Australian Capital Territory

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AUSTRALIAN CAPITAL TERRITORY

SUPREME COURT RULES

In force under the *Supreme Court Act 1933*

Reprinted as at 31 December 1993

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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AUSTRALIAN CAPITAL TERRITORY

SUPREME COURT RULES

In force under the *Supreme Court Act 1933*

1. On and after the first day of January, 1938, the Rules of Court hereinafter set out shall come into force and apply thenceforth to all suits, causes, matters, and appeals then pending, or commenced on or after that date.

PART 1—PRELIMINARY

ORDER 1

PRELIMINARY

Citation

1. These Rules may be cited as the Supreme Court Rules.[1]

Interpretation

4. (1) In these Rules, unless the contrary intention appears:

"Act" means the *Supreme Court Act 1933*;

"action" means a cause commenced by a writ of summons;

"administration and probate jurisdiction" means jurisdiction under the *Administration and Probate Act 1929*;

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"Cause Book" means the Cause Book referred to in Order 6, rule 5;

"Crown Solicitor" means the Crown Solicitor of the Commonwealth or the Government Solicitor;

"diplomatic or consular representative" means a person appointed to hold or act in any of the following offices:

(a) ambassador;

(b) high commissioner;

(c) minister;

(d) head of a mission;

(e) commissioner;

(f) chargé d'affaires;

(g) counsellor, secretary or attaché at an embassy, high commissioner's office, legation or other post;

(h) consul-general;

(i) consul;

(j) vice-consul;

(k) pro-consul;

(l) trade commissioner; and

(m) consular agent;

"file" means to file in the Registrar's office;

"originating summons" means a summons by which a matter is commenced otherwise than by writ, notice of motion, special case, or petition;

"prescribed" means prescribed by these Rules;

"probate action" means an action or other matter relating to the grant or recall of probate or of letters of administration, other than common form business;

"Registrar of Companies" means the Registrar of Companies or an Acting Registrar of Companies holding office under the *Companies Ordinance 1962*;

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"Registrar's office", "Registry" or "the office of the Registrar" means the offices of the Court;

"taxing officer" means the person whose duty it is to tax costs in the court;

"writ of execution" includes writs of *fieri facias*, *capias*, sequestration and attachments, and all subsequent writs that issue for giving effect thereto, and "issuing execution against any party" means the issuing of any such process against his person or property as is applicable to the case.

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

(a) any reference to an Order or to a rule shall be read as a reference to an Order or rule, as the case may be, contained in these Rules; and

(b) any reference to a Schedule shall be read as a reference to a Schedule to these Rules.

Application of Rules

5. (1) Part 2 of these Rules shall apply to all proceedings in the Court in any of its jurisdictions, unless, and except in so far as, other provision is made by law or by these Rules.

(2) Part 2 of these Rules shall not apply to—

(a) proceedings on the Crown side of the Court or criminal proceedings; or

(b) proceedings in the revenue jurisdiction of the Court.

(3) Orders 32, 37, 40, 54, 65, 66, 67 and 70 shall, so far as they are applicable, apply to all civil proceedings on the Crown side of the Court, including Mandamus, Prohibition and Quo Warranto.

(4) Nothing in these Rules shall, unless the contrary intention appears, affect the practice or procedure in any criminal proceedings.

PART 2—CIVIL JURISDICTION

ORDER 2

COMMENCEMENT OF CIVIL PROCEEDINGS

Mode of commencement

1.

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(2) Causes and matters which are by any law required or authorized to be commenced by motion, whether on notice or *ex parte*, or by originating summons, or order to show cause, or by petition, shall or may, respectively, be so commenced.

(3) Where by any law, or by these Rules, any person is authorized to make any application to the Court with respect to any matter which is not already the subject-matter of a pending cause or matter, and no other mode of making the application is prescribed by that law, or by these Rules, the application shall be made by motion or by originating summons.

Application of Order

2. This Order does not apply to the commencement of proceedings under the ASC Law or the Corporations Law.

ORDER 2A

COMMENCEMENT OF CORPORATIONS PROCEEDINGS

Commencement by application—Form 5

1. (1) Subject to these Rules, all proceedings in the Court's original jurisdiction under the ASC Law or the Corporations Law must be commenced by filing an application in, or substantially in, Form 5 in Schedule 12.

(2) An application under this Order must specify the section or sections of the ASC Law or the Corporations Law under which the proceedings are brought.

Parties

2. (1) A party claiming relief must be called an applicant.

(2) A party against whom relief is claimed must be called a respondent.

Relief claimed

3. (1) The application must state specifically the relief claimed by the applicant.

(2) Where the claim for relief includes a claim for the determination or direction of the Court on any question, the application must state the question.

(3) Costs need not be specifically claimed.

(4) Exemplary damages must be specifically claimed.

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Name, address etc.

4. (1) An application must contain—

(a) the name and address of the applicant; and

(b) where a party sues in a representative capacity—a statement of that fact; and

(c) where the applicant sues by a solicitor—the name, address and telephone number of the solicitor; and

(d) where the applicant sues by solicitor and that solicitor has another solicitor as agent for him or her in the proceeding—the name, address and telephone number of the agent; and

(e) an address for service.

(2) Where it appears from an application that the applicant sues by a solicitor—

(a) the solicitor must, on request in writing by a respondent, declare in writing whether the application was filed by him or her; and

(b) if the solicitor declares in writing that the application was not filed by him or her—the Court may, on application by a respondent, stay the proceeding.

Notice to appear

5. Where there is a respondent, an application must bear a note that—

(a) if there is no attendance before the Court by the respondent or his or her counsel or solicitor at the time and place stated in the application, the proceeding may be heard and the respondent will be liable to suffer judgment or an order against him or her; and

(b) before any appearance at that time the respondent must enter an appearance in the Registrar's office.

Affidavit

6. (1) The applicant must file and serve with the application an affidavit.

(2) The affidavit must show—

(a) the nature of the applicant's claim; and

(b) the material facts on which it is based.

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Filing and copies

7. (1) On an application and affidavit being filed, the Registrar on the applicant's request must sign and seal with the seal of the Court a sufficient number of copies of the application for service and proof of service.

(2) The serial number of the proceeding must be endorsed on each document.

Date for directions hearing

8. Subject to rule 9, an application must state a date for a directions hearing.

Claim for interlocutory relief

9. (1) Where by his or her application, an applicant seeks interlocutory relief, the applicant must make a distinct claim for that relief.

(2) A date for the hearing of the claim for interlocutory relief must be endorsed on the application.

(3) Where a date for hearing is endorsed on the application under subrule (2), a separate date for a directions hearing must not also be endorsed on the application.

(4) At the hearing of the claim for interlocutory relief the Court may give such directions as it thinks fit as on a directions hearing.

Endorsement of date

10. (1) The date for a hearing under rule 8 or 9 to be endorsed on the application must be obtained from the Registrar's office.

(2) Where the Court has made an order abridging time, the application must bear a note of the order made.

Time for service

11. An application and affidavit must, unless the Court otherwise orders, be served on the respondent in accordance with Order 10, not less than 5 days before the date appointed for hearing under rule 8 or 9.

Alteration of date

12. (1) Where a date for hearing has been obtained or made, the Court or the Registrar may alter the date to a later date and may authorise the solicitor for a party to make corresponding alterations in any copy for service of any application or notice.

(2) The Registrar may give authority by telephone or by such other means as the Registrar thinks fit.

(3) This rule does not apply to a proceeding to which Order 75B applies if a public notice or advertisement of the date for hearing of the proceeding is required under Order 75B or by directions made by the Court in that proceeding.

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Alteration where service out of time

13. (1) Where an application and affidavit have been served on the respondent named in the application less than 5 days before the date for hearing endorsed on the application under rule 8 or 9, the Court or the Registrar may alter the date to a later date and may authorise the solicitor for a party to give notice to that respondent of that altered date by posting an altered copy of the application by registered post to the usual or last known place of business or abode of the respondent or to the place at which the application was served if appropriate.

(2) The Registrar may give authority by telephone or by such other means as the Registrar thinks fit.

Suit in person

14. (1) Subject to subrule (2) and to Order 19, rules 16 to 21 (inclusive), any person may proceed in the Court by solicitor or in person.

(2) Except as provided by or under any Act, a corporation may not, without the leave of the Court, commence or carry on any proceeding otherwise than by a solicitor.

ORDER 3

WRIT OF SUMMONS

Actions to be commenced by writ

1. (1) Except as provided in Orders 2 and 2A, every cause shall be commenced by writ of summons, which shall be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action.

(2) It shall not be necessary to obtain the leave of the Court to issue any writ of summons for service within the Commonwealth.

(3) A writ of summons for service out of the Commonwealth, or of which notice is to be given out of the Commonwealth, shall not be issued without leave of the Court.

Costs of prolixity

2. Any costs occasioned by the use of any more prolix or other forms of writs and of indorsements thereon than the forms prescribed shall be borne by the parties using the same, unless the Court otherwise directs.

Form of writ

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is prescribed, be in accordance with Form 1 or Form 2 in the First Schedule.

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Writs for service out of Territory. Form and notice

4. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in accordance with Form 3 or Form 4, in the First Schedule. Such notice shall be in accordance with Form 5 in the First Schedule.

Date and teste

5. (1) In this rule, "writ" means—

(a) a writ of summons; or

(b) subject to these Rules and to any other law in force in the Territory, any other writ.

(2) A writ shall bear date the day on which it is issued and shall be tested in the name of the Chief Judge.

Time for appearance to be limited in writ

6. The time to be limited in a writ of summons, other than a writ to which the *Service and Execution of Process Act 1901* of the Commonwealth applies, for the appearance of the defendant is—

(a) in the case of a writ to be served out of the Commonwealth—the time limited by the order giving leave to serve the writ out of the Commonwealth or, in the case of a writ to which Order 12, rule 3, applies, by the order giving leave to issue the writ; and

(b) in any other case—8 days.

ORDER 4

INDORSEMENT OF CLAIM

When to be made

1. The indorsement of claim shall be made on every writ of summons before it is issued, and shall contain a statement sufficient to give notice of the nature of the claim and the cause thereof and of the relief or remedy required in the action, and, in case of non-compliance with this rule, the defendant may apply before appearance to set aside or amend the writ, or for particulars.

Contents of indorsement

2. In the indorsement required by rule 1 of this Order, it shall not be necessary to set forth the precise ground of complaint or the precise remedy or relief to which the plaintiff considers himself entitled.

Representative character

3. If the plaintiff sues, or the defendant, or any of the defendants, is sued in a representative capacity, the indorsement shall show, in accordance

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with such of the indorsements in Form 6 in the First Schedule as is applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

Probate actions

4. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, next of kin, heir-at-law, devisee, or in any and what other character.

Special Indorsement

5. In any action other than one which includes—

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction; or

(b) a claim by the plaintiff based on an allegation of fraud;

the writ of summons may, at the option of the plaintiff, be specially indorsed with or accompanied by a statement of claim.

Indorsement of notice as to stay of proceedings

6. (1) Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim—

(a) shall state the amount claimed;

(b) shall state a specific amount claimed for costs and disbursements or state that the plaintiff claims taxed costs; and

(c) shall state that upon payment, within the time allowed for appearance, of the amount claimed, together with the specific amount (if any) claimed for costs and disbursements, further proceedings will be stayed.

(2) Upon payment by the defendant in compliance with such indorsement, all further proceedings in the action shall be stayed, except taxation of costs pursuant to this rule and execution to recover such costs.

(3) If—

(a) more than $505 is claimed in the writ for costs and disbursements;

(b) the plaintiff claims taxed costs; or

(c) the action could properly be brought in the Magistrates Court;

the defendant may, notwithstanding a payment which complies with paragraph (1) (c), have the costs taxed and, if more than one-sixth is disallowed, the plaintiff's solicitor shall pay the costs of taxation, and

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execution may issue for any amount by which the sum paid by the defendant for costs and disbursements exceeds the sum allowed on taxation.

(4) Upon judgment in default of appearance to a writ endorsed in accordance with this rule—

(a) subject to Order 65, rule 7A, the plaintiff shall be allowed without taxation not more than $566 for costs and disbursements and also the fees (if any) properly paid for service of the writ; and

(b) a claim for more than $566 for costs and disbursements (other than service fees) shall be subject to taxation.

Indorsement of claim for account

7. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

In actions for libel

8. In actions for libel the indorsement on the writ shall state sufficient particulars to identify the publications in respect of which the action is brought.

ORDER 5

INDORSEMENT OF ADDRESS

Where plaintiff sues by solicitor

1. (1) The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ of summons or notice in lieu of the writ of summons the address of the plaintiff, and also his own name and place of business, which shall be his address for service, if such place of business is not more than 10 kilometres from the office of the Registrar, and also, if his place of business is more than 10 kilometres from the office of the Registrar, another place, to be his address for service, which shall not be more than 10 kilometres from the office of the Registrar, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

(2) Where any such solicitor is only agent of another solicitor, he shall add to his own name and place of business the name and place of business of the principal solicitor.

(3) A solicitor referred to in subrule (1) or (2) who is willing to have documents not required to be personally served on, or delivered to, the plaintiff, served or delivered by way of—

(a) an Australian Document Exchange Pty Ltd exchange box in the Territory; or

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(b) a facsimile receiver at, or used in connection with, the solicitor's place of business;

is to include in the indorsed address for service the number of the exchange box or of the facsimile receiver, as the case may be.

Where plaintiff sues in person

2. A plaintiff suing in person shall indorse upon the writ of summons or notice in lieu of the writ of summons his place of residence, his occupation, and a place, to be his address for service, which shall not be more than 10 kilometres from the office of the Registrar, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

Where plaintiff cannot be found

3. Where a plaintiff sues in person and no person can be found at the place of residence or address for service indorsed by him, all such writs and other documents as are mentioned in the last preceding rule may be served on him by filing the same.

Proceedings other than actions

4. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding rules of this Order shall apply to the document by which such proceedings are originated as if it were a writ of summons.

ORDER 6

ISSUE OF WRITS OF SUMMONS

Place of issue

1. Every writ of summons shall be issued out of the Registrar's office.

Preparation of writ

2. Writs of summons shall be prepared by the plaintiff or his solicitor.

Sealing of writ

3. (1) The Registrar shall seal every writ of summons and so many copies of each writ as are required for the service of the writ.

(2) A writ of summons shall be deemed to have been issued at the time at which it was sealed.

Copy to be left with officer

4. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the Registrar a copy of such writ, and all

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the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

Officer to file copy

5. The Registrar shall file the copy, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which shall be in such form and kept in such manner as the Judge from time to time directs, and the action shall be distinguished by the date of the year and a number.

Writ in probate actions to be verified

6. The issue of a writ of summons in a Probate action shall be preceded by the filing of an affidavit by the plaintiff, or by one of the plaintiffs, verifying the indorsement on the writ.

ORDER 7

CONCURRENT WRITS AND ORIGINATING SUMMONSES

Issue of concurrent writs

1. The plaintiff in any action may, at the time of, or at any time during twelve months after, the issuing of the original writ of summons, issue one or more concurrent writ or writs. Each concurrent writ shall bear teste of the same day as the original writ, and shall be sealed by the Registrar with a seal bearing the word "Concurrent", and the date of issuing the concurrent writ—

Provided that a concurrent writ or writs shall only be in force for the period during which the original writ in such action is in force.

Concurrent originating summons

2. A concurrent originating summons may be issued in the same manner, *mutatis mutandis*, as a concurrent writ of summons.

Concurrent writs within and beyond the jurisdiction

3. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice is to be given in lieu of service, out of the jurisdiction, and a writ for service, or whereof notice is to be given in lieu of service, out of the jurisdiction may be issued and sealed as a concurrent writ with one for service within the jurisdiction.

Concurrent originating summons within and beyond the jurisdiction

4. An originating summons for service within the jurisdiction may be issued and marked as a concurrent originating summons with one for service out of the jurisdiction, and an originating summons for service out

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of the jurisdiction may be issued and marked as a concurrent originating summons with one for service within the jurisdiction.

ORDER 8

I—DISCLOSURES BY SOLICITORS AND PLAINTIFFS

Solicitor to declare whether writ issued by his authority

1. (1) Every solicitor whose name is indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity.

(2) If the solicitor answers in the affirmative, then he shall also, in case the Court so orders and directs, declare in writing within a time allowed by the Court, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of Court.

(3) If the solicitor declares that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court.

II—CHANGE OF SOLICITORS

Change of solicitor

2. (1) A party suing or defending by a solicitor shall, subject to Order 19, rule 34, be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice of such change being filed, but until such notice is filed and a copy thereof served, the former solicitor shall be considered the solicitor of the party.

(2) The party giving the notice shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the notice, indorsed with a memorandum stating that the notice has been filed.

Appointment of solicitor

3. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter, on his behalf, he may, either personally or by his solicitor, give notice of the appointment, and the provisions of this Order relating to a notice of change of solicitor shall, with the necessary modifications, apply to a notice of appointment of a solicitor.

Notice of intention to act in person

4. Where a party, after having sued or defended by a solicitor, intends to act in person in the cause or matter, he may give notice stating his

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intention to act in person and giving an address for service, and the provisions of this Order relating to notice of change of a solicitor shall, with the necessary modifications, apply to a notice of intention to act in person.

Removal of solicitor from the record

5. (1) Where a solicitor who has acted for a party in a cause or matter has died, or becomes bankrupt, or cannot be found, or has ceased to have the right to practice in a Federal Court, and the party has not given notice of change of solicitor or notice of intention to act in person, any other party to the cause or matter, may, on notice to be served on the first-named party personally, or by registered letter addressed to his last known place of address, unless the Court otherwise directs, apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the first-named party in the cause or matter, and the Court may make an order accordingly.

(2) If an order is made accordingly—

(a) the party on whose application it was made shall forthwith give notice of the making of the order to every other party to the cause or matter, not being parties in default as to entry of appearance; and

(b) the party whose solicitor has been removed shall either appoint another solicitor or else give such an address for service as is required to be given by a party acting in person, and shall comply with the provisions of this Order relating to notice of appointment of a solicitor or notice of intention to act in person, and in default of his so doing, any documents in respect of which personal service is not required may be served on the party so in default by being filed.

(3) An order made under this rule shall not affect the rights or liabilities of the solicitor and the party for whom he acted as between themselves.

Withdrawal of solicitor who has ceased to act for a party

6. (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with the provisions of this Order, the solicitor may, on notice served on the party personally or by registered letter addressed to his last known place of address, unless the Court otherwise directs, apply to the Court for an order to the effect that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court may make an order accordingly—

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Provided that unless and until the solicitor has complied with the next succeeding subrule he shall (subject to rules 2 and 5 of this Order) be deemed to be the solicitor of the party.

(2) If an order is made under the last preceding paragraph—

(a) the solicitor shall forthwith give notice of the making of the order to all parties to the cause or matter, not being parties in default as to entry of appearance; and

(b) the party shall either appoint another solicitor or else give such an address for service as is required to be given by a party acting in person, and shall comply with the provisions of this Order relating to notice of appointment of a solicitor or notice of intention to act in person, and, in default of his so doing, any documents of which personal service is not required may be served on the party so in default by being filed.

(3) An order made under this rule shall not affect the rights and liabilities of the solicitor and the party for whom he acted as between themselves.

Meaning of address for service

7. In this Order "address for service" means the address for service required by Order 5, rule 1 or rule 2.

Solicitor not to act for adverse parties

8. A solicitor shall not act in any cause or matter for plaintiff and defendant, or for any two or more defendants having adverse interests in a cause or matter.

ORDER 9

RENEWAL OF WRIT

Original writ to be in force for twelve months; may be renewed

1. (1) An original writ of summons shall not be in force for more than twelve months from the day of the date thereof, including the day of such date, but if any defendant therein named is not served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court for leave to renew the writ, and the Court, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ.

(2) The writ shall in such case be renewed by being sealed by the Registrar with a seal bearing the word "Renewed" and the date of the day, month, and year of such renewal, upon delivery to him by the plaintiff or

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his solicitor of a memorandum in accordance with Form 7 in the First Schedule.

(3) A writ of summons so renewed shall remain in force and be available to prevent the operation of any law whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Evidence of renewal

2. The production of a writ of summons purporting to be sealed and showing such writ of summons to have been renewed in accordance with the provisions of the last preceding rule, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Lost writ; copy may be sealed

3. Where a writ, of which the production is necessary, has been lost, the Court, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.

ORDER 10

SERVICE

Service on defendant presumed where solicitor accepts service or appearance is entered

1. (1) Where the solicitor acting for a defendant indorses on the original writ a statement that he accepts service of the writ on behalf of that defendant and that he undertakes to enter an appearance to the writ, the writ shall be deemed to be duly served on the defendant at the time at which the indorsement is made.

(2) Where an appearance to a writ of summons has been entered for a defendant, the writ shall, without any proof of the service of the writ, be deemed to have been duly served on the defendant and to have been so served on the day on which the appearance was entered.

Service of writ

2. Except where otherwise prescribed, a writ of summons shall be served personally.

Service of originating summons

2A. Where, by these Rules or by any other law in force in the Territory, an originating summons is required to be served, the summons shall be served personally.

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Meaning of "personal service"

2B. Personal service of a document shall be effected by delivering to, and leaving with, or offering to deliver to and leave with, the person to be served a sealed copy of the document.

On husband and wife

3. When husband and wife are both defendants to the action, they shall both be served, unless the Court otherwise orders.

Infant defendant

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court otherwise orders, be deemed good service on the infant—

Provided that the Court may order that service made, or to be made, on the infant shall be deemed good service.

Lunatic defendant

5. When a lunatic, or person of unsound mind not so found by inquisition, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides, or under whose care he or she is, shall, unless the Court otherwise orders, be deemed good service on such defendant.

Service on corporation

6. (1) In addition to any other method by which a document may be served on a corporation, service of a document that is required by a provision of these Rules (other than a provision of Order 75B) to be served on a corporation may be effected—

(a) in the case of a corporation incorporated under the *Companies Ordinance 1962* or a corporation within the meaning of the *Companies Act 1981* of the Commonwealth—

(i) if, in relation to that corporation, a notice has been lodged for the purpose of subsection 202B (1) of that Ordinance or subsection 340 (1) of that Act—by serving the document personally upon the official manager named in the last notice so lodged;

(ii) if, in relation to that corporation, a notice has been lodged for the purpose of subsection 280 (1) of that Ordinance or subsection 421 (1) of that Act—by serving the document personally upon the liquidator named in the last notice so lodged; and

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(iii) if no notice has been lodged for the purpose of subsection 202B (1) or 280 (1) of that Ordinance, or subsection 340 (1) or 321 (1) of that Act, in relation to that corporation—by serving the document personally upon a director, manager or secretary of the corporation; and

(ab) by leaving a copy of the document with some person apparently an officer of or in the service of the corporation and apparently of or above the age of 16 years—

(i) at the registered office of the corporation; or

(ii) if there is no registered office, at the principal place of business or the principal office of the corporation; and

(b) in any other case—by serving the document personally upon—

(i) a member of the body charged with the management of the affairs of the corporation;

(ii) a manager, secretary or similar officer of the corporation; or

(iii) in the case of a corporation constituted by one person—that person.

(2) Subject to these Rules, a reference in subrule (1) to a corporation shall, so far as is applicable, be read as including a reference to a body to which Division 6 of Part XII of the *Companies Act 1981* of the Commonwealth applies.

(3) In spite of subrule (1), for the purposes of Order 75B, personal service may be effected—

(a) on a company, as defined in section 9 of the *Corporations Act 1989* of the Commonwealth or corresponding legislation of a State or Territory ("the Corporations Law"), in any manner permitted by section 220 of the Corporations Law; and

(b) on the liquidator of a company, in the manner permitted by subsection 220 (5) of the Corporations Law; and

(c) on an official manager of a company, in the manner permitted by subsection 220 (6) of the Corporations Law.

(4) For the purposes of Order 75B, a document served by sending it by pre-paid post addressed to—

(a) a company at the registered office of the company; or

(b) a liquidator at the last address of the office of the liquidator notice of which has been lodged; or

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(c) an official manager at the last address of the office of the official manager notice of which has been lodged;

is taken to be served on the seventh day after posting.

To recover vacant land

7. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

Person serving writ to indorse date of service

8. (1) The person serving the writ of summons shall, within three days at most after such service, indorse on the writ the day of the week and month of the service thereof, otherwise the plaintiff may not, in case of non-appearance, proceed by default, and every affidavit of service of such writ shall mention the day on which such indorsement was made.

(2) This rule shall apply to substituted as well as other service.

ORDER 11

SUBSTITUTED SERVICE

Substituted service

1. Where—

(a) personal service of a document is required by these Rules; and

(b) it is made to appear to the Court that prompt personal service cannot be effected;

the Court may make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as is just.

Application for order

2. An application for an order under rule 1 shall be supported by an affidavit setting forth the grounds upon which the application is made.

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ORDER 12

SERVICE OUT OF THE COMMONWEALTH

Service out of the Commonwealth

2. Service out of the Commonwealth of a writ of summons, or notice of a writ of summons, may be allowed by the Court whenever—

(a) the whole subject-matter of the action is land situate within the Territory (with or without rents or profits) or the perpetuation of testimony relating to land within the Territory;

(b) any law, deed, will, contract, obligation or liability affecting land or hereditaments situate within the Territory is sought to be construed, rectified, set aside or enforced in the action;

(c) any relief is sought against any person domiciled or ordinarily resident within the Territory;

(d) the action is for the administration of the personal estate of any deceased person who, at the time of his death, was domiciled within the Territory, or for the execution (as to property situate within the Territory) of the trusts of any written instrument of which the person to be served is a trustee and which ought to be executed according to the law in force in the Territory;

(e) the action is founded—

(i) on any breach, or alleged breach, within the Territory of any contract wherever made which, according to the terms thereof, ought to be performed within the Territory; or

(ii) on a tort committed within the Territory;

(f) any injunction is sought as to anything to be done within the Territory, or any nuisance within the Territory is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(g) any person out of the Commonwealth is a necessary or proper party to an action properly brought against some person duly served within the Commonwealth.

Jurisdiction by consent

3. (1) Notwithstanding anything contained in the last preceding rule, the parties to any contract or agreement may agree—

(a) that the Court shall have jurisdiction to entertain any action in respect of, or arising out of, that contract or agreement; and

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(b) that service of any writ of summons in any such action may be effected at any place within or without the Commonwealth, on any party, or any person on behalf of any party, or in any manner specified or indicated in that contract or agreement.

(2) Service of any such writ of summons at the place (if any), on the party or person (if any), or in the manner (if any) specified or indicated in the contract or agreement shall be deemed to be good and effective service wherever the parties are resident.

(3) If no place, manner or person is so specified or indicated, the Court may grant leave to serve the writ, or notice of the writ, out of the Commonwealth.

Application for leave

4. Every application for leave to serve a writ of summons, or notice thereof, out of the Commonwealth, shall be supported by affidavit or other evidence—

(a) stating that, in the belief of the deponent, the plaintiff has a good cause of action;

(b) showing in what place or country the defendant is, or probably may be found;

(c) stating whether the defendant is a British subject or not; and

(d) stating the grounds upon which the application is made.

Leave not to be granted except in proper cases

5. The Court shall not grant leave to serve a writ of summons, or notice thereof, out of the Commonwealth unless the Court is satisfied that the case is a proper one for service out of the Commonwealth under this Order.

Time for appearance

6. Any order giving leave to serve a writ of summons, or notice thereof, out of the Commonwealth shall limit a time after such service or notice within which the defendant is to enter an appearance, and in fixing that time the Court shall have regard to the place where the writ is to be served or the notice given.

Notice of writ

7. Where the defendant is neither a British subject nor within the United Kingdom or a British possession, notice of the writ, and not the writ itself, shall be served upon him.

Service of notice of writ

8. Where leave is given under this Order to serve notice of a writ of summons out of the Commonwealth, the notice shall, subject to any

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direction given by the Court as to the manner in which the notice shall be served or brought under the notice of the defendant, be served in the manner in which writs of summons are served.

Service out of the Commonwealth of other documents

9. Service out of the Commonwealth may be allowed by the Court of—

(a) an originating summons;

(b) a petition;

(c) a notice of motion;

(d) the writ of summons, or notice of the writ, in a Probate action;

(e) any other originating proceeding; or

(f) any summons, order, or notice, in any proceedings duly instituted, whether by writ of summons or otherwise;

and the provisions of rules 4, 5, 6, 7 and 8 of this Order shall, *mutatis mutandis*, apply to such service.

Procedure to effect service in certain cases

10. Where leave is given in a civil or commercial cause or matter to serve any writ of summons, originating summons, notice or other document in any foreign country with which a Convention in that behalf has been or is made and extended to the Commonwealth, the following procedure shall, subject to any special provisions contained in the Convention, be adopted—

(1) The party bespeaking such service shall file a Request in accordance with Form 8 in the First Schedule. The Request shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request, and a copy of each for every person to be served and any further copies which the Convention may require, unless the service is required to be made on a British subject directly through an Australian or British diplomatic or consular representative, in which case the translation and copies thereof need not accompany the Request, unless the Convention expressly requires that they should do so.

(2) The documents to be served shall be sealed and shall be forwarded by the Registrar to the Attorney-General for transmission through the diplomatic channel to the foreign country.

(3) An official certificate transmitted through the diplomatic channel by the foreign judicial authority, or by an Australian or British diplomatic or consular representative, to the Court, establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of such

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service, and shall be filed of record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

(4) In cases where a writ of summons or notice thereof is served pursuant to this rule, and an official certificate of such service is produced, no endorsement of service under Order 10 rule 8 shall be required.

Letters of Request

11. Where in connexion with any civil or commercial matter pending before a Court or Tribunal of a foreign country which is a party to a Convention regarding Legal Proceedings in Civil and Commercial Matters which has been extended to the Commonwealth, a request for service of any document is received by the Registrar from any Consular or other authority of that country, the following procedures shall, subject to any special provisions contained in the Convention, be adopted—

(1) The service shall be effected by such person as the Judge from time to time appoints for that purpose, or by the authorized agent of that person, by delivering to and leaving with the person to be served the original document or a copy of that document, as indicated in the Request, and one copy of an English translation thereof, in accordance with the provisions of these Rules regulating the service of process.

(2) No Court fees shall be charged for the service, but particulars of the charges of the person or agent who effects service shall be submitted to the Registrar, who shall certify the amount properly payable in respect thereof.

(3) The Registrar shall transmit to the Attorney-General for transmission to the Consular or other authority making the request, a certificate establishing the fact and the date of the service, or indicating the reasons why it has not been possible to effect service, and a statement of the amount of the charges properly payable, certified in accordance with paragraph (2) of this rule.

Consequential orders

12. Upon the application of the Crown Solicitor, with the consent of the Attorney-General, the Court may make all such orders for substituted service or otherwise as are necessary to give effect to the rules of this Order.

ORDER 13

APPEARANCE

In the Registrar's office

1. A defendant shall enter his appearance to a writ of summons in the Registrar's office.

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Mode of appearance

2. (1) A defendant shall enter his appearance by delivering to the Registrar a memorandum in writing, dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the same time deliver to the Registrar a duplicate of the memorandum, which the Registrar shall seal with a seal bearing the words "Appearance Entered" showing the date on which the appearance is entered, and then return the duplicate memorandum to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

(2) A defendant who—

(a) wishes to submit to the orders of the Court, except as to costs; and

(b) is not a person who is taken under these Rules to have defaulted in making an appearance;

may add to the memorandum of appearance a statement that he or she submits to the orders of the Court, except as to costs.

(3) A defendant who adds to his or her memorandum of appearance a statement under subrule (2) and takes no active part in the proceedings is entitled to an order that the plaintiff pay the defendant's costs as a submitting party, unless the Court orders otherwise.

(4) A defendant who—

(a) having been entitled to do so, does not add to his or her memorandum of appearance a statement under subrule (2); and

(b) takes no active part in the proceedings;

is not entitled to an award for costs greater than that to which the defendant would have been entitled had the statement been added, unless the Court orders otherwise.

(5) Any costs that a plaintiff has been ordered to pay under subrule (3) shall be included in any costs payable by any other defendant or opponent to the plaintiff in respect of the proceedings.

Notice of appearance

3. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself, by serving in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, the sealed duplicate memorandum.

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Address for service of solicitor

4. (1) The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, which shall be his address for service if such place of business is not more than 10 kilometres from the office of the Registrar, and also, if his place of business is more than 10 kilometres from the office of the Registrar, another place, to be his address for service, which shall not be more than 10 kilometres from the office of the Registrar, and where any such solicitor is only agent of another solicitor, he shall add to his own name and place of business the name and place of business of the principal solicitor.

(2) A solicitor referred to in subrule (1) who is willing to have documents not required to be personally served on, or delivered to, the defendant, served or delivered by way of—

(a) an Australian Document Exchange Pty Ltd exchange box in the Territory; or

(b) a facsimile receiver at, or used in connection with, the solicitor's place of business;

is to include in the indorsed address for service the number of the exchange box or of the facsimile receiver, as the case may be.

Address for service of defendant appearing in person

5. (1) If a defendant is to appear in person, the memorandum of appearance shall specify his or her residential address and an address for service.

(2) The address for service shall be not more than 10 kilometres from the office of the Registrar.

Defective address

6. If the memorandum does not contain such address it shall not be received, and if any such address is illusory or fictitious, the appearance may be set aside by the Court, on the application of the plaintiff.

Form of appearance

7. The memorandum of appearance shall be in accordance with Form 9 in the First Schedule.

Entry in Cause Book

8. Upon receipt of a memorandum of appearance, the Registrar shall forthwith enter the appearance in the Cause Book.

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Several defendants

9. If two or more defendants in the same action appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in the one memorandum.

Appearance not entered on undertaking

10. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

Appearance allowed before judgment

11. A defendant may appear at any time before final judgment. If he appears at any time after the time limited by the writ for appearance, he shall not, unless the Court otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

Person not named may defend for land

12. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant, and the Court may strike out or confine appearances or defences set up by persons not in possession by themselves or their tenants.

Landlord to appear as such

13. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Person appearing to be named as a defendant

14. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court to appear and defend, he shall enter an appearance according to the preceding rules of this order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

Defence may be limited

15. Any person appearing to a writ of summons for the recovery of land may limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor. The notice shall be served within four days after appearance, and

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an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

Notice of limitation

16. The notice mentioned in the last preceding rule shall be in accordance with Form 10 in the First Schedule.

Setting aside originating process etc.

17. (1) On application by a defendant to an originating process, the Court may, by order—

(a) set aside the originating process;

(b) set aside the service of the originating process on the defendant;

(c) declare that the originating process has not been duly served on the defendant;

(d) discharge an order giving leave to serve the originating process outside the Territory or confirming service of the originating process outside the Territory;

(e) discharge an order extending the validity for service of the originating process;

(f) protect or release—

(i) property seized, or threatened with seizure, in the proceedings; or

(ii) property subject to an order restraining its disposition or disposal, or in respect of which such an order is sought;

(g) declare that the Court has no jurisdiction over the defendant in respect of the subject matter of the proceedings;

(h) in its discretion—decline to exercise its jurisdiction in the proceedings; or

(j) grant any other relief that it thinks appropriate.

(2) If the application is by a defendant on whom the originating process was served outside Australia, the Court may make the order on the ground that—

(a) the service of the originating process is not authorised by these Rules; or

(b) the Court is an inappropriate forum for the proceedings.

(3) Application shall be by notice of motion—

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(a) filed within the time limited for entering an appearance; and

(b) bearing a note 'The defendant's address for service is' that states the defendant's address for service.

(4) An application may be made without entering an appearance and is not taken to be a voluntary submission to the jurisdiction of the Court.

ORDER 14

DEFAULT OF APPEARANCE

Default of appearance by infant or person of unsound mind. Application for guardian

1. When no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before proceeding with the action against the defendant, apply to the Court for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court at the time of hearing such application dispenses with such last-mentioned service.

Affidavit of service

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this Order, or under Order 15, rule 1, or Order 16, rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service (as the case may be).

Final judgment when writs indorsed for liquidated demand

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails or all the defendants (if more than one) fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (in any), or (if no rate is specified) at the rate of 15 per cent per annum, to the date of the judgment, and costs.

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Where claim for liquidated demand final judgment against defendants not appearing

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may enter final judgment as in the preceding rule against such as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed with his action against such as have appeared.

Entry of interlocutory judgment

5. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail, to appear, the plaintiff may enter interlocutory judgment.

Entry of interlocutory judgment against defendants not appearing

6. Where the writ is indorsed as mentioned in the last preceding Rule and there are several defendants, of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear.

Entry of interlocutory and final judgment in claim containing liquidated demand

7. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest, and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be.

Trial of action after entry of interlocutory judgment

7A. Upon the entry of interlocutory judgment under this or any other Order, the action against the defendant against whom such judgment is entered shall, unless the Court otherwise orders, proceed to trial on the issue of damages only or of the value of goods only, or on both of those issues, as the case may be.

Possession of land where no appearance

8. In case no appearance is entered in an action for the recovery of land within the time limited for appearance, or if an appearance is entered but the defence is limited to part only, the plaintiff may enter a judgment that the

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person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Mesne profits or damages

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach of contract, or wrong or injury to the premises claimed upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land, and may proceed as in the other preceding rules of this order as to such other claim so indorsed.

Judgment may be set aside or varied

10. Where judgment is entered pursuant to any of the preceding rules of this Order, the Court may set aside or vary such judgment upon such terms as are just.

Default of appearance in other cases

11. In all actions not by the rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under Order 4, rule 5, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order 18.

Proceedings mentioned on writ may be taken

12. All such proceedings as are mentioned in or on any writ of summons, capias, or foreign attachment, or in any notice issued under the Act or under these Rules shall and may be had and taken in default of a defendant's appearance or putting in special bail (or as the case may be).

Suggestion of breaches in action in bond

13. Where the writ is indorsed with a claim on a bond within the Imperial Act 8 & 9, Will. III., c. 11, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in that Act.

Default of appearance to originating summons

14. Where a defendant, or respondent to an originating summons to which an appearance is required to be entered, fails to appear within the time limited, the plaintiff or applicant may apply to the Court for an appointment for the hearing of such summons, and upon a certificate that no appearance has been entered, the Court shall appoint a time for the hearing of such summons, upon such conditions (if any) as it or he thinks fit.

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ORDER 15

LEAVE TO SIGN JUDGMENT OR DEFEND WHERE WRIT SPECIALLY INDORSED

Summary Judgment

1. (1) Where a defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Order 4, rule 5, the plaintiff may whether or not a defence has been delivered, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed (if any), apply to the Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff is entitled to.

(1A) Notwithstanding subrule (1), an application under that subrule may, if the Judge so directs, be supported by an affidavit containing statements of information and belief with the sources and grounds thereof.

(2) The Judge may thereupon, unless the defendant satisfies him that he has a good defence to the action on the merits, or discloses such facts as are deemed sufficient to entitle him to defend the action generally, make an order empowering the plaintiff to enter such judgment as is just, having regard to the nature of the remedy or relief claimed.

(3) If, on the hearing of any application under this rule, it appears that any claim which could not have been specially indorsed under Order 4, rule 5, has been included in the indorsement on the writ, the Judge may, if he thinks fit, forthwith amend the indorsement by striking out that claim, or may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim.

(4) Where the plaintiff's claim is for the delivery up of a specific chattel (with or without a claim for the hire thereof or for damages for its detention) the Judge may make an order for the delivery up of the chattel without giving the defendant the option of retaining the chattel upon paying the assessed value thereof, and that order, if it is not obeyed may be enforced by a writ of attachment or by a writ of delivery.

Application by motion on notice

2. An application under rule 1 shall be made by motion on notice—

(a) returnable not less than 2 days after service; and

(b) accompanied by a copy of the relevant affidavit and of any exhibit referred to in the affidavit.

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Defendant may show cause

3. (1) The defendant may show cause against such application by affidavit, or, (except in actions for the recovery of land, or for the delivering up of a specific chattel), by offering to bring into Court the sum indorsed on the writ, or the Judge may allow the defendant, or any other person, to be examined on oath.

(2) The affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim.

(3) The Judge may, if he thinks fit, order the plaintiff or the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined and cross-examined on oath, or to produce any papers, books, or documents, or copies of or extracts therefrom.

Judgment may be for part of claim

4. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms (if any) as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge thinks fit, and the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Or against one defendant

5. If it appears to the Judge that any defendant has a good defence to, or ought to be permitted to defend, the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former defendant may be permitted to defend, and the plaintiff may enter final judgment against the latter defendant, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former defendant.

Leave on terms

6. Leave to defend may be given unconditionally or subject to such terms as to giving security or time or mode of trial or otherwise, as the Judge thinks fit.

Summary disposal

7. The Judge may, with the consent of all parties, dispose of the action finally, and without appeal, in a summary manner.

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Directions as to trial

9. (1) Where leave, whether conditional or unconditional, is given to defend, the Judge may give all such directions as to the further conduct of the action as might be given on a summons for direction under Order 33, and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

(2) Where the plaintiff has obtained leave to enter final judgment subject to a suspension of execution pending the trial of a counter-claim, the provisions of this rule shall apply to the counter-claim as if it were an action.

Costs

10. (1) The costs of and incidental to all applications under this Order shall be dealt with by the Judge on the hearing of the application, and he shall order by and to whom, and when, they shall be paid, or may refer them to the Judge at the trial—

Provided that in case no trial afterwards takes place, or no order as to those costs is made, the costs shall be costs in the cause.

(2) If the plaintiff makes an application under this Order, where the case is not within the Order, or where the plaintiff, in the opinion of the Judge, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the application may be dismissed with costs to be forthwith paid by the plaintiff.

Relief from forfeiture

11. A tenant shall have the same right to relief after a judgment under this Order for the recovery of land on the ground of forfeiture for non-payment of rent, as if the judgment had been given after trial.

ORDER 16

SUMMARY JUDGMENT FOR SPECIFIC PERFORMANCE

Plaintiff may apply to sign judgment

1. Where the defendant has appeared to a writ of summons endorsed with a claim for specific performance of a contract in writing for the sale or purchase of property, or any estate or interest therein, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and stating that there is, in his opinion, no defence to the action, apply to the Judge for an order for specific performance of the contract and for such consequential accounts, inquiries and directions as to payment of purchase money, interest, damages and costs or otherwise as the case requires. The Judge may thereupon, unless the defendant by affidavit or otherwise satisfies him that he has a

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good defence to the action on the merits, or discloses such facts as are deemed sufficient to entitle him to defend, make such order as is just.

Application by motion on notice

2. An application under rule 1 shall be made by motion on notice—

(a) returnable not less than 2 days after service; and

(b) accompanied by a copy of the relevant affidavit and of any exhibit referred to in the affidavit.

Defendant may show cause

3. (1) The defendant may show cause against the application by affidavit, or the Judge may allow the defendant, or any other person, to be examined on oath.

(2) The Judge may, if he thinks fit, order the plaintiff or the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined and cross-examined on oath, or to produce any papers, books, or documents, or copies of, or extracts therefrom.

Leave on terms

4. Leave to defend may be given either unconditionally or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge thinks fit.

Summary disposal

5. The Judge may, with the consent of all parties, dispose of the action finally, and without appeal, in a summary manner.

Directions as to trial

6. Where leave, whether conditional or unconditional, is given, the Judge may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 33, and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

Costs

7. The provisions of Order 15, rule 10, shall apply to all applications under this Order.

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ORDER 17

SUMMARY JUDGMENT BY DEFENDANT

Defendant may apply for summary judgment

1. Any defendant to an action may, within ten days after appearance, or at any later time by leave of the Court, apply to the Judge for summary judgment, and if the Judge is satisfied that the action is frivolous or vexatious, that the defendant has a good defence on the merits, or that the action should be disposed of summarily or without pleadings, the Judge—

(a) may order that judgment be entered for the defendant with or without costs;

(b) may order that the plaintiff shall proceed to trial without pleadings; or

(c) if all parties consent, may dispose of the action finally, and without appeal, in a summary manner.

Plaintiff may show cause

2. (1) The plaintiff may show cause against such application by affidavit or by *viva voce* evidence.

Attendance for examination

(2) The Judge may, if he thinks fit, order the plaintiff or the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined and cross-examined on oath or to produce any papers, books, or documents, or copies of or extracts therefrom.

Directions

3. If the Judge directs that the action shall proceed to trial, he may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 33, and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

ORDER 18

APPLICATION FOR ACCOUNT

Order for account

1. Where a writ of summons has been indorsed for an account, under Order 4, rule 7, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not, after appearance, by affidavit or otherwise, satisfy the Court that there is some preliminary question to be tried, an order for proper accounts, with all necessary inquiries and directions, shall forthwith be made.

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Application for it

2. An application for such an order as is mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

ORDER 19

PARTIES

1 Generally

Persons claiming jointly, severally, or in the alternative may be plaintiffs

1. (1) All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions any common question of law or fact would arise—

Provided that, if upon the application of any defendant it appears that such joinder may embarrass or delay the trial of the action, the Court may order separate trials, or may make such other order as is expedient, and judgment may be given for such one or more of the plaintiffs as are found to be entitled to relief, for such relief as he or they are entitled to, without any amendment.

(2) The defendant, though unsuccessful, shall be entitled to costs occasioned by so joining any person who is not found entitled to relief, unless the Court, in disposing of the costs, otherwise directs.

No other action to be brought for same claim

2. No other action shall be brought against the defendant by any person so joined as plaintiff in respect of the same cause of action unless by leave of the Court.

Plaintiffs may be substituted or added

3. Where an action has been commenced in the name of the wrong person as plaintiff, or it is doubtful whether it has been commenced in the name of the right plaintiff, the Court may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as seem just.

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Counter-claim or set-off in case of misjoinder

4. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Defendants may be sued jointly, severally, or in the alternative

5. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and judgment may be given against such one or more of the defendants as are found to be liable according to their respective liabilities, without any amendment.

Defendant having only partial interest

6. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him, but the Court may make such order as appears just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he has no interest.

Plaintiff may join parties jointly and severally liable

7. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Plaintiff in doubt may join defendants for alternative redress

8. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as is mentioned in this order or as is prescribed by any special order, join two or more defendants, to the intent that the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties.

Trustees, executors, and representative parties

9. (1) Trustees, executors and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons, but the Court may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.

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(2) This rule shall apply to trustees, executors, and administrators suing or sued in proceedings to enforce a security by foreclosure or otherwise.

Where parties are numerous

10. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court to defend, in such cause or matter on behalf or for the benefit of all persons so interested.

Power to approve compromise in absence of some of the persons interested

11. When in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the Court and assenting to the compromise, the Court, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts.

Amendment on misjoinder of parties

12. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court may, at any stage of the proceedings, either upon or without the application of any party, and on such terms as appear to the Court to be just, order that the names of any parties improperly joined, whether as plaintiff or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. A person shall not be added as a plaintiff suing without a next friend, or as next friend of a plaintiff under any disability, without his consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons, or notice, in the manner mentioned in this Order, or in such manner as is prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

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Application as to parties

13. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Amended writ

14. Where a defendant is added or substituted the plaintiff shall, unless otherwise ordered by the Court, file an amended copy of, and sue out, a writ of summons, and serve such new defendant with such writ, or give notice thereof, in the same manner as original defendants are served.

Probate actions

15. Subject to the provisions of these Rules, in all Probate actions the rules as to parties in the Court of Probate in England immediately before the first day of November, 1875, shall apply.

Title of proceedings after change of parties

15A. (1) In any cause or matter, all proceedings subsequent to the making of an order adding, striking out or substituting a party shall, whether or not subrule (2) has been complied with, be entitled according to the effect of the order.

(2) An order referred to in subrule (1) shall be prepared and entered by the party applying for the order or by such party as the Court may direct.

2 Persons under Disability

Infants

16. (1) Infants may sue as plaintiffs by their next friends and infants may defend any action by their guardians appointed for that purpose.

(1A) A woman, whether single or married, may be the next friend, or guardian *ad litem*, of an infant.

(2) In this part of this Order "to sue" and "to defend" include to be a party to any cause or matter.

Lunatics and persons of unsound mind

17. Lunatics, and persons of unsound mind not so found by inquisition, may respectively sue as plaintiffs in any action by their committee or next friend, and may defend any action by their committees or guardians appointed for that purpose.

Appearance of infant

18. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary,

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but the solicitor applying to enter such appearance shall make and file an affidavit in accordance with Form 11 in the First Schedule.

Guardian *ad litem* in petitions etc.

19. Every infant served with a petition or notice of motion or summons in a matter shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian *ad litem* shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last preceding rule.

Written authority of next friend or relator

20. Before the name of any person is used in any action as next friend of any infant or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed.

Consent on behalf of infants etc.

21. In all causes or matters to which an infant or person of unsound mind (whether so found by inquisition or not) or person under any other disability is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent:

Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Court.

4 Administration and Execution of Trusts

Heir-at-law, next of kin, class

37. (1) In any case in which the right of an heir-at-law, or the next of kin, or a class depends upon the construction which the Court puts upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law, or next of kin, or class, and the Court considers that, in order to save expense, or for some other reason, it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class is or are ascertained by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented.

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Power to appoint persons to represent absent parties

(2) In any other case in which an heir-at-law, or any next of kin, or a class is interested in any proceedings, the Court may, if, having regard to the nature and extent of the interest of such persons, or any of them, it appears expedient, on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such heir, or to represent all or any of such next of kin or class, and the judgment or order of the Court in the presence of the persons so appointed shall be binding upon the persons so represented.

Residuary legatees or next of kin

38. Any residuary legatee, devisee or next of kin entitled to a judgment or order for the administration of the estate of a deceased person may have the same without serving the remaining residuary legatees, devisees or next of kin.

Legatees where legacy charged on real estate

39. Any legatee interested in a legacy charged upon real estate, or any person interested in the proceeds of real estate directed to be sold, who is entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

Residuary devisee

40. Any residuary devisee or heir entitled to the like judgment or order may have the same without serving any co-residuary devisee or co-heir.

Cestuis que trustent

41. Any one of several *cestuis que trustent* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument may have the same without serving any other *cestui que trust.*

Waste

42. In all cases of actions for the prevention of waste, or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

Executors etc.

43. Any executor, administrator or trustee entitled thereto, may have a judgment or order against any one legatee, next of kin or *cestui que trust* for the administration of the estate, or the execution of the trusts.

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Conduct of action

44. The Court may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceedings to such person as it or he thinks fit, and may make such order in any particular case as it or he deems just for placing the defendant on the record on the same footing with regard to costs as other parties having a common interest with him in the matters in question.

Notice of judgment to be given

45. (1) Whenever in any action for the administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made—

(a) under Order 18;

(b) under Order 36; or

(c) affecting the rights or interests of persons not parties to the action;

the Court may direct that any persons interested in the estate, under the trust, or in the hereditaments, shall be served with notice of the judgment or order, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties, and shall be at liberty to attend the proceedings under the judgment or order.

(2) Any party so served may, within one month after such service, apply to the Court to discharge, vary, or add to the judgment or order.

Order to attend unnecessary

46. It shall not be necessary for any person served with notice of any judgment or order to obtain an order for liberty to attend the proceedings under such judgment or order, but such person may attend the proceedings upon entering an appearance in the Registrar's office in the same manner and subject to the same provisions as a defendant entering an appearance.

Entry of memorandum of service

47. A memorandum of the service upon any person of notice of the judgment or order in any action under rule 45 of this Order shall be entered in the Registrar's office upon due proof by affidavit of such service.

Notice of judgment

48. Notice of a judgment or order served pursuant to rule 45 of this Order shall be entitled in the action, and there shall be indorsed thereon a memorandum in accordance with Form 12 in the First Schedule.

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Service of notice on infant etc.

49. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

Heir-at-law not necessary party

50. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff may make the heir-at-law a party where he desires to have the will established against him.

Procedure where no personal representative

51. If in any cause, matter, or other proceeding it appears to the Court that any deceased person who was interested in the matter in question has no legal personal representative, the Court may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding, on such notice to such persons (if any) as the Court thinks fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

Parties to administration proceedings

52. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator may, unless by leave of the Court, appear either in Court or in Chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The Court may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as it or he thinks fit.

ORDER 20

THIRD PARTY PROCEDURE

Third Party Claim and Form

1. (1) Where in an action a defendant claims as against a person not already a party to the action (in this Order called the "third party")—

(a) that he is entitled to contribution or indemnity;

(b) that he is entitled to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

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(c) that a question or issue relating to or connected with the original subject matter of the action is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or between any two of them;

the defendant may issue and serve a third party claim which shall be in accordance with Form 13 or Form 14 with such variations as the case may require.

(2) Particulars of the defendant's claim against the third party shall be set out in the third party claim and shall be pleaded in accordance with the rules respecting statements of claim.

(3) The third party claim shall be sealed and shall be served on the third party and a copy of it shall be filed at the time of the sealing.

(4) At the time of the service of the third party claim, the defendant shall serve upon the third party a copy of the writ by which the action was begun and a copy of the pleadings (if any) delivered in the action.

(5) The defendant shall within the time prescribed by Order 20, rule 2, serve upon the plaintiff and all parties to the action a copy of the third party claim.

Issuing of claim

2. (1) The third party claim shall be issued and served upon the third party before the expiration of 14 days after the time limited for the delivery of the defence or such further time as is agreed to by the plaintiff or allowed by the Court.

(2) Where there are no pleadings or, for any reason, no defence is to be delivered, the claim shall be issued and served within such time as is allowed by the Court.

Service of claim

3. Subject to this Order, Order 10 (except rule 7) and Order 11 shall apply in relation to a third party claim and to the proceedings begun thereby as if—

(a) the third party claim were a writ and the proceedings begun thereby were an action; and

(b) the defendant issuing the third party claim were a plaintiff, and the person against whom it is issued a defendant, in that action.

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Rights of Third Party in action

4. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

Time for appearance

5. The time for appearance by a third party after service of the third party claim shall be as provided by Order 3, rule 6 as if the third party claim were a writ.

Appearances

6. The third party shall enter his appearance in the Registrar's office in the manner prescribed by Order 13 for a defendant to enter his appearance and shall, on the day on which he enters his appearance, serve the plaintiff and all other parties to the action with a sealed copy of the memorandum of appearance.

Defence and pleadings after service

7. (1) After service on the third party of the third party claim, the third party may take the same steps with respect to the third party claim as if it were a statement of claim delivered by a plaintiff.

(2) The third party shall file and serve his defence within 14 days after the expiration of the time limited for his appearance, and thereafter, the pleadings shall, as between the defendant and the third party, continue as in the case of an action between a plaintiff and defendant until issue is joined.

Procedure on default before trial

8. (1) If a third party duly served with a third party claim does not enter an appearance within the time allowed by these Rules—

(a) he shall be deemed to admit liability for the claims stated in the third party claim and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in the third party claim; and

(b) the defendant by whom the third party claim was issued may, if judgment is given against him in the action, at any time after satisfaction of that judgment or with the leave of the Court, before satisfaction of the judgment, enter judgment against the third party in respect of any indemnity or any contributions of a specific amount or proportion claimed in the notice and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

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(2) If the defendant by whom a third party claim was issued makes default in delivery to the third party of any pleading, the Court may order judgment to be entered for the third party or may make such other order as may appear necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (b) of subrule (1) or subrule (2) of this rule on such terms, if any, as it or he thinks fit.

Procedure on trial

9. Unless otherwise ordered by the Court, where the action between the plaintiff and the defendant proceeds to trial—

(a) the third party, if he has appeared and pleaded, shall be at liberty to appear at, and take part in, the trial of the action;

(b) the issues between the third party and the defendant shall be tried at the trial of, and concurrently with, the issues in the action; and

(c) the third party shall be bound by the result of the trial.

Judgment on third party claim

10. (1) Where in an action a defendant has served a third party claim, the Court may at or after the trial of the action, or, if the action is determined otherwise than by trial, on an application by motion or summons, order such judgment as the nature of the case requires to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where, in an action, judgment is entered against a defendant, and judgment is entered for the defendant against a third party, execution shall not issue against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

Costs

11. The Court may decide all questions of costs as between a third party and other parties to the action, and may order any one or more of them to pay the costs of any other, or others, or give such directions as to costs as the justice of the case requires.

Fourth and subsequent parties

12. (1) A third party may make a claim of the nature referred to in rule 1 of this Order against a person not already a party to the action (in this rule referred to as a fourth party) and, in relation to such a claim, the provisions of this Order shall apply *mutatis mutandis* as if the third party were a defendant and the other party were a third party.

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(2) A fourth party against whom a claim is made under the last preceding subrule may similarly make a claim against a person not already a party to the action, and so on, successively.

Service of pleadings

13. Where the third party has entered an appearance, copies of all pleadings delivered as between the plaintiff and the defendant and the defendant and the third party shall be served upon all parties to the action.

Counter-claims

14. Where, in an action, a counter-claim is made by a defendant, the provisions of this Order shall apply in relation to the counter-claim as if the subject-matter of the counter-claim were the original subject-matter of the action and as if the person making the counter-claim were a plaintiff and the person against whom it is made a defendant.

Co-defendants

15. (1) Where a defendant claims against another defendant—

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some question or issue arising between the plaintiff and the defendant making the claim and which should properly be determined not only as between the plaintiff and the defendant making the claim but as between the plaintiff, that defendant and the other defendant or between any two of them;

the defendant making the claim may serve on the other defendant a notice making the claim or specifying the question or issue.

(2) Particulars of the defendant's claim shall be set out in the notice and shall be pleaded in accordance with the rules respecting statements of claim.

(3) A copy of the notice shall be filed forthwith after service and a copy served upon the plaintiff and each other party to the action who has entered an appearance.

(4) The notice shall be served upon the other defendant as soon as reasonably practicable and shall be answered as soon as reasonably practicable by the other defendant, but no appearance to the notice shall be necessary, and the same procedure shall be adopted for the determination of the claim, question or issue between the defendants as would be appropriate under this Order if the other defendant were a third party.

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(5) Nothing in this rule prejudices the rights of the plaintiff against a defendant to the action.

(6) Copies of all pleadings delivered between the defendant making the claim and the defendant on whom the claim is made shall be served upon the plaintiff and each other party to the action who has entered an appearance.

ORDER 21

CHANGE OF PARTIES BY DEATH, ETC.

No abatement by marriage etc.

1. (1) A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*.

(2) Whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

Parties may be added

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court may, if it is deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest (if any) of such party be made a party or be served with notice in such manner and form as is prescribed by rule 5 of this Order, and on such terms as the Court thinks just, and shall make such order for the disposal of the cause or matter as is just.

Transfer of estate *pendente lite*

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

Party added by order on change of interest

4. Where by reason of marriage, death, bankruptcy, or any other event occurring after the commencement of a cause or matter, causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained *ex parte* on application to the Court, upon an allegation of such

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change, or transmission of interest or liability, or of such person interested having come into existence.

Service of order

5. An order obtained as mentioned in the last preceding rule shall, unless the Court otherwise directs, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application is himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two succeeding rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

Discharge or variation of order

6. Where any person is not under a disability, or is not under any disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, is served with such order as is mentioned in rule 4 of this Order, such person may apply to the Court to discharge or vary such order at any time within twelve days from the service thereof.

Person under disability

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as mentioned in rule 4 of this Order, such person may, at any time within twelve days from the appointment of a guardian *ad litem* for such party, apply to the Court to discharge or vary such order, and, until such period of twelve days has expired, such order shall have no force or effect as against such last-mentioned person.

Death of party and failure to proceed

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as is ordered, and in default of such proceeding, judgment may be entered for the defendant, or as the case may be, for the person against whom the cause or matter might have been continued, and in such case, if the plaintiff has died, execution may issue, as in the case provided for by Order 43, rule 23.

Abatement to be certified and entered

9. When any cause or matter becomes abated, or in the case of any such change of interest as is provided for by this Order, the solicitor for the

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plaintiff, or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the Registrar, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

Abated cause to be struck out

10. Where any cause or matter has been standing for one year in the Cause Book marked as abated, or standing over generally, such cause or matter shall, at the expiration of the year, be struck out of the Cause Book.

ORDER 22

JOINDER OF CAUSES OF ACTION

Joinder of several causes

1. Subject to the succeeding rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appears to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may order separate trials of any of such causes of action to be had, or may make such other order as is necessary or expedient for the separate disposal thereof.

Not with action for recovery of land

2. No cause of action shall, unless by leave of the Court, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same, or any part thereof, are held, or for any wrong or injury to the premises claimed:

Provided that nothing in this Order shall prevent any plaintiff in any action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff, on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption, and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these Rules:

Provided also that in case any mortgage security is foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may, by motion or summons, apply to the Court for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case requires.

Claims by trustee in insolvency

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court, be joined with any claim by him in any other capacity.

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Husband and wife

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

Executors

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Joint and separate claims

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Subject to rules 1, 8 and 9

7. The last three preceding rules shall be subject to rules 1, 8 and 9 of this Order.

Application of defendant to confine action

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together may at any time apply to the Court for an order confining the action to such of the causes of action as may be conveniently disposed of together.

Judge may exclude causes inconvenient to be joined

9. If, on the hearing of such an application as is mentioned in the last preceding rule, it appears to the Court that the causes of action are such as cannot be conveniently disposed of together, the Court may order any of such causes of action to be excluded and consequential amendments to be made, and may make such order as to costs as is just.

ORDER 23

PLEADING GENERALLY

Pleading rules

1. The following rules of pleading shall, subject to these Rules, be used in the Court.

Pleadings and particulars not to be prolix

2. Pleadings and particulars shall be as brief as the nature of the case admits, and the taxing officer in adjusting the costs of the action shall, at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

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Set-off or counter-claim

3. (1) A defendant in an action may, subject to Order 25, rule 15, set-off, or set-up by way of counter-claim, against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sounds in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim.

(2) The Court may, on the application of the plaintiff before trial, if in the opinion of the Court such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Statements in pleadings

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words.

Name of settling counsel to be included in pleadings

4A. Every pleading which has been settled by counsel shall include, at the end, a statement to the following effect:

"This pleading was settled by
Mr (or as the case may be) (name)
of counsel".

Forms of pleading

5. (1) The general form of a statement of claim shall be in accordance with Form 15 in the First Schedule.

(2) The general form of a statement of defence shall be in accordance with Form 16 in the First Schedule.

(3) The general form of a reply shall be in accordance with Form 17 in the First Schedule.

Particulars in pleading

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars are necessary beyond such as are exemplified in the Forms referred to in the last preceding rule, particulars (with dates and items if necessary) shall be stated in the pleading:

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Provided that, if the particulars are of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

Further statement or particulars

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs or otherwise, as are just.

Letter for particulars

8. Before applying for particulars by summons or notice a party may apply for them by letter. The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation. In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court.

Time for pleading after particulars

9. The party at whose instance particulars have been delivered under the Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

Pleadings to be in writing

10. Every pleading shall be in writing.

Delivery and marking of pleadings

11. (1) Every pleading shall be filed and shall be delivered on the day of filing.

(2) Every pleading shall be marked with the date of the day on which it is delivered and with a reference to the number of the action, the title of the action, and the description of the pleading and shall be endorsed with the name and place of business of the solicitor and agent (if any) delivering the same or the name and address of the party delivering the same if he does not act by a solicitor.

(3) Subrule (1) of this rule does not require the delivery of a pleading to a party to the action who, being required to enter an appearance, has not done so.

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Mode of delivery

12. Every pleading or other document required to be delivered to a party or between parties shall be delivered to the solicitor for each party who appears by a solicitor or to the party if he does not appear by a solicitor.

Allegations not denied, admitted except against infants etc.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

Conditions precedent

14. Any condition precedent the performance or occurrence of which is intended to be contested shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Special matters to be pleaded

15. When there are pleadings, the defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply (as the case may be) as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, Statute of Frauds, release, payment, performance, facts showing illegality, any statutory provision requiring contracts to be in, or to be evidenced by, writing, either by any law or at Common Law.

No departure

16. No pleading (not being a petition or summons) shall, except by way of amendment, raise any new ground of claim, or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of allegations to be specific

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

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Denial to be substantial answer

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but must answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. If an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

Effect of denial of contract

20. When a contract, promise, or agreement is alleged in any pleading or particulars, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise.

Contents of document

21. Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

Of notice

23. Whenever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred are material.

Of implied contract or relation

24. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. If in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law

25. A party need not in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (e.g.—

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consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

Actions for trespass

26. (1) In actions for trespass to land the close or place in which the trespass is alleged to have been committed must be designated in the statement of claim by name or abuttals or other description, or by a plan drawn in the margin.

(2) If the land is subject to the provisions of the *Real Property Act 1925-1937*, the reference to the Certificate of Title in which the land is comprised shall be specified.

Technical objection

27. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

Striking out scandals and matters tending to embarrass or delay

28. The Court may, at any stage of the proceedings, order to be struck out or amended any matter in any indorsement or pleading which is unnecessary or scandalous, or may tend to prejudice, embarrass, or delay the fair trial of the action, and may in any such case, if it or he thinks fit, order the costs of the application to be paid as between solicitor and client.

ORDER 24

STATEMENT OF CLAIM

Statement of claim

1. (1) Subject to the next succeeding subrule, and to the provision of Order 14, rule 11, as to filing a statement of claim where there is no appearance, a plaintiff shall deliver a statement of claim either with the writ of summons or notice in lieu of writ of summons or within fourteen days after appearance.

(2) Where the writ is specially indorsed with or accompanied by a statement of claim under Order 4, rule 5, no further statement of claim shall be delivered unless the Court otherwise orders.

Probate actions

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default, but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

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Alteration of claim without amendment of writ

3. Whenever a statement of claim is delivered, the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ.

Specific relief to be claimed

4. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for further or other relief, which may always be given, as the Court thinks just, to the same extent as if it had been asked for. The same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence.

Several claims and defences

5. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. The same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

Account stated

6. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

Probate actions

7. In Probate actions, where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

ORDER 25

DEFENCE AND COUNTER-CLAIM

Denial of debt inadmissible

1. In actions for a debt or liquidated demand in money comprised in Order 4, rule 5, a mere denial of the debt shall be inadmissible.

Bills of exchange etc.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact (e.g., the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the bill or note).

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Simple contracts, bonds etc.

3. In actions comprised in Order 4, rule 5, classes (a) and (b), a defence in denial shall deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed (e.g., in actions for goods bargained and sold or sold and delivered, the defence shall deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it shall deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff).

Damages

4. No denial or defence shall be necessary as to damages claimed or their amount and they shall be deemed to be put in issue in all cases, unless expressly admitted.

Representative capacities specifically traversed

5. If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership, he shall deny the same specifically.

Time for delivery of defence

6. Where a defendant has entered an appearance he shall deliver his defence within fourteen days from the time limited for appearance, or from the delivery of statement of claim, whichever is the later, unless the time is extended by the Court or, in actions in which the writ of summons has been specially indorsed or accompanied by a statement under Order 4, rule 5, the plaintiff in the meantime serves a summons for judgment under Order 15.

Leave to defend under

7. Where leave has been given to a defendant to defend under Order 15 or Order 16, he shall deliver his defence (if any) within the time (if any) giving him leave to defend, and if no time is thereby limited, then within eight days after the order.

Time for defence

8. When a statement of claim is delivered pursuant to an order, or filed in default of appearance under Order 14, rule 11, the defendant unless otherwise ordered, shall deliver his defence within such time (if any) as is specified in such order, or, if no time is specified, within ten days from the delivery, or filing in default, of the statement of claim, unless in either case the time is extended by the Court.

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Costs of improper traverse or refusal to admit

9. Where the Court is of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as is just with respect to any extra costs occasioned by their having been denied or not admitted.

Counter-claim to be so stated

10. Where a defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall state specifically that he does so by way of counter-claim.

Defence including person not party

11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

Service on person not party

12. Where any such person as is mentioned in the last preceding rule is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same provisions as are contained in these Rules with respect to the service of a writ of summons, and every defence so served shall be indorsed in accordance with Form 18 in the First Schedule.

Must appear

13. Any person not already a party to the action, who is served with a defence and counter-claim as mentioned in the last preceding rule, must appear thereto, and may be proceeded against as if he had been served with a writ of summons to appear in an action.

May deliver reply

14. Any person named in a defence as a party to a counter-claim thereby made, may, without leave, deliver a reply within ten days from the service upon him of a copy of the defence, or within such other time as the Court orders.

Counter-claim may be excluded from action

15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named as a party to such counter-claim contends that the claim

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thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may apply, before reply, to the Court for an order that such counter-claim be excluded, and the Court may, on the hearing of such application, make such order as is just.

Counter-claim may proceed though action stayed

16. If in any case in which a defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with, and the defendant counter-claiming shall, for all the purposes relating to the trial of the counter-claim, be deemed to be the plaintiff, and the plaintiff or the third party the defendant.

Judgment may be given for defendant for balance

17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he is entitled to upon the merits of the case.

Notice in Probate actions

18. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the Judge is of opinion that there was no reasonable ground for opposing the will.

No pleading in abatement

19. A plea or defence in abatement shall not be pleaded.

Plea of the title unnecessary

20. (1) A defendant in an action for the recovery of land who is in possession by himself or his tenant need not plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff.

(2) Except in the cases mentioned in the last preceding subrule, it shall be sufficient to state by way of defence that he is in possession, and it shall be taken to be implied in such statement that he denies or does not admit the allegations of fact contained in the plaintiff's statement of claim.

(3) The defendant may nevertheless rely upon any ground of defence which he can prove, except as mentioned in subrule (1) of this rule.

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Defence of judgment recovered

21. Where a defendant in his defence relies on a judgment recovered he shall in the margin of his defence state the date of such judgment, and, if such judgment is in a court of record, the number and title (if any) of the proceedings in which the judgment was recovered, and, in default of his so doing, the plaintiff may proceed as for default of pleading, and, in case the same is falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as is therein stated, may proceed as for default of pleading.

Issue of *nul tiel* record

22. On a reply or other pleading denying the existence of a record pleaded by the defendant, a rule for the defendant to produce the record shall not be necessary or used, and instead thereof a four days' notice shall be substituted, requiring the defendant to produce the record, otherwise judgment.

ORDER 26

PAYMENT INTO AND OUT OF COURT AND TENDER

Payment into Court otherwise than by money or bond

1. (1) In any action for a debt or damages the defendant may at any time after appearance, upon notice to the plaintiff, pay into Court a sum of money in satisfaction of the claim, or, where several causes of action are joined in one action, in satisfaction of one or more of the causes of action:

Provided that where a defence setting up tender before action is pleaded, the sum of money alleged to have been tendered shall be brought into Court.

(2) Where the money is paid into Court in satisfaction of one or more of several causes of action, the notice shall specify the cause or causes of action in respect of which payment is made, and the sum paid in respect of each of such causes of action, unless the Court otherwise orders.

(3) The notice shall be in accordance with Form 19 in the First Schedule, and shall state whether liability is admitted or denied, and receipt of the notice shall be acknowledged in writing by the plaintiff within three days.

(4) A defendant may, except under the defence of tender before action, lodge with the Registrar a bond in accordance with Form 19A in the First Schedule given by—

(i) an authorized insurer under the *Motor Traffic Act 1936* or that Act as amended or the Nominal Defendant appointed under that Act; or

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(ii) a licensed or approved insurer under the *Workers' Compensation Act 1951* or that Act as amended; or

(iii) a corporation approved by the Registrar;

under the seal of that insurer or corporation, or under the seal of the manager or other officer thereof whose general or special authority in writing so to act given under the seal of that insurer or corporation has been filed in the Registry of the Supreme Court. The authority may be in accordance with Form 19B in the First Schedule, and it shall have force and effect and bind the insurer or corporation until notice of revocation has been filed in the Registry. These rules shall then apply as if the defendant had paid money into Court.

(4A) A defendant may, instead of paying into Court a sum of money or lodging with the Registrar a bond in accordance with the preceding subrule, lodge with the Registrar a security, which is satisfactory to the Registrar, securing payment of the sum to the Registrar in the event that the plaintiff accepts, pursuant to rule 2 of this Order, the sum secured in satisfaction of the claim.

(4B) Where the Registrar has accepted a security under the preceding subrule, these rules shall then apply as if the defendant had paid money into Court.

(5) A defendant who has paid money into Court in accordance with the preceding subrules may without leave make further payments increasing the sum paid in by him.

Interest up to date of payment into Court

(6) For the purposes of this Order, the plaintiff's claim or cause of action in respect of a debt or damages shall be construed as a claim or cause of action in respect, also, of such interest as might be included in the judgment, whether under section 69 of the Act or otherwise, if judgment were given at the date of the payment into Court.

Payment in by defendant who has counterclaimed

1A. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum of money into Court under rule 1 of this Order, the notice of payment into Court must state, if it be the case, that in making the payment the defendant has taken into account and intends to dispose of—

(a) the cause of action in respect of which he claims; or

(b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

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Plaintiff may take out money

2. (1) Where money is paid into Court under rule 1 of this Order, the plaintiff may, within fourteen days after the receipt of the notice of payment into Court, or, where more than one payment has been made, within fourteen days after receipt of the notice of the last payment, accept the whole sum, or any one or more of the specified sums, in satisfaction of the claim or of the cause or causes of action to which the specified sum or sums relate, by giving notice to the defendant in accordance with Form 20 in the First Schedule, and thereupon he shall be entitled to receive payment of the accepted sum or sums in satisfaction of the claim or cause or causes of action, as the case may be.

(1A) Within fourteen days after receipt of a notice of acceptance pursuant to the preceding subrule, a defendant who has made a payment into Court by bond or other security shall pay into Court the amount of the bond or security. If the defendant fails to make such payment he shall not be entitled to any advantage under the rules by reason of his payment into Court and the party who gave the acceptance may either withdraw that acceptance by a further notice or require the Registrar to assign and deliver to him the bond or security for the purpose of enforcement.

(2) Payment shall be made to the plaintiff, or, on his written authority, to his solicitor, and thereupon proceedings in the action or in respect of the specified cause or causes of action, as the case may be, shall be stayed.

(3) If the plaintiff accepts money paid into Court in satisfaction of the claim or accepts a sum or sums paid in respect of one or more of specified causes of action and gives notice that the other cause of action is, or other causes of action are, abandoned, the plaintiff may after four days from payment out and unless the Court otherwise orders, lodge a bill of costs for taxation, such bill comprising the costs incurred to the date of payment into Court and such costs as are reasonably incurred in accepting the payment into Court.

(3A) Forty eight hours after taxation of the costs, the plaintiff may sign judgment for the amount of the taxed costs.

(4) The plaintiff in an action for libel or slander who takes money out of Court may apply by summons to the Judge in Chambers for leave to make in open court a statement in terms approved by the Judge.

(5) This rule shall not apply to an action or cause of action to which a defence of tender before action is pleaded.

(6) Where money is paid into Court by a defendant who made a counterclaim and the notice of payment into Court stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and intended to dispose of the cause or causes of action, or the

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specified cause or causes of action in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

Money remaining in Court

3. If the whole of the money in Court is not taken out under rule 2 of this Order the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in, and in pursuance of an order of the Court, which may be made at any time before, at, or after trial.

Several defendants

4. (1) Money may be paid into Court under rule 1 of this Order by one or more of several defendants sued jointly or in the alternative, upon notice to the other defendant or defendants.

(2) If the plaintiff elects within 14 days after receipt of notice of payment into Court to accept the sum or sums paid into Court, he may give notice in accordance with Form 20 in the First Schedule to each defendant.

(3) All further proceedings in the action or in respect of a specified cause or causes of action, as the case may be, shall thereupon be stayed, and the money shall not be paid out except in pursuance of an order of the Court dealing with the whole costs of the action or cause or causes of action, as the case may be.

Australian Capital Territory as defendant

4A. (1) Where the defendant is the Commonwealth of Australia or the Australian Capital Territory, it may lodge with the Registrar a bond in accordance with form 19A, varied as is necessary, in the name of the Australian Government Solicitor or the Government Solicitor for the Australian Capital Territory, respectively.

(2) These rules shall then apply as if the defendant had paid money into court.

Payment into Court by defendant to counter-claim

5. The plaintiff or other person made defendant to a counter-claim may pay money into Court in accordance with rule 1, and that rule and rules 2 (except subrule (6)), 3, 4 and 4A shall apply accordingly with the necessary modifications.

Non-disclosure of payment into Court

6. Except in an action to which a defence of tender before action is pleaded, or in which a plea under section 8 of the Defamation Act, 1901, of

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the State of New South Wales, in its application to the Territory, has been filed, no statement of the fact that money has been paid into Court under the preceding rules of this Order shall be inserted in the pleadings, and no communication of that fact shall at the trial of any action be made to the Judge or jury, until all question of liability or amount of debt or damages have been decided. In exercising his discretion as to costs, the Judge shall take into account the fact that money has been paid into Court, and the amount of such payment, but shall also take into account all other relevant circumstances.

Payment in under order

7. Money paid into Court under an order of the Court shall not be paid out of Court except in pursuance of an order of the Court:

Provided that, where money has been paid into Court by the defendant pursuant to an order under the provisions of Order 15, he may (unless the Court otherwise orders) by his pleading or notice in writing appropriate the whole or any part of such money, and any additional payment if necessary to the whole or any specified portion of the plaintiff's claim, and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding rules of this Order relating to money paid into Court, and shall be subject in all respects thereto.

Approval of settlement of action by infant or person of unsound mind

8. In an action in which there is a claim for money or damages by or on behalf of an infant or person of unsound mind suing either alone or with another party, a settlement or compromise shall not be entered into or money paid into Court shall not be accepted without the approval of the Court.

Money recovered by infant or person of unsound mind

9. (1) Money (including damages) recovered, awarded or agreed to be paid in an action in respect of the claim of an infant or person of unsound mind shall, to the extent that it has not been paid into Court or otherwise dealt with in pursuance of an order of the Court under this rule, be paid into Court.

(2) The Court may make an order directing how money (including damages) recovered, awarded or agreed to be paid in an action in respect of the claim of an infant or person of unsound mind shall be dealt with, and in particular, may, by order, direct—

(a) the payment of all or a part of the money to the infant or person of unsound mind or his next friend in respect of expenses incurred by or paid for or on behalf of the infant or person of unsound mind or for the maintenance or benefit of the infant or person of unsound mind, or to his solicitor in respect of costs;

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(b) the investment of all or a part of the money on behalf of the infant or person of unsound mind in the manner specified in the order;

(c) the investment of all or a part of the interest received from an investment under this rule on behalf of the infant or person of unsound mind in the manner specified in the order;

(d) the variation of an investment made under this rule;

(e) the sale of securities in which the money is invested under this rule at such time and upon such conditions as are specified in the order; and

(f) the payment of all or a part of the money, or the transfer of a security or investment under this rule (including a savings bank account), to the person entitled to it.

(3) The Registrar may, at any time, apply in writing to the Judge for an order under this rule directing how all or a part of the money shall be dealt with and the Judge may make an order giving such directions in relation to the matter as he thinks fit.

(4) A parent, guardian or next friend of an infant may, on behalf of the infant, request the Registrar to make an application under the last preceding subrule for the payment out of moneys invested under this rule or remaining in Court of an amount for the maintenance or benefit of the infant, and the Registrar shall make the application, together with his recommendations, accordingly.

(5) A request under the last preceding subrule—

(a) shall be in writing;

(b) shall specify the amount sought to be paid; and

(c) shall be supported by an affidavit, or, with the consent of the Registrar, a statutory declaration, verifying the amount sought to be paid and stating the reasons for the application.

(6) Unless the Judge otherwise orders, it shall not be necessary for a person to appear before the Judge in connexion with the making of an order under subrule (3) of this rule.

(7) Where the Court has not made an order under this rule for the investment of all the money paid into Court, the Registrar shall, on behalf of the infant or person of unsound mind, invest the money remaining in Court in respect of which an order has not been made in one or more of the securities in which a trustee is authorized by legislation in force in the Australian Capital Territory to invest trust funds. In making an investment on the security of a mortgage of land the Registrar will observe the

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limitations and restrictions governing such an investment by a trustee under that legislation.

(8) All investments under subrule (7) shall form a common fund and no investment shall belong to any particular infant or person of unsound mind.

(9) The Registrar shall cause to be paid into the common fund all interest earned on investments made from that fund.

(10) For the purpose of the calculation of interest, money shall be deemed to become part of the common fund—

(a) on the day when the money is paid into Court in pursuance of a judgment or order;

(b) on the day when a judgment is entered or an order is made in satisfaction or part satisfaction of which the money, being already in Court, is available; or

(c) in the case of money in Court on the date of commencement of this subrule, (subject to paragraph (b) of this subrule) on that date.

(11) In this rule, the phrase "the commencement day" means, in respect of money in Court standing to the credit of an infant or person of unsound mind, the day on which the money, pursuant to subrule (10), is deemed to become part of the common fund.

(12) The Registrar shall forthwith upon the close of every half-year ending on the 30th day of June or the 31st day of December—

(a) fix, with the approval of a judge, the rate per annum at which interest is to be credited to the accounts to the credit of which money forming part of the common fund was standing at the close of that half-year; and

(b) credit interest at that rate to each of those accounts, as having accrued from day to day from the commencement day or from the close of the last preceding half-year, as the case may be.

(13) Notwithstanding the provisions of subrule (12), interest shall not in any case be computed on fractions of one dollar.

(14) When any sum is paid out of court (not being a sum the amount of which was specified in an order for payment out) it shall include—

(a) interest credited in accordance with subrule (12); and

(b) if the commencement day was after the close of the last preceding half-year, interest calculated at the rate last fixed by the Registrar pursuant to subrule (12), as having accrued from day to day since the commencement day.

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(15) With the approval of a judge, the Registrar may, having regard to the actual rate of interest being earned by the common fund, calculate the interest referred to in paragraph 14 (a) at a rate higher or lower than the rate therein referred to.

(16) Any interest which, after the due crediting of interest pursuant to subrule (12), is not credited to any account shall be carried to a reserve fund.

(17) The reserve fund shall be treated as part of the common fund and may, with the approval of a judge, be used by the Registrar—

(a) in making good the amount by which interest calculated pursuant to paragraph 14 (b) exceeds the amount that would have been payable as interest at the rate subsequently fixed for the half-year in which the relevant payment out of Court was made;

(b) in making good the amount (if any) by which the amount of interest to be credited to the accounts forming part of the common fund during any half-year exceeds the amount of interest earned for that half-year; or

(c) to defray any sundry expenses incurred in administering the funds in Court.

(18) Interest in the reserve fund that is not used for the purposes set out in subrule (17)—

(a) shall be invested as part of the common fund; and

(b) shall not be treated as unclaimed moneys.

(19) This rule does not prejudice the lien of a solicitor for costs.

ORDER 27

REPLY AND CLOSE OF PLEADINGS

Time for delivery of reply

1. (1) Where the plaintiff desires to deliver a reply, he shall deliver it within seven days after the delivery of the defence.

(2) It is not necessary for a party to file or deliver a reply that is merely a joinder of issue.

Defence to counter-claim

2. (1) A defence to a counter-claim may be included in the same document as a reply.

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(2) Where a defence to a counter-claim is included in the same document as a reply, the substance of the defence and the substance of the reply shall be clearly distinguished.

(3) The provisions of Order 25, so far as they are applicable, apply to, and in relation to, a plaintiff and a defence to a counter-claim as if—

(a) the plaintiff were the defendant to an action;

(b) the counter-claim were a statement of claim; and

(c) the defence to the counter-claim were a defence to an action.

Close of pleadings

3. (1) Where—

(a) a pleading subsequent to reply is not ordered—then at the expiration of seven days from the delivery of the defence or reply (if any); or

(b) a pleading subsequent to reply is ordered, and the party who has been ordered or given leave to deliver that pleading fails to do so within the time limited for that purpose—then at the expiration of the period so limited;

the pleadings shall be deemed to be closed, and, subject to subrules (2) and (3), the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

(2) Where no defence to a counter-claim has been delivered, the facts stated in the counter-claim shall be taken to have been admitted.

(3) A plaintiff is not entitled to deliver a defence to a counter-claim except—

(a) within 14 days after the delivery of the counter-claim; or

(b) with the leave of the Court.

ORDER 28

MATTERS ARISING PENDING THE ACTION

Defence arising before statement of defence

1. (1) Where there are pleadings, any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. If, after a statement of defence has been delivered, any ground of defence arises to any set-off or

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counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

(2) Where there are no pleadings, the defendant shall not, except by leave of the Judge, be allowed to rely on any ground of defence which has arisen after action brought, unless he has given, within eight days after such ground of defence arose, notice in writing to the plaintiff stating the particulars thereof.

Defence arising after statement of defence

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court, deliver a further defence or further reply (as the case may be) setting forth the same.

Confession of defence

3. (1) Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last preceding rule mentioned, or by notice in writing under subrule (1) of rule 1 of this Order, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, which confession may be in accordance with Form 22 in the First Schedule, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence, or the giving of such notice, unless the Court, either before or after the delivery of such confession, otherwise orders.

(2) This rule shall apply *mutatis mutandis* to a reply to a counter-claim.

ORDER 29

PROCEEDINGS IN LIEU OF DEMURRER

No demurrer allowed

1. A demurrer shall not be allowed.

Points of law, how disposed of

2. Any party may raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge at or after the trial, but by consent of the parties, or by order of the Court, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

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Order thereon

3. If, in the opinion of the Court, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court may thereupon dismiss the action or make such other order therein as is just.

Striking out pleadings

4. The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such cause, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as is just.

Declaratory judgment

5. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is, or could be, claimed, or not.

ORDER 30

DISCONTINUANCE

May be entire or partial

1. (1) The plaintiff may, where there are pleadings, at any time before the receipt of the defendant's defence, or, after the receipt thereof, before taking any other proceeding in the action (save any interlocutory application), and, where there are no pleadings, the plaintiff may, within fifteen days after appearance, by notice in writing, wholly discontinue his action against all or any of the defendants, or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action is not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal (as the case may be) shall not be a defence to any subsequent action.

(2) Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court, but the Court may, before, or at or after the hearing or trial, upon such terms as to costs and as to any other action and otherwise as are just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.

(4) An application for a winding up order under section 459P or paragraph 461 (a) of the Corporations Law may not be discontinued without leave of the Court.

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Striking out defence

(3) The Court may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof without such leave.

Withdrawal by consent

2. A cause may be discontinued at any time upon filing a consent in writing signed by all parties.

Costs

3. A defendant may enter judgment for the costs of the action if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn if the action is not wholly discontinued, in case such respective costs are not paid within four days after taxation.

Subsequent action stayed until costs paid

4. If any subsequent action is brought before payment of the costs of a discontinued action for the same, or substantially the same, cause of action the Court may, if it or he thinks fit, order a stay of such subsequent action until such costs have been paid.

ORDER 31

DEFAULT OF PLEADING

Non-delivery of statement of claim

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court to dismiss the action with costs, for want of prosecution, and on the hearing of such application the Court may, if no statement of claim has been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court seem just.

Judgment by default

2. If the plaintiff's claim is only for a debt or liquidated demand, and the defendant, being bound to deliver a defence, does not, within the time allowed for that purpose, deliver such defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed with costs.

Default of one of several defendants

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one of them makes default as mentioned in

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the last preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment, without prejudice to his right to proceed with his action against the other defendants.

Damages, detention of goods

4. If the plaintiff's claim is for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant, or all the defendants, if more than one, make default as mentioned in rule 2 of this Order, the plaintiff may enter interlocutory judgment.

On default of one or more of several defendants

5. When in any such action as is mentioned in rule 4 of this Order there are several defendants, if one or more of them makes default as mentioned in rule 2 of this Order, the plaintiff may enter interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others.

Debt or damages and detention of goods or damages

6. If the plaintiff's claim is for a debt or liquidated demand, and also for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and any defendant makes default as mentioned in rule 2 of this Order, the plaintiff may enter final judgment for the debt or liquidated demand, and may also enter interlocutory judgment for the value of the goods and the damages, for damages only or for the value of the goods only, as the case may be.

Recovery of land

7. In an action for the recovery of land, if the defendant makes default as mentioned in rule 2 of this Order, the plaintiff may enter judgment that the person whose title is asserted in the writ of summons recover possession of the land, with his costs.

Mesne profits

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed, or any part of them, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 2 of this Order, or (if there is more than one defendant) some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in rules 4 and 5 of this Order.

Where a defence is delivered to part of claim only

9. If the plaintiff's claim is for a debt or liquidated demand, or for pecuniary damages only, or for the detention of goods with or without a

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claim for pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court enter judgment, final, or interlocutory, as the case may be, for the part unanswered, provided that the unanswered part consists of a separate cause of action, or is severable from the rest (as in the case of part of a debt or liquidated demand):

Provided that where there is a counter-claim, execution on any such judgment in respect of the plaintiff's claim shall not issue without leave of the Court.

Probate actions

10. In Probate actions, if any defendant makes default in delivering a defence, the action may proceed, notwithstanding such default.

Motion for judgment on default

11. In all actions other than those mentioned in the preceding rules of this Order, if the defendant, being bound to deliver a defence, makes default in delivering the same, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as, upon the writ or statement of claim, the Court considers the plaintiff is entitled to.

On default of one of several defendants

12. Where in any such action as is mentioned in the last preceding rule there are several defendants, then if one of such defendants makes such default as is mentioned in the last preceding rule the plaintiff may either, if the cause of action is severable, set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

Default of any other party to issue

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading which he is bound to deliver, the opposite party may apply to the Court for such judgment (if any) as upon the pleadings he appears to be entitled to, and the Court may order judgment to be entered accordingly, or may make such other order as is necessary to do complete justice between the parties.

Judgment by default may be set aside

14. Any judgment by default, whether under this or any other Order, may be set aside by the Court upon such terms as to costs or otherwise as the Court thinks fit, and where an action has been set down on motion for judgment under rule 11 of this Order, such setting down may be dealt with by the Court in the same way as if the judgment by default had been signed when the case was set down.

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ORDER 32
AMENDMENT

By order or with leave

1. The Court may, at any stage of proceedings—

(a) on application by a party or of its own motion, order that any document in the proceedings be amended; or

(b) give leave to any party to amend any document of that party in the proceedings;

in such manner and on such terms as the Court thinks just.

Without leave

2. (1) A party may, without leave, amend any pleading of that party once before the pleadings are closed.

(2) A party may, without leave, further amend any pleading of that party before the pleadings are closed with the consent of all other parties.

(3) In subrules (1) and (2), "pleading" includes the indorsement of claim on a writ of summons.

Answering pleading

3. Where a party amends a pleading, any other party may, if a pleading in answer to that pleading had already been filed, amend the answering pleading without leave within the time allowed by rule 4.

Time for filing or amending answering pleading

4. (1) Where a party amends a pleading, the time within which any other party may—

(a) file a pleading in answer to the amended pleading; or

(b) amend an answering pleading that had already been filed;

is the time that would be allowed under these Rules for filing an answering pleading if the amended pleading had been delivered on the date on which a copy of notice of the amendment or of the amended pleading is served under rule 12.

(2) Paragraph (1) (a) has effect notwithstanding any other provision of these Rules.

Failure to amend answering pleading

5. Where—

(a) a pleading is amended after a pleading in answer to it has been filed; and

(b) the answering pleading is not amended under rule 3;

the party who filed the answering pleading shall be taken to rely on it in answer to the amended pleading.

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Time for reply to unamended defence

6. Where an answering pleading to which rule 5 applies is a defence, the time within which the plaintiff may deliver a reply is the time that would be allowed under these Rules if an amended defence had been delivered on the last day allowed for doing so.

Disallowance of amendment

7. Where a party amends a pleading, the Court may, on the application of any other party made within 8 days after service of a copy of notice of the amendment or of the amended pleading under rule 12, disallow all or part of the amendment.

Scandalous etc. matter

8. The Court may order to be struck out of a filed document any matter which is scandalous, vexatious or oppressive.

Directions for mode

9. (1) Where the Court orders, or gives leave for, the making of an amendment, the Court may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment.

(2) Rules 10, 11 and 12 have effect subject to subrule (1).

Mode—simple amendment

10. (1) Where the amendments authorised under this Order to be made to a document are not so numerous or lengthy or otherwise of such a nature as would render the document difficult or inconvenient to read, the amendments may be made by—

(a) filing a notice specifying the amendments and the matters referred to in subrule (2); and

(b) if the document to be amended has been filed—writing the alterations in the document.

(2) A filed document amended in accordance with subrule (1) shall be endorsed with a statement specifying the date of the amendment and—

(a) if the amendment was made pursuant to an order—the date of the order; or

(b) if the amendment was not so made—the rule authorising the amendment.

Mode—fresh document

11. (1) Subject to subrule 10 (1), amendments authorised under this Order to be made to a document shall be made by filing a fresh document, amended as so authorised and endorsed with a statement specifying the matters referred to in subrule 10 (2).

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(2) An amended document referred to in subrule (1) shall be in a form that—

(a) distinguishes between original and added text; and

(b) discloses any deleted text.

Service after amendment

12. Where a document has been served and is later amended, the party making the amendment shall, as soon as practicable, serve on the parties on whom the document was served a copy of—

(a) if the amendment was made under subrule 10 (1)—the notice referred to in that subrule; or

(b) if the amendment was made under subrule 11 (1)—the fresh document.

Costs

13. A party who amends a document is liable to pay the costs of any other party of or occasioned by the amendment unless the Court otherwise orders.

Judgments and orders: accidental slips or omissions

14. The Court may at any time, on application by a party or of its own motion, correct a clerical mistake in a judgment or order or an error in a judgment or order arising from an accidental slip or omission.

ORDER 33

DIRECTIONS

Directions

1. (1) Any party to a cause may at any time after the issue of the originating process apply for directions.

(2) Notwithstanding subrule (1) the Court may at any time give such directions, and upon such terms, as may be just and expedient, including directions with respect to—

(a) pleadings;

(b) particulars;

(c) admissions;

(d) discovery;

(e) interrogatories;

(f) inspection of documents;

(g) inspection of real or personal property;

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(h) commissions;

(j) examination of witnesses;

(k) place, time and mode of trial; and

(l) the mode by which particular facts may be proved at the trial.

Form of application

2. (1) Application for directions shall be by motion on notice.

(2) A party applying for directions shall as far as possible specify in the notice the directions he seeks, but the Court shall not be limited to giving the directions specified.

Affidavit not to be used

3. On an application under rule 1 no affidavit shall be used except by leave of the Court.

When application to be made

4. On the hearing of the application all parties shall, as far as possible, apply for any directions in the cause which they desire, and any such application made on a later occasion by any party shall, if granted, be granted at the costs of the party so applying, unless the Court is of opinion that it could not reasonably have been made on the earlier occasion.

ORDER 33A

FAILURE TO CONDUCT PROCEEDINGS

Power to stay or dismiss

1. If the claimant for relief in any proceedings—

(a) fails to comply with an order or direction of the Court as to the conduct of the proceedings; or

(b) delays prosecution of the proceedings without due cause;

the Court may stay or dismiss the proceedings.

ORDER 33B

SECURITY FOR COSTS

Interpretation

1. In this Order—

"defendant" means a person against whom a claim for relief is made in any proceeding;

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"plaintiff" means a person who makes a claim for relief in any proceeding.

Application procedure

2. (1) A defendant in a proceeding may apply for an order that the plaintiff provide security for costs.

(2) An application shall be by motion—

(a) on notice; and

(b) supported by an affidavit stating the material facts and the grounds on which the order is sought.

Circumstances in which order may be made

3. (1) The Court may order a plaintiff in a proceeding to give security for the costs of a defendant who has applied for the order if it appears to the Court that—

(a) the plaintiff is ordinarily resident outside Australia;

(b) for the purpose of avoiding obligations that could arise from the proceeding, the plaintiff's address is not stated, or is mis-stated, in the originating process;

(c) for the purpose of avoiding obligations that could arise from the proceeding, the plaintiff has changed address after instituting the proceeding;

(d) the plaintiff—

(i) has made the claim on behalf of a person other than the plaintiff; and

(ii) will not be able to pay the defendant's costs if ordered to do so; or

(e) the interests of justice so require.

(2) An order under subrule (1) may be made in respect of the defendant's costs in, and incidental to, the proceeding.

Value and mode of security

4. A security ordered under this Order shall be given—

(a) in such amount;

(b) in such manner;

(c) at such time; and

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(d) in such terms (if any);

as the Court directs.

ORDER 34

DISCOVERY AND INSPECTION

Discovery by interrogatories

1. **(1)** A party to an action commenced by writ of summons, and, by leave of the Court, a party in any other cause or matter, may deliver interrogatories relating to any matter in question between that party and the other party or parties.

(2) Further interrogatories may be delivered by leave of the Judge.

(3) The Court may order that all or any of the interrogatories may be answered by some person on behalf of a party and, in such a case, the answers of that person shall be as effective and binding in all respects as if made by the party interrogated.

(4) Interrogatories which do not relate to any matters in question in the action, cause or matter shall be deemed to be irrelevant, notwithstanding that the answers to them would be admissible on the oral examination of a witness.

(5) Interrogatories may be delivered by letter setting out the precise terms of the interrogatories.

When *ex parte*

2. Where no summons for directions has been taken out, orders for interrogatories, discovery, and inspection may be made *ex parte*.

Offer to discover to be considered

3. In deciding upon any application for leave to deliver interrogatories the Judge shall take into account any offer which has been made by the party sought to be interrogated to deliver particulars, to make admissions, or to produce documents relating to the matter in question, or any of them, and the Judge, in granting leave to administer interrogatories, may grant such leave—

(a) generally;

(b) limited to a particular matter or subject of inquiry; or

(c) subject to the interrogatories being submitted to the Judge for his approval before delivery.

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Costs of unreasonable or vexatious interrogatories

4. In adjusting the costs of the cause or matter inquiry shall, at the instance of any party, be made into the propriety of delivering such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the interrogatories and the answers thereto shall be paid in any event by the party in fault.

Interrogatories to corporation or company

7. (1) Where discovery is to be made, or interrogatories answered, by a body corporate or any other body of persons empowered by law to sue or to be sued, whether in its own name or in the name of any officer or other person, the affidavit of discovery or the affidavit in answer to interrogatories shall be made by the secretary or other proper officer, agent or servant of that body corporate or other body.

(2) An opposite party may apply for an order allowing him to deliver interrogatories to be answered by a specified officer, agent or servant of a body referred to in the last preceding subrule.

Objections may be taken in answer

8. Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not made *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

Applications to set aside

9. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or may be struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous, and any application for this purpose shall be made within four days after service of the interrogatories.

Answer

10. (1) Interrogatories shall be answered by affidavit to be filed within 14 days of their delivery and a copy of the affidavit shall be delivered within the same time to the party administering the interrogatories.

(2) A person required to answer interrogatories shall, before answering, make all due and proper inquiries of his servants and agents and, if he is an officer of a body corporate or of any other body of persons empowered by law to sue or to be sued whether in its own name or in the name of any officer or other person, of his fellow officers and the servants and agents of the body corporate or other body.

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Form of answer

11. An affidavit in answer to interrogatories shall—

(a) be in accordance with Form 24 in the First Schedule; and

(b) set out, in its precise terms, each interrogatory that, having regard to the terms of the interrogatories is required to be answered and, immediately after it, the answer to the interrogatory.

Order for further answers

12. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further (as the case may be), and an order may be made requiring him to answer, or answer further, either by affidavit or by *viva voce* examination, as the Court directs.

Discovery of documents

13. Any party may, without filing an affidavit, apply to the Court for an order directing any other party to the cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. On the hearing of the application the Court may either refuse or adjourn the same if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as is, in its or his discretion, thought fit:

Provided that discovery shall not be ordered unless, and so far as, the Court is of opinion that it is necessary either for disposing fairly of the cause or matter or for saving costs.

Affidavit in opposition

14. The affidavit to be made by a party against whom an order as is mentioned in the last preceding rule has been made shall specify which (if any) of the documents therein mentioned he objects to produce, and shall be in accordance with Form 25 in the First Schedule.

Neglect to make discovery

15. If any party neglects or refuses to make discovery within the time limited, or makes insufficient discovery, the Court may order compliance with such discovery upon such terms as the Court thinks fit.

Effect of discovery in writing

15A. A party who makes discovery of documents, whether by affidavit or not, shall be deemed to have received notice to produce at the trial such of the documents as are specified in the affidavit of discovery, or list of documents, as being in his possession, custody or power.

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Production of documents

16. The Court may at any time during the pendency of any cause or matter, order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such cause or matter as the Court thinks right, and the Court may deal with such documents, when produced, in such manner as appears just.

Inspection of documents

17. Every party to a cause or matter may at any time, by notice in writing, give notice to any other party, in whose writ, pleading, particulars, or affidavit reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor and to permit him to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter unless he satisfies the Court that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court deems sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court thinks fit.

Effect of inspection of documents discovered by another party

17A. (1) A party who inspects a document discovered by another party shall, subject to subrule (2), be deemed to admit, saving all just exceptions to the admissibility of the document in evidence—

(a) that the document, if described in the affidavit of discovery, or list of documents, as an original document, is an original document and was printed, written, signed or executed as it purports to have been;

(b) that the document, if described in the affidavit of discovery or list of documents as a copy, is a true copy; and

(c) that if the document is described in the affidavit of discovery or list of documents as a copy of one which was served, sent, or delivered, the original was served, sent or delivered as described.

(2) Subrule (1) does not apply—

(a) if the party who inspects the documents has by his pleading denied its authenticity;

(b) if the party who inspects the document within 14 days of inspecting it serves on the party giving inspection a notice that he disputes its authenticity or that the original thereof was served, sent or delivered as described; or

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(c) if the Court so orders.

Notice to produce documents for inspection

18. Notice to any party to produce any document referred to in his writ, pleading, particulars, or affidavit shall be in accordance with Form 26 in the First Schedule.

Appointment for inspection of documents

19. (1) This rule applies if a party gives another party a notice to produce documents.

(2) If this rule applies, the producing party shall give the inspecting party a notice specifying—

(a) a time and place at which the inspection may take place; and

(b) any document specified in the notice to produce documents which the producing party objects to producing, and the grounds of any such objection.

(3) The time specified under paragraph (2) (a) shall be no later than 3 days after the notice to inspect documents is given to the inspecting party.

(4) The place specified under paragraph (2) (a) shall be—

(a) the office of the producing party's solicitor;

(b) if the producing party is to appear in person—a place not more than 10 kilometres from the office of the Registrar; or

(c) if banker's books, books of account or books in constant use for the purposes of a trade or business are to be inspected—the books' usual place of custody.

(5) A notice to inspect documents may be in accordance with Form 27 of the First Schedule.

(6) The producing party shall give a notice to inspect documents to the inspecting party—

(a) if all the documents specified in the notice to produce documents are specified in the producing party's affidavit as to documents under rule 14, or in that party's writ, pleadings or particulars—within 2 days after receiving the notice to produce documents; or

(b) in any other case—within 4 days after receiving the notice to produce documents.

(7) In this rule—

"inspecting party", in relation to a notice to produce documents, means the party who gave that notice;

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"notice to inspect documents" means a notice under subrule (2);

"notice to produce documents" means a notice under rule 18;

"producing party", in relation to a notice to produce documents, means the party to whom that notice was given.

Court order for inspection of documents

20. (1) This rule applies if a party who has been given a notice to produce documents—

(a) does not, in accordance with rule 19, give the inspecting party a notice to inspect documents; or

(b) in a notice to inspect documents given in accordance with rule 19, objects to producing any document specified in the notice to produce documents.

(2) If this rule applies, on the application of the inspecting party, the Court may order the inspection of any document specified in the notice to produce documents at a place and time, and in a manner, that the Court thinks fit.

(3) If the notice to produce documents specifies any document which is not specified in the producing party's affidavit as to documents under rule 14, or in that party's writ, pleadings or particulars, the inspecting party shall accompany an application for an order under subrule (2) with an affidavit—

(a) specifying the documents sought to be inspected;

(b) stating that those documents are in the possession or power of the producing party; and

(c) stating that the inspecting party is entitled to inspect those documents.

(4) In this rule—

"inspecting party", in relation to a notice to produce documents, means the party who gave that notice;

"notice to inspect documents" means a notice under subrule 19 (2);

"notice to produce documents" means a notice under rule 18;

"producing party", in relation to a notice to produce documents, means the party to whom that notice was given.

Verified copies

21. (1) Where inspection of any business books is applied for, the Court may, instead of ordering inspection of the original books, order a

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copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original books any and what erasures, interlineations, or alterations:

Provided that notwithstanding that such copy has been supplied, the Court may order inspection of the books from which the copy was made.

Privileged documents

(2) Where, on an application for an order for inspection, privilege is claimed for any document, the Court may inspect the document for the purpose of deciding as to the validity of the claim of privilege.

Power to order discovery of particular document or class of documents

(3) The Court may, on the application of any party to a cause or matter, at any time, and whether an affidavit of documents has or has not already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power, and, if they are not then in his possession, when he parted with the same, and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the cause or matter, or to some of them.

Question of discovering or inspection may be reserved

22. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Attachment on failure to comply with order

23. If any party fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not

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defended, and the party interrogating may apply to the Court for an order to that effect, and an order may be made accordingly.

Service on solicitor

24. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order, but the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

Notice to client

25. A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects, without reasonable excuse, to give notice thereof to his client, shall be liable to attachment.

One answer or part may be used without the rest

26. Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided always that in such case the Judge may look at the whole of the answers, and if he is of opinion that any others of them are so connected with those put in the last-mentioned answers ought not to be used without them, he may direct them to be put in.

Action against or by Sheriff

27. In any action against or by the Sheriff in respect of any matters connected with the execution of his office, the Court may, on the application of either party, order that the affidavit to be made in answer either to interrogatories, or to an order for discovery, shall be made by the officer actually concerned.

Order to apply to infants

28. This Order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem.*

ORDER 34A

PRELIMINARY DISCOVERY

Interpretation

1. In this Order, unless the contrary intention appears—

"applicant" means an applicant for an order under this Order;

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"description", in relation to the person against whom the applicant desires to bring a proceeding, includes—

(a) in the case of a natural person—the name, place of residence, occupation and sex; and

(b) in the case of a corporation—the registered office and place of business;

"possession" includes custody and power.

Privilege

2. An order made under this Order does not operate to require the person against whom the order is made to produce any document that, on the ground of privilege, the person could not be required to produce—

(a) in the case of an order under rule 3 or 5—if the applicant had commenced a proceeding against the person; or

(b) in the case of an order under subrule 6 (1) or (2)—if the applicant had made the person a party to the proceeding.

Discovery to identify defendant

3. (1) If an applicant, having made reasonable inquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this rule called "the person concerned") and it appears that a person—

(a) has or is likely to have knowledge of facts; or

(b) has or is likely to have, or has had or is likely to have had, possession of any document or thing;

tending to assist in the ascertainment, the Court may make an order under this rule.

(2) An order may require the person who is the subject of the order or, in the case of a corporation, an appropriate officer to—

(a) attend before the Court to be examined in relation to the description of the person concerned;

(b) produce to the Court any document or thing that is, or has been, in the person's possession relating to the description of the person concerned;

(c) make and serve on the applicant a list of the documents or things that are, or have been, in the person's possession relating to the description of the person concerned; or

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(d) produce for inspection by the applicant any document or thing that is, or has been, in the person's possession relating to the description of the person concerned.

(3) An order may direct that the examination by the Court be held before a Registrar.

Conduct money

4. Rule 27 of Order 39 applies in relation to an order for attendance under rule 3 as if the order were a subpoena.

Discovery from prospective defendant

5. If—

(a) it is reasonable to believe that the applicant has, or may have, the right to obtain relief from a person whose description has been ascertained;

(b) having made reasonable inquiries, the applicant has not gained sufficient information to enable a decision to be made whether to institute a proceeding to obtain the relief;

(c) it is reasonable to believe that the person—

(i) has, or is likely to have; or

(ii) has had, or is likely to have had;

possession of a document relating to the question whether the applicant has the right to obtain the relief; and

(d) inspection of the document by the applicant would assist in making the decision;

the Court may order the person to produce the document to the applicant.

Applicant who is party to a proceeding

6. (1) Rule 3 applies, with any necessary modification, in relation to an applicant who is a party to a proceeding and proposes to make, in the proceeding, a claim—

(a) that is against a person who is not a party; and

(b) that could properly have been made in the proceeding had the person been a party.

(2) Rule 5 applies, with any necessary modification, in relation to an applicant who is a party to a proceeding and who proposes to make, in the proceeding, a claim against a person who is not a party—

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(a) that it is reasonable to believe is a claim that the applicant has, or may have, the right to make against the person; and

(b) that could properly have been made in the proceeding had the person been a party.

Service of application and supporting affidavit

7. (1) An application for an order under rule 3 or 5 shall be served personally on the person the subject of the intended order unless a Judge orders otherwise.

(2) An application under this Order shall be supported by an affidavit—

(a) stating the facts on which the applicant relies; and

(b) specifying or describing the documents or class of documents in respect of which an order is sought.

(3) A copy of the supporting affidavit shall be served on every person on whom the notice of motion is served.

Order for inspection, preservation etc. of property

8. When making an order under this Order, the Court may make a further order in relation to the subject-matter of the proceedings or property that relates to the subject-matter or as to which any question arises in the proceedings, providing for any of the following matters:

(a) the inspection, observation, measurement, photocopying, preservation, custody or detention of the subject-matter or other property;

(b) taking samples;

(c) carrying out experiments;

(d) making, playing or screening any kind of recording of sight or sound;

(e) making and reproducing or displaying other instrumental recordings or tracings.

ORDER 35

ADMISSIONS

Notice of admission of facts

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

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Notice to admit documents

2. (1) A party may request another party in the same proceedings to admit any document by notice in accordance with Form 28 in the First Schedule.

(2) If, after being given a notice to admit documents, a party does not admit a specified document in accordance with the notice, the costs of proving that document shall be paid by that party irrespective of the outcome of the relevant proceedings.

(3) Subrule (2) does not apply if the Court certifies that the failure to admit the document was reasonable.

(4) No costs of proving a document shall be allowed against a party unless—

(a) a notice to admit documents in relation to the document is given to the party; or

(b) if no such notice is given—the taxing officer considers that the omission to give such a notice is a saving of expense.

(5) In this rule—

"notice to admit documents" means a notice under subrule (1).

Notice to admit facts

3. (1) A party may request another party in the same proceedings to admit any fact by notice—

(a) in accordance with Form 29 in the First Schedule; and

(b) given to the other party no later than 14 days after the date fixed for determining the trial date.

(2) A party given a notice to admit facts may admit any facts specified in that notice by an admission—

(a) in accordance with Form 30 in the First Schedule; and

(b) given to the other party within 7 days after receiving the notice to admit facts, or within such further time as the Court allows.

(3) If a party does not, by an admission of facts, admit a fact specified in a notice to admit facts given to that party, the costs of proving that fact shall be paid by that party irrespective of the outcome of the relevant proceedings.

(4) Subrule (3) does not apply if—

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(a) the Court certifies that the failure to admit the fact was reasonable; or

(b) the Court otherwise orders or directs at any time.

(5) The Court may at any time allow a party to amend or withdraw any admission made under this rule, on just terms.

(6) An admission of a fact under this rule operates only—

(a) for the purposes of the proceedings in which the fact is admitted; and

(b) in favour of the party giving the relevant notice to admit facts.

(7) In this rule—

"admission of facts" means an admission under subrule (2);

"notice to admit facts" means a notice under subrule (1).

Judgment or order upon admissions of facts

6. Any party may, at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may, upon such application, make such order, or give such judgment, as the Court thinks just.

Affidavit of signature to admissions

7. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Notice to produce documents

8. (1) Notice to produce documents shall be in accordance with Form 31 in the First Schedule.

(2) An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs of notice where documents unnecessary

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

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ORDER 36

ISSUES, INQUIRIES AND ACCOUNTS

Preparation of issues

1. Where in any cause or matter it appears to the Court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court.

Application for

2. Any party may at any stage of the proceedings in a cause or matter apply to the Court for a direction to have issues prepared, and all or any of the parties, their solicitors, and other persons may be examined *viva voce*, and all documents which may be necessary to the inquiry shall be produced for inspection.

Inquiry of account at any stage

3. The Court may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it appears that there is some special or further relief sought for, or some special issue to be tried, as to which it is proper that the cause or matter should proceed in the ordinary manner.

Where account ordered Court may give special directions as to mode of taking same

4. The Court may, either by the judgment or order directing such account, or by any subsequent order, give special directions with respect to the mode in which the account is to be taken or vouched, and in particular, may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they are advised.

Accounts to be verified by affidavit

5. Where any account is directed to be taken, the accounting party unless the Court otherwise directs, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and be filed.

Mode of vouching accounts

6. Upon the taking of any account, the Court may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as are contested or surcharged shall be brought before the Judge in Chambers.

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Surcharge

7. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received, shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

Inquiry as to outstanding estate

8. Every judgment or order for a general account of the estate of a testator or intestate shall contain a direction for an inquiry as to what parts (if any) of such estate are outstanding or undisposed of, unless the Court otherwise directs.

Directions to be numbered

9. Whenever by any judgment or order any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in accordance with Form 32 in the First Schedule.

Just allowances

10. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

Registrar to report

11. In any case in which there has been undue delay in the proceedings before him, the Registrar shall report to the Court the fact of such delay in such proceedings, and shall state, in his opinion, the cause thereof.

Delay in prosecution of accounts

12. If it appears to the Court, on the representation of the Registrar or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries or any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case require.

ORDER 36A

STATEMENT OF PARTICULARS BEFORE TRIAL

Application

1. This Order applies to an action in which a claim for damages for personal injury is made.

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Interpretation

2. In this Order—

"plaintiff" includes a defendant counter-claiming damages for personal injury and "defendant" includes a plaintiff against whom a counter-claim is made; and

"earnings" means gross earnings per week or other appropriate period and net earnings after taxation per week or other appropriate period, and "earned" and "earning" shall be construed accordingly.

3. (1) Unless the Court otherwise orders, 56 days before the date fixed for determining the trial date, the plaintiff shall file and serve on each other party a statement called "Statement of Particulars" setting out—

(a) particulars of the injuries received;

(b) particulars of disabilities suffered since the accident and allegedly arising therefrom and continuing disabilities so arising;

(c) details of out-of-pocket expenses; and

(d) where any claim is made in respect of past loss of earning capacity—

(i) the name and address of each employer during the 12 months preceding the accident together with details of the periods of employment, capacity in which employed, and earnings during each period of employment;

(ii) the name and address of each employer since the accident together with details of the periods of employment, capacity in which employed, and earnings;

(iii) the amount claimed in respect of loss of earnings to the date of the statement by a comparison between what the plaintiff has earned since the accident and what he alleges he would have earned but for the accident, setting out, in respect of that allegation, particulars of that comparison, including, where appropriate, particulars of earnings of employees engaged in employment like that in which the plaintiff alleges he would have been engaged, and the identity of those employees, or particulars of payments which the plaintiff alleges he would have received under an award or industrial agreement (identifying that award or industrial agreement) applicable to the employment in which he alleges he would have been engaged; and

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(iv) in the case of self-employed persons, such additional particulars as will achieve full disclosure of the basis of the claim for loss of earning capacity; and

(e) particulars of any alleged future loss of earning capacity and future economic loss.

(2) With the statement the plaintiff shall serve, but not file, copies of all documents available to him in support of a claim for special damages and economic loss, whether past, present or continuing, including—

(a) hospital, medical or similar accounts;

(b) letters from a workmen's compensation insurer indicating moneys paid on behalf of the plaintiff for hospital, medical, ambulance and the like expenses; and

(c) letters from employers, wage records, income records and group certificates.

ORDER 37

I—SPECIAL CASE

Questions of law

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as are necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Preliminary question of law

2. If it appears to the Court that there is in any cause or matter a question of law which it would be convenient to have decided before any evidence is given, or any question or issue of fact is tried, or before any reference is made to a referee or arbitrator, the Court may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court deems expedient, and all such other or further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

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Special case

3. Every special case shall be signed by the several parties, or their counsel or solicitors, and shall be filed by the plaintiff.

Copies for the Judges

4. Four clear days before the day appointed for argument, the plaintiff shall deliver a copy of the special case for the use of the Judge, and in default thereof the other party may on the day following deliver such copy, and the costs thereof shall be costs in the cause, unless otherwise ordered.

Married woman, infant, or person of unsound mind

5. A special case in a cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind (not so found by inquisition) is a party shall not be set down for argument without leave of the Court, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

Entry of special case for argument

6. Either party may enter a special case for argument by delivering to the Registrar a memorandum of entry, in accordance with Form 33 in the First Schedule, and also if any married woman (except in the cases specially provided for by rule 5 of this Order), infant, or person of unsound mind (not so found by inquisition) is a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument.

Agreement of damages and costs

7. The parties to a special case may, if they think fit, enter into an agreement in writing that, upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties or to be ascertained by the Court or in such manner as the Court directs, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter, and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs (as the case may be), and execution may issue forthwith upon such judgment unless otherwise agreed or unless stayed on appeal.

Application of order

8. This Order shall apply to every special case stated in a cause or matter or in any proceeding incidental thereto.

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II—ISSUES OF FACT WITHOUT PLEADINGS

Trial of questions of fact by consent

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court, proceed to the trial of any such questions of fact, and in such mode and with such number of jurors (if any) as are agreed upon, without formal pleadings, and such questions may be stated for trial in an issue in accordance with Form 34 in the First Schedule. The issue shall be filed by the plaintiff within four days after the making of such order, and the proper fees and jury fees (if any) payable by him shall be paid, and thereupon the like proceedings shall be had and taken as in the case of an ordinary action after notice of the close of pleadings has been filed. If the plaintiff fails to file such issue within the prescribed time, and pay such fees, the cause or matter shall, unless the Court orders otherwise, be wholly discontinued, and the plaintiff shall pay the defendant's costs of such cause or matter.

Amount agreed to be paid

10. The Court may, by consent of the parties, order that, upon the finding of the affirmative or negative of such issue, as in the last preceding rule mentioned, a sum of money fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, either with or without the costs of the cause or matter.

Judgment and execution

11. Upon the finding of any such issue as is mentioned in rule 9 of this Order, judgment may be entered for the sum fixed or ascertained in accordance with the provisions of the last preceding rule, with or without costs (as the case may be), and execution may issue upon such judgment forthwith unless otherwise agreed, or unless the Court otherwise orders, for the purpose of giving either party an opportunity of moving to set aside the finding or for a new trial.

Proceedings may be recorded

12. The proceedings upon such issue as is mentioned in rule 9 of this Order may be recorded at the instance of either party, and the judgment, whether recorded or not, shall have the same effect as any other judgment in a contested action.

ORDER 38

TRIAL

Place of trial

2. Unless the Court otherwise orders, the trial of every suit shall take place at Canberra.

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Non-appearance of defendant at trial

10. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

Of plaintiff

11. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim, so far as the burden of proof lies upon him.

Of plaintiff and defendant

12. If, when a trial is called on, neither the plaintiff nor the defendant appears, the cause may be struck out, and shall thereupon, unless the Court otherwise orders, be wholly discontinued, and neither party shall be entitled to costs.

Special defences where no pleadings

13. Where there are no pleadings or issues, the defendant shall not, except by leave of the Court, be allowed to rely on a set-off or a counter-claim, or on the defence of infancy, coverture, fraud, illegality, truth (in an action of defamation) or facts in mitigation of damages in such action, defence on equitable grounds, statutory limitation of actions, or discharge under any law relating to bankruptcy or the winding up of companies, unless he has given, within twenty days after appearance, notice to the plaintiff stating the grounds and the particulars upon which he relies. A copy of any such notice shall be filed by the plaintiff for the use of the Judge at the trial.

Judge may call on defendant for defence in certain cases

14. Where there are no pleadings or issues, the Judge may, at any stage of the trial, call upon the defendant to give a concise statement of his defence, and, except by leave of the Judge, no other defence shall be open to the defendant beyond that so stated.

Setting aside verdict obtained on party not appearing

15. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court upon such terms as are just, upon an application made within seven days after the trial.

Judge may postpone trial

16. The Judge may, if he thinks it expedient for the interest of justice, postpone or adjourn the trial for such time and upon such terms (if any) as he thinks fit.

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Habeas corpus where adjournment

17. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court so directs.

Addresses to jury

18. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: The party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence (if any), and the right to reply shall be the same as existed in England before the enactment of The Common Law Procedure Act, 1854.

Evidence in mitigation of damages in libel and slander

19. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Disallowance of questions

20. The Judge may disallow any questions put in cross-examination of any party or witness which appear to him to be vexatious or not relevant to any matter proper to be inquired into.

Judgment to be entered as directed

21. The Judge shall, at or after trial, direct judgment to be entered as he thinks right, and a motion for judgment shall not be necessary in order to obtain that judgment.

Note of time occupied

22. The Associate, Registrar, or officer present at any hearing or trial shall make a note of the times at which such hearing or trial commences and terminates respectively, on each day on which the trial takes place, for communication to the taxing officer, if required.

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Associate may enter findings

23. Upon every trial, where the officer present at the trial is not the officer by whom judgments ought to be entered, the Associate shall enter all such findings of fact as the Judge directs to be entered, and the directions (if any) of the Judge as to judgment, and the certificates (if any) granted by the Judge, in a book to be kept for the purpose.

Authority for judgment

24. If the Judge directs that any judgment be entered for any party absolutely, the certificate of the Associate or other officer to that effect shall be a sufficient authority for entering judgment accordingly. The certificate may be in accordance with Form 37 in the First Schedule.

Trial with assessors

25. Trials with assessors shall take place in such manner and upon such terms as the Court directs.

Writs of trial and inquiry abolished

26. No writ of trial or of inquiry shall be necessary or used.

Calculation of damages

28. In every action or proceeding in which it appears to the Court that the amount of damages sought to be recovered is substantially a matter of calculation, the Court may direct that the amount for which final judgment is to be entered shall be ascertained by the Registrar, and the Registrar shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order, with such indorsement, to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise as upon the finding of a jury upon an inquiry.

Continuing cause of action

29. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER 39

EVIDENCE

Division 1—General

Interpretation

1A. In this Order, unless the contrary intention appears—

"expert's report" means a statement in writing by an expert and, where the expert has made more than one statement, each such statement

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which sets out the expert's opinion and the facts on which the opinion is formed and which contains the substance of the expert's evidence which the party serving the statement or statements intends to adduce in chief at the trial;

"hospital report" means a statement in writing concerning a patient made by or on behalf of a hospital which the party serving the statement intends to adduce in evidence in chief at the trial;

"person named", in relation to a subpoena, means the person to whom the subpoena is addressed;

"subpoena for production" means an order in writing requiring the person named in the order to attend as directed by the order to produce a document or thing for the purposes of evidence or, where the person named is a corporation, requiring the corporation to produce a document or thing for the purposes of evidence and its officer to attend and answer questions;

"subpoena to give evidence" means an order in writing requiring the person named in the order to attend as directed by the order for the purposes of giving evidence.

Examination of witnesses at trial

1. In the absence of any agreement in writing between the parties or their solicitors, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open court.

Evidence in another cause

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court, to be obtained at the time of making any such applications, and, in any other case, upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

Office copies

3. Office copies of all writs, records, pleadings, and documents filed in the Court shall be admissible in evidence in all causes and matters and between all persons or parties to the same extent as the original would be admissible.

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Division 2—Orders for inspection of documents held by third parties

Inspection of documents in the possession of a person not a party to the cause or matter

6A. (1) In this rule, "respondent" means, in relation to an application under subrule (2), the person against whom an order is sought in the application.

(2) Any party to a cause or matter may apply to the Court for an order directing any person who is not a party to the cause or matter to produce for inspection any document in his possession or power relating to anything in question in the cause or matter which he could be required to produce at the trial.

(3) An application under subrule (2) shall be made on motion supported by affidavit and the notice of motion and a copy of every affidavit in support and of any exhibit referred to in such an affidavit shall be served on the respondent at least 3 clear days before the return day.

(4) If the Court is satisfied that the respondent has in his possession or power a document of the kind referred to in subrule (2) and that it is necessary that the party making the application under that subrule should inspect the document at that stage of the cause, the Court may, if it or he thinks it just, on such conditions as it or he thinks fit, order that the respondent produce the document, or a part of the document, for the inspection of the party at the time and place specified in the order and that the party or his solicitor be permitted to take copies of the document or part.

(5) The place specified in an order under subrule (4) shall, if the respondent so requests, be the office or place of business of the respondent or his solicitor, or the place at which the document is usually kept.

(6) The Court may, whether it or he grants or dismisses an application under subrule (2) in relation to a document, order the party making the application to pay to the respondent the costs of the application and may order that prior payment of the costs be a condition of the inspection of the document.

(7) No order for costs shall in any event be made against the respondent.

(8) Nothing in this rule affects the power of the Court to order that the costs of an application under subrule (2) (including any costs paid by the party making the application to the respondent) be borne or paid by any other party to the cause or matter.

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Division 3—Taking evidence otherwise than at trial—examination of witnesses within Australia

Application

7. **(1)** This Division applies to an examination for the purposes of civil proceedings—

(a) if the examination is to be conducted within the Territory—where it is ordered under paragraph 57 (a) of the Act; or

(b) if the examination is to be conducted outside the Territory, but within Australia—where it is ordered under paragraph 57 (a) of the Act or under Part XIIA of the *Evidence Act 1971*.

(2) This Division applies to an examination for the purposes of criminal proceedings where it is—

(a) to be conducted outside the Territory, but within Australia; and

(b) ordered under Part XIIA of the *Evidence Act 1971*.

Application to Magistrates Court proceedings

8. An order under Part XIIA of the *Evidence Act 1971* for an examination in relation to proceedings in the Magistrates Court shall only be made where the Court is satisfied that it would not be in the interests of justice for an order for examination to be made by the Magistrates Court under section 201 of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

When order for examination may be made

9. An order for examination may be made at any stage of the relevant proceeding.

Application for order

10. **(1)** An application for an order for examination may be made by any party to the relevant proceeding.

(2) An application may be made—

(a) if the proceeding is in the Court—by notice of motion; or

(b) if the proceeding is in the Magistrates Court—by summons.

(3) All other parties to the proceeding shall be made respondent to the notice of motion or the summons, as the case may be.

(4) Evidence in support of an application shall be given by affidavit.

(5) Where an order is applied for under paragraph 57 (a) of the Act, in determining whether to make the order, the Court shall have regard to the

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matters referred to in subsection 85C (2) of the *Evidence Act 1971* as if the application were for an order under subsection 85C (1) of the last-mentioned Act.

(6) In determining whether to make an order for examination, in addition to the matters referred to in subsection 85C (2) of the *Evidence Act 1971*, the Court shall have regard to whether the proposed examiner is suitable.

Appointment of examiner

11. (1) Any of the following persons may be appointed as an examiner:

(a) a Judge;

(b) the Master;

(c) an officer of the Court;

(d) any other person considered by the Court to be suitable.

(2) A Judge, the Master or an officer of the Court shall only be appointed with the concurrence of the Chief Justice.

Forms of order

12. (1) An order for the examination of a person within the Territory shall be made in accordance with Form 38 in the First Schedule.

(2) An order for the examination of a person outside the Territory but within Australia shall be made in accordance with Form 39 in the First Schedule.

Documents for examiner

13. (1) The party obtaining an order for examination shall give the examiner copies of the documents in the proceeding that are necessary to inform the examiner of the questions to which the examination is to relate.

(2) If the documents in the proceeding are not sufficient to inform the examiner of the questions, the Court shall state the questions in the order or in a later order.

Appointment for examination

14. (1) The examiner shall appoint a place and time for an examination unless the Court orders otherwise.

(2) The appointed time shall be as soon as practicable after the making of the order, having regard to the convenience of the person to be examined and to the circumstances of the examination.

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(3) Notice of the appointment for examination shall be given—

(a) by the examiner to the party obtaining the order; and

(b) at least 3 days before the day appointed for the examination—by the party obtaining the order to each other party to the proceeding, and to the person to be examined.

Conduct of examination

15. (1) Subject to this Division, an examination shall be conducted in accordance with the procedure of the Court.

(2) Each party to the relevant proceeding and each party's counsel and solicitor may attend the examination.

(3) The person examined may be cross-examined and re-examined unless the Court orders otherwise.

(4) The examination, cross-examination and re-examination of a person before an examiner shall be conducted in like manner as at a trial unless the Court orders otherwise.

(5) The examiner may put any question to the person being examined as to—

(a) the meaning of an answer made by the person; or

(b) any matter arising in the course of the examination.

(6) The examiner may adjourn the examination from time to time or from place to place.

Examination of additional persons

16. (1) An examiner may examine a person additional to the person named or described in the order for examination where each party to the proceeding consents in writing.

(2) The examiner shall annex to the deposition of the person additionally examined the consent of each party to the proceeding.

Objections

17. Where a person being examined objects to answering a question or to producing a document or thing—

(a) the question, the ground for the objection, the opinion of the examiner and any answer given shall be set out in the deposition of the person being examined (or in a statement attached to the deposition);

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(b) on motion by the person objecting or by any party, the Court may decide the validity of the ground for the objection; and

(c) if the Court decides the ground for the objection to be invalid, the Court may order the person objecting to pay the costs occasioned by the objection.

Recording of depositions

18. (1) The deposition of a person being examined shall be recorded by means of—

(a) writing or shorthand;

(b) stenotype machine;

(c) sound-recording apparatus; or

(d) in accordance with the directions of the Court or the examiner—any audio-visual method, including video-taping.

(2) A deposition shall record the statement of the person being examined as accurately as possible.

(3) The examiner may direct that the words of any question and the answer to the question be recorded in the deposition.

(4) Subject to this Division, a deposition need not record every question and answer in the examination.

Authentication and filing

19. (1) Where a deposition is recorded in writing (other than shorthand)—

(a) it shall be read by or to the person examined, as directed by the examiner; and

(b) the person examined may endorse it as a true record of the examination.

(2) Where a deposition is recorded by shorthand or by any means other than writing—

(a) a transcript shall be prepared of the deposition;

(b) the transcriber shall certify that the transcript is correct; and

(c) the person examined may endorse the transcript as a true record of the examination.

(3) The examiner shall endorse the written record or transcript of a deposition with a note—

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(a) stating that the record or transcript is a true record of the examination;

(b) specifying the time occupied by the examination; and

(c) specifying the fees received by the examiner for the examination.

(4) The examiner shall send to the Registrar—

(a) the original record of the deposition;

(b) any transcript of that record; and

(c) any exhibits obtained in the course of the examination.

(5) The Registrar shall deal with anything sent to him or her under subrule (4) as the Court directs.

Special report

20. (1) The examiner may make a special report to the Court about—

(a) an examination;

(b) the absence of a person from an examination; or

(c) the conduct of a person at an examination.

(2) In consideration of the report, the Court may direct such proceedings to be taken, or make such order, as it thinks fit.

Default of witness

21. (1) Where a person required by subpoena to be examined refuses—

(a) to be sworn, or to make an affirmation, for the purposes of the examination;

(b) to answer a lawful question; or

(c) to produce a document or thing;

upon the request of a party to the proceeding, the examiner shall sign and give to the party a certificate of that refusal.

(2) Following the filing of the certificate, on a motion by any party, the Court may—

(a) order the person to be sworn or to make an affirmation, to answer the question or to produce the document or thing, as the case may be; and

(b) order the person to pay any costs occasioned by the refusal.

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Conduct money

22. A person examined before an examiner is entitled to payment for expenses and loss of time as if he or she were attending the Court as a witness in a trial.

Division 4—Taking evidence otherwise than at trial—outside Australia

Application of Division

23. (1) This Division applies to an order for an examination, or for the sending of a letter of request, in relation to the taking of evidence outside Australia—

(a) for the purposes of civil or criminal proceedings—under subsection 7V (1) of the *Evidence Act 1905* of the Commonwealth; or

(b) for the purposes of civil proceedings—under section 57 of the *Supreme Court Act 1933*.

When order may be made

24. An order to which this Division applies may be made at any stage of the relevant proceeding.

Application for order

24A. (1) An application for an order to which this Division applies may be made by any party to the proceeding.

(2) The application may be made—

(a) if the proceeding is in the Court—by notice of motion; or

(b) if the proceeding is in the Magistrates Court—by summons.

(3) All other parties to the proceeding shall be made respondent to the notice of motion or the summons, as the case may be.

(4) Evidence in support of the application shall be given by affidavit.

(5) Where an order is applied for under section 57 of the Act, in determining whether to make the order, the Court shall have regard to the matters referred to in subsection 7V (2) of the *Evidence Act 1905* of the Commonwealth as if the application were for an order under subsection 7V (2) of the last-mentioned Act.

(6) In determining whether to make an order, in addition to the matters referred to in subsection 7V (2) of the *Evidence Act 1905* of the Commonwealth, the Court shall have regard to—

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(a) whether the proposed examiner or foreign tribunal is suitable; and

(b) in the case of an application for an order for the issue of a letter of request to the judicial authorities of a foreign country—

(i) whether a convention exists to which Australia and the country are parties dealing with the examination of witnesses in that country; and

(ii) the content of any such convention.

Forms of order

24B. (1) An order for the examination of a person outside Australia shall be made in accordance with Form 39 in the First Schedule.

(2) An order for the sending of a letter of request to the judicial authorities of a foreign country shall be made in accordance with Form 40 in the First Schedule.

Letters of request

24C. (1) Upon the making of an order for the sending of a letter of request to the judicial authorities of a foreign country, the party obtaining the order shall—

(a) lodge with the Registrar—

(i) a form of the appropriate letter of request;

(ii) any interrogatories and cross-interrogatories to accompany the letter of request; and

(iii) if necessary—a translation of the documents referred to in subparagraphs (i) and (ii) into the official language of the foreign country; and

(b) file in Court—

(i) a copy of each of the documents referred to in paragraph (a); and

(ii) an undertaking in accordance with Form 41 in the First Schedule to pay any reasonable expenses incurred by the Territory, the Commonwealth, or both, upon due notification from the Registrar.

(2) A translation lodged under subparagraph (1) (a) shall be endorsed with a note by the translator stating—

(a) the full name and address and the relevant qualifications of the translator; and

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(b) that the translation is correct.

Order for payment of expenses—r. 24C (1) (b) (ii)

24D. This rule applies where a party—

(a) has given an undertaking under subparagraph 24C (1) (b) (ii) to pay any reasonable expenses incurred by the Territory, the Commonwealth, or both, upon due notification from the Registrar; and

(b) does not, within 7 days after being notified of the amount of expenses incurred, pay that amount to the Registrar.

(2) Where this rule applies, on application by the Registrar, the Court may—

(a) order the party to pay that amount;

(b) if the party is plaintiff—stay the proceeding in so far as it concerns any claim for relief by that party, or any part of such claim; and

(c) if the party is defendant—make such order as it thinks fit, including an order that until payment the defendant be taken not to have filed an appearance or be not permitted to use in evidence any deposition of a witness obtained pursuant to the letter of request.

Procedure for taking evidence by examination—application of Division 3 rules

24E. (1) Rules 13 to 20 (inclusive), and rule 22, apply as far as practicable, with necessary changes, to an examination to which this Division applies.

(2) Where an examination to which this Division applies is ordered under paragraph 57 (a) of the *Supreme Court Act 1933*, subsection 7V (3) of the *Evidence Act 1905* of the Commonwealth applies as if the examination were ordered under subsection (1) of the last-mentioned Act.

(3) The rules referred to in subrule (1) apply subject to any directions which may be given by the Court under subsection 7V (3) of the *Evidence Act 1905* of the Commonwealth.

Procedure for taking evidence under a letter of request—application of Division 3 rules

24F. (1) Rules 13 to 20 (inclusive), and rule 22, apply as far as practicable, with necessary changes, to the taking of evidence pursuant to a letter of request as if the foreign court or tribunal where the evidence is to be taken were an examiner appointed for the purposes of those rules.

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(2) Subrule (1) applies subject to the terms of the letter of request and of any applicable convention.

Division 5—Taking evidence for interstate and foreign courts and tribunals

Application of Division—orders under Part XIIB of the *Evidence Act 1971*

24G. (1) This Division applies to an order for the taking of evidence for an interstate or foreign court or tribunal under Part XIIB of the *Evidence Act 1971*, and to an examination conducted pursuant to such an order.

(2) This Division applies subject to—

(a) the terms of the relevant letter of request and of any applicable convention; and

(b) in relation to the application of rules 24J to 24P (inclusive)—any direction by the Court consistent with the letter of request and any applicable convention.

Application for order

24H. (1) An application for an order to which this Division applies—

(a) may be made by a person nominated for the purpose by the requesting tribunal or, if a person is not nominated, by the Attorney-General; and

(b) shall be made by summons without defendant.

(2) After an order to which this Division applies is made, any further related order shall be applied for by motion.

(3) No notice need be given of a motion referred to in subrule (2).

Form

24J. An order to which this Division applies shall be made in accordance with Form 42 in the First Schedule.

Appointment of examiner

24K. (1) For the purposes of this Division, evidence may be taken before any of the following examiners:

(a) a Judge;

(b) the Master;

(c) an officer of the Court;

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(d) any other person considered by the Court to be suitable.

(2) A Judge, the Master or an officer of the Court shall only be appointed with the concurrence of the Chief Justice.

Attendance at examination by applicant

24L. The applicant for an order to which this Division applies may attend and take part in the examination held pursuant to the order.

Procedure for taking evidence—application of Division 3 rules

24M. Subject to this Division, rules 13 to 20 (inclusive) and rule 22 apply as far as practicable, with necessary changes, to an examination to which this Division applies.

Retention of exhibits

24N. (1) Notwithstanding the application of paragraph 19 (4) (c), where, in an examination to which this Division applies, the examiner receives an exhibit from a person, the examiner shall return it to the person unless the person consents to the retention of the exhibit by the examiner.

(2) Where an examiner retains an exhibit under subrule (1), he or she shall send it to the Registrar with the deposition and other documents as required by rule 19 in its application to the examination.

Certificate of order and depositions

24P. On receipt of a deposition of a witness, and of any transcript of a deposition, taken in the course of an examination to which this Division applies, the Registrar shall—

(a) issue a certificate, sealed with the Court seal, in accordance with Form 43 in the First Schedule; and

(b) give the certificate, and the documents specified in the certificate, to the Attorney-General.

Privilege of witnesses

24Q. (1) This rule applies to evidence which is the subject of a claim for privilege referred to in section 85L of the *Evidence Act 1971*, being a claim which is not supported or conceded in accordance with paragraph 85L (2) (a) or (b) of that Act.

(2) The deposition, and any transcript, recording evidence to which this rule applies shall—

(a) be kept separate from any deposition and transcript in the examination; and

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(b) when given to the Registrar—be accompanied by a statement signed by the examiner setting out the claim for privilege and the ground on which it was made.

(3) The Registrar—

(a) shall include the statement of the claim for privilege with the documents sent to the Attorney-General under rule 24P, together with a request to determine the claim; and

(b) shall not include with those documents the deposition, and any transcript, recording the evidence which is the subject of the claim.

(4) Upon the determination of the claim for privilege by the court or tribunal which requested the examination, the Registrar shall—

(a) if the claim is rejected by the requesting court or tribunal—send to that court or tribunal the deposition, and any transcript, recording the evidence to which the claim relates; or

(b) if the claim is upheld by the requesting court or tribunal—return the deposition and any transcript to the person claiming privilege.

(5) After the requesting court or tribunal has made a determination about a claim for privilege, the Registrar shall accordingly notify—

(a) the person claiming privilege; and

(b) the applicant for the order for examination.

Division 6—Subpoenas

Power to issue

25. The Court may, in any proceeding, issue a subpoena to give evidence, a subpoena for production, or a subpoena for production and to give evidence, in the prescribed form or in such other form as the Court directs for the attendance or production on any trial or other occasion of or by the person named before the Court or before any Judge, officer, examiner or other person having authority to take evidence.

Return date for subpoena for production

26. A subpoena for production shall not require a person to produce a document earlier than 14 days after the service of the subpoena, unless the Court orders otherwise.

Power of Registrar to grant leave to inspect documents

26A. Unless the Court otherwise orders, where the person named in a subpoena for production does not object to the documents produced by him or her being inspected by the parties to the proceedings, and no party to the

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proceeding objects, the Registrar may give the parties leave to inspect the documents.

Conduct money

27. (1) A person named shall be excused from complying with a subpoena requiring him to attend or produce any document or thing on any day on which his attendance is required unless a sum sufficient to meet his reasonable expenses of complying with the subpoena in relation to that day is paid or tendered to him at the time of service of the subpoena or not later than a reasonable time before that day.

(2) Where the person named is a corporation the sum mentioned in subrule (1) may be paid or tendered to any person on whom service of the subpoena may be effected.

Production by non-party

28. (1) Where the person named in a subpoena for production of any document or thing in relation to a proceeding, being a subpoena requiring attendance before the Court or officer of the Court, is not a party to the proceeding, the subpoena shall, unless the Court otherwise orders, permit him to produce the document or thing to the Registrar not later than the day before the first date on which his attendance is required, instead of attending and producing the document or thing as required by the subpoena.

(2) Where a document or thing is produced to the Registrar pursuant to subrule (1), the Registrar shall—

(a) give a receipt to the person producing the document or thing; and

(b) produce the document or thing as the nature of the case requires or as the Court directs.

(3) This rule does not apply to so much of a subpoena as requires the person named to attend to give evidence in any proceeding.

Costs of complying with subpoena

29. (1) Where a person named in a subpoena for production of any document or thing in relation to a proceeding is not a party to the proceeding and he incurs substantial expense or loss in complying with the subpoena the Court dealing with the proceeding may order that the party who requested the issue of the subpoena pay to that person, in addition to any amount which the person served with the subpoena is entitled to be paid pursuant to rule 27 of this Order, or pursuant to rule 7 of Order 65 and the Fourth Schedule, an amount which is sufficient to compensate him for such expense or loss as is reasonably incurred or lost by that person in complying with the subpoena.

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(2) Where an order is made under subrule (1) the Court hearing the matter shall either fix the amount or direct that the amount shall be fixed by the taxing officer.

(3) The provisions of Order 65 apply *mutatis mutandis* to any taxation under this rule.

Banker's books

30. (1) Where, in any proceeding, the person named in the subpoena is an officer of a bank, and the bank is not a party to the proceeding, and the subpoena requires the officer to produce any banker's book, the contents of which can be proved under legislation in force in the Territory by means other than the production of the book, the subpoena shall, unless the Court otherwise orders, expressly permit the officer to produce proof of the relevant entries in accordance with that legislation, instead of producing the banker's book.

(2) When issuing a subpoena the Registrar shall not be concerned to enquire whether subrule (1) applies to the subpoena, but the Court may set aside as irregular a subpoena which does not comply with subrule (1).

Issue—Forms 45, 46, 47 and 48

31. (1) On request by a party, the Registrar shall, unless the Court otherwise orders, issue a subpoena to give evidence, a subpoena for production or a subpoena for production and to give evidence.

(2) A subpoena shall be issued under seal.

(3) A party requesting the issue of a subpoena shall file a copy of the subpoena, but need not file a *praecipe* for subpoena.

(4) Subpoenas shall be in, or substantially in, the forms numbered 45 to 48 in the First Schedule.

Document or thing in custody of a court

32. (1) The Registrar shall not issue a subpoena for production of any document or thing in the custody of the Court or another court.

(2) A party desiring the production of a document or thing in the custody of another court shall request the Registrar to proceed under subrule (3).

(3) On the receipt of a request under subrule (2), the Registrar shall request the court holding the document or thing to send it to the Registrar.

(4) The Registrar shall produce the document or thing as the nature of the case requires or as the Court directs.

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Service of subpoenas

32A. (1) Subject to subrule (2), a subpoena shall be served personally.

(2) Where the person named in a subpoena is a party and has a solicitor in the proceeding, the subpoena may, with the consent of the solicitor, be served on the person named by leaving it at his address for service.

(3) Where the person named in a subpoena is a medical expert—

(a) service of the subpoena on the expert may be effected at the place where the expert's practice is carried on, by handing it to some person apparently engaged (whether as servant or otherwise) in the practice and apparently of or above the age of 16 years;

(b) if, on tender of the subpoena to the person mentioned in paragraph (a), he refuses to accept it, the subpoena may be served by putting it down in his presence after he has been told of the nature of the subpoena; and

(c) if the subpoena requires the person to attend to give evidence, it must not be served later than 6 weeks before the day fixed for the hearing of the proceeding, unless—

(i) the subpoena is a subpoena referred to in subrule (3A); or

(ii) the Court otherwise orders.

(3A) Where a medical expert to whom a notice under subrule 32B (1) has been delivered in accordance with subrule 32B (2) fails to attend before the Court on the date and at the time specified in the notice, then, notwithstanding paragraph 32A (3) (c), the Court may grant leave for the service of a subpoena on the medical expert.

(4) A subpoena shall not be enforced unless service of it has been effected in accordance with this rule.

Notice in lieu of subpoena to medical expert

32B. (1) In any cause or matter, a notice specifying the date and time fixed for the hearing and requesting his or her attendance may, subject to subrule (2), be delivered to a medical expert in lieu of a subpoena.

(2) A notice under subrule (1)—

(a) may be delivered in the same manner as a subpoena may be served on a medical expert pursuant to subrule 32A (1) or (3); and

(b) shall not be delivered later than 6 weeks before the date fixed for the hearing of the cause or matter.

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No abridgement of time prescribed for service

32C. The parties to a proceeding may not, by consent, abridge the time prescribed for service of a subpoena on, or delivery of a notice under subrule 32B (1) to, a medical expert.

Setting aside

33. (1) The Court may, on motion by the person named in a subpoena, set aside the subpoena wholly or in part.

(2) Notice of a motion under subrule (1) shall be filed and served on the party on whose request the subpoena was issued.

Delivery of documents to the Registrar

33A. (1) Where a party serves a *subpoena* upon a person to produce a document and that person does not object to the production thereof to the Court or to its being made available by the Court for inspection by a party, the person serving the *subpoena* may arrange with that person that the document be sent or delivered to the Registrar.

(2) Where such an arrangement is made, the person shall—

(a) post the document to the Registrar so as to reach him before the day specified in the *subpoena*; or

(b) deliver the document to the Registrar before that day;

together with, in either case, the *subpoena* or a copy thereof or a schedule giving brief particulars of the document and containing an adequate reference to the proceedings in which the *subpoena* was issued and the name and address of the person producing the document.

(3) Upon receipt of a document produced in accordance with subrules (1) and (2), the Registrar shall notify the party on whose behalf the *subpoena* was issued or his solicitor that he has received a document from the person to whom the *subpoena* was addressed.

(4) Where a person served with a *subpoena* to produce a document objects to the production thereof to the Court or to its being made available by the Court for inspection by a party, he shall not produce that document to the Registrar in accordance with this rule, but shall answer the *subpoena* by attending the Court at the time and place specified in the *subpoena* and make his objection to the Court.

(5) The Registrar shall not, without the leave of the Court, allow a document produced to him in accordance with this rule to be inspected by any party or person, but shall arrange for the document to be available at the hearing for which it is required.

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(6) The production of documents to the Registrar in accordance with this rule and pursuant to an arrangement with the party who has issued a *subpoena* shall be a sufficient answer to the *subpoena*, and shall be treated as being in obedience thereto.

(7) A *subpoena* to produce a document shall have endorsed thereon or annexed thereto a written statement commencing with the words "Order 39, rule 33A, subrules (1) to (6), inclusive, of the Rules of Court are as follows—" and followed by the text of the last six preceding subrules.

(8) The last preceding subrule does not apply in any case where it is intended that the procedure provided for in this rule is not to be followed.

Division 7—Perpetuating testimony

Action to perpetuate testimony

34. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which is or may be material for establishing such right or claim.

Where Crown interested

35. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown has or may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken.

Action necessary

36. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

Not to be entered for trial

37. An action to perpetuate the testimony of witnesses shall not be entered for trial.

Division 8—Disclosure of experts' reports and hospital reports

Application

45. The Rules contained in this Division apply—

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(a) to proceedings in the Court in which a claim is made for damages for personal injuries or in respect of the death of a person; and

(b) to any other proceedings in which the Court may at any time on the application of a party or of its own motion direct that they shall apply.

46. (1) Unless the Court otherwise orders, 56 days before the date fixed for determining the trial date the plaintiff, and 49 days before that date each other party, shall serve experts' reports and hospital reports on parties to the proceedings who have an address for service.

(2) Any report which becomes available after the date specified in the preceding subrule and—

(a) is purely responsive to another report served pursuant to this rule; or

(b) serves only to update a report previously served;

shall be served on the parties referred to in the preceding rule within three working days of its receipt by the party who commissioned it.

47. (1) Except with the leave of the Court or by consent of the parties, the oral evidence in chief of any expert is not admissible unless that evidence is covered by the expert's report served in accordance with the preceding rule.

(2) For the purposes of subrule (1) evidence is covered by a report if the report contains the substance of the matters sought to be adduced in evidence.

48. Where an expert's report or hospital report is served in accordance with rule 46 or an order made under that rule or consent is given, the report is admissible as evidence of the author's opinion and, where the author's direct oral evidence of a fact upon which the opinion was formed would be admissible as evidence of that fact without further evidence, oral or otherwise, the report is admissible as evidence of that fact.

49. (1) Unless the Court otherwise orders—

(a) a party may in any case, where the Court fixes a hearing date, not later than 49 days before the date fixed for trial require the attendance for cross-examination of the expert;

(b) a party who is served with an expert's report may tender that report.

(2) Where the attendance of an expert is required under subrule (1), his report shall not be tendered or otherwise used unless the expert attends or is dead or the Court grants leave to use it.

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ORDER 40

I—AFFIDAVITS

Title of affidavit

1. (1) Subject to subrules (2) and (3) of this rule, an affidavit in a proceeding shall be entitled in that proceeding and bear the number, if any, of that proceeding.

(2) Where a proceeding is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a proceeding is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.

(4) The costs occasioned by unnecessary prolixity in a title shall be disallowed by the taxing officer.

Form of affidavit

2. (1) An affidavit shall be expressed in the first person and shall state—

(a) the address of the deponent and his occupation or, if he has none, his description; and

(b) if he is, or is employed by, a party to the proceeding in which the affidavit is to be used, that fact.

(2) An affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(3) Sums of money, numbers and references to the days of the months, and references to years, in dates shall be expressed in figures and not in words.

(4) There must appear on the first page of an affidavit the name of the deponent, the date on which it was taken and the party on whose behalf it is filed.

(5) Costs shall not be allowed for an affidavit or part of an affidavit substantially departing from this rule.

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Contents of affidavit

3. (1) An affidavit shall, except as provided by subrule (2) of this rule, be confined to such facts as the witness is able of his own knowledge to prove.

(2) An affidavit for use in interlocutory proceedings may contain statements of information and belief with the sources and grounds of that information and belief.

(3) Costs shall not be allowed for an affidavit or part of an affidavit which unnecessarily sets forth matters of hearsay, argumentative matter or copies of or extracts from documents.

Annexures and exhibits

4. (1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.

(2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

(3) Instead of making a document an annexure or an exhibit to an affidavit, the relevant portion of the document may be included in the body of the affidavit and the party filing the affidavit shall in that case produce the document whenever the affidavit is used.

(4) An exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is taken. The certificate shall be entitled in the same manner as the affidavit.

Taking of affidavit

5. (1) An affidavit shall be signed by the deponent and the *jurat*, duly completed, shall be signed by the person before whom it is taken.

(2) The date when and the place where the affidavit is taken and the title of the person before whom it was taken shall be stated in the *jurat.*

(3) When a deponent does not take an oath, the form of *jurat* shall be varied and the necessary alterations made so as to conform with the solemn affirmation or declaration of the deponent.

When affidavit may be taken

6. An affidavit for use in a proceeding may be taken before or after the commencement of the proceeding.

Affidavit by two or more deponents

7. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit shall be inserted in the *jurat* except that, if

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the affidavit is sworn, affirmed or declared by both or all the deponents at the one time before the same person, it shall be sufficient to state that it was sworn, affirmed or declared by both, or all, of the "abovenamed" deponents.

Affidavit by illiterate or blind person

8. (1) Where it appears to the person before whom an affidavit is taken that the deponent is blind or illiterate or for any other reason is unable to read the affidavit for himself, the person before whom the affidavit is taken shall certify in or below the *jurat* that—

(a) the affidavit was read in his presence to the deponent;

(b) the deponent seemed to understand it; and

(c) the deponent made his mark or signature in the presence of that person.

(2) Where it appears to the Court that the deponent of an affidavit is blind or illiterate or for any other reason is unable to read the affidavit for himself, the affidavit shall not be used in evidence without such a certificate unless the Court is satisfied that the affidavit was read to the deponent and that he appeared to understand it.

Affidavit by person unable to understand English

9. (1) Where it appears to the person before whom an affidavit is taken that the deponent is unable to understand the affidavit when read to him in English, the person before whom the affidavit is taken shall certify in or below the *jurat* that an interpreter, whose name and address is stated in the certificate, swore, affirmed or declared before him—

(a) that he had in the presence of the person taking the affidavit interpreted to the deponent the contents of the affidavit;

(b) that the deponent seemed to understand it;

(c) that he had interpreted to the deponent the oath, affirmation or declaration; and

(d) that the deponent had sworn, affirmed or declared that the contents of the affidavit so interpreted to him were true.

(2) Where it appears to the Court that the deponent to an affidavit is unable to understand the affidavit when read to him in English, the affidavit shall not be used in evidence without such a certificate unless the Court is satisfied that the affidavit was interpreted to the deponent and that he appeared to understand it.

Alterations in affidavits

10. (1) An affidavit which has in the *jurat* or body thereof an interlineation, erasure or other alteration shall not be used in a proceeding

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without the leave of the Court unless the interlineation, erasure or alteration is authenticated by the signature or initials of the person taking the affidavit or, if it is taken before an Officer of the Court at the Registry, either by his signature or initials or by a seal inscribed as mentioned in Order 62, rule 1.

(2) The last preceding subrule applies to an account verified by affidavit as if the account were part of the affidavit.

Filing of affidavits

11. (1) An affidavit for use in a proceeding shall be filed.

(2) An affidavit which has not been filed may not be used without the leave of the Court.

Copies of affidavits to be served

12. Except in the case of an *ex parte* application, a copy of an affidavit intended to be used by a party in a proceeding shall be delivered to each other party to the proceeding a reasonable time before the hearing.

Use of defective affidavit

13. (1) An affidavit may, with the leave of the Court, be used in evidence notwithstanding any defect in the title or *jurat* or any irregularity in the form thereof.

(2) Where leave is granted, the Court may direct that a memorandum to that effect be made on the affidavit.

Scandalous, etc., matter

14. Where there is scandalous, irrelevant or offensive matter in an affidavit, the Court may order that—

(a) the matter be struck out; or

(b) the affidavit be taken off the file.

Cross-examination

15. (1) A party may require the attendance for cross-examination of a person making an affidavit.

(2) A requirement under this rule shall be made to the party filing or proposing to use the affidavit.

(3) Where the attendance of a person is required under this rule and he does not attend, his affidavit shall not be used without the leave of the Court.

(4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine him.

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III—TRIAL ON AFFIDAVIT

Evidence on affidavit by consent

24. Unless otherwise ordered on a summons for directions, at any time before the memorandum of the close of the pleadings in any action is filed, where there are pleadings, and, where there are no pleadings, at any time before notice of trial is served upon the Registrar, the parties may agree that the evidence to be adduced on the trial shall be taken by affidavit:

Provided that notwithstanding such agreement the Court at the trial may order the whole or any part of the evidence to be taken *viva voce*.

Affidavits of plaintiff

25. Within seven days after such memorandum has been filed, or such notice of trial has been served upon the Registrar, or within such time as the Court allows, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

Of defendant

26. The defendant, within seven days after delivery of such list, or within such time as the Court allows, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Of plaintiff in reply

27. Within four days after the expiration of the last-mentioned seven days, or such other time as is allowed in pursuance of the last preceding rule, the plaintiff shall file his affidavits in reply (which shall be confined to matters strictly in reply) and shall deliver to the defendant or his solicitor a list thereof.

Cross-examination of deponent

28. Where the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial. The notice shall be served at any time before the expiration of seven days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court specially appoints, and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

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Compelling attendance of deponent

29. The party to whom such notice as is mentioned in the last preceding rule is given may compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

ORDER 41

MOTION FOR JUDGMENT

Judgment to be on motion

1. Except where by any law or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion to the Court for judgment.

Motion where no judgment directed

2. Where at the trial of an action, the Judge abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not so set down a motion and give notice thereof to the other parties within ten days after the trial, any defendant may set down a motion for judgment, and give notice thereof to the other parties.

Judgment after issues tried

3. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

Where certain issues only determined

4. (1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court for leave to set down a motion for judgment, without waiting for such trial or determination.

(2) The Court may, if satisfied of the expediency thereof, give such leave, upon such terms (if any) as are just, and may give any directions which are desirable as to postponing the trial of the other issues or questions of fact.

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None after a year without leave

5. No motion for judgment shall, except by leave of the Court, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

ORDER 42

ENTRY OF JUDGMENT

Mode and form of entry of judgment

1. Every judgment shall be entered by the Registrar in a book which shall be kept for the purpose in the Registrar's office. Judgments shall be in accordance with such form as is applicable in the circumstances.

Preparation of judgments and orders

2. (1) Where the entry of a judgment or order is authorized by a law of the Commonwealth, a law of the Australian Capital Territory, by these Rules or by order of the Court, the party in whose favour the judgment or order was made shall, not later than 7 days after the date on which the judgment or order was given, lodge a draft of the judgment or order with the Registrar.

(2) Where a draft of a judgment or order has not been lodged pursuant to subrule (1) or pursuant to any directions given by the Registrar under paragraph 3 (b), a party other than the applicant may lodge a draft of the judgment or order with the Registrar.

(3) Where a draft of a judgment or order is lodged with the Registrar pursuant to this rule, the Registrar—

(a) may approve the draft either with or without amendment; and

(b) shall, upon the filing by the appropriate party of the judgment or order engrossed in accordance with the approved draft, enter the judgment or order.

(4) In proceedings under the *Companies Act 1981*, the Registrar may enter a judgment or order—

(a) notwithstanding that no party has lodged a draft; and

(b) without appointing any time or place for attendance of the parties on settlement.

(5) The Registrar may file a minute of a judgment or order without a direction of the Court or a request of a party.

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Where judgment pronounced in Court

3. Where any judgment is pronounced by the Court in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court otherwise orders, and the judgment shall take effect from that date:

Provided that by leave of the Court a judgment may be ante-dated or post-dated.

Judgment under order

4. When any judgment is directed to be entered by an order made on the hearing of an application for judgment under Order 15, or Order 16, the judgment shall, unless the Court otherwise orders, be dated as of the day on which the order is made and the judgment shall take effect from that date:

Provided that the order may direct that the judgment shall not be entered until a given date, in which case the judgment shall take effect from that date.

In other cases

5. In all cases not within the last two preceding rules, the entry of judgment shall be dated as of the day on which the requisite documents are left with the Registrar for the purpose of such entry, and the judgment shall take effect from that date.

Orders for performance of acts to state time

6. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order served upon the person required to obey the same, there shall be indorsed a memorandum in the words or to the effect following, viz.:

"If you, the within-named A.B., neglect to obey this judgment (*or* order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the said judgment (*or* order).".

Examination of documents by officer

7. Where under any law or these Rules, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the Registrar shall examine the affidavit or document produced, and if the same is regular and contains all that is by law required, he shall enter judgment accordingly.

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Judgment pursuant to order or certificate

8. Where under any law or these Rules any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the Registrar to enter judgment accordingly.

Certificate to be filed

9. Where reference is made to the Registrar to ascertain the amount for which final judgment is to be entered, the Registrar's certificate shall be filed when judgment is entered.

Judgment by consent

10. (1) In any cause or matter where the defendant has appeared by a solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

(2) Where the defendant has appeared in person, no order for entering judgment shall be made by consent unless the defendant attends before the Judge and gives his consent in person, or the consent is in writing and, unless the defendant is a solicitor, is attested by a solicitor.

Consent order or judgment signed by Registrar

11. (1) Subject to subrule (5), where—

(a) the solicitor for a party to a cause or matter has lodged with the Registrar a draft order or judgment in proper form; and

(b) there is endorsed on the draft the consent for the purposes of this rule of the solicitor for each party to the cause or matter who would be affected by the proposed order or judgment;

the Registrar shall sign and seal the order or judgment.

(2) A draft lodged with the Registrar for the purpose of subrule (1) shall include a statement that the order or judgment is made or given by consent of specified parties.

(3) An order sealed in accordance with subrule (1) has effect as if the order had been made by the Court on the day on which the order was so sealed.

(4) Where a judgment has been sealed in accordance with subrule (1), the judgment has effect, and the preceding rules of this Order apply, as if the judgment had been pronounced by the Court on the day on which the judgment was so sealed.

(5) The Registrar shall not sign or seal an order or judgment under subrule (1) if he is of the opinion that the order or judgment is not such as the Court would make or pronounce by consent.

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Consent judgment in Chambers

12. (1) In any cause or matter, a Judge may, on application made in Chambers, order that judgment be entered by consent of parties.

(2) A judgment entered in accordance with an order under subrule (1) has effect, and the preceding rules of this Order apply, as if the judgment had been pronounced by the Court on the day on which the order was made under subrule (1).

(3) Notwithstanding rule 1 of Order 56, an application under this rule need not be made by motion or by summons.

Copy of order of Federal Court may be filed

13. A certified or office copy of an order of the Federal Court of Australia affirming, varying or setting aside a judgment or order of the Supreme Court may be filed in the matter in which the judgment or order of the Supreme Court was made.

Copies

14. (1) The Registrar shall, on the request of a party, furnish that party with a certified or office copy of the order entered in the proceeding.

(2) The Registrar may, on payment of the prescribed fee, furnish to any person appearing to have a sufficient interest in the order entered in any proceeding a certified or office copy of the order.

(3) The Registrar shall, on the request of a judgment creditor, furnish to the judgment creditor a certificate in accordance with Form 50A in the First Schedule setting out the particulars of the judgment.

ORDER 42A

INTEREST ON JUDGMENTS

Rates of interest

1. The interest rate fixed for the purpose of section 70 of the Act on a judgment debt is to be ascertained in accordance with the following table:

Item	Period	Interest rate
1.	On and before 30 April 1986—	(a) if judgment was entered before 1 October 1977— 5% a year for the whole period; or (b) if judgment was entered on or after 1 October 1977— 10% a year.
2.	1 May 1986 to 30 June 1990 (inclusive)—	15% a year.

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Item	Period	Interest rate
3.	1 July 1990 to 31 December 1991 (inclusive)—	20% a year.
4.	1 January 1992 to 30 June 1993 (inclusive)—	15% a year.
5.	On and after 1 July 1993—	12% a year.

ORDER 43

EXECUTION

No demand necessary when judgment directs money to be paid or property transferred

1. Whenever any person is by any judgment or order directed to pay any money, or deliver up or transfer any property, real or personal, to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same, without demand.

Waiver of judgment on condition

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the judgment or order in such case warrant or such proceedings as might have been taken if no such judgment or order had been made, unless the Court otherwise directs.

Judgment may be enforced as heretofore

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a like judgment or decree of the Supreme Court of New South Wales may be enforced.

Judgment for payment in Court

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or, in cases in which attachment is authorized by law, by attachment.

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For recovery of land

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

For recovery of other property

6. A judgment for the recovery of any property other than land or money may be enforced—

(a) by writ for delivery of the property;

(b) by writ of attachment;

(c) by writ of sequestration.

For any other matter

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing any act, may be enforced by a writ of attachment, or by committal.

Judgment on condition, execution

8. Where a judgment or order is to the effect that any party is entitled to any relief subject to, or upon the fulfilment of, any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court for leave to issue execution against such party, and the Court may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

Production of judgment

9. A writ of execution shall not be issued without the production to the Registrar of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry, and the Registrar shall be satisfied that the proper time (if any) to entitle the party to execution has elapsed.

Praecipe

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *praecipe* for that purpose. The *praecipe* shall be in accordance with one of the Forms 51 to 53 in the First Schedule, or with such other form as is applicable in the circumstances, and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he does so in person.

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Indorsement of name and address

11. Every writ of execution shall be indorsed with the name and place of office of business of the solicitor actually suing out the same, and, when the solicitor actually suing out the writ sues out the same as agent for another solicitor, the name and place of office or business of such other solicitor shall also be indorsed upon the writ, and in case a solicitor is not employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city or town, and also the name of the street (if any) and number of the house (if any) of such plaintiff's or defendant's residence, or otherwise describing the plaintiff's or defendant's place of residence.

Form of writ of execution

12. Every writ of execution shall bear date of the day on which it is issued, and shall be in accordance with one of the Forms 54 to 56 in the First Schedule, or with such other form as is applicable in the circumstances.

Fees and expenses

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

Additional fees and expenses

14. (1) In every case of execution against any freehold land or chattel real, or against any land, lease, mortgage, or charge, the party entitled to execution may, over and above the sum recovered, and in addition to the poundage, fees and expenses mentioned in the last preceding rule, levy the fees and expenses properly paid on registering the judgment, or lodging the writ of *fieri facias* against the freehold land or chattel real, or against the land, lease, mortgage, or charge sought to be affected by the execution, together with the sum of $2.10 for the costs thereof.

Direction to Sheriff to levy

(2) The party or his solicitor requiring the Sheriff to levy for fees, expenses, and costs under the last preceding subrule, shall file with the Sheriff a specific direction in writing requiring him so to levy, together with a receipt from the Registrar of Titles appointed under the *Real Property Act 1925-1937*, or other proper officer, showing the amount of the fees which have been paid, and for which, in addition to the fixed charge for costs, the levy is so to be made.

Amount to be indorsed on writ of execution

15. Every writ of execution for the recovery of money shall be indorsed with a direction to the Sheriff, or other officer or person to whom

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the writ is directed, to levy the amount really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon at the applicable rate fixed by Order 42A from the time when the judgment or order was entered or made:

Provided that in cases where there is an agreement between the parties as to the rate of interest that shall be secured by the judgment or order, then the indorsement may be accordingly to levy interest at the rate so agreed.

Form of indorsement on writ of *fieri facias*

16. Every writ of *fieri facias* shall be indorsed as follows—

"Levy $, and $ for costs of execution and also interest on $ at [*insert applicable rate fixed by Order 42A*] per cent per annum [*or other agreed rate*] from the day of till payment, besides Sheriff's poundage, officer's fees, costs of levying, the fees, expenses, and costs mentioned in Order 43, rule 14, if and when incurred, and all other legal incidental expenses.".

Execution for money or costs on entry of judgment

17. Every person to whom any sum of money or any costs is or are payable under a judgment or order may, as soon as the money or costs is or are payable, sue out one or more writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows—

(a) If the judgment or order is for payment within a period therein mentioned, no such writ shall be issued until after the expiration of such period.

(b) The Court may, at or after the time of giving judgment or making an order, stay execution until such time as it or he thinks fit.

Separate writs for money and costs

18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall be only for costs, and shall be issued not less than eight days after the first writ.

Writ in force for one year; with power to renew

19. A writ of execution, if unexecuted, shall remain in force for one year only from its issue, unless renewed in the manner provided in this rule, but such writ may, at any time before its expiration, by leave of the Court, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed

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writ, either by being sealed with a seal bearing the word "Renewed" and the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the Sheriff, signed by the party or his solicitor, and sealed with the like seal, and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

Evidence of renewal

20. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as is mentioned in the last preceding rule showing the same to have been renewed, shall be *prima facie* evidence of its having been so renewed.

Execution within six years

21. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order.

Execution by leave of Court

22. In the following cases—

(a) where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(b) where a husband is entitled or liable to execution upon a judgment or order for or against a wife;

(c) where a party is entitled to execution upon a judgment of assets *in futuro*; or

(d) where a party is entitled to execution against any of the shareholders of a company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply by summons for leave to issue execution accordingly, and the Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried, and in either case the Judge may impose such terms, as to costs or otherwise, as are just.

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Order enforceable as judgment

23. Every order of the Court, in any cause or matter, may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

Execution by or against person not party

24. Any person, not being a party to any cause or matter, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter, and any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

***Audita querela* abolished: Stay of execution**

25. No proceeding by *audita querela* shall hereafter be used, but any party against whom judgment has been given may apply to the Court for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded, and the Court may give such relief and upon such terms as are just.

Former rights reserved

26. Nothing in this Order shall take away or curtail any right to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Order of issue of writs

27. Nothing in this Order shall effect the order in which writs of execution may be issued.

Enforcement of mandatory judgment etc.

28. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract is not complied with, the Court may direct that besides, or instead of, proceedings against the disobedient party for contempt, the act required to be done may be done so far as is practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court directs, and execution may issue for the amount so ascertained, and costs.

Corporation wilfully disobeying order

29. Any judgment or order against a corporation which is wilfully disobeyed, may, by leave of the Court, be enforced by sequestration against

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the corporate property, or by attachment against the directors or other officers of the corporation, or by writ of sequestration against their property.

Enforcing award

30. An award may, with the leave of the Court, and on such terms as are just, be enforced at any time, though the time for moving to set it aside has not elapsed.

Examination of judgment debtors

31. (1) Where—

(a) a person has obtained a judgment or order for the recovery from, or payment of money by, some other person (hereinafter referred to as "the judgment debtor"); and

(b) the amount of any part of the sum payable by the judgment debtor has not been paid;

the Court or Registrar may, on an application made *ex parte* by the person entitled to enforce the judgment or order, order the judgment debtor, or if the judgment debtor is a body corporate, an officer thereof named in the order, to attend at the time and place specified in the order before the Registrar to be orally examined on the questions—

(c) whether any, and if so, what debts are owing to the judgment debtor; and

(d) whether the judgment debtor has any, and, if so, what other property or means of satisfying the judgment or order;

and to produce at the time and place so specified any books or documents in the possession of or under the control of the judgment debtor relevant to those questions.

(2) The order shall be in accordance with form 56A in the First Schedule.

(3) It shall not be necessary for a person applying for an order under subrule (1) of this rule to appear personally, or by solicitor or counsel.

(4) An order under this rule shall be served personally on the person named in the order not less than seven (7) clear days before the return day. At the time service is effected payment or a tender of payment shall be made of a sum reasonably sufficient to cover the travelling expenses of the person named in the order to and from the place where he is required by the order to attend.

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(5) Where a judgment debtor or such an officer fails to attend at the time and place appointed for his examination or otherwise disobeys the order or refuses to answer a question which the Registrar allows to be put to him or fails to answer such a question to the satisfaction of the Registrar, the Registrar may report the matter to the Court and the Registrar's report shall be evidence of the facts stated therein in any proceedings which may be taken in consequence thereof.

(6) The Registrar may at any time adjourn the examination for further hearing before the Court.

(7) The Registrar shall cause a record to be made of the examination.

In cases of difficulty, party may apply

32. (1) Where any difficulty arises in or in connexion with the enforcement of any judgment or order, other than a judgment or order mentioned in rule 31 of this Order, the Court may on an application made *ex parte* by a person entitled to enforce the judgment or order, order that the party liable to satisfy the judgment or order, or, if that party is a body corporate, an officer thereof, attend before the Registrar to be examined on such questions as are specified in the order.

(2) The provisions of rule 31 shall apply with such modifications as may be necessary to an order made under this rule and the proceedings thereunder.

Costs

33. The Registrar may make an order for costs in respect of any proceedings brought before him under the last two preceding rules and that order may be enforced as if it were an order of the Court.

ORDER 44

WRITS OF FIERI FACIAS AND SEQUESTRATION

Effect of *fi. fa.*

1. A writ of *fieri facias* shall have the same force and effect as the like writ issued out of the Supreme Court of the State of New South Wales has, and shall be executed in the same manner in which the like writ issued out of the Supreme Court of the State of New South Wales may be executed.

Writ of *venditioni exponas*

2. Where it appears, upon the return of any writ of *fieri facias*, that the Sheriff or other officer has, by virtue of such writ, seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable may, immediately after such writ with such return has been filed as of record, sue out a writ of *venditioni exponas*.

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Other writs in aid

3. Writs of *venditioni exponas*, *distringas nuper vice comitem*, and all other writs in aid of a writ of *fieri facias*, may be issued and executed in the same cases and in the same manner as in the Supreme Court of the State of New South Wales.

Against estate of disobedient person

4. Where any person is, by any judgment or order, directed to pay money into Court, or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order may, at the expiration of the time limited for the performance thereof, without obtaining any order for that purpose, issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration issued out of the Supreme Court of the State of New South Wales in its jurisdiction in equity has, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration are dealt with by that Court.

No *subpoena* or without leave, sequestration for costs

5. No *subpoena* for the payment of costs, and, unless by leave of the Court, no sequestration to enforce such payment, shall be issued.

ORDER 45
ATTACHMENT

As heretofore

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Supreme Court of the State of New South Wales in its jurisdiction in equity.

Not to issue without leave

2. No writ of attachment shall be issued without the leave of the Court, which shall be applied for on notice to the party against whom the attachment is to be issued.

ORDER 46
ATTACHMENT OF DEBTS

Order for attachment of debts

1. (1) The Registrar may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under that judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still

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unsatisfied, and to what amount, and that any other person is indebted to the debtor, and is within the jurisdiction, issue a summons calling on that other person to show cause why all debts owing or accruing from that other person (in these Rules called "the garnishee") to the debtor should not be attached to answer the judgment or order, together with the costs of the garnishee proceedings. Upon the hearing of the summons the Court may order that the garnishee shall pay to the person who has obtained the judgment or order the debt due from him to the debtor, or so much thereof as is sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

(2) The summons shall be served on the garnishee or his solicitor, and, unless otherwise ordered, on the judgment debtor or his solicitor, at least seven days before the day of hearing.

(3) Service on the judgment debtor may be made in manner provided by Order 67, rule 2 either at the address for service, if the judgment debtor has appeared in the action and given an address for service, or on his solicitor, if he has appeared by solicitor, or, if there has been no appearance, then at his usual residence or place of business, or in such other manner as the Court directs.

Service of summons to bind debts

2. Service on the garnishee of a summons issued under rule 1 of this Order shall bind all debts owing or accruing from him to the debtor.

Execution against garnishee

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor liable under the judgment or order, or an amount equal to the amount of the judgment or order, or does not dispute the debt due or claimed to be due from him to the debtor, or if he does not appear upon the hearing of the summons, then the Court may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from the garnishee, or so much thereof as is sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

Trial of liability of garnishee

4. If the garnishee disputes his liability, the Court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Lien of third person on debt of garnishee

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the

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Court may order such third person to appear, and state the nature and particulars of his claim upon such debt.

Trial of claim of third person and order thereon or on non-appearance

6. After hearing the allegations of any third person under such order as is mentioned in rule 5 of this Order and of any other person whom by the same or any subsequent order the Court orders to appear, or in case of such third person not appearing when ordered, the Court may order execution to issue to levy the amount due from such garnishee, together with the costs of the garnishee proceedings, or any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person, or make such other order as the Court thinks fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court thinks just and reasonable.

Discharge of garnishee

7. Payment made by, or execution levied upon, the garnishee under any proceeding in pursuance of this Order shall be a valid discharge to him as against the debtor liable under a judgment or order, to the amount paid or levied, although such proceeding is set aside, or the judgment or order reversed.

Debt-attachment book

8. There shall be kept by the Registrar a debt-attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered and otherwise, and copies of any entries made therein may be taken by any person upon application to the Registrar.

Costs of proceedings

9. The costs of any application for an attachment of debts, and of any proceedings arising from, or incidental to, such application, shall be in the discretion of the Court, and as regards the costs of the judgment creditor shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount of the judgment debt.

ORDER 47

CHARGING ORDERS AND STOP ORDERS

Order charging stock or shares

1. An order charging stock or shares may be made by the Court, and the proceedings for obtaining such order shall be such as are directed, and

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the effect shall be such as is provided by the Judgment Creditors Remedies Act, 1901 of the State of New South Wales.

Charge on partnership property

2. Every summons by a separate judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 28 of the *Partnership Act 1963-1966*, and for such other orders as are thereby authorized to be made, shall be served on the judgment debtor and on his partners, or such of them as are within the jurisdiction, and such service shall be good service on all the partners, and all orders made on such summons shall be similarly served.

Application by partner of judgment debtor

3. Every application made by any partner under the same section shall be made by summons, and such summons shall be served on the judgment creditor and on the judgment debtor, and on such of the other partners as do not concur in the application and as are within the jurisdiction. Such service shall be good service on all the partners, and all orders made on such summons shall be similarly served.

Meaning of company and stock

4. In the succeeding rules of this Order the expression "company" includes every public company, whether incorporated or not, and the expression "stock" includes shares, securities, and dividends thereon.

Filing and service of affidavit and notice as to stock

5. Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or his solicitor in accordance with Form 57 in the First Schedule, and on filing the same, together with a notice in accordance with Form 58 in the First Schedule, and on procuring an office copy of the affidavit and a duplicate of the filed notice, serve the office copy and duplicate notice on the company.

Affidavit to state address of claimant

6. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.

Service by post

7. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated or at any such substituted address as is mentioned in this Order, whether the person to whom the notice is sent is living or not.

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Alteration of address

8. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given, or for the time being substituted therefor, shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the company in the manner required for service of a notice under this Order.

Service of affidavit and filed notice to have same effect as writ of *distringas*

9. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect as if these Rules had not been made and a writ of *distringas* in respect of the stock had been duly issued.

Withdrawal or discharge of notice

10. A notice filed under rule 5 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given, on a written request signed by him, or its operation may be made to cease by an order obtained by motion on notice, or by summons at Chambers, duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

Effect of notice on transfer of stock or payment of dividend

11. If, while a notice filed under rule 5 of this Order continues in force, the company on whom it is served receives from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred, or to pay the dividends thereon, the company shall not, by force or in consequence of the service of the notice, be authorized without the order of the Court, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than eight days after the date of the request.

Amendment of notice

12. If the person who files a notice under rule 5 of this Order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the company a sealed duplicate thereof, and in that case service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

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Costs of stop order

13. Where any moneys or securities are in Court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order is obtained on the shares of such moneys or securities affected by such order shall be liable, at the discretion of the Court, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, are occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

Service

14. Any person moving on notice, or taking out a summons, for any order in pursuance of the last preceding rule, shall not be required to serve such notice or summons upon the parties to the cause or matter, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by any such order.

ORDER 48

WRIT OF POSSESSION

On a judgment for land

1. A judgment or order that a party recover possession of any land may be enforced by writ of possession in the manner used in actions of ejectment in the Supreme Court of the State of New South Wales.

Affidavit of service and disobedience

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order may, without any order for that purpose, and on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed, sue out a writ of possession.

One or separate writs for possession

3. Upon any judgment or order for the recovery of any land and costs there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party.

Writ of assistance

4. Upon due service of a judgment or order that a party do recover possession of any land, the person prosecuting the same shall be entitled to an order for a writ of assistance.

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ORDER 49
WRIT OF DELIVERY

Absolute order for

1. Where it is sought to enforce a judgment or order for the recovery of any property, other than land or money, by writ of delivery, the Court may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property upon paying the value assessed (if any), and that if the property cannot be found, and unless the Court otherwise orders, the Sheriff shall distrain the defendant by all his lands and chattels till the defendant delivers the property, or, at the option of the plaintiff, that the Sheriff cause to be made of the defendant's goods the assessed value (if any) of the property.

Form. Execution for damages and costs

2. A writ of delivery shall be in accordance with Form 59 in the First Schedule, or with such other form as is applicable in the circumstances, and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

ORDER 50
ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Disclosure of partners' names

1. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action, and any party to an action may in such case apply by summons to the Judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge directs.

Disclosure of partners' names

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitor shall, on demand in writing, by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought, and if the plaintiffs or their solicitor fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court directs, and when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had

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been named as plaintiffs in the writ, but all the proceedings shall, nevertheless, continue in the name of the firm.

Service

3. Where persons are sued as partners in the name of their firm under rule 1 of this Order, the writs shall be served either upon any one or more of the partners, or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there, and, subject to these Rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not:

Provided that in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable.

Notice in what capacity served

4. Where a writ is issued against a firm, and is served as provided by rule 3 of this Order, every person upon whom it is served shall be informed by notice in writing, given at the time of such service, whether he is served as a partner, or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners

6. Where a writ is served under rule 3 of this Order upon any person having the control or management of the partnership business, an appearance by him shall not be necessary unless he is a member of the firm sued.

Appearance under protest of person served as partner

7. Any person served as a partner under rule 3 of this Order may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form.

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Execution of judgment against a firm

8. (1) Where a judgment or order is against a firm, execution may issue—

(a) against any property of the partnership within the jurisdiction;

(b) against any person who has appeared in his own name under rule 5 or 6 of this Order, or has admitted on the pleadings that he is, or has been adjudged to be, a partner; or

(c) against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

(2) If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court for leave so to do, and the Court may give such leave if the liability is not disputed, or, if such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

(3) Except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and has not appeared to the writ, unless he has been made a party to the action under the law relating to the service of writs and notices out of the jurisdiction, or has been served within the jurisdiction after the writ in the action was issued.

Attachment of debts owing from a firm

9. (1) Debts owing from a firm carrying on business within the jurisdiction may be attached under Order 46, although one or more members of the firm is resident abroad if a person having the control or management of the partnership business or some member of the firm within the jurisdiction is served with the garnishee order.

(2) An appearance by any member pursuant to an order shall be a sufficient appearance by the firm.

Application of Rules to actions between co-partners

10. The preceding rules of this Order shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in any such action without leave of the Court, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as are just.

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Application of Rules to person trading as a firm

11. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case permits, all rules relating to proceedings against firms shall apply.

ORDER 51

CONSOLIDATION

Actions may be consolidated

1. Causes or matters may be consolidated by order of the Court in the manner in use in the Supreme Court of the State of New South Wales.

ORDER 52

Division 1—Interlocutory orders as to mandamus, injunctions, interim preservation of property, etc.

Interim order for preservation of subject of action

1. Where by any contract a *prima facie* case of liability is established, and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, the Court may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Order for sale of perishable or other property

2. The Court may, on the application of any party to any cause or matter, make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as the Court orders, of any goods, wares, or merchandise which are of a perishable nature or are likely to be injured from keeping, or which, for any other just and sufficient reason, it is desirable to have sold at once.

Order for detention, preservation, or inspection of property

3. The Court may, upon the application of any party to a cause or matter, and upon such terms as are just, make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of those purposes, may authorize any person to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of those purposes may authorize any samples to be taken, or any observation to be made or experiment to be tried, which seems necessary or expedient for the purpose of obtaining full information or evidence.

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Judge may inspect

4. The Judge, with or without the jury (if any), may inspect any property or thing concerning which any question may arise in any cause or matter.

Jury may inspect

5. The provisions of rule 3 of this Order shall apply to inspection by a jury, and in such case the Court may make all such orders upon the Sheriff or other person as are necessary to procure the attendance of the jury at such time and place and in such manner as it or he thinks fit.

Application for order

6. An application for an order under section 34 of the Act or under rules 2 or 3 of this Order, may be made to the Court by any party. If the application is by the plaintiff for an order under section 34 of the Act, it may be made either *ex parte* or with notice, and if for an order under rules 2 or 3 of this Order, it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it is by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

Application by plaintiff under r. 1

7. An application for an order under rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings, or, if there are no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court.

Payment into Court in discharge of lien

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court may, at any time after such last-mentioned claim appears from the pleadings, or, if there are no pleadings, by affidavit or otherwise to the satisfaction of the Court, order that the party claiming to recover the property may pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court directs, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Court may allow whole or part of income

9. Where any real or personal property forms the subject of any proceedings in the Court, and the Court is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be

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provided for in such action, the Court may, at any time after the commencement of such proceedings, allow the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or the whole or part of the income thereof, up to such time as the Court directs, and for that purpose may make such orders as appear to the Court necessary or expedient.

Conduct of sale

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court otherwise directs.

Writ of injunction abolished

11. A writ of injunction shall not be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

Injunction to restrain repetition or commission of acts of like kind

12. In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract, and the Court may grant the injunction, either upon or without terms, as is just.

Leave to compound penal action

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice has first been given to the Attorney-General, but in other cases it may be given without notice.

Order for

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

King's half of penalty

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the King's portion of the composition shall be paid into the hands of the Registrar for the use of His Majesty.

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Division 2—Receivers

Interpretation

16. In this Division, "Court" includes a Judge.

Application for order

17. (1) A party applying for an order for the appointment of a receiver must move the Court for the order on notice, unless the matter is urgent, in which case the Court may be moved *ex parte*.

Address for service

18. Not later than 7 days after appointment, a receiver must file a notice that specifies the receiver's address for service.

Security

19. (1) If a receiver is appointed by the Court, the Court may give directions to the receiver to file a security in accordance with this rule.

(2) If the appointment of a receiver is directed by the Court, a person must not be appointed under the direction until the person has filed a security in accordance with this rule, unless the Court otherwise orders.

(3) For the purposes of this rule, a security must be—

(a) approved by the Court; and

(b) given in respect of an undertaking by the receiver, or prospective receiver, in accordance with Form 60 in Schedule 1 that what is received as receiver will be—

(i) accounted for; and

(ii) dealt with as the Court may direct.

(4) The Court may make orders for the vacation of a security filed under this rule.

Powers

20. (1) A receiver appointed by the Court has the powers of a receiver and manager, unless the Court otherwise orders.

(2) The Court may authorise a receiver to do (in the receiver's name or in the name of the parties or of a party and either generally or in a particular instance) any act or thing that the parties or a party might do if of full age and capacity.

(3) Subrule (2) has effect whether or not a party is a minor or is otherwise incapacitated.

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(4) This rule does not affect the powers of the Court apart from this rule to authorise a receiver to do any act or thing.

Remuneration

21. A receiver appointed under this rule is allowed the remuneration, if any, fixed by the Court.

Accounts

22. (1) A receiver appointed under this rule must submit accounts to such parties at such intervals or on such dates as the Court may direct.

(2) A party to whom a receiver must submit accounts may, on giving reasonable notice to the receiver, inspect, personally or by an agent, the documents or things on which the accounts are based.

(3) A party who objects to accounts of the receiver—

(a) may serve notice in writing on the receiver that—

(i) specifies the items to which objection is taken; and

(ii) requires the receiver to file in the Court within not less than 14 days of the service of notice, a copy of the accounts; and

(b) if such notice is served—must file a copy of the notice in the Court.

(4) A receiver on whom notice is served under subrule (3) must file in the Court within the specified period a copy of the accounts.

(5) The Court may examine the items to which objection is taken and, after examination—

(a) must declare by order the result of the examination; and

(b) may make an order for the costs of a party or of the receiver.

Default

23. (1) If a receiver does not, in accordance with these Rules or under an order or direction of the Court—

(a) file an account or other document that is required to be filed; or

(b) do a thing that is required to be done;

the Court may make such orders and give such directions as the Court thinks fit, including an order or direction for—

(c) discharge of the receiver; or

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(d) appointment of another receiver; or

(e) payment of costs.

(2) If a receiver fails to comply with a requirement of these Rules or an order or direction of the Court to pay into Court an amount shown by the receiver's accounts to be due from the receiver, the Court may charge the receiver interest on that amount—

(a) at the rate fixed from time to time for the purpose of section 70 of the Act under Order 42A of these Rules; or

(b) at such other rate as the Court determines to be just;

in respect of the period of that failure.

(3) This rule does not affect the Court's powers to enforce its orders or to punish contempt of the Court.

Account on death

24. (1) If a receiver, being a natural person, dies, the Court may, on the motion of a party, make such orders as the Court thinks fit for—

(a) filing and passing of accounts—

(i) by the representatives of the receiver; or

(ii) by any other person who has, or has had, possession or control of property the subject of the receivership; and

(b) payment into Court of any amount shown to be due; and

(c) delivery of property the subject of the receivership.

(2) The Court must not make an order under subrule (1) unless notice of the motion for the order has been served on the representatives of the receiver or other person affected by the order.

(3) A notice of motion under this rule may be served in a manner in which a statement of claim may be served under these Rules.

Division 3—Liquidators, guardians and committees

Liquidators

25. The accounts of liquidators, guardians and of committees of persons of unsound mind shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

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ORDER 53

SALES BY THE COURT

Sale of real estate may be directed any time after action

1. If, in any cause or matter relating to any real estate, it appears necessary or expedient that the real estate or any part thereof should be sold, the Court may order the same to be sold, and any party bound by the order and in possession of such estate, or in receipt of the rents or profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as is thereby directed.

Mode of carrying out sale, mortgage, partition, or exchange when ordered by Court

2. In all cases where a sale, mortgage, partition or exchange is ordered, the Court shall have power, in addition to the power already existing, with a view to avoiding expense or delay, or for other good reason, to authorize the same to be carried out, either as at present—

(a) by laying proposals before the Judge in Chambers for his sanction; or

(b) by proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the Judge in Chambers orders:

Provided always, that the Judge shall not authorize the proceedings altogether out of the Court, unless and until he is satisfied, by such evidence as he deems sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged are before the Court, or are bound by the order for sale, mortgage, partition, or exchange, and every order authorizing the proceedings altogether out of Court shall be prefaced by a declaration that the Judge is so satisfied and a statement of the evidence upon which such declaration is made.

Power to make order for sale in debenture-holders' actions at any time

3. In debenture-holders' actions, where the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture-holders, and the Judge is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not.

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Sale under order

4. Where a judgment or order is given or made directing any property to be sold, unless otherwise ordered, the same shall be sold with the approbation of the Judge to the best purchaser that can be got for the same, to be allowed by the Judge, and all such proper parties as the Judge directs shall join in the sale and conveyance.

Reserved biddings

5. Affidavits for the purpose of enabling the Judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

Particulars and conditions of sale

6. As soon as particulars and conditions of sale settled at Chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the Judge's Chambers, shall be left at Chambers.

Affidavit of result of sale

7. An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at Chambers at least one clear day before the day appointed for settling the certificate of the result of the sale.

Opinion of counsel

8. The Court may require or receive the opinion of counsel for his aid and assistance in the investigation of the title to an estate with a view to an investment of money in the purchase, or on mortgage thereof, or with a view to the sale thereof, or to the settlement of a draft of a lease, transfer, mortgage, settlement, conditions of sale, or other instrument, or any other matter which the Court thinks fit to refer.

Subject to objection

9. Any party may object to any opinion of any such counsel and thereupon the point in dispute shall be disposed of by the Court or by the Judge according to the nature of the case.

ORDER 54

MOTIONS AND OTHER APPLICATIONS

Application by motion

1. Where by these Rules any application is authorized to be made to the Court, such application, if made in Court, shall be made by motion.

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Rule to show cause

2. A motion or application for a rule *nisi*, or order to show cause, shall not be made in any action, or—

(a) to set aside, remit, or enforce an award; or

(b) for attachment; or

(c) to answer the matters in an affidavit; or

(d) against a sheriff to pay money levied under an execution.

Previous notice of motion required

3. Except where according to the practice existing in the Supreme Court of the State of New South Wales any order or rule may be made absolute *ex parte* in the first instance, and except where, notwithstanding rule 2 of this Order, a motion, or application, may be made for an order to show cause only, a motion shall not be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court thinks just, and any party affected by such order may move to set it aside.

Notice of motion to set aside award etc.

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, shall state in general terms the grounds of the application, and where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

Two clear days between notice and hearing

5. Unless the Court gives leave to the contrary, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

Motion dismissed or adjourned for notice on other persons

6. If, on the hearing of a motion or other application, the Court is of opinion that any person to whom notice has not been given ought to have, or to have had, such notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms (if any) as the Court thinks fit to impose.

Hearing adjourned

7. The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court thinks fit.

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Service of notice of motion

8. The plaintiff may, without leave, serve any notice of motion or other notice upon any defendant, either with the writ of summons or before or after the time limited for the appearance of such defendant, and whether such defendant has appeared or not.

No order for return of writ etc. necessary

10. An order shall not issue for the return of any writ or to bring in the body of a person ordered to be attached or committed, but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the Sheriff to return such writ, or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of the Sheriff.

Notice to Sheriff, out of office

11. When the Sheriff, before going out of office, arrests any defendant, and renders return of *sepi corpus*, he may be called upon by a notice, as provided by the last preceding rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.

Order to bear date of making

12. Every order, if and when drawn up, shall be dated the day of the week, month, and year on which the same was made, unless the Court otherwise directs, and shall take effect accordingly.

Order need not be drawn up in certain cases

13. (1) Where an order has been made not embodying any special terms nor including any special directions, but simply enlarging time for taking any proceeding, or doing any act, or giving leave—

(a) for the issue of any writ, other than a writ of attachment;

(b) for the amendment of a writ or pleadings;

(c) for the filing of any document; or

(d) for any act to be done by any officer of the Court;

Note or memorandum sufficient

it shall not be necessary to draw up such order unless the Court otherwise directs, but the production of a note or memorandum of such order signed

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by the Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act.

(2) A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule.

Notice of order

(3) The person or solicitor of the person on whose application such order is made shall forthwith give notice in writing thereof to such persons (if any) as would, if this rule had not been made, have been required to be served with such order.

Petition to state parties to be served

14. At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons (if any) intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

Two clear days between service and hearing

15. Unless the Court gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

Affidavit of claim to purchase money paid into Court

16. In the case of applications under any law directing the purchase money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

Title and form of petition etc. for advice

17. All petitions, summonses, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a Judge under section 63 of the Trustee Act, 1925-1942 of the State of New South Wales, in its application to the Territory, shall be intituled in the matter of that Act, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

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Proceeding on summons for advice

18. At the time when any such summons as is mentioned in the last preceding rule is issued, the statement upon which the same is grounded shall be left at the Chambers of the Judge, and on the conclusion of the proceeding shall, with the minutes of the opinion, advice, or direction given by the Judge, be transmitted by the Associate of the Judge to the Registrar's office, to be there filed.

Time for service

19. Every such petition or summons as is mentioned in rule 17 of this Order shall be served seven clear days before the hearing thereof, unless the person served consents to a shorter time.

Opinion to be entered

20. The opinion, advice, or direction of the Judge, as is mentioned in rule 17 of this Order, shall be passed and entered and remain as of record in the same manner as any other order made by the Court, and the same shall be termed a "judicial opinion", or "judicial advice", or "judicial direction", as the case may be.

Account by solicitor

21. Where the relationship of solicitor and client exists, or has existed, a summons may be issued by the client or his representatives for the delivery of a cash account, or payment of moneys, or the delivery of securities, and the Court may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into Court the whole, or any part of the same, within such time as the Court orders. In the event of the respondent alleging that he has a claim for costs, the Court may make such provision for the payment or security thereof, or the protection of the respondent's lien (if any), as the Court thinks fit.

Interim certificate

22. If, during the taxation of any bill of costs, or the taking of any account between solicitor and client, it appears to the taxing officer that there must in any event be moneys due from the solicitor to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the solicitor. Upon the filing of such certificate, the Court may order the moneys so certified to be forthwith paid to the client or brought into Court.

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ORDER 55

CERTIORARI: MANDAMUS: PROHIBITION: QUO WARRANTO: HABEAS CORPUS

1 General

Application, how made

1. Applications for writs of Certiorari, Mandamus, or Prohibition, or for leave to exhibit informations of Quo Warranto, or for relief of like nature to Mandamus or Quo Warranto, may be made to the Court. The applications shall be, in the first instance, for an order calling on the parties interested in resisting the application to show cause why the writ should not be issued, or the information filed, or other relief given, except in the case of application by a law officer *ex officio* for a writ of Certiorari or leave to file an information of Quo Warranto, in which case the order shall, if asked, be absolute in the first instance:

Provided that the Court may, in its or his discretion, in any case in which it appears necessary for the advancement of justice, grant an order absolute in the first instance for a writ of Certiorari, Mandamus, or Prohibition.

Order to be returnable before the Court

2. Orders to show cause shall be to show cause before the Court.

Title of affidavits

3. Affidavits intended to be used on the application shall be entitled "In the Supreme Court of the Australian Capital Territory" without any other title.

Title of proceedings

4. (1) The order to show cause and all subsequent proceedings shall be entitled "The King against" the judicial or other authority or other person to whom the writ is proposed to be directed, or against whom the information is proposed to be exhibited, "*ex parte*" the applicant.

(2) In the case of a writ of Certiorari, Mandamus, or Prohibition, which is proposed to be directed to a judicial or public authority, the authority shall be described by his or their name of office. The applicant shall, in the cases of applications for writs of Mandamus or relief of like nature, and of applications for writs of Prohibition, be called the prosecutor, and, in the case of applications for information of Quo Warranto or relief of like nature, the relator.

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Order absolute

5. An order absolute need not be served, but the costs of service thereof may be allowed in the discretion of the taxing officer, if the writ is not actually issued or the information is not actually exhibited.

Costs

6. When the order is made absolute, the Court may, except as otherwise provided by these Rules, dispose of the costs of the proceedings either by the final judgment or by a separate order.

2 Certiorari

Copy, warrant, order etc. to be produced on application

8. An order *nisi* for a writ of Certiorari to remove any warrant, order, conviction, inquisition, or record shall not be granted unless at the time of the application a copy of the warrant, order, conviction, inquisition, or record, verified by affidavit, is produced, or its non-production accounted for to the satisfaction of the Court.

Objections to be stated in order

9. Any mistake or omission in any judgment, order or other proceeding, which is intended to be relied upon as a ground for quashing the judgment, order, or proceeding, shall be stated in the order *nisi*, otherwise an objection on account of the omission or mistake shall not be allowed.

Service

10. In the case of orders to show cause why a writ of Certiorari should not be issued addressed to the Magistrates Court, service of the order on the Clerk of the Court shall be sufficient.

Security for costs

11. A writ of Certiorari to remove a judgment or order of any Court or tribunal shall not be issued, except on the application of a law officer, until the applicant has given security to the satisfaction of the Registrar in the sum of $100, conditioned to prosecute the writ with effect at his own cost without delay, and to pay to the party in whose favour the judgment or order was given or made, in the event of its being confirmed, such costs, if any, as the Court orders him to pay.

Order to quash in first instance

12. (1) When cause is shown against an order *nisi* for a writ of Certiorari to bring up a judgment or order, the Court, if it directs the writ to issue, may by the same order direct that the judgment or order shall be

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quashed on return without further order, and in that case no security need be given as required by the last preceding rule, and a memorandum to that effect shall be indorsed upon the writ by the officer by whom it is issued.

(2) In any such case the judgment or order shall be quashed, upon being returned to the Court, without further order.

When no cause shown

13. When cause is not shown against an order *nisi* for a writ of Certiorari to bring up a judgment or order, or when the order is absolute in the first instance, the applicant shall apply to the Court for an order to quash the judgment or order. Such application shall be made upon notice to the parties interested in supporting the judgment or order.

Forms

14. A writ of Certiorari shall be in accordance with Form 63 in the First Schedule.

3 Mandamus

Prosecutor to be named

15. An order *nisi* for a writ of Mandamus or for relief of a like nature shall not be granted except upon the application of some person who is interested in the relief sought, and the applicant must state by affidavit that the application is to be made at his instance as prosecutor.

Persons to show cause

16. The Court may direct that the order *nisi* shall be addressed to, and served upon, any person who, in the opinion of the Court, ought to have notice thereof, and any person who, in the opinion of the Court, would be affected by the issue of the peremptory writ may show cause against the order *nisi*, and, if he does so, shall be liable to costs as if the order had been addressed to him.

Form of writ

17. Unless otherwise ordered by the Court, every writ of Mandamus shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it, but the Court may direct that the command shall be peremptory in the first instance. Every writ of Mandamus shall be in accordance with Form 64 in the First Schedule, and shall bear date of the day on which it is issued, and shall be tested in the name of the Judge.

Time for return of writ

18. Unless otherwise ordered by the Court, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

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Service

19. (1) When a writ of Mandamus is directed to one person only, the original writ must be personally served upon him by delivering it to him.

(2) When the writ is directed to two or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of a writ of summons, and shall be served upon the remaining one by delivering the original writ to him.

Service on justices or corporate bodies

20. When a writ of Mandamus is directed to a corporation, or to a company, or to public authorities, it shall be served on so many of the officers or members of the corporation or company or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

Return

21. The persons to whom a writ of Mandamus is directed shall, within the time allowed by the writ, file the writ, together with a certificate, written thereon or annexed thereto, and signed by them, setting forth that they have done the act commanded by the writ, or else setting forth the reason why they have not done so.

Service

22. A copy of the return shall be served upon the prosecutor on the same day as it is filed.

Pleading to return

23. If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time, as if the return were a defence in an action in which the prosecutor was the plaintiff and the person to whom the writ is directed was the defendant, and had pleaded this return as his defence.

Peremptory writ

24. If the question of fact and law, if any, raised by the return is determined in favour of the prosecutor by judgment of the Court or otherwise, the prosecutor shall be entitled to a peremptory writ of Mandamus, commanding the persons to whom the first writ was directed to do the act therein commanded, and such writ shall be awarded by the judgment, if any, or, if there is no judgment, by a separate order.

Costs when peremptory writ awarded in the first instance or on obedience

25. (1) When a peremptory writ is awarded in the first instance, the Court shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.

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(2) When a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time after the return is filed, not being later than the fourth day of the sittings of the Court held next after the day on which the return is filed.

Proceedings in nature of interpleader

26. When upon an application for a writ of Mandamus it appears that some person other than the prosecutor claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the prosecutor claims to have done, the person to whom the order *nisi* or writ is directed may apply to the Court for an order that the last-named person be substituted for him in all subsequent proceedings up to the issue of a peremptory writ of Mandamus, and the Court may make such order on the application as is just.

Time

27. An application for a writ of Mandamus, or an order in the nature of a Mandamus, to a judicial tribunal to enter a minute of adjournment and hear a matter, shall be made within two months of the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court.

Mandamus by order

28. In any case in which the Court directs the issue of a peremptory writ of Mandamus, the command may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a peremptory writ of Mandamus.

No action against party obeying writ or order

29. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of Mandamus or an order of the court for relief of the like nature issued by the Court.

4 Prohibition

Pleadings in prohibition

30. The Court may in any case, instead of directing the issue of a writ of Prohibition, direct the prosecutor to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded, and thereupon the same proceedings shall be had and taken in all respects as in an action.

Proceedings on judgment

31. If judgment is given for the prosecutor, the judgment shall include a direction that a writ of Prohibition shall issue.

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Writ of Procedendo

32. When a writ of Prohibition has been issued, and it is afterwards made to appear to the Court that relief ought to be given against the judgment or order by which the writ was awarded on any ground on which relief might be given against a judgment in an action, the Court may direct that a writ, called a writ of Procedendo, shall be issued commanding the judicial tribunal to which the writ of prohibition was issued to proceed to hear or determine the matter in question or otherwise proceed therein as if the writ of Prohibition had not been issued.

Prohibition by order

33. The Prohibition may be expressed in an order of the Court without the issue of a writ, which order shall have the same effect as a writ of Prohibition. A writ of Prohibition shall be in accordance with Form 65 in the First Schedule.

5 Quo Warranto

Relator to be named

34. Upon an application for an order for leave to exhibit an information of Quo Warranto, or for relief of a like nature, the applicant shall state by affidavit that the application is to be made at his instance as relator. The Court may allow a new relator to be substituted for the original relator, on such terms as to costs or otherwise as are just.

Objections to be stated in order *nisi*

35. Every objection intended to be made to the title of the defendant or person called on to show cause shall be stated in the order *nisi*, and no objection not so stated shall be raised on the return of the order *nisi*, or in the information, without the leave of the Court.

Security for costs

36. An information shall not, without the leave of the Court, be filed until the applicant has given security in the sum of $100 conditioned to file the information and prosecute the same with effect, and to pay to the defendant such costs, if any, as the Court orders.

Form of information

37. The information shall set forth the facts relied on by the relator as invalidating the title of the defendant to the office in question in the same manner as in a statement of claim.

Signature of service of information

38. The information shall be in the name of the Attorney-General or the relator, as the case may be, on behalf of His Majesty, and shall be

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signed by the Attorney-General or relator. A copy of the information shall be served upon the defendant, or, if at the return of the order *nisi* he appeared by solicitor, then upon his solicitor.

Defence and subsequent proceedings

39. The defendant shall plead to the information within the same time and in the same manner as if the information were a statement of claim in an action, and thereupon the same proceedings shall be taken in all respects as if the proceeding by information were an action in which the relator was plaintiff and the defendant was defendant.

Judgment costs

40. If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped by him.

Disclaimer

41. The defendant may, if he thinks fit, disclaim the office in question. Such disclaimer shall be signed by the defendant and attested by a person authorized to take an affidavit, and shall be filed, and a copy thereof shall be served on the relator within the time allowed for delivering a defence. The relator shall thereupon, unless the Court otherwise orders, be entitled to enter judgment of ouster with costs, including the costs of the order giving leave to exhibit the information.

Consolidation

42. When proceedings by information of Quo Warranto, or for relief of a like nature, are pending against several persons for usurpation of offices of the same nature, and upon the same grounds of objection, the Court may direct the proceedings to be consolidated, as in the case of actions, and for that purpose may make such orders as are just, but an order for consolidation or stay of proceedings against any defendant shall not be made upon the application of a defendant unless he undertakes to enter a disclaimer in the event of judgment being given for the relator in the proceeding which is not stayed.

7 Habeas Corpus

How applied for

43. Applications for writs of Habeas Corpus, or for orders for the production of persons in confinement for the purpose of examination or trial, may be made to the Court *ex parte*. The affidavits upon which the application is made shall be entitled "In the Supreme Court of the Australian Capital Territory" without other title, except in the case of applications for orders for the production of persons for examination as witnesses in causes

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or matters pending in the Court, in which case they shall also be entitled in the cause or matter.

How granted

44. The Court may make an order absolute in the first instance for the issue of the writ or production of the person, or may make an order calling upon the person who would be required to obey the writ or order, if granted, to show cause why it should not be issued or made. The order and all subsequent proceedings shall be entitled "The King against" the person to whom the writ or order is directed, except in the case of orders for the production of persons as witnesses, which shall be entitled in the cause or matter.

Service

45. Writs of Habeas Corpus, and orders for production directed to persons charged by law with the custody of persons in lawful custody or confinement, may be served either personally, or by leaving the original with a servant or officer of the person to whom the writ or order is directed at the place where the person in question is confined or detained. Other writs of Habeas Corpus shall be served personally unless an order for substituted service is made as provided for by Order 11. When a writ of Habeas Corpus is directed to more persons than one, it shall be served in the same manner as a writ of Mandamus directed to several persons. Together with the writ there shall be served a notice, directed to the person to whom the writ is addressed, specifying the acts to be done by him in obedience to the writ, and pointing out the consequences of making default.

Return to writs of Habeas Corpus

46. The person to whom a writ of Habeas Corpus is directed shall, at the time and place specified therein, make his return to the writ, which shall be indorsed upon or attached to the writ, and shall set out all the causes of the detention of the person named in the writ. The return shall be filed.

Amendment of return

47. The return may be amended by leave of the Court.

Proceedings on return

48. Upon the return of the writ the return shall be read, and a motion shall then be made for the disposition of the person therein named, or for amending or questioning the return.

Discharging without writ

49. When an order to show cause has been made, the Court may, on the return of the order, direct the discharge or other disposition of the person

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in question without the issue of a writ of Habeas Corpus, and any such order shall be as effectual as if it had been made on the return of a writ.

ORDER 56

APPLICATIONS AND PROCEEDINGS AT CHAMBERS

Summons

1. Every application at Chambers not made *ex parte* shall be made by summons.

Forms of originating summons

2. An originating summons shall be in accordance with Form 66 in the First Schedule, or with such other form as is applicable in the circumstances. It shall be prepared by the applicant or his solicitor, and shall be sealed, and when so sealed shall be deemed to be issued. The person obtaining the summons shall file a copy thereof.

Time for attendance

3. The day and hour for attendance under an originating summons need not be inserted therein and, if it is not so inserted, notice of such day and hour shall be served with the summons, or separately from the summons, but in such manner and within such time as the summons is required to be served.

Appearances to be entered

4. The parties served with an originating summons shall, before they are heard in Chambers, enter appearances in the Registrar's office and give notice thereof.

Time for service of original summons

5. An originating summons, where service is necessary, shall, unless otherwise directed by the Judge, be served seven clear days before the return thereof.

Time of service of summons

6. Every summons, other than an originating summons, shall be served within a reasonable time before the return thereof, and in no case later than two o'clock in the afternoon of the day before the hearing thereof, or, if served on Saturday, not later than twelve o'clock noon.

Proceeding *ex parte* in case of party summoned failing to attend

7. Where any of the parties to a summons fails to attend, whether upon the return of the summons, or at any time appointed for the consideration or

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further consideration of the matter, the Judge may proceed *ex parte*, if, considering the nature of the case, he thinks it expedient so to do. No affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he thinks just.

Reconsideration of *ex parte* proceedings

8. Where, pursuant to rule 7, the Judge has proceeded *ex parte*, such proceedings shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge is satisfied that the party failing to attend was not guilty of wilful delay or negligence, and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time and direct them to be paid by the party or his solicitor before he is permitted to have such proceeding reconsidered, or make such other order as to such costs as he thinks just.

Non-attendance

9. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he thinks reasonable to be paid to the party attending by the absent party or by his solicitor personally.

Further attendance on summons

10. Where matters in respect of which a summons has been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as are appointed for the consideration or further consideration of the matter.

Summons may include all matters

11. In every cause or matter, where any party thereto makes any application at Chambers, either by way of summons or otherwise, he may include in one and the same application all matters upon which he then desires the order or directions of the Court, and upon the hearing of such application the Court may make any order and give any directions relative to or consequential on the matter of such applications as is just, and any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

Form of summons

12. A summons other than an originating summons shall be in accordance with Form 67 in the First Schedule, or with such other form as is applicable in the circumstances, and shall be addressed to all the persons on whom it is to be served.

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Issue of summons

13. In all cases of applications originating in Chambers, a summons shall be prepared by the applicant or his solicitor and sealed, and, when so sealed, shall be deemed to be issued. The person obtaining a summons shall file a copy thereof.

Hour of return

14. Summonses shall be returnable at such time as is fixed by the Judge or Registrar.

Form of order

15. An order shall be in accordance with Form 68 in the First Schedule, or with such other form as is applicable in the circumstances, and shall be prepared by the party entitled to the order.

ORDER 56A

CONSENT ORDERS IN INTERLOCUTORY PROCEEDINGS

Interlocutory order by consent

1. Where, at the hearing of an application made on motion or by summons, a party to the application who is represented by a solicitor does not appear but the applicant produces to the Court—

(a) a copy of the notice of motion or summons endorsed with the consent of the solicitor for the first-mentioned party to the making of the order sought; or

(b) a document entitled in the cause, signed by the solicitor for the first-mentioned party and expressing the consent of that solicitor to the making of an order in the terms set out in the document;

the Court may make an order in accordance with the endorsement or the document, as the case may be.

Adjournment by consent

2. Where, at the hearing of an application made on motion or by summons, a party to the application who is represented by a solicitor does not appear but the applicant produces to the Court—

(a) a copy of the notice of motion or summons endorsed with the consent of the solicitor for the first-mentioned party to the adjournment of the hearing; or

(b) a document entitled in the cause, signed by the solicitor for the first-mentioned party and expressing the consent of that solicitor to the adjournment of the hearing;

the Court may adjourn the hearing.

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Adjournment without attendance

3. The adjournment of the hearing of an application on motion or by summons may be ordered without the attendance of any of the parties to the application if, not later than one clear day before the date fixed for the hearing, there is filed a document entitled in the cause signed by the solicitor for each party to the application and expressing the consent of every such party to the adjournment of the hearing.

ORDER 57

DECLARATION ON ORIGINATING SUMMONS

Power to make declarations on summons

1. Any person claiming to be interested under a deed, will or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument, and for the declaration of the rights of the persons interested.

Construction of Act, Ordinance or regulation

2. Where any person claims any legal or equitable right, and the determination of the question whether he is entitled to that right depends upon a question of construction of any Act, State Act, Ordinance or regulation in force in the Territory, that person may apply by originating summons for the determination of that question and for a declaration as to the right claimed.

Service

3. The Court may direct such persons to be served with the summons as it or he thinks fit.

Evidence

4. The application shall be supported by such evidence as the Court requires.

Direction of Court

5. The Court shall not be bound to determine any such question of construction if, in its or his opinion, it ought not to be determined on an originating summons.

ORDER 58

I—ADMINISTRATION AND TRUSTS

Originating summons for relief without administration

1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and

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any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person mentioned in this rule may take out, as of course, an originating summons returnable in Chambers for such relief of the nature or kind following as is specified by the summons, and as the circumstances of the case require, that is to say, the determination without an administration of the estate or trust, of any of the following questions or matters—

(a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, heir-at-law or *cestui que trust.*

(b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others.

(c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts.

(d) The payment into Court of any money in the hands of the executors, administrators, or trustees.

(e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators, or trustees.

(f) The approval of any sale, purchase, compromise, or other transaction.

(g) The determination of any question arising in the administration of the estate or trust.

Summons for administration

2. Any of the persons named in the last preceding rule may in like manner apply for and obtain an order for—

Personal estate

(a) the administration of the personal estate of the deceased;

Real estate

(b) the administration of the real estate of the deceased; or

Trusts

(c) the administration of the trust.

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Service

3. The persons to be served with the summons under the last two preceding rules shall, in the first instance, be the following—

A. Where the summons is taken out by an executor or administrator or trustee—

(a) For the determination of any question under subparagraphs (a), (e), (f), or (g) of rule 1 of this Order, the persons, or one of the persons, whose rights or interest are sought to be affected.

(b) For the determination of any question, under subparagraph (b) of rule 1 of this Order, any member or alleged member of the class.

(c) For the determination of any question under subparagraph (c) of rule 1 of this Order, any person interested in taking such accounts.

(d) For the determination of any question under subparagraph (d) of rule 1 of this Order, any person interested in such money.

(e) For relief under subparagraph (a) of rule 2 of this Order, the residuary legatees, or next of kin, or some of them.

(f) For relief under subparagraph (b) of rule 2 of this Order, the residuary devisees or heirs, or some of them.

(g) For relief under subparagraph (c) of rule 2 of this Order, the *cestuis que trustent*, or some of them.

(h) If there is more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

Originating summons for foreclosure etc.

4. (1) Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons for such relief of the nature or kind following as is specified by the summons and as the circumstances of the case require, that is to say,

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sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.

(2) As to any land under the *Real Property Act 1925-1937*, nothing in this rule shall be construed so as to give any right to foreclose or to sell otherwise than as provided by that Act.

Persons to be served with summons for foreclosure

5. The persons to be served with the summons under the last preceding rule shall be such persons as under these Rules would be proper defendants to an action for the like relief as that specified by the summons.

Service on other persons

6. The Court may direct such other persons to be served with the summons as it or he thinks fit.

Evidence and directions as to trial

7. The application shall be supported by such evidence as the Court requires, and directions may be given as it or he thinks just for the trial of any questions arising thereout.

Judgment

8. The Court may upon such summons pronounce such judgment as the nature of the case requires.

Special directions

9. The Court may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as it or he thinks just.

Decision without judgment for administration

10. It shall not be obligatory on the Court to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust, or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

Orders which may be made on application for administration or execution of trusts

11. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts, or insufficient accounts, have been rendered, the Court may, in addition to the powers already existing—

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(a) order that the application stand over for a certain time and that the executors, administrators, or trustees in the meantime render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings; or

(b) when necessary to prevent proceedings by other creditors or by persons beneficially interested, make the usual judgment or order of administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

Not to effect power of trustees

12. The issue of a summons under rule 1 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control is necessarily involved in the particular relief sought.

II—ASSISTANCE OF EXPERTS

Accountants, merchants etc.

13. The Judge in Chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, or other persons, the better to enable the Judge to determine any matter at issue in any action or proceeding, and may act upon the certificate of any such person, and may make such order as to the costs thereof as he thinks fit.

III—PROCEEDINGS RELATING TO INFANTS, ETC.

Evidence on application to appoint guardian etc.

14. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

(a) the ages of the infants;

(b) the nature and amount of the infants' fortunes and incomes; and

(c) what relatives the infants have.

Appointment of guardian *ad litem*

15. At any time during the proceedings at Judge's Chambers under any judgment or order, the Judge may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

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IV—DOCUMENTS TO BE LEFT AT CHAMBERS

Proceedings under judgment

16. In all cases of proceedings in Chambers under any judgment or order, the party prosecuting the same shall leave the original, or a copy, of such judgment or order at the Judge's Chambers, unless the original judgment or order has been previously filed, and, in the case of a copy, shall certify the same to be a true copy of the judgment or order as made by the Judge.

Adjournment to Chambers without order drawn, note sufficient

17. Whenever any matter is adjourned from the Court to Chambers, or any directions are given in Court to be acted upon at Chambers, whether upon a matter adjourned into Court from Chambers, or upon any other occasion, without an order being drawn up, a note signed by the Judge, stating for what purpose such matter is adjourned to Chambers, or the directions given, shall be sufficient.

Names of solicitors

18. A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at Chambers with every judgment or order.

Certificate of service and appearance

19. A copy of every certificate of the Registrar entry of a memorandum of service of notice of a judgment or order, and of every appearance entered by a person served with such notice, certified by the solicitor, shall be left at Chambers.

V—SUMMONSES TO PROCEED

Time for bringing in judgment or order directing accounts or inquiries

20. Every judgment or order directing accounts or inquiries to be taken or made shall be brought into the Judge's Chambers by the party entitled to prosecute the same within ten days after the same has been passed and entered, and in default thereof any other party to the cause or matter may bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge otherwise directs.

Summons to proceed with accounts or inquiries

21. Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and, upon the return of such summons, the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order,

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shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise as is found necessary.

Settling deed under judgment etc. in case parties differ

22. Where by a judgment or order a deed is directed to be settled by the Judge in Chambers, in case the parties differ, a summons to proceed shall be issued, and upon the return of such summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge thinks fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of eight days.

Service of notice of judgment or order, where dispensed with

23. Where upon the hearing of the summons to proceed it appears to the Judge that, by reason of absence or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made, or ought to be dispensed with, the Judge may, if he thinks fit, wholly dispense with such service, or may, at his discretion, order any substituted service or notice by advertisement or otherwise in lieu of such service.

Power to bind persons, service on whom is dispensed with

24. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the Judge may at any time, if he thinks fit, order that the persons upon whom service is dispensed with shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts.

Advertisements for the creditors may be issued before appearance of all parties

25. If, on the hearing of the summons to proceed, it appears that all necessary parties are not parties to the action, or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors and for leaving the accounts in Chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken except for the purpose of ascertaining the parties to be served until all necessary parties have been served and are bound, or service has been dispensed with, and until directions have been given as to the parties who are to attend on the proceedings.

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Course of proceeding

26. The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and, where so directed, copies shall be supplied to the other parties. Copies shall not be made of deeds or documents where the originals can be brought in, unless the Judge otherwise directs.

VI—ATTENDANCES

Judge may nominate one solicitor for a class

27. Where upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge with respect to the whole or any portion of the proceedings that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon a solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him, and where any of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge with respect to which such nomination has been made, and all such further costs as are occasioned to any of the parties by his being represented by a solicitor different from the solicitor so nominated.

Judge may require distinct solicitors to represent parties

28. Whenever in any proceeding before the Judge in Chambers the same solicitor is employed for two or more parties, the Judge may, at his discretion, require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceeding until such party is so represented.

Attendance of parties other than those directed to attend

29. Any of the parties (other than those who have been directed to attend) may attend at their own expense, and upon paying the costs (if any) occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action, either in addition to or in substitution for any of the parties who have been directed to attend.

Order to state parties to attend

30. An order is to be drawn up on a summons taken out by the plaintiff or the party having the conduct of the action, stating the parties who

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have been directed to attend and such of them (if any) as have elected to attend at their own expense, and such order is to be recited in the Registrar's certificate.

VII—CLAIMS OF CREDITORS AND OTHER CLAIMANTS

Advertisements

31. Upon the hearing of a summons to proceed on a judgment or order directing an account of debts, claims or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, the Judge may direct an advertisement or advertisements for creditors or other claimants to be issued.

By whom prepared and signed

32. Every advertisement for creditors shall be prepared by the party prosecuting the judgment or order, and shall be signed by his solicitor, or, if he has no solicitor, by the Registrar, and such signature shall be sufficient authority to the printer of the *Gazette* to insert the same. Every advertisement for claimants other than creditors shall be prepared by the party prosecuting the judgment or order and shall be submitted to the Registrar for approval, and when approved shall be signed by the Registrar, and such signature shall be sufficient authority to the printer of the *Gazette* to insert the same.

Substance and form of advertisements

33. Every advertisement shall fix a time within which each claimant is to send to such person as the judge directs, to be named and described in the advertisement, the name and address of such claimant, and the full particulars of his claim. Notice of the time appointed for adjudicating on the claims shall be inserted in the advertisement, and at such appointment and at any adjournment thereof (subject in the case of creditors to the provisions of rule 41 of this Order) every claimant shall attend personally, or by his solicitor, to support his claim. The advertisement shall contain a direction that a claimant not residing in the Territory must send with particulars of his claim the name and address of a person in the Territory to whom notices to the claimant required by these Rules or directed by the Judge can be sent. Any such claimant not complying with this direction shall not be entitled to receive any further notice, and in the case of any claimant complying therewith a notice sent to the name and address mentioned by him shall be equivalent to a notice sent to the claimant himself.

Claimants not sending particulars of claims excluded

34. Claimants who do not send full particulars of their claims to the person named, and within the time fixed by the advertisement, shall be excluded from the benefit of the judgment or order unless the Court, upon application made by summons, otherwise orders. Any such order may be

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made upon such terms and conditions as to costs and otherwise as the Court thinks fit.

Service of notices on claimants

35. Every notice by this Order required or by the Judge directed to be given to or served upon claimants shall, unless the Judge otherwise directs, be deemed sufficiently given and served if transmitted prepaid through the post addressed to the claimant at the address given in the claim sent in by him pursuant to the advertisement, or in case such claimant is represented by a solicitor, to such solicitor at the address given by him.

Claimants to produce documents if required

36. Every claimant shall, if required by notice in writing given by such party as the Judge directs, produce at such time as is specified in such notice all deeds and documents necessary to substantiate his claim before the Registrar.

Claimants' affidavits

37. Claimants required to file affidavits under the succeeding rules of this Order shall not be bound to take office copies, but shall forthwith give notice of filing to the person to whom particulars of claims are to be sent, and such person shall take office copies and produce the same at the hearing, unless the Judge otherwise directs.

VIII—CLAIMS OF CREDITORS

Examination and verification of claims

38. (1) Such party as the Judge directs shall examine the claims of persons claiming to be creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days before the time appointed for adjudication or within such other time as the Judge directs, file an affidavit made by the executors of the will or administrators of the estate of the deceased and by the person to whom claims are required by the advertisement to be sent (or by such person or persons as the Judge directs) verifying lists—

(a) of claims which have been sent in pursuant to the advertisement;

(b) of claims which have been received by the executors or administrators or any of them, other than claims sent in pursuant to the advertisement; and

(c) of sums of money which were or may have been due and owing by the deceased at the time of his death and are or may be still due and owing and have come to the knowledge of the executors or

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administrators or any of them, but in respect of which no claim has been received or sent in pursuant to the advertisement.

(2) Such affidavit shall state to which of such claims or sums of money or parts thereof respectively the estate of the deceased is, in the opinion of the deponents, justly liable, and their belief that such claims or sums of money or parts thereof respectively are justly due and proper to be allowed, and the reasons for such belief.

Adjudication on claims

39. When adjudicating upon the claims of persons claiming to be creditors, the Judge, in his discretion, may allow any of such claims, or any part thereof respectively, without proof by the claimants, and may direct all or any of the claims not so allowed to be investigated in such manner as he thinks fit, and may require any further particulars, information, or evidence, relating to such claims, and may require any claimant to attend and prove his claim, or any part thereof, and may adjourn the adjudication upon such claims as are not then allowed.

Adjournment. Further evidence

40. Where on the day appointed for adjudicating upon the claims of persons claiming to be creditors, any of such claims are adjourned or remain undisposed of, another day for adjudicating upon such claims shall be fixed, and, where further evidence is to be adduced, the times for filing evidence in support of and in opposition to the claims may be fixed, and in that case the proceedings shall be adjourned until the evidence is completed.

Notice of claims allowed or disallowed

41. (1) Notice of allowance shall be given by such party as the Judge directs to every creditor whose claim, or any part thereof, has been allowed.

(2) Notice shall be given by such party as the Judge directs to every person claiming to be a creditor whose claim or any part thereof has not been allowed to prove his claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein mentioned, being the time appointed for adjudicating on the claim, and in case the claimant does not comply with such notice, his claim, or part thereof, may be disallowed.

Unless served with notice claimant need not attend

(3) A person claiming to be a creditor need not make any affidavit or attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as provided by this rule.

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(4) Every person claiming to be a creditor shall produce the security (if any) held by him before the Registrar at such time as is specified in the advertisement for adjudicating on the claims.

Costs

42. (1) A creditor who has established his debt in the Judge's Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, unless the Judge otherwise directs, and the sum to be allowed for such costs shall be fixed by the Judge, unless he thinks fit to direct the taxation thereof, and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

(2) The Judge may disallow any costs of a claimant unnecessarily or improperly incurred, and may order a claimant to pay the costs of any party or parties incurred in opposing any claim or any part of a claim which the claimant has failed to establish.

List of claims allowed

43. A list of creditors' claims allowed shall be made out and left in the Judge's Chambers by such party as the Judge directs.

IX—CLAIMS OF PERSONS OTHER THAN CREDITORS

Affidavit verifying claims

44. In the case of claimants other than creditors, such party as the Judge directs shall, at least seven clear days before the time appointed for adjudication, or within such time as the Judge directs, file an affidavit made by the executors of the will or administrators of the estate of the deceased or by the trustees, and in each case by the person to whom claims are required by the advertisement to be sent (or by such persons as the Judge directs) verifying lists of the claims the particulars of which have come to the knowledge of the executors, administrators or trustees or any of them or which have been sent in pursuant to the advertisement.

Adjudication on claims

45. At the time appointed for adjudicating upon the claims of claimants other than creditors, the times for filing evidence in support of and in opposition to the claims may be fixed, and in that case the proceedings shall be adjourned until the evidence is completed.

Claimants who have established their claims to be served with notice of judgment

46. Where a claimant other than a creditor has established his claim, he shall, if not already a party, and unless the Court otherwise directs, be served with notice of the judgment or order pursuant to Order 19, rule 45,

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and when he has been so served and has entered an appearance, he shall, unless the Court otherwise directs, be entitled as part of his costs of action (if allowed) to costs properly incurred in proving his claim previously to his having entered an appearance.

X—INTEREST

Rate of interest on debts

47. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts, as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of 15 per cent per annum from the date of the judgment or order.

Interest payable out of surplus assets

48. A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers under a judgment or order of the Court or of the Judge in Chambers, shall, unless otherwise ordered, be entitled to interest upon his debt at the rate of 15 per cent per annum from the date of the judgment or order, out of any assets which remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

Interest on legacies

49. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of 15 per cent per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

XI—CERTIFICATES OF THE REGISTRAR

Directions to be in no particular form

50. The directions to be given by the Judge for or touching any proceedings before the Registrar shall require no particular form, but the result of such proceedings shall be stated in the shape of a short certificate to the Judge, and shall not be embodied in a formal report unless in any case the Judge sees fit so to direct.

Not to set out documents etc.

51. The certificate of the Registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order, or any document, or evidence, or reasons, but shall refer to the judgment or order, document and evidence, or particular paragraphs thereof, so that it appears upon what the result stated in the certificate is founded.

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Form of certificate

52. The certificate of the Registrar shall, when prepared and settled, be transcribed by the solicitor prosecuting the proceedings in such form and within such time as the Registrar requires, and shall be signed by the Registrar either then, or (if necessary) at an adjournment to be made for the purpose, and, when the Judge approves of such certificate or report, he shall sign the same in testimony of his adopting the same.

Where accounts are directed

53. When an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied, and shall state what additions (if any) have been made by way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith or retained in Chambers, and subsequently filed as the Judge in Chambers directs. A copy of any such account shall not be required to be taken by any party.

Taking of Judge's opinion

54. Any party may, before the proceedings before the Registrar are concluded, take the opinion of the Judge upon any matter arising in the course of the proceedings, without any fresh summons for the purpose.

When certificate becomes binding—Application to discharge or vary it

55. Every certificate, with the accounts (if any) to be filed therewith, shall be filed by the Registrar, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied upon application by summons made before the expiration of eight clear days after the filing of the certificate.

Discharge or variation of certificate after lapse of any time

56. The Judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

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XII—FURTHER CONSIDERATION

Further consideration

57. Where any matter originating in Chambers has, at the original or any subsequent hearing, been adjourned for further consideration in Chambers, such matter may, after the expiration of eight days and within fourteen days from the filing of the Registrar's certificate, be brought on for further consideration by a summons taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons taken out by any other party. Such summons shall be in the form following:

"That this matter, the further consideration whereof was adjourned by order dated the day of 19 , may be further considered.";

and shall be served six clear days before the return:

Provided that this rule shall not apply to any matter the further consideration whereof has, at the original or any subsequent hearing, been adjourned into Court.

XIII—REGISTERING AND DRAWING UP OF ORDERS IN CHAMBERS

Notes of proceedings

58. Notes shall be kept of all proceedings in the Judge's Chambers, with proper dates, so that all such proceedings in each cause or matter shall appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

Drawing up orders in Chambers

59. The Judge may direct that any order made in Chambers shall be drawn up by the Registrar, and all such orders shall be entered in the same manner as orders made in open Court.

ORDER 59

INTERPLEADER

When granted

1. Relief by way of interpleader may be granted—

(a) where the person seeking relief (in this Order called "the applicant") is under liability for any debt, money, goods, or chattels for or in respect of which he is, or expects to be, sued by

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two or more parties (in this Order called "the claimants") making adverse claims thereto; and

(b) where the applicant is the Sheriff or other officer charged with the execution of process by or under the authority of the Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels, by any person other than the persons against whom the process issued.

Affidavit

2. The applicant must satisfy the Court by affidavit or otherwise—

(a) that the applicant claims no interest in the subject-matter in dispute, other than for charges or costs;

(b) that the claimant does not collude with any of the claimants; and

(c) that the applicant, except where he is the Sheriff or other officer charged with the execution of process by or under the authority of the Court who has seized goods and has withdrawn from possession in consequence of the execution creditor admitting the claims of the claimant under rule 16 of this Order, is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court directs.

Where claims adverse

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

Time defendant may apply

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

Summons to state claim

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

Stay of proceedings

6. If the application is made by a defendant in an action, the Court may stay all further proceedings in the action.

Order on summons

7. If the claimants appear in pursuance of the summons, the Court may order either that any claimant be made a defendant in any action already

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commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant, and the mode in which such trial shall be had.

On consent or request of claimant Court may decide

8. The Court may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as are just.

Question of law

9. Where the question is a question of law, and the facts are not in dispute, the Court may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Federal Court of Australia.

Claimant failing to appear etc. barred

10. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court may make an order declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

Issue to be filed

11. The plaintiff in an interpleader issue shall file the issue within four days after the making of the order under rule 7 of this Order, and shall thereupon pay the fees and jury fees (if any) payable on entering a cause for trial. If the plaintiff makes default in so doing, the order shall be deemed to be abandoned, and the Court may make such further order on the applicant's summons, and as to the costs of the issue directed, as is just and reasonable.

Goods seized in execution

12. When goods or chattels have been seized in execution by a Sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as are just.

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Trial of issue

13. Orders 35 and 39 shall, with the necessary modifications, apply to an interpleader issue, and the Court may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

Where several causes pending

14. Where in any interpleader proceedings it is necessary or expedient to make one order in several causes or matters pending in the Court, such order may be made, and shall be entitled in all such causes or matters, and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

Costs

15. The Court may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as are just and reasonable.

Sheriff's costs

16. Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court, it shall be in writing, and upon the receipt of the claim the Sheriff or his officer shall forthwith give notice thereof to the execution creditor in accordance with Form 69 in the First Schedule, and the execution creditor shall, within four days after receiving the notice, give notice in accordance with Form 70 in the First Schedule to the Sheriff or his officer that he admits or disputes the claim. If the execution creditor admits the title of the claimant, and gives notice as directed by this rule, he shall only be liable to the Sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Withdrawal by Sheriff

17. (1) When the execution creditor has given notice to the Sheriff or his officer that he admits the claim of the claimant, the Sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the seizure and possession of the goods, and the Judge may make such order as is just and reasonable in respect of the same.

(2) Notice of the intended application shall be given to the claimant, who may, if he so desires, attend the hearing of the same, and if he attends, the Judge may, in and for the purposes of such application, make all such orders as to costs as are just and reasonable.

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Costs in interpleader

18. When the execution creditor does not in due time, as directed by the preceding rules of this Order, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the Sheriff or his officer, the Sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the Sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the Judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses as are just and reasonable.

ORDER 60

APPEALS FROM THE MAGISTRATES COURT

Division 1—Appeals other than appeals by way of order to review

Procedure

1. (1) Institution of an appeal to the Court from a decision of the Magistrates Court or a magistrate—

(a) shall be by notice of appeal in accordance with Form 72 in the First Schedule; and

(b) shall, as far as possible, be in accordance with the rules of this Division, subject to—

(i) the provisions of the Act under which the appeal is made; and

(ii) any direction given by the Court on the application of any party to the appeal.

(2) A notice of appeal shall be filed—

(a) if the provisions of the Act under which the appeal is instituted do not provide otherwise—within 21 days after the date of the judgment complained of; or

(b) within any further time allowed by the Court on application made at any time.

(3) Subject to subrule (4), a notice of appeal may be amended by filing before the date appointed under paragraph (5) (a)—

(a) a notice adding further evidence for a further ground for the appeal; or

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(b) a supplementary notice of appeal.

(4) In relation to subrule (3), a Judge may give any direction that the Judge thinks fit, on the Judge's motion or on the application of a party.

(5) At the time of filing the notice of appeal, the appellant shall—

(a) appoint a date with the Registrar to settle the appeal papers; and

(b) record on the notice, and on each copy for service, the date of the appointment.

(6) The appellant shall serve on each respondent to the appeal—

(a) as soon as practicable after filing—a copy of the notice of appeal and of any supplementary notice of appeal; and

(b) with the notice of appeal, if leave to appeal is required—a copy of the order granting leave to appeal.

(7) At an appointment to settle appeal papers, the Registrar may

(a) give the parties such directions as the Registrar thinks appropriate; and

(b) if appropriate—adjourn the appointment.

(8) The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar's motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.

Parties

2. (1) The appellant instituting the appeal shall join—

(a) as an appellant—each party to the proceedings appealed from who would be affected by the relief sought, if the party consents to joinder; and

(b) as a respondent—each person who is interested in maintaining the judgment complained of.

(2) The Court may order the addition or removal of any person as an appellant or respondent.

Cross-appeal

3. (1) A respondent to an appeal who proposes—

(a) to appeal against a part of the judgment complained of; or

(b) to seek a variation of the judgment;

need not institute a separate appeal if, within 21 days after service on him or her of the notice of appeal, or within any further time allowed by the Court,

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the respondent files a notice of cross-appeal and serves a copy of the notice on the appellant and any other person who would be affected by the relief sought.

(2) A notice of cross-appeal shall state—

(a) what part of the judgment the respondent cross-appeals against or contends should be varied;

(b) briefly, but specifically, the grounds of the cross-appeal; and

(c) the relief sought in lieu of that part of the judgment, or the variation sought.

(3) A respondent to an appeal who proposes to contend that some matter of fact or law has been erroneously decided against the respondent in the proceedings appealed from, but does not propose to seek a discharge or variation of a part of the judgment entered, need not file and serve a notice of cross-appeal if, before the date appointed under paragraph 1 (5) (a), the respondent—

(a) gives to the appellant notice of the respondent's contention and of the record of evidence or documents relevant to the contention; and

(b) files a copy of the notice.

Discontinuance

4. (1) An appellant may discontinue an appeal at any time by filing and serving on each other party to the appeal, a notice of discontinuance of the appeal.

(2) An appellant's appeal is not discontinued by a notice of discontinuance filed and served by another appellant in the appeal.

(3) A party who files a notice of discontinuance is liable to pay the costs of other parties that are occasioned by the appeal.

(4) If—

(a) a party whose costs are payable by another party under subrule (3) has the costs taxed by the Registrar; and

(b) the taxed costs remain unpaid at the end of 14 days after service of the certificate of taxation;

the party entitled to the costs may enter judgment for the taxed costs.

Proceedings not stayed by appeal

5. The institution of an appeal does not operate as a stay of proceedings unless the Court so orders.

Appearance

6. If there is a respondent to an appeal, the notice of appeal shall be endorsed with a statement to the effect that before taking any step in the proceedings the respondent is to enter an appearance in the Registrar's office, and the respondent shall enter an appearance accordingly.

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II—APPEALS BY WAY OF ORDER TO REVIEW

Application for order *nisi*

9. Application for an order *nisi* to review shall be made orally to the Court and shall be supported by an affidavit setting out the material circumstances, each statutory ground relied on together with a concise statement of the matter relied on under each ground, and the orders sought. Application shall be made *ex parte* in the first instance but the Court may direct that notice of the application be given to a person interested in maintaining the decision, who shall be entitled to be heard on the application.

Time for making application

10. The application shall be made within twenty-one days after the pronouncing of the decision to which the application relates.

Affidavits

11. Affidavits for use on the application shall be "In the Supreme Court of the Australian Capital Territory" and in the matter of the *Magistrates Court Act 1930*.

Form of order *nisi*

12. An order *nisi* to review shall be in accordance with Form 71 in the First Schedule.

Service of order *nisi* etc.

13. Within seven days after the making of the order *nisi* to review, the order *nisi* and affidavits in support of the application therefor shall be served on each person called upon to show cause or on a solicitor who accepts service on his behalf, or as the Court may direct, and left with the Registrar of the Magistrates Court.

Application to revoke order *nisi*

14. An application to revoke an order *nisi* shall be made by motion on notice supported by affidavit served on the applicant for the order *nisi* and any person to whom the Court has directed that notice be given under Rule 10.

III—RULE APPLICABLE TO ALL APPEALS

Transcripts and records of proceedings

15. (1) In this rule, a reference to a transcript of the evidence given in the Magistrates Court includes a reference to a document which was an exhibit in the Magistrates Court.

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(2) Subject to subrule (3), the Registrar shall, as soon as possible after—

(a) the time limited for the giving of the notice referred to in subrule 6 (3) of this Order; or

(b) the order *nisi* to review;

(as the case may be) cause to be filed a copy, certified by him as correct, of the proceedings in which the order, conviction, or decision under appeal was made.

(3) The Registrar shall include in the proceedings copied and filed under subrule (2) a transcript of the whole, or of such part, of the evidence given in the Magistrates Court, as he may think appropriate having regard to the praecipe to set down the appeal and to any notice given under subrule 6 (3) of this Order, or to the order *nisi*, as the case may be; and in his discretion may exclude any document.

(4) The Court may, on the application of any party to the appeal, or of its or his own motion, order that a transcript of the whole or any part of such evidence be included in the proceedings copied and filed.

(5) Each party to the appeal shall be entitled to one such copy of the proceedings, on application to the Registrar.

(6) A party shall file, and also deliver to each other party, a copy of every document, other than a document being part of the proceedings in the Magistrates Court, which he intends to use at the hearing of the appeal.

ORDER 61

OFFICERS

Absence of Registrar

1. In the absence of the Registrar from his office all acts which he is required to do may be done during his absence by some person in that behalf appointed by the Judge.

Clerk may perform merely ministerial duties

2. Where by any of these Rules the Registrar is required to do any act of a merely ministerial nature it shall be sufficient if such act is done by a clerk in his office.

Authority of Registrar

3. The jurisdiction of the Court that is exercisable in accordance with subsection 8 (1) of the Act may be exercised by the Registrar—

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(a) in the hearing and determination of applications under any of the following provisions of these Rules:

Order 4, rule 1

Orders 8, 9, 10, 12, 13, and 14

Order 19, except rules 11 and 37

Order 20, except rules 8, 10 and 11 other than in respect to interlocutory applications heard and determined by the Registrar

Orders 21, 22, 23, 24 and 25

Order 26, except subrule 2 (4) and rules 8 and 9

Orders 27 and 28

Order 29, rule 4

Orders 30, 31, 32, 33 and 34

Order 39, rule 26

Order 40

Orders 46 and 50

Order 56A

Order 64, rules 3 and 5

Order 69;

(b) in the hearing and determination of applications under any of the following provisions of the *Service and Execution of Process Act 1992* of the Commonwealth:

subsection 11 (8)

paragraph 17 (1) (b)

paragraph 30 (1) (b)

subsection 35 (3)

subsection 45 (3)

subsection 105 (4); and

(d) in accordance with rule 7 of Order 75B.

Jurisdiction to be exercised by Judge

3A. Where the jurisdiction of the Court is to be, or is being, exercised in a particular case by the Registrar, a Judge may—

(a) on the application of a party to the proceedings; and

(b) at any time before the conclusion of the proceedings before the Registrar;

order that the jurisdiction of the Court in the case be exercised by the Court constituted by a Judge.

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Reference of application to Judge

4. (1) If it appears to the Registrar that an application under a provision or enactment specified in rule 3 is proper for the decision of a Judge, the Registrar may refer the application to a Judge.

(2) Where, under subrule (1), an application has been referred to a Judge, the Judge may either hear and determine the application or refer the application back to the Registrar with such directions (if any) as the Judge thinks fit.

Authority of Registrar

5. (1) The procedure for appeal under subsection 10 (2) of the Act shall be as follows—

(a) The appeal shall be instituted within 5 days after the date of the decision or order complained of.

(b) Except where the application was made *ex parte*, an appeal shall be instituted by the service of notice of appeal on the respondent and the filing of a copy of notice of appeal.

(c) Where the application was made *ex parte*, an appeal shall be instituted by the making of a fresh application to the Court.

(d) Notice of appeal need not set out grounds of appeal.

(e) Unless otherwise ordered by the Court, there shall be at least one clear day between service of the notice of appeal and the hearing of the appeal.

(f) An appeal shall be by way of a re-hearing *de novo* of the application, but each party may, subject to paragraph (g) and to any proper objections as to admissibility, rely upon any affidavit used, and any evidence given orally, before the Registrar.

(g) Where a party to an appeal requires the attendance of a person for examination at the hearing of the appeal, an affidavit made, or evidence given, by that person may not be used unless the person attends for examination or the Court grants leave.

(2) The institution of an appeal under subsection 10 (2) of the Act does not operate as a stay of proceedings unless the Court, a Judge or the Registrar so orders.

ORDER 61A

MASTER

Authority of Master

1. The jurisdiction of the Court that is exercisable in accordance with subsection 8 (1) of the Act may be exercised by the Master—

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(a) in trials (except with a jury) of suits in which damages are claimed in respect of the death of, or bodily injury to, any person or damage to property caused by, involving, or arising out of, the use of a motor vehicle;

(b) in trials (except with a jury) of suits where the only matters in question are the amount of damages and costs;

(c) in trials (except with a jury) of suits where the only matters in question are the value of goods and costs or the amount of damages, the value of goods and costs;

(d) in trials of suits where the only matters in question are interest under section 69 of the Act and costs;

(e) in any matter (other than a trial of the whole proceedings, or a matter in proceedings tried or to be tried with a jury) referred to the Master by order of the Court;

(ea) in any matter in respect of which, with leave of the Court, all the parties to the matter consent to that exercise by the Master;

(f) in trials and hearings of matters which if commenced in the Magistrates Court would have been within the jurisdiction of that Court pursuant to the *Magistrates Court (Civil Jurisdiction) Act 1982*;

(g) in trials or hearings of suits (except with a jury) where the only matters in question are the possession of land and costs or the possession of land, the amount of damages or other money and costs and the trial or hearing may be dealt with under Order 38, rules 10 and 11;

(h) in any suit in which an order, judgment or direction is sought with the consent of all parties to the suit;

(i) subject to the other paragraphs of this subrule, in the hearing and determination of applications under any of the provisions of these Rules except:

Order 6

Order 19, rules 11 and 37

Order 29, rule 5

Orders 36 and 37

Order 39, rules 10, 11, 12, 24A and 24B, paragraph 24G (2) (b) (in relation to the application of rules 24J and 24K) and rules 24J and 24K

Orders 45, 47 and 52

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Order 53, except in the circumstances described in paragraph (g)

Orders 55, 57, 58 and 59

Divisions 2 and 3 of Order 60

Order 61

Order 61A, paragraphs 1 (e) and (ea)

Order 65, rules 66, 82 and 83

Order 72;

(j) in the hearing and determination of applications under any of the following provisions of the *Service and Execution of Process Act 1992* of the Commonwealth:

subsection 11 (8)

paragraph 17 (1) (b)

subsection 18 (3)

subsection 19 (1)

paragraph 30 (1) (b)

subsection 35 (3)

subsection 45 (3)

subsection 105 (4)

subsection 106 (1);

(k) in the hearing and determination of applications pursuant to subsection 11 (1) of the *Criminal Injuries Compensation Act 1983*;

(l) in the hearing and determination of applications arising under the *Foreign Judgments (Reciprocal Enforcement) Act 1954*;

(n) in accordance with rule 7 of Order 75B;

(o) in the hearing and determination of applications for a final order under subsection 11A (9F) of the *City Area Leases Act 1936* as in force immediately before 2 April 1992;

(p) in the hearing and determination of applications for an order under section 8 or 9A of the *Family Provision Act 1969* and in the exercise of associated powers and functions of the Court;

(q) in the hearing and determination of interlocutory applications for further time for institution of an appeal under subsection 209 (1) of the *Magistrates Court Act 1930*;

(r) in the hearing and determination of interlocutory applications for an order regarding service of notice under section 210 of the *Magistrates Court Act 1930*;

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(s) in the hearing and determination of applications under Part XIX of the *Magistrates Court (Civil Jurisdiction) Act 1982* regarding the transfer of proceedings;

(t) in the hearing and determination of interlocutory applications under Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* in connection with appeals;

(u) in the hearing and determination of applications for an order under section 28 of the *Partnership Act 1963*;

(v) in the hearing and determination of applications under the *Public Trustee Act 1985* in respect of the following matters:

(i) a direction under section 24;

(ii) an order under subsection 25 (2), (3) or (4) or paragraph 25 (5) (a) or a direction under paragraph 25 (5) (b);

(iii) a direction under subsection 26 (2);

(iv) an order under subsection 31 (2);

(v) an extension of time under subsection 33 (3) to institute proceedings;

(vi) an order under subsection 34 (1);

(vii) an order under subsection 45 (2);

(w) in the hearing and determination of applications for an order under subsection 103 (1) or section 106 of the *Real Property Act 1925*; and

(x) in the hearing and determination of applications under the Trustee Act, 1925 of the State of New South Wales in its application in the Territory in respect of the following matters:

(i) an opinion, advice or direction under subsection 63 (1) or 63 (10);

(ii) an order under subsection 70 (1);

(iii) a vesting order under section 71;

(iv) an order under paragraph 75 (1) (a) or (b);

(v) an order under paragraph 75 (1) (a) or a direction under paragraph 75 (1) (b);

(vi) an order under subsection 95 (2) or (3);

(vii) an order under subsection 98 (4).

2. In paragraph 1 (a) "motor vehicle" has the same meaning as it has in subsection 4 (11) of the *Motor Traffic Act 1956.*

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3. Paragraph 1 (a) does not apply to a suit for damages in respect of the death of or bodily injury to any person where the suit is based upon an act, neglect or default of a defendant for which, if proved, he or she would, as the employer of that person and not otherwise, incur liability to the plaintiff.

4. In any matter in which the jurisdiction of the Court may be exercised by the Master pursuant to a provision of this Order, the Master may exercise the Court's inherent jurisdiction relating to the matter.

Procedure in appeals from interlocutory judgments of Master

5. The procedure for appeal under paragraph 9 (2) (a) of the Act shall be as follows—

(a) The appeal shall be instituted within 5 days after the date of the judgment complained of.

(b) The appeal shall be instituted by the service of notice of appeal on the respondent and the filing of a copy of the notice of appeal.

(c) The notice of appeal shall be in or substantially in accordance with Form 77 of the First Schedule, shall bear the same matter number as the matter in which the judgment appealed from was made and shall be intituled as a document in that matter.

(d) The notice of appeal need not set out grounds of appeal.

(e) Unless otherwise ordered by the Court, there shall be at least three clear days between service of the notice of appeal and the hearing of the appeal.

Procedure in appeals other than from interlocutory judgments

6. The procedure for appeal under paragraph 9 (2) (b) of the Act shall be as follows—

(a) The appeal shall be instituted within 21 days after the date of the judgment complained of or such further time as is allowed by the Court upon application made at any time.

(b) The appeal shall be instituted by filing a notice of appeal which shall be in or substantially in accordance with Form 78 of the First schedule.

(c) An appellant shall serve on each respondent to the appeal a copy of the notice of appeal as soon as is practicable after it has been filed.

(d) A notice of appeal may, before the date of the appointment given under paragraph (e), be amended by filing a supplementary notice of appeal.

(e) An appellant who files a supplementary notice of appeal shall serve a copy of it on all respondents to the appeal as soon as is practicable.

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(f) The applicant shall, on filing a notice of appeal, get from the Registrar an appointment to settle the appeal papers, which notice may be subscribed to the notice of appeal, and shall serve notice of the appointment on each person on whom the appeal is served.

(g) At the appointment to settle the appeal papers the Registrar shall give the parties such directions as the Registrar thinks appropriate in relation to the preparation of the appeal papers, including adjourning the appointment.

(h) When the Registrar is satisfied that the appeal is ready for hearing, the Registrar may on his or her own motion or upon the request of a party to the appeal fix the date for the hearing of the appeal.

(i) Paragraphs (d) and (e) shall be subject to any direction which may be given by a Judge either on the Judge's own motion or on the application of a party to the appeal.

Parties to appeal

7. (1) In appeals to which rule 6 applies, each party to the proceedings appealed from who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment under appeal shall be joined as a party appellant or respondent to the appeal but a person shall not be made an appellant without his or her consent.

(2) The Court may order the addition or removal of any person as a party appellant or respondent to an appeal.

Cross-appeal

8. (1) A respondent to an appeal under paragraph 9 (2) (b) of the Act who desires to appeal from a part of the judgment or to seek a variation of a part of the judgment, need not institute his or her own appeal but shall within 21 days after service on him or her of the notice of appeal, or within such further time as the Court allows, file and serve a notice of cross-appeal on the appellant and any other person affected by the relief which is sought.

(2) A notice of cross-appeal shall state what part of the judgment the respondent cross-appeals from or contends should be varied, and shall state briefly, but specifically, the grounds of the cross-appeal and—

(a) the relieve sought in lieu of the judgment appealed from; or

(b) the variation of the judgment sought.

(3) If a respondent proposes to contend that some matter of fact or law has been erroneously decided against the respondent but does not seek a discharge or variation of a part of the judgment entered, the respondent need not file a notice of cross-appeal but prior to the date of the appointment given under paragraph 6 (f) shall—

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(a) give notice to the appellant of the respondent's contention and of the record of evidence or documents before the Master relevant to the contention; and

(b) file a copy of the notice.

Discontinuance of appeal

9. **(1)** An appellant may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal shall be abandoned.

(2) A notice of discontinuance filed by an appellant under subrule (1) shall not affect any other appellant in the appeal.

(3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by the appeal.

(4) A party whose costs are payable under subrule (3) may tax the costs and, if the costs when taxed are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs.

Stay of proceedings

10. The institution of an appeal under subsection 9 (2) of the Act does not operate as a stay of proceedings unless the Court, a Judge or Master so orders.

Application of other Orders

11. Subject to this Order and any order of the Court, the provisions of the other Orders of these Rules apply, so far as is practicable, to appeals from judgments of the Master.

ORDER 62

SEALS, FILING, SEARCHES, ETC.

Sealing of documents issued from the Court

1. A document that is issued from the Court, being a document that is required to be sealed, shall be sealed with the Seal of the Court.

Office copies etc.

2. All copies, certificates, and other documents appearing to be sealed with the Seal of the Court shall be presumed to be office copies, certificates or other documents, respectively, issued from the Registrar's office, and no signature or other formality, except the sealing, shall be required for the authentication of any such copy, certificate, or other document.

Petitions etc. to be filed before judgment etc. passed

3. No order made on petition, no order to make a submission to arbitration or an award, no order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read shall be

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passed until the original petition, submission to arbitration or award, or written admission of evidence has been filed and a note thereof made on the judgment or order by the Registrar.

Date of filing

4. The date of filing shall be written upon every pleading or other proceeding which is filed.

Entries on filing documents

5. There shall be indorsed on every document delivered at the Registrar's office to be filed, the date of the filing thereof.

Distinguishing marks on documents

6. Every judgment, order, certificate, petition, affidavit, or document made, presented, filed or used in any cause or matter shall be distinguished by having plainly written or stamped on the first page thereof the year and the number by which the cause or matter is distinguished in the Cause Book.

Entry of date of judgment

7. There shall also be entered in the Cause Books the date of every judgment, order, and certificate made in every cause or matter.

Searches

8. The Registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes or calendars under his custody, and issue a certificate of the result of the search.

Certificate of state of cause

9. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the Registrar shall, at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the prescribed fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Registrar's office.

Production of records

10. An order of the Judge shall not be necessary for taking out of the office of the Court any affidavit or record of the Court, and the same may in any cause or matter be produced upon notice to the proper officer by the person requiring the same.

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Deposit for officer's expenses

11. Any officer being required to attend with any record or document at any Court or place out of the Court at Canberra shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which are not fully answered by such deposit.

Deposit of deeds

12. Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in Chambers, or otherwise, the same shall be left or deposited in the Registrar's office, and shall be subject to such directions as are given for the production thereof.

Impounded documents

13. Impounded documents, while in the custody of the Court, are not to be parted with, and are not to be inspected, except on a written order signed by the Judge. Such documents shall not be delivered out of the custody of the Court except upon an order made by the Judge.

Certificates etc. to be filed

14. All certificates of the Registrar, and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the Registrar's office, to be there filed or preserved, and all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within forty-eight hours after the same have been bespoken.

ORDER 63

OFFICES OF THE COURT

Office hours

1. The offices of the Court shall be open to the public for business between the hours of 9.15 a.m. and 4.15 p.m. on each day of the week except Saturday, Sunday and any day observed as a public holiday in the Territory.

Office hours

2. The offices of the Court may be opened at other times for the transaction of business upon payment of a fee.

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ORDER 64

TIME

Certain days not reckoned

1. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding Sunday, and any other day on which the offices of the Court are not open shall not be reckoned in the computation of such limited time.

Time expiring on Sunday or when offices closed

2. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices of the Court are not open, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time for doing or taking the same, be held to be duly done or taken if done or taken on the next day on which the offices are open.

Time not reckoned

3. In the computation of the time appointed or allowed by the rules for filing, amending, serving or delivering any pleadings, or other document, time shall not, unless otherwise ordered by the Court, run in the period that commences on the twenty-fourth day of December in one year and ends on the second day of January in the next succeeding year.

Time for proceedings where security ordered

4. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

Enlargement or abridgment of time

5. (1) The Court may enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging or abridging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case requires, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

(2) Where the time appointed by these Rules or fixed by any order for doing any act or taking any proceeding will expire before application can be made to the Court for an order under the last preceding subrule to enlarge that time, the Registrar may, on the application of any party, enlarge that time:

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Provided that the Registrar shall not enlarge the time beyond the next day upon which an application under the last preceding subrule may be heard by the Court.

Enlargement of time by consent

6. The time for delivering, amending, or filing any pleading or document may be enlarged by consent in writing, without application to the Court.

Time for service

7. Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of five o'clock in the afternoon, except on Saturdays, when it shall be effected before the hour of noon. Service effected after five o'clock in the afternoon on any week-day, except Saturday, shall for the purpose of computing any period of time subsequent to such service be deemed to have been effected on the following day. Service effected after noon on Saturday shall be deemed to have been effected on the following Monday.

Reckoning of time

8. (1) Subject to rule 1 of this Order, any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.

(2) Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where an act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

(4) Where an act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

Proceedings after a year

9. (1) In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed.

(2) A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this rule.

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Time for setting aside award

10. An application to set aside an award may be made at any time before the last day of the sittings of the Court next after such award has been made and published to the parties.

Enlarging time for award

11. Where the time for making an award is enlarged, the enlargement shall be deemed to be for one month, unless a different time is specified in the order.

"Month" means calendar month

12. Where—

(a) by these Rules, or by a judgment or order, the time for doing an act is limited by months; or

(b) the word "month" occurs in a document which is part of any legal procedure under these Rules;

the time shall be computed by calendar months, unless otherwise expressed.

ORDER 65

I—COSTS

Costs, with certain exceptions, to be in the discretion of the Court

1. (1) Subject to the provisions of any Act and these Rules, the costs of and incidental to all proceedings in the Court, and in Chambers, including the administration of estates and trusts, shall be in the discretion of the Court.

Trustees etc.

(2) Nothing in this Order shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.

Costs where trial with jury to follow event

(3) Where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless for good cause shown the Judge otherwise orders.

Where cause removed

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2. If a cause is removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause, and shall be dealt with under rule 1 of this Order.

Solicitor personally liable for costs

3. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court, which according to the practice or these Rules, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court thinks fit to award.

Scale of costs

7. (1) Except where otherwise ordered, for work done and services performed after this rule comes into operation, solicitors shall be entitled to charge and be allowed the costs set out in the Fourth Schedule, and no higher costs shall be allowed in any case except such as are by this Order otherwise provided for.

(2) In respect of work done and services performed by a solicitor on or after 1 April 1993, a reference in this rule to the costs set out in, or the charges provided for by, Schedule 4 (other than items 36 and 37) is a reference to those costs or charges increased by 3.13%.

(3) Nothing in this rule affects the operation of section 120 or 121 of the *Legal Practitioners Act 1970.*

Costs and disbursements where amount recovered less than Magistrates Court limit

7A. (1) Where by or under these Rules or any order of the Court the plaintiff in a suit to which this subrule applies is entitled to the costs of the suit and recovers by default, judgment or otherwise an amount (exclusive of costs) which is equal to or less than an amount specified in Column 1 of the table below, the plaintiff shall be entitled only to the costs and disbursements specified in Column 2 of the table below in respect of that amount.

Column 1	Column 2
$25,000	The costs and disbursements, at the appropriate scale, which the plaintiff would have been entitled to recover if the suit had been instituted in the Magistrates Court.
$50,000	Two-thirds of the charges and disbursements provided for in the Fourth Schedule or the amount specified in Order 4, subrule 6 (4), whichever is applicable.

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(2) Subrule (1) applies to—

(a) a suit instituted on or after 3 January 1989 which the Magistrates Court would have had jurisdiction and power to hear and determine; and

(b) a suit instituted on or after 3 January 1989 which the Magistrates Court would, but for the amount claimed, have had jurisdiction and power to hear and determine;

and to no other suits or matters.

(3) The costs and disbursements to which a plaintiff is entitled pursuant to subrule (1) shall be reduced by an amount equal to the additional costs properly incurred by the defendant by reason of the suit having been instituted in the Supreme Court instead of the Magistrates Court, but the plaintiff shall not be required to pay to the defendant any amount by which the additional costs exceed the costs payable to the plaintiff.

(4) Notwithstanding the provisions of subrule (1) and subject to rule 1 of this Order, the Court may in any suit order that the costs and disbursements to which the plaintiff is entitled shall be those applicable to a greater or lesser amount specified in Column 1 of the table to subrule (1), the charges provided for in subrule (1) of rule 7 or such proportion of those charges as is deemed fit.

Costs improperly incurred etc.

8. If in any case it appears to the Court that costs have been improperly, or without any reasonable cause, incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case requires. The Court may, if it or he thinks fit, refer the matter to the taxing officer for inquiry and report, and direct the solicitor to show cause before such taxing officer. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court directs.

Where solicitor appointed guardian *ad litem*

9. Where the Court appoints a solicitor to be guardian *ad litem* of an infant or person of unsound mind, the Court may direct that the costs incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind is interested, and may give

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directions for the repayment or allowance of such costs as the justice and circumstances of the case require.

Set-off notwithstanding lien for costs

10. A set-off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. This rule shall apply to cases where the set-off arises in independent actions.

Costs out of estate

11. The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the Judge otherwise directs.

Costs as regards particular shares

12. The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the Judge otherwise directs.

Distribution not to be delayed by difficulties as to some shares

13. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court may order or allow immediate payment of their shares to the persons ascertained, without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares, and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the Court thinks reasonable.

Costs may be ordered out of portion of an estate

14. In any action in which it is ordered that any costs shall be paid out of the estate, the Judge may direct out of what portion or portions of the estate such costs shall be paid, and such costs shall be paid accordingly.

On award

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

Where no appearance

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

Order to tax to be left with taxing officer

18. (1) The solicitor having the carriage of any order directing a taxation of costs shall, when obtaining an appointment to tax, leave with the taxing officer the original or a copy of such order, unless he has previously filed such original.

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Bill of costs

(2) In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column therein shall be cast before the bill is left for taxation.

Drafts directed to be settled by counsel

19. Where, in pursuance of any direction by the Court in Chambers, drafts are settled by any counsel, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court otherwise directs.

Gross sum costs

20. (1) In any case where the Court thinks fit to award costs to any party, the Court may by the order direct taxation of the costs of such party, and payment of a proportion thereof, or payment of the taxed costs less a specified sum in gross to be deducted therefrom, or direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such proportion, or taxed costs, or sum shall be paid.

(2) Nothing in this rule shall derogate from the discretion of the Court as to costs.

II—SPECIAL ALLOWANCES AND GENERAL REGULATIONS

21. The special allowances and general regulations set out in this part of this Order shall apply to all proceedings and all taxations in the Supreme Court.

Allowance for work in preparation of documents

22. As to writs of summons requiring special endorsement, and as to special cases, pleadings and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order 35, rule 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing the attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he thinks proper.

Fees to include copy for use

23. As to drawing any pleading or other documents, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Further allowance on special grounds

24. As to instructions to sue or defend or the preparation of briefs, if the taxing officer on special grounds considers the fee provided inadequate,

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he may make such further allowance as he in his discretion considers reasonable.

And on affidavit of several deponents

25. As to affidavits, when there are several deponents to be sworn or it is necessary for the purpose of an affidavit being sworn to go to a distance or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion thinks fit.

Allowance on affidavits to include attendances

26. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponents to settle and read over.

Where same solicitor for both parties

27. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

Mileage on several writs etc.

28. When two or more writs, summonses, orders, or notices in the same cause or matter can be served at the same time on any party, they shall be so served, and, when such is the case, mileage shall be allowed for the service of one only.

Perusals

29. As to perusals, the fees are not to apply where the same solicitor is for both parties.

Separate pleadings where same solicitor

30. Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Procuring evidence

31. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

Agency correspondence

32. As to agency correspondence in agency causes and matters, if it is shown to the satisfaction of the taxing officer that such correspondence has

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been special and extensive, he may make such special allowance in respect thereof as in his discretion he thinks proper.

Settling and passing judgments

33. As to the attendance of solicitors upon the Registrar for the purpose of settling the terms of and passing judgments or orders, the taxing officer may make such special allowances in respect thereof as he considers reasonable.

In special circumstances higher remuneration may be allowed for attendance at Chambers

34. As to the attendance at the Judge's Chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge thinks the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge, has required skill and labour for which no fee has been allowed, or in proceedings to wind up a company, the Judge may allow such fee as in his discretion he thinks fit, and where the preparation of the case or matter to lay it before a Judge in Chambers on a summons has required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore appears to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow the solicitor, by memorandum in writing expressly made for that purpose and signed by the Judge specifying distinctly the grounds of such allowance, such fee as the Judge in his discretion thinks fit.

On non-attendance or neglect by party at Chambers, Judge may order costs

35. As to attendances at the Judge's Chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he thinks reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally, and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Attendance by solicitors or clerk in Court or in Chambers to instruct Counsel

35A. (1) Where a principal solicitor attended in Court or in Chambers or before the Registrar to instruct counsel, the taxing officer may allow the amount shown in the Fourth Schedule for such an attendance if he is of opinion that, by reason of the importance or difficulty of the matter or

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because of the responsibility involved in instructing counsel, the attendance of the principal solicitor was warranted, but if he is not of that opinion, the taxing officer may allow whichever of the amounts shown in the Fourth Schedule for such an attendance by either an employed solicitor or clerk as he considers the circumstances warranted.

(2) Where an employed solicitor attended in Court or in Chambers or before the Registrar to instruct counsel, the taxing officer may allow the amount shown in the Fourth Schedule for such an attendance if he is of opinion that the attendance was warranted, but if he is not of that opinion he may allow the amount shown in the Fourth Schedule for the attendance of a clerk.

(3) No allowance shall be made for the attendance of a clerk in Court or in Chambers or before the Registrar to instruct counsel unless he was competent to instruct counsel in the particular matter.

Folios

36. A folio shall comprise 72 words, every figure comprised in a column being counted as one word.

Costs of procuring advice of counsel

37. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer in his discretion thinks just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer in his discretion thinks proper to be settled by counsel, are to be allowed, but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Allowance for notice to inspect

39. The cost of inspection of documents shall be in the discretion of the taxing officer, but no allowance is to be made for any inspection unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for making such inspection.

Power to make an interim certificate

40. The taxing officer may make one or more interim certificate or certificates, allocatur or allocaturs, in any taxation for any portion or portions of the taxed costs directed to be taxed, without waiting until a certificate for the full amount can be made.

Rate of payment for copies of documents

41. As to taking copies of documents in possession of another party, or extracts therefrom, under these Rules or any special order, the party

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entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may by writing require at the rate of $1.75 per page, and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract may make it and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Tender of costs for perusing petition where notice that appearance not required

42. Where any petition, notice of motion or summons is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and is accompanied by a tender of costs for perusing the same, the amount to be tendered shall be $6.30. The party making such payment shall be allowed the same in his costs provided that such service was proper, but not otherwise, but this rule is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court considers the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding the amount aforesaid.

Court may disallow costs of pleading or matter improper or unnecessary

43. The Court may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, or of any pleading, summons, affidavit, evidence, notice to produce, admit, or cross-examine witnesses, or of any account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he finds to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or to be caused by misconduct or negligence, and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties, and in any case where such question has not been raised before and dealt with by the Court the taxing officer shall look into the same (and, as to evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

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Costs may be set-off or adjusted between parties

44. In any case in which, under the last preceding rule or any other rule, or by the order or direction of the Court, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay, or such officer may allow or certify the costs to be paid, and direct payment, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Note for taxing officer

45. Where any question as to any costs is, under rule 43 of this order dealt with at Chambers, the Judge or Registrar shall make a note thereof and state the same on his allowance of the fees for attendances at Chambers, or otherwise as is convenient, for the information of the taxing officer.

Disallowance where party not interested etc.

46. Where any party appears upon any application or proceeding in Court or at Chambers in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court expressly directs such costs to be allowed.

Extension of time

47. The costs of an application to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless the Court has specially directed how such costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary and could not with due diligence have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Order 64, rule 5 applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent to a sufficient extension of time, or the taxing officer considers there was a good reason for not making such application, and in case the taxing officer does not allow the costs of such summons, and considers that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by rule 44 of this Order.

Taxing officers may administer oaths

48. The taxing officer shall, for the purpose of any proceeding before him, have power and authority to summons and examine witnesses, either orally or upon affidavit, to administer oaths, and to require the production of books, papers, and documents, and for such purpose to issue subpoenas,

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and to make separate certificates or allocaturs, and to require any party to be represented by a separate solicitor, and to do such acts and adopt such proceedings as are directed by these Rules, or by the Court.

Registrar to be taxing officer

49. The Registrar shall be the taxing officer of the Court.

Account in part consisting of bill of costs

50. Where an account consists in part of any bill of costs, the Court may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the accounts of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof as if the same had been referred to the taxing officer by an order, and he shall return the same, with his opinion thereon, to the Court.

Taxing officer regulates the attendance of parties on taxation

51. The taxing officer may arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and may disallow the costs of any party whose attendance such officer in his discretion considers unnecessary.

On neglect of party to tax costs, taxing officer may prevent prejudice to other party

52. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer may certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Costs to be allowed on taxation

53. On every taxation the taxing officer shall allow all such costs, charges, and expenses as appear to him to have been necessary or proper for the attainment of justice or for enforcing or defending the rights of any party, but save as against the party who incurred the same, costs shall not be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence, or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses.

Costs incidental to negotiations

53A. Any costs of and incidental to negotiations for settlement which appear to the taxing officer to have been reasonably and properly incurred

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shall be allowed on taxation whether or not the negotiations were successful.

Fees for work and labour not otherwise provided for

54. As to any work and labour properly performed and not provided for by these Rules, and in respect of which, in the opinion of the taxing officer, an allowance should be made, such sum shall be allowed as is just and reasonable.

Costs in the cause

55. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to the defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which appears to have been rendered necessary by the default of such defendant), but there shall be deducted from such costs any sum which has been paid by the plaintiff according to the course of the Court at the time of any amendment.

Costs of amendments

56. Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Taxation without order to refer

57. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs.

Where parties differ

58. (1) If, following an order for costs, the parties are unable to agree on the amount, the party entitled to costs may submit the bill of costs to the taxing officer.

(2) On receipt of a bill of costs under subrule (1), the taxing officer must mark—

(a) on the bill; and

(b) on a copy of the bill for service on the other party;

the day and time when the bill will be taxed.

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(3) The day on which a bill is to be taxed must be not earlier than 14 days after its receipt by the taxing officer.

(4) After a copy of the bill has been marked in accordance with subrule (2) the party entitled to costs must serve that copy on the party liable for costs on that, or the next, day.

(5) The taxing officer—

(a) may, during the course of taxing a bill, issue to the parties interim certificates; and

(b) must, when taxing of the bill is complete, issue to the parties a certificate.

(6) The party liable for costs under an order may, at any time after the order is made but not later than 14 days before the taxing officer commences taxing the bill of the party entitled to costs, tender, by a solicitor's trust account cheque or by bank cheque, a sum in payment of those costs and accrued interest (if any).

(7) A tender made under subrule (6) may be replaced by a later tender or tenders but must not otherwise be withdrawn before—

(a) the day on which the bill is to be taxed; or

(b) the end of 14 days after the tender is made;

whichever is the earlier.

(8) If a tender is not returned to the tenderer before the end of the period referred to in subrule (7)—

(a) the tender is taken to have been accepted; and

(b) the taxing officer is not to tax the bill.

(9) If, in the opinion of the taxing officer, a sum tendered and not accepted is appropriate for acceptance, any costs incurred by the parties after the day the tender is received by the party entitled to costs are to be borne by that party.

(10) In forming an opinion for the purposes of subrule (9), the taxing officer must have regard to—

(a) costs of the party entitled to costs at the date the tender is received by that party; and

(b) costs properly incurred by that party after that date; and

(c) interest (if any) accrued on the costs referred to in paragraphs (a) and (b).

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Costs out of fund

59. Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

Costs of scientific witnesses

60. The allowances in respect of fees to counsel, accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to an appeal to the Judge.

Discretionary fees

61. All fees or allowances which are discretionary, shall, unless otherwise provided, be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel (if any) in respect of the work to which such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances, and, when a party is entitled to sign judgment for his costs, the taxing officer in taxing the costs may allow a fixed sum for the costs of the judgment.

Power to taxing officer to assess costs at a gross sum

62. If upon any taxation it appears that the costs have been increased by unnecessary delay, or by improper, vexatious, prolix, or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive, having regard to the nature of the business transacted, the interest involved, the money or value of the property to which the costs relate, or to the other circumstances of the case, the taxing officer shall allow only such an amount of costs as is reasonable and proper, and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties, if more than one, or may report the matter to the Judge who may make such order as he thinks fit.

(2) The provisions as to review of taxation shall apply to allowances and certificates of the taxing officer under this rule.

Disallowances where bill reduced by a sixth

63. If on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges contained in the bill is reduced by a sixth

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part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, or for attending the taxation.

Party dissatisfied with taxation may object

64. Any party who is dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. The taxing officer may, if he thinks fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as is necessary shall be issued by the taxing officer after his decision upon such objections.

Taxing officer may review taxation

65. Upon an application under the last preceding rule, the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he thinks fit, receive further evidence in respect thereof, and, if so required by any party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon and any special facts or circumstances relating thereto.

Party dissatisfied with taxing officer may apply to Judge

66. Any party who is dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which has been objected to, may, within fourteen days from the date of the certificate or allocatur, or such other time as the Court, or the taxing officer at the time he signs his certificate or allocatur, allows, apply to the Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge thinks just, but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which have not been objected to in the manner provided in this Order.

Evidence thereon

67. An application under the last preceding rule shall be heard and determined by the Judge upon the evidence which has been brought in before the taxing officer, and no further evidence shall be received upon the hearing hereof unless the Judge otherwise directs.

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Retainer of counsel

68. No retaining fee to counsel shall be allowed on taxation as between party and party.

Conferences

69. Fees for conferences shall not be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it appears to the taxing officer for some special reason that a conference was necessary or proper.

Allowances of two junior counsel

70. Where the costs of retaining two counsel may properly be allowed, such allowance may be made, although both such counsel may have been selected from the outer bar.

Refreshers

71. Where a cause or matter is tried or heard in open Court, and occupies, either on the first day only, or partly on the first day and partly on a subsequent day or days, more than five hours, an allowance may be made for every five hours or part of five hours subsequent to the expiration of the first five hours, which allowance shall, unless otherwise ordered by the Court be such an amount as the taxing officer thinks fit.

Brief where cause not tried

72. Where a cause or matter has not been brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer is of opinion that such costs were prematurely incurred.

Where set down again after being struck out

73. Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

Counsel's signature

75. No fee to counsel shall be allowed on taxation unless vouched by his signature.

Of affidavit of discovery

77. It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used against such party.

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Delay before taxing officer

78. Where in proceedings before the taxing officer any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he thinks proper, or may deal with them under rule 44 of this Order.

Where costs out of fund bill to be sent to clients

79. Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he considers there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill or any part thereof previously to such officer completing the taxation thereof, accompanied by any statement such officer directs, and by a letter informing such client that the bill of costs has been referred to the taxing officer, for taxation, and will be proceeded with at the time the officer has appointed for this purpose, and such officer may suspend the taxation for such time as he considers reasonable.

Taxing officer may limit or extend time

80. The taxing officer may limit or extend the time for any proceeding before him, and where, by these Rules or any Order of the Court, a time is appointed for any proceeding before or by a taxing officer, unless the Court otherwise directs, such officer shall have power from time to time to extend the time appointed, upon such terms (if any) as the justice of the case requires, and, although the application for the same is not made till after the expiration of the time appointed, it shall not be necessary to make a certificate or order for the purpose, unless required for any special purpose.

Indorsement of name and address of solicitor

81. Every bill of costs which is left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor (if any) for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.

Appeal to Judge

82. Any person dissatisfied with the decision of the taxing officer in regard to items "Instructions for brief" and "Drawing same", may, within fourteen days of such decision appeal by summons to the Judge, who may review the taxation as to such items without being bound by the discretion of the taxing officer. This appeal may be had in addition to any other application to review the taxation.

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Fees to barristers and solicitors

83. (1) In actions where a barrister and solicitor acts in both capacities, or appears as a barrister, instructed by his partner acting as solicitor, neither he nor his partner shall be entitled to make any charge for "Instructions for brief", or for "Drawing" or "Engrossing brief", but, in lieu of all such charges, such barrister and solicitor, or partner, as the case may be, shall be entitled to such fees as are allowed by the taxing officer for "Preparing for trial", and for "Preparing brief notes for use on trial".

(2) Any person dissatisfied with the decision of the taxing officer in regard to such allowance may appeal, within fourteen days of such decision, by summons to the Judge, who may review the taxation as to such item without being bound by the discretion of the taxing officer. This appeal may be had in addition to any other application to review the taxation.

ORDER 66

DOCUMENTS

Division 1—Style

Interpretation

1. In this Order, "document" means a document prepared by a party to proceedings for use by or in the Court.

Registrar may refuse to file

2. (1) The Registrar may refuse to file a document that does not comply with this Order to the extent that the nature of the document permits.

(2) Costs incurred by a party in relation to a document refused filing under this rule may be disallowed on taxation of the party's costs.

Paper to be used

3. A document must be presented on paper that is—

(a) white; and

(b) durable; and

(c) international paper size A4.

Writing requirements

4. (1) One page only of each leaf of a document may display writing.

(2) Writing must be permanent in form and easily legible.

(3) A document that bears writing that is—

(a) materially disfigured by blotting, erasure or other alteration; or

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(b) a carbon copy of another document;

cannot be filed in the Court.

(4) Each succeeding line of writing in a document must be separated from the preceding line of writing by a space not less than 3 millimetres.

Page margins

5. Each page of a document must have margins at its edges, free of writing, that are not less than—

(a) to the left of any writing—25 millimetres; and

(b) at the foot of the writing—20 millimetres.

Use of numerals

6. (1) Mathematical expressions, amounts of money and dates appearing in a document must be expressed in numbers.

(2) Numbers appearing in a document must be expressed in Arabic numerals.

Pagination

7. A document containing more than one page must be paginated, the number of each page appearing in the lower right corner of the page.

Backing sheet

8. A document need not have a backing sheet.

Identification

9. The party filing a document must be identified in writing at the foot of the first page of the document as follows—

(a) the identification is to be separated from the text of the document by a horizontal line, above and below which there must be, respectively, at least 4 millimetres space; and

(b) below that line is to be set out—

(i) the name of the party by whom, or on whose behalf, the document is filed;

and—

(ii) if the party is not represented by a solicitor—the address for service of the party and his or her telephone number (if any); or

(iii) if the party is represented by a solicitor—

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(A) the solicitor's name, address for service and telephone number; and

(B) if the solicitor is the agent of another solicitor for the purpose of the proceeding—the name and place of business of the other solicitor.

Signature on behalf of solicitor

10. (1) If the signature of a solicitor is required, or permitted, on any document for the purpose of any proceedings, the signature on the document of any of the following persons is sufficient for that purpose:

(a) a solicitor who is a partner of the solicitor;

(b) a solicitor who is the agent of the solicitor, for the purpose of the proceedings;

(c) a solicitor who is a partner of the agent of the solicitor;

(d) a solicitor who is employed by the solicitor;

(e) a solicitor who is employed by the agent of the solicitor.

(2) A person signing a document under this rule must add to the document a statement of the capacity in which the person signs the document.

Division 2—Inspection

Restriction on inspection of Registry files

11. (1) Except with leave of the Court, a person who is not a party to a matter is not entitled to inspect, or search the Registry for, any of the following documents in relation to that matter:

(a) any judgment, order, transcript of a proceeding or any other document that the Court, has ordered to be kept confidential;

(b) an affidavit that has not been read in Court;

(c) any part of an affidavit that has been ruled to be inadmissible in evidence;

(d) an interrogatory, or an answer to an interrogatory, that has not been admitted into evidence;

(e) a list of documents given on discovery;

(f) an admission that has not been admitted into evidence;

(g) a subpoena, or any document filed with the Registrar in answer to a subpoena for production of documents;

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(h) any document in relation to a proceeding in respect of the adoption, custody or guardianship of a child;

(i) any document in relation to a proceeding under the *Family Law Act 1975* of the Commonwealth;

(j) any document filed with the Court in the Court's probate jurisdiction other than:

(i) a grant of probate or of letters of administration; or

(ii) an order to administer an estate; or

(iii) proceedings in relation to a contested matter;

(k) a deposition taken before an examiner;

(l) any document filed with the Court in support of an *ex parte* application;

(m) any document that the Registrar has determined should remain confidential to the parties to the matter in the interests of justice.

(2) Except with leave of the Court, a party to a matter is not entitled to inspect, or search the Registry for, a subpoena issued at the request of another party.

(3) Except with leave of the Court, a party to a matter is not entitled to inspect, or search the Registry for, a document filed to support an application for:

(a) any document, evidence or thing to be kept confidential; or

(b) any document or thing to be granted privilege from production.

ORDER 67

SERVICE OF ORDERS, ETC.

Service of judgments and orders

1. (1) When it is intended to enforce obedience to a judgment or order by process of attachment, the judgment or order shall be served personally upon the person against whom such process is to be sought.

(2) Subject to the last preceding subrule, personal service of a judgment or order shall not be necessary under these Rules, nor need the original be shown unless required by the person served.

Where service not required to be personal

2. (1) Any document in connection with a matter in respect of which personal service is not required by these Rules may be served on the person to be served—

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(a) by being left at the address for service of the person, given in accordance with Order 5 or 13, on any day when the Registrar's office is open for business; or

(b) by being sent by pre-paid post to the person at that address; or

(c) if provision is made by these Rules, or by or under an Act or Ordinance, for service of documents of that kind on a corporation, by being served on a corporation in accordance with that provision; or

(d) if, under Order 5 or 13, the person's solicitor in the Territory has provided as an address for service the number of an Australian Document Exchange Pty Ltd exchange box—by being left in that box; or

(e) if, under Order 5 or 13, the person's solicitor in the Territory has provided as an address for service the number of a facsimile receiver—by facsimile transmission to that number; or

(f) in the case of a notice to be served by the office of the Registrar—by being left in the collection box, in the Registrar's office, that is the box of the solicitor for the person to be served.

(2) A document served under paragraph (1) (a) after 4.00 p.m. on any day is, for the purpose of calculating any period of time after that service, to be taken to be served on the next day.

(3) For the purposes of these Rules, the day of service of a document is—

(a) if the document is sent by post in accordance with paragraph (1) (b)—the third day after the document is so sent; or

(b) if the document is left in an exchange box in accordance with paragraph (1) (d)—the day following the day on which it is so left; or

(c) if the document is sent by facsimile transmission in accordance with paragraph (1) (e)—the day following the day on which it is so sent; or

(d) if—

(i) the document is a notice sent from the Registrar's office; and

(ii) the document is left in a collection box in the Registrar's office, being the collection box of the solicitor for the person to be served—the next day.

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Where no appearance or address, service by filing

4. (1) Where no appearance has been entered for a party, or where a party or his solicitor (as the case may be), has omitted to give an address for service as required by Orders 5 and 13, all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them.

(2) Any document so filed shall be posted up in the Registrar's office and shall remain so posted up for fourteen days.

(3) Any document so filed must have endorsed on its first page a statement that the document is filed under Order 67.

On solicitor after appearance in person

7. Where a party, after having sued or appeared in person, has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

On solicitor appearing for person not party

8. Where a person who is not a party appears in any proceeding either before the Court or in Chambers, service upon the solicitor in Canberra by whom such person appears, whether such solicitor acts as principal or agent, shall be deemed good service except in matters requiring personal service.

Affidavit of service

9. Affidavits of service shall state when, where, and how and by whom such service was effected.

ORDER 68

SHERIFF'S RULES

Personal estate to be sold first

1. When the Sheriff takes in execution both real and personal estate belonging to the same party, he shall, unless the Judge otherwise directs, cause the personal estate (other than an estate of leasehold) to be first sold, and in case the proceeds are not sufficient to satisfy the execution, he shall then sell any estate of leasehold and any real estate.

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Portions of property sold first

2. When the property, either real or personal, of any person is taken in execution under a writ of *fieri facias*, such person may point out what portion thereof respectively he will have sold first, and the portion so pointed out shall be sold first, unless the Judge otherwise orders.

Under $100, time of sale

3. When personal property is taken in execution by the Sheriff under a writ indorsed to levy a sum less than $100, he shall cause the same to be sold as soon as reasonably convenient after twenty-four hours from the levy thereof, subject to the provisions of the next succeeding rule.

Publicity of sale. Other cases

4. When the Sheriff intends to put up for sale any property taken in execution, he shall give due publicity to the time, place, and particulars of the intended sale by advertisement, and, when the property is intended to be sold at the place of levy, by affixing notices in and about the place of levy.

Place of sale

5. The Sheriff shall cause any property taken in execution to be sold at the place of levy, or elsewhere, as he deems most advantageous:

Provided that all property real and personal taken in execution shall be offered for sale by the Sheriff by public auction, and shall not be offered for sale in any licensed house or premises.

How Sheriff to pay moneys received in certain cases

6. In cases not within section 93 of the *Bankruptcy Act 1924-1933* of the Commonwealth, when the Sheriff, by virtue of any writ to whom directed, receives any moneys, he shall pay them on demand to the party entitled to receive the same, or his solicitor, deducting all lawful charges therefrom, whether such writ be then returnable or not, unless he has received from some person claiming to be interested therein notice to retain the same.

Notice to Sheriff not to pay money to execution creditor

7. When the Sheriff, by virtue of any writ to him directed, receives any moneys, and has been served with notice by any person claiming to be interested therein, not to pay over the same, the Sheriff may retain such moneys in his hands, to abide the order of the Court thereon, and if no application is made by the party giving such notice to the Court, within four days next after the date of such notice, the Sheriff may pay over such moneys in pursuance of the writ, without regard to the notice.

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Suspension of execution

8. The Sheriff shall not suspend the execution of any writ or process directed to him, except upon an absolute order in writing to that effect lodged with him by the person entitled to the benefit of the same, or his solicitor or agent. Any such person may at any time afterwards withdraw such order, and lodge with the Sheriff a written instruction to execute the said writ or process.

Judge's order in vacation to enforce performance of duty

9. Where the Sheriff does not execute or return a writ directed to him, according to the exigency thereof, or does not pay over money received, or deliver possession of the premises taken by him, or bring in the body of a party he is directed to arrest or attach, or otherwise neglects or omits to perform any duty incumbent upon him, an order may be obtained from the Judge on summons to enforce the performance of such duty.

Persons arrested to be lodged in nearest gaol

10. When any person is arrested by the Sheriff on any civil process of the Court, he shall be lodged in the gaol nearest to the place of his arrest, and be there detained until the Court orders his discharge.

Poundage

11. (1) In the execution of process, poundage is chargeable under a writ of *fieri facias* or a writ of *venditioni exponas* on the money obtained by the seizure at the rate of 5 per cent up to $200, and at the rate of $2\frac{1}{2}$ per cent for the excess when the money so obtained exceeds $200, and under a writ of possession at the rate of 5 per cent on the annual value of the property delivered up to $200 and at the rate of $2\frac{1}{2}$ per cent for the excess when the annual value exceeds $200.

(2) The Sheriff shall, as far as practicable, levy the poundage and other fees and the expenses of the execution in addition to the amount directed to be recovered.

Security for costs

12. In every action against the Sheriff for anything done or omitted to be done by him in the intended execution of his duty, the plaintiff shall be compelled to give security for costs.

Duties discharged by Serjeant-at-Arms in England to be discharged by Sheriff

13. Except as provided by these Rules, all duties discharged in the Chancery Division of the High Court of Justice in England in respect of

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process issued out of that Court, or otherwise, by a Serjeant-at-Arms, shall be discharged within the Territory by the Sheriff.

ORDER 69

EFFECT OF NON-COMPLIANCE

Non-compliance with rules not to render proceeding void

1. Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void, unless the Court so directs, but such proceedings may be set aside, either wholly or in part, as irregular, or may be amended or otherwise dealt with, in such a manner, and upon such terms as the Court thinks fit.

Application to set aside for irregularity

2. An application to set aside any proceeding for irregularity shall not be allowed unless it is made within a reasonable time, or after the party applying has taken any fresh step with knowledge of the irregularity.

Objections of irregularity

3. Where an application is made to set aside any proceeding for irregularity, each objection to be relied upon, and the ground for it, shall be stated in the notice of motion.

ORDER 69A

APPLICATIONS UNDER PART XIX OF THE MAGISTRATES COURT (CIVIL JURISDICTION) ACT 1982

Interpretation

1. In this Order, "the Act" means the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Mode of commencement of applications

2. (1) An application under section 279 of the Act shall be made by motion.

(2) An application under section 281 or 282 of the Act shall be made by motion supported by affidavit.

PART 3—OATHS AND AFFIRMATIONS

ORDER 70

Order to apply to criminal proceedings

1. This Order applies to all proceedings in the Court, including criminal proceedings.

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Manner of taking oath

2. (1) For the purposes of this Order, a person taking an oath shall, if he is physically capable of doing so—

(a) hold in his hand the Bible, the New Testament or the Old Testament; and

(b) at the same time, say the words of the oath.

(2) For the purposes of this Order, the words of an oath shall be spoken in the English language or in such other language as the Court allows.

(3) Where a person is incapable of speaking, he may express the words of an oath by signs or by such other means as the Court allows.

Forms of oath

3. (1) The form of oath to be taken by a person called as a witness is the following:

> I swear by Almighty God that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.

(2) The form of oath to be taken by an interpreter who is to interpret a spoken language is the following:

> I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully translate from the English language into the language and from the language to the English language.

(3) The form of oath to be taken by an interpreter who is to interpret statements made by means of signs is the following:

> I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully communicate by signs or other convenient means words spoken in the English language and translate into the English language statements made by means of signs.

Juror's oath

4. The form of oath to be taken by a person before serving as a juror is the following:

> I swear by Almighty God that I shall give a true verdict according to the evidence.

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Oath by juror on issue of fitness to plead

5. The form of oath to be taken by a juror impanelled to try whether a prisoner is or is not capable of pleading to an indictment is the following:

> I swear by Almighty God that I shall diligently inquire whether A. B. is or is not capable of pleading to the indictment and that I shall give a true verdict according to the best of my understanding.

Oath by person in charge of jury

6. The form of oath to be taken by a person in charge of a jury is the following:

> I swear by Almighty God that I shall keep this jury in my charge, that I shall not allow anyone to speak to any juror and that I shall not speak to any juror myself concerning the issues before the Court.

Oath by person in charge of jurors on a view

7. The form of oath to be taken by a person in charge of a jury on a view is the following:

> I swear by Almighty God that I shall faithfully attend this jury to the place (*or* property) that the jury has been ordered by the Judge to view, that I shall not allow anyone to speak to any juror concerning the issues before the Court, other than the persons appointed and sworn to show that place (*or* property) to this jury, and that I shall not speak to any juror myself concerning the issues before the Court.

Oath by person appointed to conduct a view

8. The form of oath to be taken by a person appointed to conduct a view is the following:

> I swear by Almighty God that I shall attend this jury and faithfully show this jury the place (*or* property) that this jury has been ordered by the Judge to view and that I shall not speak to any juror concerning the issues before the Court otherwise than to describe that place (*or* property).

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Affidavits—form of oath

9. The form of oath to be taken by the deponent to an affidavit for use in a proceeding is as follows:

> I swear by Almighty God that the signature to this affidavit is my signature and that every statement in the affidavit is true.

Court may permit other forms of oaths

10. If a person objects to taking an oath in accordance with any of the preceding rules of this Order, the person may take an oath that the Court is satisfied is binding on the conscience of the person and is appropriate to the occasion on which it is taken.

Affirmations

11. (1) A person may, instead of taking an oath in accordance with any of the preceding rules of this Order, make an affirmation in the appropriate form.

(2) For the purpose of subrule (1), the appropriate form of affirmation is the form of the corresponding oath, with the substitution of the words "I solemnly declare and affirm" for the words "I swear by Almighty God".

PART 4—ADMINISTRATION AND PROBATE JURISDICTION

ORDER 72

I—PRELIMINARY

Interpretation

1. (1) In this Part, unless the contrary intention appears:

"Office of the Registrar", or "Registrar's office" means the office of the Registrar of Probates and Administrations, or of the Acting Registrar of Probates and Administrations;

"The Act" means the *Administration and Probate Act 1929-1937*, and if that Act is amended, includes that Act as amended.

(2) Expressions used in this Part, not being expressions defined in the preceding subrule, shall, unless the contrary intention appears, have the same meaning as in the Act.

Title of proceedings

2. Every proceeding in the Court in the jurisdiction conferred on it by the Act shall be entitled "In the Supreme Court of the Australian Capital Territory, Probate Jurisdiction".

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II—APPLICATION FOR REPRESENTATION

Notice of intended application for probate or administration

3. (1) Notice of an intended application for representation shall be in accordance with Form 1 or Form 2 in the Third Schedule.

(2) In applications for administration when a reduction of or dispensation with the prescribed bond is asked for, notice shall also be given to creditors to send in their claims, and an affidavit of the publication and result of that notice shall be filed in the Registrar's office.

Notice of intended application to reseal foreign grant

4. Notice of an intended application to reseal any foreign grant of representation shall be in accordance with Form 3 in the Third Schedule.

Application to be made on motion

5. (1) Unless otherwise provided in the Act or these Rules, an application for representation may be made on motion, which, unless the Court otherwise orders, may be made *ex parte*.

(2) The application may be made through a solicitor or in person by executors and parties entitled to grants of administration.

Application for probate

6. (1) Every application for probate shall be accompanied by affidavits setting forth—

(a) that the applicant, being a natural person, is of the full age of eighteen years;

(b) that the testator has died and the date of death;

(c) whether the testator was married at the date of death;

(ca) if the applicant relies on section 20A of the *Wills Act 1968* of the Australian Capital Territory ("Effect of termination of marriage")—the facts on which the reliance is based;

(d) that the testator has left a will and that the will is unrevoked (if that be the fact);

(da) the applicant's means of identifying the will;

(e) the date of the will;

(f) that:

(i) the testator was 18 years of age or more at the time the will was made; or

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(ii) the testator made the will validly under section 8 of the *Wills Act 1968* of the Australian Capital Territory ("Minors—testamentary capacity");

(g) the name of each executor and of each of the subscribing witnesses thereto and the residence of each at the time the affidavit is sworn (if known);

(h) that the will was duly executed;

(ha) if:

(i) the testator died after the commencement of the *Wills (Amendment) Act 1991* of the Australian Capital Territory; and

(ii) the applicant is unaware of the existence of any document, or part of a document, (other than the will the subject of the application) purporting to embody testamentary intentions of the testator;

a statement to the effect that the applicant is not aware of the existence of such a document or part of a document;

(j) a statement of the value of the property of the testator in the Territory, distinguishing real and personal property, and stating shortly of what it consists;

(l) that notice of intention to make the application has been published as prescribed;

(m) that no caveat has been lodged up to the morning of the application; and

(n) that no application for probate or administration in the matter has theretofore been made to or been granted by the Court or the Registrar, or, if any previous application has been made, the full particulars thereof.

(2) The will shall be marked by the applicant for probate and by the person before whom the affidavit setting forth the particulars referred to in paragraph (1) (da) was sworn.

Proof of execution of will and attestation

7. (1) Where an applicant for probate seeks to prove a will or codicil that does not contain a sufficient attestation clause or contains no attestation clause, then subject to subrules (2) and (3), the applicant shall file an affidavit of a subscribing witness to the will or codicil as to the due execution of the will or codicil.

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(2) Where the applicant is unable to comply with subrule (1), then, subject to subrule (3), the applicant shall file an affidavit explaining the reason for the non-compliance and an affidavit by a person who was present when the will or codicil was executed as to the manner of execution of the will or codicil.

(3) Where the applicant is unable to comply with subrule (2), the applicant shall furnish evidence, by affidavit of the reason for the non-compliance, of the handwriting of the testator and of the subscribing witnesses to the will or codicil or of any other facts from which it may be inferred that the will or codicil was duly executed.

Proof of execution of will and blindness of testator etc.

8. (1) Where an applicant for probate seeks to prove a will or codicil and—

(a) the will or codicil appears to have been signed by a blind or illiterate testator;

(b) the will or codicil appears to have been signed by another person by direction of the testator; or

(c) there are circumstances which raise doubt whether the testator, at the time of execution of the will or codicil, knew and approved of its contents;

the applicant shall furnish evidence by affidavit that the testator, at the time of execution of the will or codicil, knew and approved of its contents.

(2) Where any of the evidence referred to in subrule (1) is furnished by the affidavit of a subscribing witness to the will or codicil or by the affidavit of another person present when the will or codicil was executed, that affidavit shall contain a statement as to the manner in which the will or codicil was executed.

Further evidence of due execution etc.

9. (1) Notwithstanding that an applicant for probate has complied with rule 7 or 8 as the case requires, where the Court considers that there is doubt about the due execution of the will or codicil or that any of the circumstances in connection with the execution of the will or codicil require explanation, the Court may require further evidence.

(2) Where an applicant for probate seeks to prove a will or codicil and—

(a) the will or codicil is undated; or

(b) there appears to be doubt as to the date on which it was executed, the Court may require evidence of the date of its execution.

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(3) Where—

(a) an applicant for probate seeks to prove a will or codicil;

(b) an interlineation, alteration, obliteration or erasure appears in the will or codicil; and

(c) the interlineation, alteration, obliteration or erasure has not been duly authenticated or otherwise validated;

the Court may require evidence of whether the interlineation, alteration, obliteration or erasure was made before the execution of the will or codicil.

Deeds etc. referred to in will

10. If a will or codicil contains a reference to any deed, paper, memorandum or other document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will or codicil, the deed, paper, memorandum or other document must be produced with a view to ascertaining whether it is entitled to probate, and if it is not produced, its non-production shall be accounted for.

Appearance of the paper

11. If there are any vestiges of sealing-wax, or wafers, or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the testamentary papers, they shall be satisfactorily accounted for, or the paper, memorandum, or other document shall be produced, and, if it is not produced, its non-production shall be accounted for.

Affidavits in support of applications for administration with the will annexed

12. Every application for administration with the will annexed shall be supported by affidavits setting forth the particulars required by rule 6 of this Order, so far as practicable, and also stating the character in which the person making the application claims to be entitled and the truth thereof.

Where will inoperative

13. Where a will is believed to be wholly or in part inoperative, the Court or the Registrar may require from the applicant a statement on oath showing what relatives or next of kin the deceased left surviving him, so far as is known and material by law to the right to administer or share in his property.

Application for administration

14. (1) Every application for administration of the estate of a deceased person dying intestate shall be supported by affidavits setting forth—

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(a) that the applicant, being a natural person, is of the full age of eighteen years;

(b) the death of the deceased and whether he was married or not;

(c) the date of the death of the deceased;

(d) that he died intestate, leaving property in the Territory, specifying its value, distinguishing real and personal property, and stating shortly of what it consists;

(e) what relatives or next of kin the deceased left surviving him, so far as is known and material by law to the right to administer or share in his property;

(f) the character in which the person making the application claims to be entitled, and the truth thereof;

(g) if the applicant is a creditor, that fact and to what amount, and the particulars of his debt and the evidence in support thereof;

(h) that the applicant has carefully inquired if there is a will;

(j) that notice of intention to make the application has been published as prescribed;

(k) that no caveat has been lodged up to the morning of the application; and

(l) that no application for probate or administration in the matter has theretofore been made to or been granted by the Court or the Registrar, or, if any previous application has been made, the full particulars thereof.

(2) An affidavit made for the purpose of paragraph (1) (e) shall have annexed to it such birth, marriage, death or other certificates as tend to support the statements made in the affidavit.

Application by creditors

15. A creditor who intends to apply for administration shall, before so applying, issue a citation calling upon the husband or widow and next of kin of the deceased to appear and show cause why administration should not be granted to him, and shall, before the return day of the citation, prove his debt before the Registrar.

Applications where Curator has obtained order to collect

16. An applicant for representation in a matter where the Curator has obtained an order to collect shall give seven days' notice in writing to the Curator of the intended application, and shall, at the same time, lodge with the Curator, for inspection, all documents in support of the application.

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Address for service

17. Upon every application for representation a notice of an address where all notices may be served shall be filed, and service at that address by registered letter, or as the Court directs, shall be deemed sufficient service of any notice, notification or summons under the Act or under this Part, unless the contrary intention appears in the Act or this Part.

Notice to other next of kin

18. Where administration is applied for by one or some only of the persons entitled to administration, there being another or other next of kin equally entitled thereto, or a husband or widow of the deceased within the jurisdiction, their consent duly verified shall be filed, or evidence shall be adduced of their having been served with notice of the application, or that they cannot be found:

Provided that where the husband or widow of the deceased applies, notice of the application shall be given to all the next of kin of the deceased of full age within the jurisdiction, or evidence shall be adduced that they cannot be found.

Registrar refusing to deal with application

19. Where—

(1) an application for representation, or to have the seal of the Court affixed to any probate or letters of administration, has been made to the Registrar, and

(a) a caveat against such application is subsequently lodged with the Registrar before the representation applied for has been granted; or

(b) it appears doubtful to the Registrar whether the application should be granted; or

(c) the application is made under Part IV of the Act, and the Registrar thinks it proper to be dealt with by the Court, or it becomes necessary to obtain the directions of the Court; or

(2) an application has been made to the Registrar under section 16 of the Act to dispense with one or both sureties to an administration bond, or to direct that the penalty of any bond required to be executed shall be reduced in amount, or that more bonds than one shall be given so as to limit the liability of any surety, or to accept the bond of an incorporated company or guarantee society, and

(a) it appears doubtful to the Registrar whether he ought to do so; or

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(b) any person interested in the estate, or any creditor, of the deceased has lodged with the Registrar notice in writing objecting thereto;

the Registrar shall serve on the applicant a notice in writing stating that he will not deal with the application, and giving his reasons, and the applicant may then make the application to the Court on notice of motion filed in the office of the Registrar at least seven clear days before the application comes on for hearing.

III—ADMINISTRATION DURANTE MINORE AETATE

Administration *durante minore aetate*

20. A grant of administration *durante minore aetate* may be made to guardians of infants for the use and benefit of the infants, subject to such limitations or conditions as the Court orders.

Election of guardian

21. Infants above the age of seven years may elect a guardian, but in other cases a guardian shall be assigned by the Court, and, upon any application by the guardian for administration, evidence of his election or assignment shall be produced.

Where there are infants both above and under age of seven years

22. In a family where there are infants both above and under the age of seven years, an elected guardian may act for all the infants without special assignment.

IV—SMALL ESTATES

Applications in the case of small estates

23. (1) Any person desiring to obtain a grant of representation in pursuance of Part IV of the Act, shall apply in person to the Registrar, and not by letter.

(2) No such application shall be received through any agent of the applicant.

Applications previously made through solicitor

25. Any application which has in the first instance been made through a solicitor shall not be entertained as a personal application.

Where directions of Court obtained

26. Whenever, in the opinion of the Registrar, it becomes necessary, in the course of a personal application, to obtain the directions of the Court, the application shall not be further proceeded with as a personal one except by leave of the Court.

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Affidavits etc. to be filled up by Registrar

27. (1) All affidavits and other forms necessary to support the grant applied for shall be filled in by the Registrar if so desired.

(2) Any further papers that are required shall be prepared by the Registrar.

(3) Testamentary papers deposited with the Registrar shall not be given out unless by order of the Judge.

Certificate of death to be produced

28. Every applicant for a first grant of representations shall produce a certificate of the death of the deceased, or give a reason, to the satisfaction of the Registrar, for the non-production thereof.

Engrossments of wills etc.

29. The engrossments of wills and testamentary papers shall be made in the office of the Registrar, and for the purpose of applications under Part IV of the Act, printed forms of probate or letters of administration may be used.

V—ADMINISTRATION BONDS

Bond

30. The bond of an ordinary administrator and his sureties shall be in accordance with Form 4 in the Third Schedule, and the bond of an administrator to whom administration has been granted as a creditor of the deceased shall be in accordance with Form 5 in the Third Schedule.

Justification by affidavit

31. (1) Sureties to administration bonds shall justify by affidavits in accordance with Form 6 in the Third Schedule.

(2) No such affidavit shall be attested by any person who is the solicitor, or the clerk of the solicitor, of the person applying for the administration.

(3) Every such affidavit shall specify the particulars of the property of the person making it, and the value of those particulars over and above his just debts and liabilities respectively, and shall be filed in the office of, and laid before the Registrar, who, if not fully satisfied therewith, may require further information or assurance as to the sufficiency of the security, either by further affidavit, or by the personal attendance and examination upon oath of the proposed surety.

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Bond by incorporated company or guarantee society

32. Where the bond of an incorporated company or guarantee society approved by the Attorney-General is received as security instead of the security of individuals, the bond and condition shall be in the same form, substituting the name of the company or society for those of the individuals, and the Registrar, before the issue of the letters of administration, shall satisfy himself as to the due execution of the bond.

Price for procuring security

33. An administrator shall not be allowed, as an expense of administration, the price he pays for procuring the security either of individuals or of a company or society.

VI—DELAY IN APPLICATION

Delay in applying for representation

34. In every case where probate or administration is, for the first time, applied for after the lapse of six months from the date of the death of the deceased, the reason for the delay shall be explained by affidavit when the application is made.

VII—CITATIONS

Citations

35. (1) A citation shall not issue under the seal of the Court until an affidavit, in verification of the averments it contains, has been filed in the office of the Registrar, nor shall it be made returnable in less than fourteen days from the service thereof, unless the Court otherwise orders.

(2) Citations shall be served personally where practicable.

(3) Personal service of a citation shall be effected by leaving a true copy thereof with the person cited and showing him the original, if required by him so to do.

VIII—SALE AND MANAGEMENT OF REAL ESTATE

Application as to time and mode of sale etc. of real estate

36. (1) Notice of the application of an administrator under section 51 of the Act, or in a case of partial intestacy, of an executor or administrator with the will annexed, or of any person beneficially interested, shall be served personally on all parties beneficially interested unless that service is, upon application to the Court dispensed with, but in case one party is an infant or is of unsound mind, and no guardian or committee of his person or estate has been appointed, or is out of the jurisdiction of the Court, or it is desired to serve notice on any such party within the jurisdiction of the Court

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in any other manner, or to dispense with service altogether, an application shall be made to the Judge in Chambers *ex parte* by the applicant for directions as to the manner and mode of the service or otherwise as to the Judge seems fit.

(2) Every such application shall be supported by affidavits setting out fully the circumstances of the case and the grounds upon which the order is applied for.

IX—INVENTORY AND ACCOUNTS

Filing of inventory

37. Every executor and administrator shall, within three months after the grant of probate or administration, make or cause to be made, a true and perfect inventory of all and singular the property, lands and hereditaments, goods, chattels and credits of the deceased which have come to the hands, possession or knowledge of any other person for the executor, or administrator. and lodge the inventory in the office of the Registrar.

Filing etc. of accounts

38. (1) An executor or administrator referred to in subrule (3) must file the accounts relating to the execution or administration of the estate of the deceased not later than 12 months:

(a) after the date of grant of probate or administration of the estate; and

(b) if the grant is resealed—after the date on which it is resealed.

(2) When the executor or administrator files the accounts, he or she must request the Registrar to set a date for passing them.

(3) Subrule (l) applies to an executor or administrator who is:

(a) a creditor in relation to the estate of the deceased; or

(b) a guardian of a minor who is a beneficiary of the estate of the deceased; or

(c) the executor or administrator of an estate that will pass to a charitable or other public benevolent institution:

(i) in whole; or

(ii) in part, being a part determined by the Court, for the purposes of this rule, to be a substantial part; or

(d) ordered by the Court or the Registrar to file and pass the accounts.

Notice of filing accounts

39. (1) Notice of the filing of the accounts of any executor or administrator, in accordance with Form 7 in the Third Schedule, and of the

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day fixed for passing the accounts, shall be published in a newspaper published and circulating in the Territory, fourteen days at least before the day fixed for passing the accounts, and if the executor or administrator intends to apply for commission, notice shall also be given of that intention.

(2) In the case of an administrator, notice of the filing and of the application to pass his accounts shall also be served on the sureties to the administration bond.

Objection to passing of accounts

40. Any person desiring to object to the passing of the accounts of any executor or administrator, or the granting of commission, shall file with the Registrar, on or before the day fixed for the passing of the accounts, a notice of his intention to object, and also an affidavit stating his interest and the nature and grounds of his objection.

Order as to service on taking of accounts

41. Upon taking the accounts, the Registrar may make such order as to service upon any of the parties interested as he thinks fit.

Persons interested may attend upon taking accounts

42. Any person interested may attend before the Registrar upon the taking of the accounts.

Certificate as to correctness of accounts

43. The Registrar shall give his certificate as to the correctness of the accounts, and also as to the amount on which commission is allowable.

Entry of accounts for allowance by Court

44. Within fourteen days after the signing of the certificate by the Registrar, the accounting party shall, if he desires to be allowed commission, enter the accounts for allowance by the Court, and for allowance of commission.

Appeal from finding of Registrar

45. If the accounting party, or any person who has filed a notice of objection under rule 40 of this Order, desires to appeal from the finding of the Registrar on the passing of the accounts, he shall, within seven days from the signing of the certificate by the Registrar, file a notice in the office of the Registrar, setting forth the nature and grounds of his appeal.

Application where Registrar refuses accounts

46. Where accounts have been filed with the Registrar in pursuance of rule 38 of this Order, and

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(a) any doubt or difficulty arises, or

(b) any person interested desires the matter referred to the Court;

the Registrar shall serve the accounting party with a notice in writing stating that he will not pass the accounts, and giving his reasons, and the accounting party may, within fourteen days after the service of such notice, apply to the Court to pass the accounts.

Time for instituting appeal

47. Where the accounting party, or any person, has filed within the prescribed time a notice in the office of the Registrar setting forth the nature and grounds of his appeal pursuant to rule 45 of this Order, he shall within twenty-one days after filing such notice institute the appeal.

Summons in Chambers

48. Every application to the Court under rule 46 of this Order to pass accounts, and every institution of an appeal under rule 47 of this Order, shall be made by summons in Chambers, and a copy of the summons shall be served on the Registrar seven clear days before the return day thereof.

Service of summons

49. The Court may order such persons as it thinks fit to be served with the summons.

Failure to comply with provisions

50. Should an accounting party who has filed his accounts with the Registrar and has been served with a notice in writing by the Registrar stating that the Registrar will not pass such accounts, fail, within the time prescribed by rule 46 of this Order, to apply to the Court to pass the accounts, he shall for all purposes of the Act and these Rules be deemed to have failed to comply with the provisions of section 58 of the Act and of rule 38 of this Order relating to the filing and passing of accounts.

Filing of inventory may be dispensed with

51. In any case in which application is made by an executor or administrator to the Court or the Registrar for an order that the filing of the inventory mentioned in section 58 of the Act of the estate of the deceased and the passing of the accounts relating thereto by such executor or administrator be dispensed with, and

(a) such executor or administrator is the only person who is beneficially entitled under the will of which he is executor or in distribution of the estate of which he is administrator; or

(b) all persons who are beneficially entitled under the will of which he is executor or in distribution of the estate of which he is

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administrator are over the age of twenty-one years and consent to such order being made; and

(c) in the case of an administration, when there are sureties to the administration bond, such sureties consent;

the Court or the Registrar may make an order that the filing of such inventory of the estate of the deceased and the passing of the executor's or administrator's accounts relating thereto be dispensed with, and upon the making of such order the executor or administrator shall cease to be under an obligation to file an inventory of the estate, or to pass accounts relating thereto, unless and until the Court otherwise directs.

X—CAVEATS

Caveats

52. (1) Every caveat shall be in accordance with Form 8 in the Third Schedule and bear date of the day it is entered, and shall remain in force for the space of six months only and then expire, but a caveat may be renewed from time to time by lodging a new caveat.

(2) Every caveat shall be signed, either by the caveator or his solicitor, with his proper handwriting.

Return of order *nisi*

53. Upon the return of any order *nisi* under section 34 of the Act, it shall not be necessary for either party to prove his case by witnesses in the first instance, but the caveator shall state generally his ground of objection to the grant of representation, and, unless the case is such as can be disposed of summarily, the Court shall fix a day for hearing, or direct the case to be entered in a list of causes for hearing.

Particulars of objection

54. Within four days from a direction given in pursuance of the last preceding rule, unless the Court otherwise orders, the caveator shall deliver to the party seeking representation particulars of objection in accordance with either of the forms set forth hereunder, according to the circumstances of the case.

Particulars of Objection to Will—

(a) Later will or act of revocation and date thereof;

(b) Not executed by testator;

(c) Not executed in conformity with the Wills, Probate and Administration Act, 1898 of the State of New South Wales in its application to the Territory;

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(d) Want of testamentary capacity—

(i) confined to the period shortly before and at the time of execution;

(ii) existing before that period, and due to insanity or imbecility of which the symptoms first manifested themselves at a date to be set out; or

(e) Undue influence and by whom exercised.

Particulars of Objections to Grant of Administration of Intestacy—

(a) A will and date thereof;

(b) The person applying does not fill the capacity or stand in the relationship in which he seeks administration;

(c) The caveator or some other person seeking administration has a better right, stating the nature thereof; or

(d) The proposed administrator is disqualified, and, if so, how.

Special grounds of objection

55. (1) The caveator shall also state in the particulars any special grounds of objection not included in those specified in the last preceding rule, and shall not, without the leave of the Court, raise any objection not stated in the particulars.

(2) The Court shall, at its discretion, direct the mode of proceeding at the hearing as to right to begin, rebutting case and otherwise.

Witnesses

56. Where an order is made fixing a time for shewing cause against an order *nisi* under section 34 of the Act, both parties may subpoena their witnesses for the hearing in the same manner as in an action before the Court.

Affidavits to be filed and notice served

57. Either party shall, four clear days before the day appointed for hearing, file in the office of the Registrar in which the case is to be shewn, any affidavits he proposes to use at the hearing, and serve notice of the filing thereof upon the opposite party, and if the opposite party desires to cross-examine a deponent he shall, two clear days before the day appointed for hearing, serve a notice requiring the production of the deponent for cross-examination:

Provided that the Court may, at its discretion, specially order variations from this rule.

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Discovery and inspection of documents

58. Upon the return of any order *nisi* under section 34 of the Act, the Court may, in its discretion, order that the parties, or either of them, shall make discovery upon oath of all documents which are or have been in their or his possession, power, custody or control, or which were in the possession, power, custody or control of the testator or intestate at the time of his death, relating to any matter in dispute in the cause, and inspection thereof, or make any other order for the conduct of the hearing that the Court in its discretion thinks fit.

XI—REVOCATION OF REPRESENTATION

Suits for revocation of probate or administration

59. In a suit for the revocation of probate or administration, proceedings shall be commenced by the issue of a citation against the party to whom the grant was made, requiring him to bring in and deposit the grant in the Registrar's office and, within fourteen days after notice of the deposit, the party issuing the citation shall file his statement of claim against the party cited, who shall be the defendant in the suit, and all subsequent proceedings shall be had and taken as in a contested suit for probate.

XII—ADMINISTRATION BY CURATOR

Application to collect and administer

60. (1) An application by the Curator to collect and administer the estate of any deceased person shall be supported by affidavits setting forth—

(a) the death of the party;

(b) the time and place thereof;

(c) whether testate or intestate;

(d) whether leaving real or personal estate within the Territory;

(f) whether any widow or next of kin; and

(g) any other particulars which are deemed necessary.

(2) For the purposes of this rule, Forms 9, 10 and 11 in the Third Schedule shall be used.

Renunciation of probate in favour of Curator

61. Where the executors named in the will of a deceased person renounced probate in favour of the Curator, the renunciation shall be in accordance with Form 12 in the Third Schedule.

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Persons declining to apply for administration

62. Where the persons primarily entitled to administration decline so to apply, with a view to the Curator applying therefor, they shall file in the office of the Curator a document in accordance with Form 13 in the Third Schedule.

Notice of intended application for probate etc.

63. Every applicant for probate of the will or administration of the estate of a deceased person whose estate the Curator has obtained an order to collect and administer, shall give seven days' notice in writing to the Curator of his intended application, in accordance with Form 14 in the Third Schedule, and shall at the same time lodge with the Curator, for inspection, the documents in support of the application.

Petitions etc. to be filed in office of Curator

64. Whenever it is necessary to take any steps in connexion with any estate being administered by the Curator, and whether the Curator is a party thereto or not, every application, affidavit, summons or other process shall be filed in the office of the Curator, and any *ex parte* order calling upon the Curator to show cause obtained under section 95 of the Act shall state whether proof shall be given orally or upon affidavit.

Notification by Curator

65. Upon the filing of the order and affidavits, it shall not be necessary for the Curator to serve copies of any affidavits made by him in reply, but he shall notify to the person obtaining the order the fact of the affidavits having been filed, and that copies thereof may be obtained upon payment of the ordinary fees as prescribed.

Bills of Costs

66. The Curator may refer for taxation any bill of costs that has been incurred by him in the administration of any estate, and the certificate of the taxing officer of the taxation shall be conclusive.

MAINTENANCE OF WIDOWS AND YOUNG CHILDREN

Service of application

67. Notice of any application under section 111 of the Act shall be served on the executor of the will of the deceased person or on the administrator with the will annexed of the deceased person.

MISCELLANEOUS

Substituted service

68. If personal service of any proceedings under this Part cannot be effected by reason of the absence from the Territory of the person to be

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served, or if the Court is satisfied, by affidavit or other evidence on oath, that that person is keeping out of the way to avoid service, or that for any other cause prompt personal service cannot be effected, the Court may order substituted service to be made by the delivery of the proceedings to some adult inmate of his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court directs.

Form of acknowledgment under section 56 of Act

69. The acknowledgment which may be signed by an executor or administrator in pursuance of section 56 of the Act shall be in accordance with Form 15 in the Third Schedule.

PART 5—FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)

ORDER 73

REGISTRATION OF FOREIGN JUDGMENTS

Interpretation

1. In this Order, "the Act" means the *Foreign Judgments (Reciprocal Enforcement) Act 1954*.

Application for registration

2. An application under section six of the Act to have a judgment to which Part II of the Act applies registered in the Supreme Court may be made *ex parte* to the Court.

Evidence in support of application

3. (1) An application for registration shall be supported by an affidavit—

(a) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal and, if the judgment is not in the English language, a translation of the judgment certified by a notary public and authenticated by affidavit;

(b) stating to the best of the information and belief of the deponent—

(i) that the applicant is entitled to enforce the judgment;

(ii) that at the date of the application the judgment has not been satisfied, or, if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied;

(iii) that at the date of the application the judgment can be enforced by execution in the country of the original court;

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(iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section eight of the Act; and

(c) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration;

and shall be accompanied by such other evidence with respect to the matters referred to in subparagraph (iii) of paragraph (b) or in paragraph (c) of this subrule as may be required having regard to the provisions of the Proclamation declaring Part II of the Act to extend in relation to the country of the original court.

(2) Where the sum payable under the judgment is expressed in a currency other than Australian currency, the affidavit shall also state the amount which that sum represents in Australian currency calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor, respectively, as far as known to the deponent.

(4) Where a judgment is in respect of different matters, and some, but not all, of the provisions of the judgment are such that, if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

Security for costs

4. The Court may, in respect of an application for registration, order the judgment creditor to find security for the costs of the application and of any proceedings which may thereafter be brought to set aside the registration.

Title of affidavit and summons

5. The affidavit shall be intituled—

"In the matter of the *Foreign Judgments (Reciprocal Enforcement) Act 1954*, and in the matter of a judgment of the [*describing the Court*] obtained in the [*describing the cause or matter*] and dated the day of 19 ."

Order on application for registration

6. (1) An order giving leave to register a judgment shall be drawn up by, or on behalf of, the judgment creditor.

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(2) It shall not be necessary to serve the order on the judgment debtor.

(3) The order shall state the period fixed by the Court within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court may, on an application made at any time while it remains competent for a party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the registration set aside may be made.

Register of judgments

7. There shall be kept in the Registrar's office a register of the judgments ordered to be registered under the Act.

Notice of registration

8. (1) Notice in writing of the registration of a judgment shall be served on the judgment debtor—

(a) if within the jurisdiction, by personal service as in the case of a writ of summons, unless another mode of service is ordered by the Court;

(b) if out of the jurisdiction, in accordance with the provisions of these Rules relating to the service of a writ of summons out of the jurisdiction, except that special leave to serve out of the jurisdiction is not required.

(2) The notice of registration shall state—

(a) full particulars of the judgment registered and the order for registration;

(b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, a summons issued by the judgment debtor may be served;

(c) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside; and

(d) in accordance with the terms of the order giving leave to register; within what time from the date of service of the notice an application to set aside may be made.

Endorsement of service

9. (1) Within three days after the day of service or within such extended period as may, in special circumstances, be allowed by order of

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the Judge, the notice of registration or a copy of the notice shall be endorsed by the person serving it with the day of the month and of the week on which service was effected, and, if the notice or copy is not so endorsed, the judgment creditor is not at liberty to issue execution on the judgment without the leave of the Court.

(2) An affidavit of service of a notice shall state on what day the endorsement was made.

Application to set aside registration

10. (1) An application to set aside the registration of a judgment shall be made by summons to the Court and shall be supported by affidavit.

(2) A summons for the purpose of this rule shall be an ordinary summons intituled in the same manner as the affidavit referred to in rule 5 of this Order.

(3) On an application to set aside the registration of a judgment, the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial of the issue as may be necessary.

Issue of execution

11. (1) Execution shall not issue on a registered judgment until after the expiration of the period which, in accordance with the provisions of subrule (3) of rule 6 of this Order, is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, execution shall not issue until the application has been disposed of.

(3) The party desirous of issuing an execution upon a registered judgment shall produce to the proper officer an affidavit of the service of the notice of registration and of any order made by the Court in relation to the judgment registered.

Form of writ of execution

12. In the case of a registered judgment the form of a writ of execution shall be varied as follows:

> For the words "which said sum of money and interest were lately before us in the Supreme Court of the Australian Capital Territory" etc. there shall be substituted the words "which said sum of money and interest were lately in [*describing the Court in which judgment was obtained*]," etc. "and which judgment has been duly registered

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in the Supreme Court of the Australian Capital Territory pursuant to the *Foreign Judgments (Reciprocal Enforcement) Act 1954*".

Determination of certain questions

13. If a question arises whether a judgment to which Part II of the Act applies could be enforced by execution in the country of the original court, or what interest is payable under that judgment under the law of that country, proof in relation to that question may be given in accordance with the provisions, if any, in that behalf, contained in the Proclamation declaring that Part to extend in relation to that country.

ORDER 74

CERTIFIED COPIES OF JUDGMENTS

Application for certified copy of judgment of the Supreme Court

1. (1) An application under section thirteen of the *Foreign Judgments (Reciprocal Enforcement) Act 1954* for a certified copy of a judgment obtained in the Court shall be made *ex parte* to the Registrar on an affidavit made by the judgment creditor or his solicitor.

(2) An affidavit for the purposes of this rule shall—

(a) give particulars of the proceedings in which the judgment was obtained;

(b) have annexed to it a copy of the writ of summons or the originating summons by which the proceedings were instituted, the evidence of service thereof upon, or appearance by, the defendant, copies of the pleadings, if any, in the proceedings, and a statement of the grounds on which the judgment was based;

(c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;

(d) show—

(i) that the judgment is not subject to a stay of execution;

(ii) that no notice of appeal against it has been entered; and

(iii) whether the time for appealing has expired; and

(e) state the rate at which the judgment carries interest.

Issue of certified copies

2. Where an application for a certified copy of a judgment is duly made under this rule, there shall be issued an office copy of the judgment sealed with the seal of the Court and certified by the Registrar as follows:

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"I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of the Australian Capital Territory and is issued in accordance with section thirteen of the *Foreign Judgments (Reciprocal Enforcement) Act 1954.*

(Signed) .....
Registrar."

together with the following further certificates also under the seal of the Court and certified by the Registrar:

(a) a certificate giving particulars of the proceedings in which the judgment was obtained and having annexed to it—

(i) a copy of the writ of summons, or originating summons, by which the proceedings were instituted;

(ii) a copy of the pleadings, if any, in the proceedings; and

(iii) a statement showing the manner in which the writ of summons, or originating summons, was served on the defendant, or that the defendant appeared to the writ or summons, the objections, if any, made to the jurisdiction, the grounds on which the judgment was based and such other particulars as it may be necessary to give to the tribunal in which it is sought to obtain execution of the judgment; and

(b) a certificate stating the rate at which the judgment carries interest.

PART 5A—FOREIGN JUDGMENTS

ORDER 74A

RECIPROCAL ENFORCEMENT OF JUDGMENTS UNDER THE FOREIGN JUDGMENTS ACT 1991 OF THE COMMONWEALTH

Interpretation

1. (1) In this Order—

"the Act" means the *Foreign Judgments Act 1991* of the Commonwealth.

(2) Unless the contrary intention appears, expressions used in this Order have the same meaning as in the Act.

Application of Order

2. This Order applies in relation to an order for the registration of a money judgment or a non-money judgment to which paragraph 6 (2) (a) or (c) of the Act applies.

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Application for an order for registration

3. (1) An application under subsection 6 (1) of the Act to have a judgment registered shall—

(a) be in accordance with Form 78A;

(b) have attached a copy of the judgment certified by the original court;

(c) if the judgment is not in the English language—have attached a translation of the judgment authenticated by affidavit; and

(d) be supported by affidavits filed in accordance with rule 4.

(2) An application may be made *ex parte*.

Supporting affidavits

4. (1) An affidavit shall be filed with the application and shall state the following:

(a) the full name, occupation and the usual or last known place of residence, or of business, of the parties;

(b) that Part 2 of the Act applies in relation to the judgment;

(c) if paragraph 6 (1) (b) of the Act applies—the date of the last judgment in proceedings by way of appeal;

(d) if the judgment is a money judgment—

(i) that the judgment was given in a superior court of a country in relation to which Part 2 of the Act extends or an inferior court of such a country, being an inferior court in relation to which that Part extends; and

(ii) if section 13 of the Act does not apply to the country of the original court—that section 13 does not apply;

(e) if the judgment is a non-money judgment—that the judgment is prescribed for the purposes of subsection 5 (6) of the Act;

(f) if applicable—that the judgment was given in proceedings in which a matter for determination arose under the Commerce Act 1986 of New Zealand (other than proceedings in which a matter for determination arose under section 36A, 98H or 99A of that Act);

(g) that if the judgment were registered the registration would not be, or be liable to be, set aside under section 7 of the Act;

(h) the amount of costs of and incidental to the registration sought to be included in the registered judgment.

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(2) A further affidavit in support of the application shall be filed on the day on which the application is to be heard and shall state—

(a) that on that day the judgment can be enforced in the country of the original court; and

(b) if the judgment is a money judgment—

(i) that on that day the judgment has not been wholly satisfied;

(ii) if the judgment has been partly satisfied—the balance remaining payable on that day;

(iii) the interest (if any) which, by the law of the country of the original court, has become due up to the time of registration; and

(iv) if the amount payable under the judgment is expressed in a currency other than Australian currency and the application does not state that the judgment is to be registered in the currency in which it is expressed—that the judgment is to be registered for the equivalent amount in Australian currency, based on the rate of exchange prevailing on the day of the application for registration.

(3) An affidavit filed in accordance with subsection (2) shall set out the facts and grounds relied on for each statement made in the affidavit and attach any certificates that have been issued by the original court—

(a) setting out the causes of action to which the judgment relates;

(b) stating whether or not the judgment can be enforced in the country of the original court; and

(c) setting out the rate of interest (if any) payable under the law of that country on any amount payable under the judgment.

Registration

5. (1) An order for the registration of a money judgment shall be in accordance with Form 78B.

(2) An order for the registration of a non-money judgment shall be in accordance with Form 78C.

Notice of registration

6. (1) The party named in an order for registration of a judgment as the judgment creditor shall serve notice of the registration in accordance with Form 78D or 78E (as the case requires) on the party named in the order as the judgment debtor.

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(2) The notice shall have attached—

(a) an office copy of the order; and

(b) copies of the affidavits filed in accordance with rule 4.

(3) The notice and the attachments to it shall be served personally unless some other mode of service is ordered by the Court.

Affidavit of service to be filed

7. Before any step is taken to enforce a registered judgment, an affidavit of due service of notice of the registration shall be filed.

Time limit

8. Rule 5 of Order 64 applies in relation to an application to have the registration of a judgment set aside as if the period within which the application may be made had been appointed by these Rules.

Court may give directions

9. On an application to have the registration of a judgment set aside, the Court may give such directions as may be necessary for the statement and trial of any issue arising in the application.

Security for costs

10. The Court may order an applicant for registration of a judgment to give such security as the Court thinks fit for the costs of the application and of any application that may be brought to set aside the registration of the judgment.

Record of registered judgment

11. The Registrar shall maintain a record of the following particulars of each registered judgment:

(a) the details of the judgment of the original court;

(b) the date of the order that the judgment be registered;

(c) the full name and address of the party named in the order as the judgment creditor, or the name and address of that party's solicitor or agent on whom a document can be served;

(d) the full name, occupation and last known address of the party named in the order as the judgment debtor;

(e) if the judgment is a money judgment—

(i) the amount payable under the judgment expressed in the currency in which the judgment is registered;

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(ii) the interest (if any) due under the judgment up to the time of registration; and

(iii) the rate at which interest is due under the judgment;

(f) if the judgment is a non-money judgment—the terms of the judgment;

(g) the amount of costs of, and incidental to, registration included in the registered judgment;

(h) the particulars of any enforcement of or proceeding in respect of the registered judgment.

PART 6—COMPANIES

ORDER 75B

CORPORATIONS LAW AND AUSTRALIAN SECURITIES COMMISSION LAW

Division 1—Preliminary

Citation

1. This Order may be cited as the Corporations Rules.

Interpretation

2. (1) In this Order, unless the contrary intention appears—

"ASC Law" has the meaning provided for by section 1D of the *Australian Securities Commission Act 1989* of the Commonwealth;

"Australian Company Number" means the registration number allotted to a company under Part 2.2 of the Corporations Law, Part 4.1 of the Corporations Law or a law corresponding to those Parts;

"body corporate" has the same meaning as in section 9;

"Commission" means the Australian Securities Commission;

"company" has the same meaning as in section 9;

"contributory" has the same meaning as in section 9;

"controller" means a controller of property of a company;

"corporation" has the same meaning as in section 9;

"Corporations Law" has the meaning provided for by section 14 of the *Corporations Act 1989* of the Commonwealth;

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"Corporations Regulations" has the meaning provided for by section 14 of the *Corporations Act 1989* of the Commonwealth;

"*Gazette*" means the *Commonwealth of Australia Gazette*;

"office copy" means a copy of an order made by the Court and furnished by the Registrar under Order 42, rule 14;

"officer", in relation to a body corporate, has the same meaning as in section 9;

"official liquidator" has the same meaning as in section 9;

"prescribed information" means, in relation to a company—

(a) a statement of—

(i) the statute under which the company was incorporated; and

(ii) the date of the company's incorporation; and

(iii) the general nature of any business carried on or previously carried on by the company at any relevant time; and

(b) unless the company to which the proceedings relate is the applicant, a statement of the capacity in which the applicant makes the application; and

(c) unless the company to which the proceedings relate is the applicant or has entered an appearance in the proceedings—a statement of the address of the company's registered office, as determined by a search, made not earlier than 7 days before the application was filed, of records maintained by the Commission;

"prescribed newspaper" means—

(a) where the proceedings relating to a body corporate and the prescribed office of that body corporate is within 100 kilometres of the Registrar's office in the proper place of the proceedings, a daily newspaper circulating generally in the proper place of the proceedings; or

(b) where the proceedings relate to a body corporate which does not have a prescribed office, and if the principal place of business or the last known principal place of business of the body corporate is or was within 100 kilometres of the

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Registrar's office in the proper place of the proceedings, a daily newspaper circulating generally in the proper place of the proceedings; or

(c) where the proceedings relate to any other body corporate—

(i) if the body corporate has a prescribed office, a newspaper circulating generally in the district in which the prescribed office of the body corporate is situated; or

(ii) if the body corporate does not have a prescribed office, a newspaper circulating generally in the district in which the principal place of business or the last known principal place of business of the body corporate is or was situated;

"prescribed office" means—

(a) where a body corporate is a company, its registered office for the purposes of section 217; or

(b) where a body corporate is registered under Division 1 or Division 2 of Part 4.1 of the Corporations Law, its registered office for the purposes of section 359.

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

(a) a reference to a section, subsection or paragraph in this Order is a reference to a section, subsection or paragraph of the Corporations Law; and

(b) a reference to a form by number is a reference to the form in the Schedule 12 which has that number.

(3) In this Order, unless the contrary intention appears, a word or phrase defined for the purposes of the Corporations Law has the same meaning as in the Corporations Law.

Application of this Order and other Orders to proceedings under the Corporations Law and under the ASC Law

3. (1) This Order applies to all proceedings arising under the Corporations Law or under the ASC Law, whether or not expressly referred to in this Order.

(2) Subject to this Order and to any law of the Commonwealth, the provisions of the other Orders of these Rules apply, so far as is practicable, to proceedings arising under the Corporations Law or under the ASC Law.

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Form of documents

4. (1) Subject to subrule (2), all documents (including an application under rule 5 or rule 6), filed in proceedings arising under the Corporations Law or under the ASC Law, whether or not expressly referred to in this Order, must be headed as in Form 75.

(2) Except in the case of—

(a) an originating process; or

(b) a document to be served on a person not a party to a proceeding; or

(c) a final order;

a document may bear a heading in Form 76 abbreviating the title of the proceeding in a manner sufficient to identify the proceeding.

(3) All documents (including an application under rule 5 or rule 6), filed in proceedings arising under the Corporations Law or under the ASC Law must specify the name and (if applicable) the Australian Company Number of the corporation which is the subject of the proceedings.

(4) If applicable, the words "(in liquidation)", "(receiver appointed)", "(receiver and manager appointed)", "(under official management)" or "(administrator appointed)" shall be added to the name of a corporation that is a party to proceedings.

Commencement of Proceedings

5. (1) All proceedings (other than proceedings within the scope of rule 6) in the Court's original jurisdiction arising under the Corporations Law or under the ASC Law, whether or not expressly referred to in this Order, must be commenced by filing an application in or substantially in Form 5.

(2) An application under this rule must specify the section or sections of the Corporations Law or ASC Law under which the proceedings are brought.

Commencement of proceedings by a person aggrieved—sections 350, 574, 777, 1082, 1140 and 1323

6. (1) This rule applies to an application for—

(a) an order that the name of a foreign company be restored to the register under section 350; and

(b) an order for the reinstatement of the registration of a company under section 574; and

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(c) an order giving directions concerning compliance with the business rules or listing rules of a securities exchange under section 777, if that application is made by a person who claims to be aggrieved by the non-compliance; and

(d) an order under subsection 1082 (2) relating to orders made or directions given where a person was convicted of an offence in respect of an invitation or offer in contravention of Division 6 of Part 7.12 of the Corporations Law; and

(e) an order giving directions concerning compliance with the business rules of a futures exchange, of a clearing house for a futures exchange or of a futures association under section 1140, if that application is made by a person who claims to be aggrieved by the non-compliance; and

(f) an order prohibiting the payment or transfer of money, securities, futures contracts or other properties or any other order under section 1323, if that application is made by a person claiming to be a person aggrieved.

(1A) Persons named as respondents to an application under this rule shall include—

(a) in an application under section 350 or 574—the Commission;

(b) in an application under section 777—the relevant securities exchange; and

(c) in an application under section 1140—the relevant futures exchange, clearing house for a futures exchange, or futures association, as the case may be.

(2) An application under this rule must—

(a) be commenced by filing an application in or substantially in Form 77, together with an affidavit in support of the application; and

(b) specify the section or sections of the Corporations Law or ASC Law under which the proceedings are brought.

(3) As soon as practicable after filing an application under this rule, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and the affidavit in support of the application upon—

(a) the other parties to the proceedings; and

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(b) the company to which the proceedings relate, if it is not a party to the proceedings.

(4) If another party to the proceedings objects to the competency of the application, it must file and serve a notice of objection to competency, stating briefly the grounds of its objection, within 14 days of service of the application upon it.

(5) In addition to the powers of the Court under Order 33 and this Order, the Court may give directions in relation to an application under this rule—

(a) that a party give notice of the application to such persons or classes of persons in such a manner as the Court directs; and

(b) where a notice of objection of competency has been filed by a party to the proceedings, that the objection be determined before the application to which the objection relates is determined.

Powers of Registrar and Master

7. (1) The Registrar or Master may exercise the jurisdiction of the Court—

(a) under a provision specified in column 2 or 3 of an item in Schedule 13; and

(b) under subsection 79 (4) of the ASC Law.

(2) Where a form specified or referred to in a rule is to be used in a proceeding before the Registrar or Master, the form may be altered in such manner as the circumstances require to make the form applicable to that proceeding.

Power to direct that notice be given

9. Without limiting any other power of the Court, at any stage of a proceeding under the Corporations Law the Court may—

(a) direct that notice of any matter be given to any person; and

(b) direct that a document be served on any person; and

(c) give such further directions with respect to such a matter or document as the Court thinks fit.

Leave to creditor, contributory or officer to be heard

10. (1) The Court may grant leave to any person who is or claims to be—

(a) a creditor, contributory or officer of a body corporate; or

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(b) an officer of a creditor of a body corporate; or

(c) an officer of a contributory of a body corporate;

to be heard in proceedings under the Corporations Law without becoming a party to those proceedings.

(2) Leave may be granted under subrule (1) on conditions, and may be revoked by the Court at any time.

(3) If the Court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party to the proceedings (including the body corporate to which the proceedings relate) which should be borne by the person to whom leave was granted, the Court may direct that those costs be paid by that person and may order that that person is not entitled to be heard in the proceedings until those costs are paid or secured to the Court's satisfaction.

(4) The Court may order that a person who is or claims to be a creditor, contributory or officer of the body corporate be added as a respondent in proceedings under the Corporations Law, and may impose conditions on such an order.

(5) Leave may be sought under subrule (1) or an order may be made under subrule (3) on—

(a) a notice of motion brought in the proceedings by a party to the proceedings; or

(b) a notice of motion brought in the proceedings by a person having an interest in the proceedings; or

(c) on the Court's own motion.

Inquiry as to creditors

11. (1) The Court may direct an inquiry as to any debts, claims or liabilities or any class of debts, claims or liabilities of a body corporate to which a proceeding under the Corporations Law relates, or which affects such a body corporate.

(2) Where the Court directs an inquiry under subrule (1), subrules 14 (4) to 14 (8) (inclusive) apply, with such modifications as may be necessary, as though the Court had directed that a list of creditors be settled.

Division 2—Specified applications

Applications under sections 167, 168, 172, 194, 197, 198, 199, 202 and 1074

12. (1) This rule applies to an application for—

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(a) an order for the cancellation of a change of status of a company under section 167;

(b) an order for the cancellation of a change from a public company to a proprietary company or from a proprietary company to a public company under section 168;

(c) an order for the cancellation of an alteration of the memorandum of a company under section 172;

(d) an order validating a purported issue or allotment of shares or confirming the terms of a purported issue or allotment of shares under section 194;

(e) an order setting aside a variation or abrogation of rights attached to shares or an alteration of the memorandum or articles of a company, where the company has a share capital divided into classes of shares, under section 197;

(f) an order setting aside a variation or abrogation of rights attached to shares or an alteration of the memorandum or articles of a company, where the company has a share capital that is not divided into classes of shares, under section 198;

(g) an order setting aside a variation or abrogation of rights of members of a company included in a class of members or an alteration of the memorandum or articles of a company, where the company does not have a share capital, under section 199;

(h) an order approving the payment of interest out of the capital of a company under section 202; and

(i) an order confirming a resolution that an undertaking, scheme, enterprise or arrangement be wound up under section 1074.

(2) Except where an application is brought under section 1074, evidence brought by the applicant in support of an application shall include an affidavit setting out—

(a) the prescribed information; and

(b) the amounts of the authorised and issued share capital of the company, and the classes, if any, of the issued shares;

which may be in Form 128.

(3) Where an application is brought under section 1074, evidence brought by the applicant in support of an application shall include—

(a) an affidavit setting out the prescribed information in relation to the management company under an approved deed, which may be in Form 128; and

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(b) an affidavit setting out details of the undertaking, scheme, enterprise of arrangement to which the application relates.

(4) As soon as practicable after filing an application under this rule, and in any event not later than 14 days after the date of filing, the applicant (if it is not the company to which the proceedings relate) shall serve that application and the affidavit in support of the application on the company to which the proceedings relate.

(5) Unless the Court orders to the contrary, notice in Form 78 of an application to which this rule applies shall be published in the manner prescribed by rule 104 not later than 5 days before the date appointed for directions under Order 2A, rule 8.

(6) If a person on whom the application has not been served intends to appear on the date appointed for directions under Order 2A, rule 8, he or she shall—

(a) file a notice of appearance in Form 79; and

(b) serve that notice of appearance on the applicant;

not later than 2 days before the date appointed for directions.

(7) At the first directions hearing or any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

Division 3—Issue of shares at a discount, reduction of capital, financial assistance, buy backs

Order confirming the issue of shares at a discount—subsection 190 (3)

13. (1) This rule applies to an application for an order confirming the issue of shares at a discount under subsection 190 (3).

(2) Evidence brought by the applicant in support of an application shall include an affidavit setting out—

(a) the prescribed information; and

(b) the amounts of the authorised and issued share capital of the company, and the classes, if any, of the issued shares;

which may be in Form 128.

(3) As soon as practicable after filing an application under this rule, and in any event not later than 14 days after the date of filing, the applicant (if it is not the company to which the proceedings relate) shall serve that

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application and the affidavit in support of the application on the company to which the proceedings relate.

(4) Unless the Court orders to the contrary, notice in Form 78 of an application to which this rule applies shall be published in the manner prescribed by rule 104 not later than 5 days before the date appointed for directions under Order 2A, rule 8.

(5) If a person on whom the application has not been served intends to appear on the date appointed for directions under Order 2A, rule 8, he or she shall—

(a) file a notice of appearance in Form 79; and

(b) serve that notice of appearance on the applicant;

not later than 2 days before the date appointed for directions.

(6) At the first directions hearing or any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

(7) Unless the Court orders to the contrary, an office copy of an order confirming the issue of shares at a discount shall be lodged with the Commission within 14 days after the order is made, or within any other time specified by the Court in the order, and the order will not take effect until after that office copy has been lodged.

Application for order confirming reduction of capital—section 195

14. (1) This rule applies to an application for an order confirming a reduction of the share capital of a company under section 195.

(2) In a directions hearing in proceedings under this rule, the Court may—

(a) determine whether all or any of the provisions of subsection 195 (3) are to apply;

(b) where settlement of a list of creditors is required, fix a date with reference to which the list of creditors is to be made out for the purposes of paragraph 195 (3) (a);

(c) fix the date by which a creditor must furnish particulars of his or her claim for the purposes of paragraph 195 (3) (b);

(d) give directions as to the publication of advertisements for the purposes of section 195 or this rule;

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(e) give directions as to the compliance with any other requirements of section 195 or this rule; and

(f) set a date for the hearing of the application.

(3) Subrules (4) to (11) (inclusive) apply where the Court fixes a date for the purposes of paragraph 195 (3) (a).

(4) Within 7 days after the date fixed by the Court for the purposes of paragraph 195 (3) (a), the company shall—

(a) make out a list of the creditors of the company on that date; and

(b) file an affidavit in Form 81 annexing that list of creditors and verifying the truth of that list.

(5) A list of creditors made out under subrule (4) shall contain—

(a) so far as practicable, the names and addresses of the creditors of the company;

(b) the amount due to each creditor for any debt, claim or liability within the scope of the inquiry; and

(c) if a debt is payable on a contingency or is not ascertained, or if a claim or liability is not ascertained, an estimate of the value of that debt, claim or liability.

(6) A copy of the list of creditors made out under subrule (4) shall be kept at the company's registered office and at the office of its solicitors in the proceedings and shall be made available for inspection at all times during which the company's office is required to be open and accessible to the public under section 217.

(7) A list of creditors made available for inspection under subrule (6) shall show—

(a) the names and addresses of creditors; and

(b) a figure for the total amount due to creditors, including the total value of any estimated debts, claims or liabilities;

and, unless the Court orders to the contrary, the amount due to particular creditors shall not be shown on that list.

(8) Within 7 days of filing the affidavit required under subrule (4), the company shall—

(a) publish a notice in Form 82 in the manner prescribed by rule 104; and

(b) serve a notice in Form 83 on each creditor whose name is contained in the list of creditors made out under subrule (4).

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(9) A notice published or served under subrule (8) shall specify the date by which a creditor shall furnish particulars of his or her claim which was fixed by the Court for the purposes of paragraph 195 (3) (b).

(10) Within 7 days after any date fixed by the Court under paragraph 195 (3) (b) as being the final day on which creditors whose names are not entered on the list of creditors may claim to be so entered, the company shall file—

(a) a notice of motion in the proceedings seeking directions from the Court;

(b) an affidavit in Form 84 which shall be made by the company secretary, the company's solicitor and a managing director, director or other responsible officer of the company and must annex—

(i) a copy of the notice published by the company under subrule (8) (a);

(ii) a copy of the notice served by the company on each creditor under subrule (8) (b);

(iii) the list of creditors made out by the company under subrule (4); and

(iv) lists in alphabetical order of the persons who have sent in particulars of their debts or claims set out as in Schedules D and E to Form 84;

(c) a list in alphabetical order of all creditors who have been paid or who have consented to the proposed reduction of capital, verified by an affidavit by a responsible officer or officers of the company; and

(d) a list in alphabetical order of all creditors whose debts or claims the company does not admit at their full amount but is willing to provide for at their full amount, verified by an affidavit by a responsible officer or officers of the company.

(11) In a directions hearing in relation to a motion for directions under subrule (10), the Court may—

(a) order that the company serve a notice in Form 85 upon a person claiming to be a creditor of the company in an amount other than that admitted by the company, specifying the date on which that person's claim to be a creditor will be heard;

(b) direct that any claim of that person be investigated in such manner as the Court thinks fit;

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(c) require the claimant to provide particulars or evidence of his or her claim or to produce any security relating to the claim;

(d) allow the claim in whole or in part and fix the amount of the claim or disallow the claim in whole or in part; or

(e) give such directions as it thinks proper for securing the claim in the manner specified in paragraph 195 (3) (c).

(12) After hearing the claim of any person claiming to be a creditor of a company other than that admitted by the company, the Court may settle a list of persons entitled to object to the application under subsection 195 (3).

(13) The Court may disallow a claim in whole or in part or limit the amount of that claim to the amount set out beside the claimant's name in the list of creditors filed by the company under subrule (4) if the claimant does not—

(a) comply with a notice served under subrule (11) by filing an affidavit setting out all relevant information and serving that affidavit on the company before the time specified in that notice;

(b) attend at the hearing of his or her claim at the time specified in that notice; and

(c) produce any securities or documents relating to the claim.

(14) Following settlement of a list of the names of creditors entitled to object under section 195 (3) (b), the Court may appoint a date for hearing the application for an order confirming the reduction of the share capital of the company under section 195 (5).

(15) Unless the Court orders to the contrary, the company shall—

(a) publish notice in Form 86 of the hearing of the application in the manner prescribed by rule 104 not later than 5 days before the date appointed for the hearing of the application; and

(b) serve a copy of the application and of each affidavit on which it intends to rely at the hearing of the application on the Commission not later than 5 days before the date appointed for the hearing of the application.

(16) Subject to subrule (17), any creditor of the company—

(a) who has not consented to the proposed reduction of capital; and

(b) whose debt or claim has not been discharged or secured in full;

may appear at the hearing and oppose the application, unless the company has indicated that it is willing to appropriate the amount of that debt or claim in such a manner as the Court directs.

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(17) Unless the Court orders to the contrary, a creditor who appears pursuant to subrule (16) is entitled to his or her costs of doing so.

(18) A person who intends to appear at the hearing of the application shall—

(a) file a notice of appearance in Form 79 together with any affidavit on which he or she intends to rely; and

(b) serve that notice of appearance and any such affidavit on the company;

not later than 2 days before the date appointed for the hearing of the application.

(19) The company or its solicitors shall prepare a list in Form 80 of the names and addresses of persons who have given notice of their intention to appear under subrule (18) and shall file that list in Court at the time the application is heard.

(20) Evidence brought by the company in support of an application to which this rule relates shall include an affidavit setting out—

(a) the prescribed information; and

(b) the amounts of the authorised and issued share capital of the company, and the classes, if any, of the issued shares;

which may be in or substantially in Form 128.

(21) On hearing the application, the Court may—

(a) give directions under paragraph 195 (3) (c) to secure payment of the debt or claim of a creditor who does not consent to a proposed reduction of the capital of the company; and

(b) may require such further evidence and give such further directions as are necessary for that purpose.

(22) In a directions hearing under this rule or on hearing the application, the Court may—

(a) order that a creditor shown on the list filed under subrule (10) as consenting to the proposed reduction of capital be permitted to appear at the hearing of the application and oppose that application, if the Court is satisfied that the creditor did not consent or that the circumstances of his or her consent were such that an order should be made; and

(b) for the purposes of this subrule, direct such investigation, require such information and hear such evidence as it thinks fit.

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(23) An order confirming a reduction of capital shall contain the particulars required under subsection 195 (6).

Service and advertising of order confirming a reduction of capital

15. Within 7 days after an order confirming a reduction of capital is made, or within any other time specified by the Court in the order, the company must—

(a) lodge an office copy of the order with the Commission; and

(b) publish a notice in Form 87—

(i) once in the *Gazette*; and

(ii) once in a prescribed newspaper; and

(iii) in such other publications as the Court directs.

Application opposing giving of financial assistance—subsection 205 (12)

16. (1) This rule applies to an application under subsection 205 (12) opposing the giving by a company of financial assistance for the purpose of or in connection with an acquisition or proposed acquisition of shares or units of shares in the company or in a holding company of the company, where a special resolution has been passed by the company under paragraph 205 (10) (a).

(2) The application shall be accompanied by an affidavit setting out—

(a) the prescribed information; and

(b) a statement of the grounds of the application.

(3) An affidavit filed under subrule (2) may be in Form 128.

(4) As soon as practicable after filing—

(a) the application; and

(b) the affidavit in support of the application;

and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on the company concerned.

Application by creditor in relation to a proposed buy-back scheme or buy-back—section 206LD

17. (1) This rule applies to an application by a creditor under section 206LD for an order prohibiting the making of offers in relation to a proposed buy-back scheme or the entering into of a proposed buy-back.

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(2) The application shall be accompanied by—

(a) an affidavit setting out the prescribed information which may be in Form 128; and

(b) an affidavit—

(i) setting out a statement of the grounds of the application; and

(ii) annexing a copy of the notice relating to the proposed buy back scheme or buy-back published by the company in a newspaper under section 206LC.

(3) As soon as practicable after filing the application and affidavits in support of the application, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and affidavits on—

(a) the company concerned; and

(b) the Commission.

Division 4—Officers (Part 3.2), Financial benefits to related parties of public companies (Part 3.2A), Oppression Proceedings (Part 3.4) and Charges (Part 3.5)

Grant of leave to manage a corporation—section 229

18. (1) This rule applies to an application for leave to manage a corporation under subsection 229 (1) or (3).

(2) The evidence in support of the application shall include—

(a) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information, which may be in Form 128; and

(b) an affidavit made not earlier than 7 days before the application is filed setting out any other material facts to be relied on by the applicant in support of the application.

(3) As soon as practicable after filing the application and the affidavit in support of the application, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(a) the corporation concerned; and

(b) the Commission.

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Order prohibiting a person from managing a corporation—section 230

19. (1) This rule applies to an application for an order under section 230 prohibiting a person from managing a corporation.

(2) The evidence in support of the application shall include—

(a) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information, which may be in Form 128; and

(b) an affidavit made not earlier than 7 days before the application is filed setting out—

(i) any material facts to be relied upon by the applicant in support of the application; and

(ii) a statement of the grounds of the application and a reference to the paragraph or paragraphs of subsection 230 (1) on which the applicant relies.

(3) As soon as practicable after filing the application and the affidavit in support of the application, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(a) the person in relation to whom orders are sought;

(b) any body corporate to which the application relates and any liquidator, provisional liquidator or official manager of that body corporate; and

(c) if the Commission is not the applicant, on the Commission.

Order sanctioning non-compliance with Part 3.2A—section 243ZD

19A. (1) This rule applies to an application for an order under section 243ZD.

(2) An application shall specify the condition prescribed in Part 3.2A of the Corporations Law in respect of which the applicant seeks a declaration.

(3) As soon as practicable after filing the application, but in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application—

(a) on the other parties to the transaction to which the application relates; and

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(b) if the company to which the application relates is not the applicant or a party to the proceeding—on that company.

(4) The Court may direct that notice of an application under section 243ZD be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.

Application for orders in cases of oppression or injustice—section 260

20. (1) This rule applies to an application for an order or orders under section 260.

(2) The evidence in support of the application shall include—

(a) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information, which may be in Form 128; and

(b) an affidavit made not earlier than 7 days before the application is filed setting out—

(i) any other material facts to be relied upon by the applicant in support of the application; and

(ii) a statement of the grounds of the application and a reference to the subparagraph of subsection 260 (1) on which the applicant relies.

(3) The affidavit setting out the matters referred to in paragraph (2) (b) shall be made by a person who can depose of his or her own knowledge to at least some of the grounds relied upon in support of the application.

(4) As soon as practicable after filing the application and the affidavit in support of the application, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(a) the company; and

(b) any person against whom orders are sought in the application.

(5) If the remedies sought in an application under section 260 include an order that the company be wound up, the applicant—

(a) may, at the same time as filing the application and any affidavit in support, lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up is made and, unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator; and

(b) shall, within 14 days of filing, serve a copy of any such nomination on the company.

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(6) Unless the Court orders to the contrary, notice of the application in Form 90 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date the application was served on the company and not later than 7 days before the date appointed for directions under Order 2A, rule 8.

(7) If a person on whom the application has not been served intends to appear on the date appointed for directions under Order 2A, rule 8, he or she shall—

(a) file a notice of appearance in Form 79; and

(b) serve that notice of appearance on the applicant and on the company concerned;

not later than 2 days before the date appointed for directions.

(8) At the first directions hearing or any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in Form 89 of the names and addresses of person who have given notice of their intention to appear in the proceedings.

(9) Without limiting any right of inspection otherwise available under Order 46, rule 6, the Registrar shall—

(a) permit a person who is or claims to be a contributory, member, creditor or officer of the company to inspect an application for an order or orders under section 260 and any affidavits in relation to the application which are in the Registrar's custody; and

(b) on payment of the prescribed fee, provide a person who is or claims to be a contributory, member, creditor or officer of the company with a copy of the application and any affidavits in relation to the application which are in the Registrar's custody.

(10) The Registrar may prescribe a form of application to be completed by a person who seeks to inspect or be provided with a copy of a document under subrule (9).

Application for leave to enforce a charge—subsection 267 (3)

21. (1) Evidence brought by an applicant in support of an application for leave to enforce a charge under subsection 267 (3) must include—

(a) an affidavit setting out the prescribed information, which may be in or substantially in Form 128; and

(b) an affidavit setting out—

(i) the evidence on which the applicant relies to establish that the company which created the charge was solvent immediately after the creation of the charge; and

(ii) any other matters relevant to the application.

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(2) Unless the Court orders to the contrary, notice of an application for an order under subsection 267 (3) need not be published.

Division 5—Arrangements and reconstructions (Part 5.1)

Applications relating to compromises with creditors or members—sections 411 and 413

22. (1) This rule applies to an application to the Court to approve a compromise or arrangement in relation to a Part 5.1 body.

(2) An application relating to a compromise or arrangement under section 411 may be commenced in Form 5. Any further application relating to that compromise or arrangement may be made by notice of motion in the proceedings.

(3) Evidence brought by the applicant in support of an application for an order under subsection 411 (1) that a meeting or meetings be convened must include—

(a) an affidavit setting out—

(i) the prescribed information; and

(ii) the amounts of the authorised and issued share capital of the company, and the classes, if any, of the issued shares;

which may be in or substantially in Form 128;

(b) an affidavit setting out—

(i) the names, addresses and amounts owed by the company to each of its creditors; and

(ii) details of any security held by any creditor of the company; and

(iii) details of any priority or preference to which any creditor would be entitled if the company was then to be wound up; and

(iv) details of any prospective or contingent creditor; and

(v) a statement of the sources from which the list of creditors and their addresses has been compiled and a statement as to the likely accuracy and completeness of that list; and

(vi) a statement that, to the best of the knowledge of the person making the statement, there are no prospective, contingent or other creditors of the company or threatened claims against the company other than those which have been disclosed in the information provided under paragraph (b),

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and setting out the basis of knowledge of the person making the statement; and

(vii) a statement of any Australian State or Territory or any other country in which the company has carried on business or dealings; and

(viii) details of any other compromise or arrangement which has been proposed to be implemented in relation to the company and of any liquidation, official management, receivership or other arrangements between the company and its members or creditors; and

(ix) a statement as to the terms of the proposed compromise or arrangement; and

(x) where the company is already in liquidation or under official management, details of any outstanding steps to be taken in the liquidation or the official management; and

(xi) a statement of any other matters relevant to the application; and

(xii) a copy of the proposed compromise or arrangement and the draft explanatory statement in relation to the proposed compromise or arrangement.

(4) Subject to any direction by the Court to the contrary, evidence brought by an applicant in support of an application for an order under subsection 411 (1A) or 411 (1B) that a meeting or meetings of creditors of a holding company and each of its wholly-owned subsidiaries be held on a consolidated basis must include—

(a) an affidavit, which may be in or substantially in Form 128, setting out—

(i) the names of the holding company and each of the Part 5.1 bodies which are said to be wholly-owned subsidiaries of the holding company ("the relevant subsidiaries"); and

(ii) the amounts of the authorised and issued share capital of the holding company, and the classes, if any, of the issued shares; and

(iii) the prescribed information in relation to the holding company and each of the relevant subsidiaries;

(b) an affidavit setting out—

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(i) a statement of the evidence on which the applicant relies to establish that each of the relevant subsidiaries is a wholly-owned subsidiary of the holding company; and

(ii) a statement as to the terms of the proposed compromise or arrangement; and

(iii) a statement of the matters on which the applicant relies in support of the application, including a statement of the number of meetings between creditors which would be required in the absence of an order under subsection 411 (1A) or 411 (1B); and

(iv) a statement of any other matters relevant to the application; and

(v) a copy of the proposed compromise or arrangement and the draft explanatory statement in relation to the proposed compromise or arrangement.

(5) If a person making an affidavit or affidavits filed under subrule (3) or subrule (4) cannot depose to all the contents of the affidavit from his or her own knowledge, he or she must specify details of the sources of information contained in the affidavit and state his or her belief in the truth of that information.

(6) Prior to the hearing of an application under subsection 411 (1), 411 (1A) or 411 (1B), the applicant must file an affidavit stating that—

(a) the person who is nominated to act as chairman or alternate chairman of a meeting ordered to be convened under subsection 411 (1), 411 (1A) or 411 (1B)—

(i) is willing to act in that capacity; and

(ii) does not have and has not previously had any relationship or dealing with the company or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and

(iii) does not have any interest or obligation which may give rise to a conflict of interest in acting as chairman of the meeting, except as disclosed in the affidavit; and

(b) the person proposed to be appointed to administer the proposed compromise or arrangement does not fall within paragraphs (a) to (f) (inclusive) of subsection 411 (7), except as disclosed in the affidavit.

(7) Unless the Court orders to the contrary, notice in Form 91 of—

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(a) an application for an order approving a compromise or arrangement under subsection 411 (4); or

(b) an application for an order in respect of the reconstruction or amalgamation of a Part 5.1 body or bodies under subsection 413 (1);

must be published in the manner prescribed by rule 104 not later than 5 days before the date appointed for the hearing of the application.

(8) A copy of an application for an order under subsection 411 (4) or 413 (1) must be served on the Commission, together with copies of any affidavits upon which the applicant intends to rely, as soon as practicable after the notice of motion is filed and in any event not later than 14 days after the date of filing the application.

(9) If a person on whom the application has not been served intends to appear at the hearing of the application, he or she must—

(a) file a notice of appearance in Form 79 together with any affidavit on which he or she intends to rely; and

(b) serve that notice of appearance and any such affidavit on the applicant;

not later than 2 days before the date appointed for the hearing of the application.

(10) If the Commission intends to appear at a hearing of the application seeking approval of the compromise or arrangement and to oppose the grant of that approval, it must—

(a) file a notice of intervention in Form 127 together with any affidavit on which it intends to rely; and

(b) serve that notice of intervention and any such affidavit on the applicant;

not later than 2 days before the date appointed for the hearing of the application.

(11) At the first directions hearing or any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

Service of order approving a compromise or arrangement

23. The applicant must lodge an office copy of an order of the Court under subsection 411 (1), 411 (4), 411 (6) or 413 (1) with the Commission and serve an office copy of the order on any person appointed to administer

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the compromise or arrangement within 7 days of the date on which the order is made, or within any other time specified by the Court in the order.

Inquiry as to conduct of person administering a compromise or arrangement—subsection 411 (9)

24. (1) A complaint to the Court under subsection 411 (9) may be made by filing a notice of motion seeking an inquiry in respect of the complaint and an affidavit setting out the relevant circumstances in the proceedings in which the compromise or arrangement was approved by the Court.

(2) A report to the Court by the Commission in respect of the conduct of a person administering a compromise or arrangement may be made by filing—

(a) a notice of motion seeking orders in respect of the report; and

(b) an affidavit setting out the relevant circumstances or annexing a copy of the report;

in the proceedings in which the compromise or arrangement was approved by the Court.

(3) A report filed under subrule (2) must not be inspected or used except with the leave of the Court.

(4) The Commission, a creditor or contributory of a Part 5.1 body, or a person aggrieved by the conduct of a person administering a compromise or arrangement may seek an order that the person administering the compromise or arrangement or any other person be examined under subsection 411 (9) by filing a notice of motion in the proceedings in which the compromise or arrangement was approved by the Court.

(5) Rule 81 applies, with such adaptations as may be necessary, to an examination under subrule (4).

Application to restrain proceedings against Part 5.1 body—subsection 411 (16)

25. (1) Where a compromise or arrangement has been proposed between a Part 5.1 body and its creditors or any class of them, an application under subsection 411 (16) for an order restraining further proceedings in an action or civil proceeding against that body may be made by notice of motion in the proceedings commenced under subsection 411 (1).

(2) Unless the Court orders to the contrary, the notice of motion referred to in subrule (1) must be served on the person bringing the action or proceeding against that body.

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Review of remuneration of person administering a compromise or arrangement

26. On the application of a person whose interests are affected by a compromise or arrangement approved by the Court under section 411, the Court may fix or review the remuneration of the person appointed to administer the compromise or arrangement.

Application for directions in relation to compromise or arrangement

27. (1) A trustee or manager under a compromise or arrangement or any member bound by a compromise or arrangement may apply to the Court by notice of motion for directions in relation to any matter arising in the administration of the compromise or arrangement.

(2) A notice of motion under subrule (1) must indicate the matter in respect of which directions are sought.

(3) The Court may direct that notice of an application under subrule (1) be given by advertisement or otherwise to such persons or classes of persons as the Court determines, and may adjourn the application for that purpose.

Division 6—Receivers and Other Controllers of Corporation Property (Part 5.2)

Declaration as to validity of controller's appointment—section 418A

27A. (1) A person (other than a controller) who intends to file an application for a declaration concerning the validity of a controller's appointment under section 418A shall give written notice of the proposed application to the controller, not later than the day before the application is filed—

(a) by hand delivery; or

(b) by express post addressed to the controller.

(2) An application for a declaration shall be accompanied by an affidavit annexing a copy of the notice required under subrule (1).

(3) As soon as practicable after filing an application for a declaration, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on—

(a) if the controller is not the applicant—the controller; and

(b) if the company concerned is not the applicant—that company.

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(4) The Court may direct that notice of an application be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.

Power to make order relieving a person from liability if not properly appointed as receiver—subsection 419 (3)

28. An application for—

(a) an order under paragraph 419 (3) (d) in respect of a person who entered into or assumed control of property of a corporation and was not properly appointed as receiver; and

(b) an order under paragraph 419 (3) (e) in respect of a person who purported to appoint the first person as receiver;

may be made by notice of motion in the proceedings referred to in paragraph 419 (3) (c).

Application for relief of controller from liability—subsection 419A (7)

28A. (1) An application under subsection 419A (7) shall be accompanied by an affidavit setting out the identity of persons to whom the controller is or may be liable for rent or other payments in the absence of an order relieving the controller from liability.

(2) As soon as practicable after filing the application and affidavit, and in any event not later than 7 days after the date of filing, the controller shall serve a copy of the application and affidavit on each of the persons identified in the affidavit as a person to whom the controller is or may be liable.

Court's power to authorise managing controller to dispose of property despite prior charge—section 420B

28B. (1) An application under section 420B shall be accompanied by an affidavit setting out—

(a) the nature of the property that the controller seeks authority to dispose of;

(b) a summary of the terms of the proposed sale or disposition;

(c) the identity of the proposed purchaser or disponee;

(d) the identity of the person who holds a prior charge over the property and the nature of that charge;

(e) the steps taken by the managing controller to obtain the consent of the holder of the prior charge to the sale or disposal; and

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(f) the identity of any other persons who, to the knowledge of the applicant, hold an interest in the property.

(2) As soon as practicable after filing the application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

(a) the person identified in that affidavit as the holder of the prior charge;

(b) any other person identified in that affidavit as holding an interest in the property; and

(c) the company concerned.

Receiver's power to carry on a corporation's business during a winding up—section 420C

28C. As soon as practicable after filing an application under section 420C and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on the liquidator of the corporation.

Inquiry as to conduct of a controller—section 423

29. (1) A complaint to the Court under paragraph 423 (1) (b) or a report to the Court by the Commission under subsection 423 (2) may be made—

(a) in the case of a controller appointed under an instrument, by filing—

(i) an application in Form 5 seeking an inquiry in respect of the complaint; and

(ii) (A) in the case of a report to the Court by the Commission under subsection 423 (2), an affidavit setting out the relevant circumstances or annexing a copy of the report; or

(B) in any other case, an affidavit setting out the relevant circumstances; or

(b) in the case of a controller appointed by the Court, by filing—

(i) a notice of motion seeking an inquiry in respect of the complaint in the proceeding in which the controller was appointed; and

(ii) (A) in the case of a report to the Court by the Commission under subsection 423 (2), an affidavit

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setting out the relevant circumstances or annexing a copy of the report; or

(B) in any other case, an affidavit or affidavits setting out the relevant circumstances.

(2) A report by the Commission under subsection 423 (2) shall not be inspected or used without the leave of the Court.

(3) The Commission, a creditor or contributory or a person aggrieved by the conduct of a controller may seek an order that the controller or any other person be examined under subsection 423 (3)—

(a) in the case of a controller appointed under an instrument, by filing an application in Form 5; or

(b) in the case of a controller appointed by the Court, by filing a notice of motion in the proceeding in which the controller was appointed.

(4) Rule 81 applies, with such adaptations as may be necessary, to an examination under subrule (3).

Application by controller for directions—section 424

30. (1) An application to the Court by a controller under section 424 shall indicate the matter in respect of which the controller seeks the directions of the Court.

(2) The Court may direct that notice of an application under section 424 be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.

Court's power to fix receiver's remuneration—section 425

30A. As soon as practicable after filing an application under section 425, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on—

(a) if a liquidator of the corporation is not the applicant—that liquidator;

(b) if an administrator of the corporation is not the applicant—that administrator;

(c) if an administrator of a deed of company arrangement executed by the corporation is not the applicant—that administrator;

(d) if the receiver concerned is not the applicant—the receiver; and

(e) the Commission.

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Court's power to remove controller for misconduct—section 434A

30B. **(1)** Evidence brought by an applicant in support of an application for the removal of a controller under section 434A shall include an affidavit—

(a) stating any material facts relied upon by the applicant in support of the application; and

(b) identifying the grounds on which it is said that the controller should be removed.

(2) As soon as practicable after filing the application and affidavit in support, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

(a) the controller; and

(b) the corporation concerned.

Removal of redundant controller—section 434B

30C. **(1)** An application for the removal of a redundant controller under section 434B shall be accompanied by an affidavit setting out—

(a) the nature of the property in relation to which the controller is appointed;

(b) the identity of the holder of the charge under which the controller is appointed; and

(c) the grounds on which the applicant relies to allege that the controller is redundant.

(2) As soon as practicable after filing the application, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on—

(a) the person specified in that affidavit as the holder of the charge under which the controller was appointed; and

(b) the controller.

Division 7—Official management (Part 5.3)

Stay of proceedings where company is under official management—section 444

31. **(1)** An application for leave to carry on an action or civil proceeding against a company under official management may be made by notice of motion in the action or proceeding in respect of which leave is sought.

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(2) An application for leave to commence an action or civil proceeding against a company under official management may be made by filing an application in Form 5.

(3) Where a company has convened a meeting of its creditors for the purpose of placing the company under official management under section 436, an application for a stay of proceedings in an action or civil proceeding against the company under subsection 444 (2) may be made by notice of motion in that action or proceeding.

(4) This rule applies only to companies placed in official management before 23 June 1993.

Inquiry as to conduct of official manager—subsection 452 (4)

32. (1) A complaint to the Court under subsection 452 (4) may be made by filing an application in Form 5 seeking an inquiry in respect of the complaint and an affidavit setting out the relevant circumstances.

(2) A report to the Court by the Commission in respect of conduct of an official manager of a company may be made by filing—

(a) an application in Form 5 seeking orders in respect of the report; and

(b) an affidavit setting out the relevant circumstances or annexing a copy of the report.

(3) A report filed under subrule (2) shall not be inspected or used except with the leave of the Court.

(4) The Commission, a creditor or contributory of a company, or a person aggrieved by the conduct of an official manager of a company may seek an order that the official manager or any other person be examined under subsection 452 (4) by filing an application in Form 5.

(5) Rule 81 applies, with such adaptations as may be necessary, to an examination under subrule (4).

(6) This rule applies only to companies placed in official management before 23 June 1993.

Application for variation or cancellation of resolution to place company under official management—section 454

33. (1) This rule applies to an application under section 454 for the variation or cancellation of a resolution determining that a company be placed under official management.

(2) An application under this rule need not be served on any person.

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(3) Evidence brought by the applicant in support of the application shall include—

(a) an affidavit setting out the prescribed information, which may be in Form 128; and

(b) an affidavit setting out—

(i) evidence that the applicant falls within paragraph 454 (1) (a), (b) or (c) and a statement of which of those paragraphs applies; and

(ii) a statement whether the applicant claims that there is no reasonable prospect of the company being rehabilitated or that the resolution to place the company under official management is not in the interests of creditors and members of the company or both.

(4) An application for a variation of the resolution shall be accompanied by a draft of the variation which is sought.

(5) Unless the Court orders to the contrary, notice in Form 92 of the application shall be published in the manner prescribed by rule 104 not later than 5 days before the date appointed for the hearing of the application.

(6) If a person on whom the application has not been served intends to appear at the hearing of the application, he or she shall—

(a) file a notice of appearance in Form 79 together with any affidavit on which he or she intends to rely; and

(b) serve that notice of appearance and any such affidavit on the applicant;

not later than 2 days before the date appointed for the hearing of the application.

(7) The applicant or its solicitors shall prepare a list in Form 80 of the names and addresses of persons who have given notice of their intention to appear under subrule (6) and shall file that list in Court at the time the application is heard.

(8) This rule applies only to companies placed in official management before 23 June 1993.

Release of official manager—section 456

34. (1) A person who applies for an order of release under subsection 456 (19) or 456 (20) shall give notice of that application to—

(a) each creditor who has proved his or her debt; and

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(b) each creditor who is—

(i) mentioned in the report as to the affairs of the company prepared under subsection 436 (4); and

(ii) who has not proved his or her debt.

(2) This rule applies only to companies placed in official management before 23 June 1993.

Division 7A—Administration of a Company's Affairs (Part 5.3A)

Applications under Part 5.3A

34A. (1) An application under Part 5.3A of the Corporations Law shall be made in accordance with Form 5.

(2) Without limiting the generality of Order 75B, rule 9, the Court may direct that notice of an application within the scope of Part 5.3A of the Corporations Law be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.

(3) As soon as practicable after filing an application that relates to a matter specified in Column 1 of the following table, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application on the person or persons specified opposite that kind of application in Column 2 of the table.

Column 1 Nature of application	Column 2 Persons to be served copy
Application for leave to enforce a charge if an administrator has been appointed (section 440B)	The administrator of the company concerned
Application for leave to take possession of property (section 440C)	The administrator of the company concerned
Application for leave to begin, or proceed with, enforcement process in relation to the property of a company (section 440F)	The administrator of the company concerned

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Column 1 Nature of application	Column 2 Persons to be served copy
Application for leave to take enforcement action under a guarantee (section 440J)	(a) The person who gave the guarantee concerned; and (b) the administrator of the company concerned.
Application to limit powers of chargee in relation to charged property (section 441D)	The chargee, receiver or other person, to which the application properly relates
Application to limit powers of receiver etc. in relation to property used by company (section 441H)	The person who has entered into possession or assumed control of property or who exercises any other power in relation to the property, in respect of which the application is made
Application for leave to dispose of— (a) property of a company in administration which is subject to a charge; or (b) property that is used or occupied by, or is in the possession of, a company in administration but of which someone else is the owner or lessor. (section 442C)	The chargee, owner or lessor of the property concerned
Application for relief of administrator from personal liability for rent (section 443B)	The owner or lessor of the property concerned
Application for extension of time for execution of deed of company arrangement (subsection 444B (2))	(a) The company concerned (if it is not the applicant); and (b) the administrator of the company (if he or she is not the applicant).

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Column 1 Nature of application	Column 2 Persons to be served copy
Application by a person bound by a deed of company arrangement to begin, or proceed with— (a) a proceeding against the company or in relation to any of its property; or (b) enforcement process in relation to the property of the company. (section 444E)	The administrator of the company concerned
Application for an order cancelling a variation of a deed of company arrangement (section 445B)	The administrator concerned
Application for an order terminating a deed of company arrangement (section 445D)	(a) The administrator of the deed of company arrangement (if he or she is not the applicant); and (b) the company concerned (if it is not the applicant).
Application for an order as to the application of Part 5.3A in respect of a particular company (section 447A)	(a) If the company is in administration—the administrator of the company (if he or she is not the applicant); and (b) if the company has executed a deed of company arrangement—the deed's administrator (if he or she is not the applicant).
Application for an order to protect interests of a company's creditors during an administration (section 447B)	(a) The administrator of the company (if he or she is not the applicant); or (b) the administrator of the deed of company arrangement concerned (if he or she is not the applicant).

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Column 1 Nature of application	Column 2 Persons to be served copy
Application for the determination, or review, of the remuneration of an administrator (section 449E)	The administrator of the company concerned or of the deed of arrangement of the company concerned, as the case may be (if he or she is not the applicant)

Court's power to limit rights of secured creditor or owner or lessor of property—subsection 444F (1)

34B. (1) An application for an order under subsection 444F (1) shall be accompanied by an affidavit that—

(a) annexes a copy of the proposed deed of company arrangement or of the executed deed of company arrangement, as the case may be;

(b) sets out the identity of the secured creditor or owner or lessor, as the case may be, of property to which the application relates;

(c) sets out the nature of the security or the interest in the property; and

(d) specifies the grounds (if any) on which it is said that the interests of the creditor, owner or lessor will be adequately protected by the terms of the deed.

(2) As soon as practicable after filing the application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on any creditor, owner or lessor of property to which the application relates.

Application to avoid or validate a deed of company arrangement—section 445G

34C. (1) A person (other than the administrator of a deed of company arrangement) who intends to file an application under section 445G for an order avoiding the deed of company arrangement, shall give written notice of the proposed application to the administrator not later than the day before the application is filed—

(a) by hand delivery; or

(b) by express post addressed to the administrator.

(2) An application for an order under subsection 445G (1) shall be accompanied by an affidavit—

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(a) stating any material facts relied on by the applicant in support of the application;

(b) identifying the grounds on which it is said that the Court should make an order under subsection 445G (2); and

(c) if the application is for an order avoiding the deed—annexing a copy of the notice required under subrule (1).

(3) As soon as practicable after filing an application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

(a) if the administrator of the deed of company arrangement is not the applicant—the administrator; and

(b) the Commission.

Application by administrator for directions—section 447D

34D. (1) An application to the Court under section 447D shall indicate the matter in respect of which the administrator seeks directions from the Court.

(2) An application shall be accompanied by an affidavit setting out any matters known to the applicant and material to the application.

Supervision of administrator of company or deed of company arrangement—section 447E

34E. (1) An application for an order under subsection 447E (1) shall be accompanied by an affidavit—

(a) stating any material facts relied upon by the applicant in support of the application; and

(b) identifying the grounds on which it is said that the Court should make an order under section 447E.

(2) As soon as practicable after filing an application and affidavit, and in any event not later than 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

(a) the administrator of the company or of the deed of company arrangement, as the case may be; and

(b) the Commission.

Removal of administrator—section 449B

34F. (1) An application for an order under subsection 449B shall be accompanied by an affidavit—

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(a) stating any material facts relied upon by the applicant in support of the application; and

(b) identifying the grounds on which it is said that the Court should make an order under section 449B.

(2) As soon as practicable after filing an application and affidavit, and in any event within 7 days after the date of filing, the applicant shall serve a copy of the application and affidavit on—

(a) the administrator of the company or of the deed of company arrangement concerned; and

(b) the Commission.

Vacancy in office of administrator of a company or of administrator of a deed of company arrangement—sections 449C and 449D

34C. (1) This rule applies to an application—

(a) under section 449C—for an order that a person be appointed as administrator of a company; or

(b) under section 449D—for an order that a person be appointed as administrator of a deed of company arrangement.

(2) At the same time as filing an application, the applicant shall lodge a nomination in accordance with Form 92A of a person who (unless the Court is satisfied that some other person should be appointed) will be appointed—

(a) as administrator of the company, if an order under section 449C is made; or

(b) as administrator of the deed of company arrangement, if an order under section 449D is made.

(3) Within 14 days of filing the application, the applicant shall file a written acknowledgment in accordance with Form 92B, signed by the person nominated under subrule (2).

(4) The applicant shall publish a notice of the application in accordance with Form 92C, in the manner prescribed by rule 104, not later than 7 days before the date on which the application is to be heard.

Division 8—Winding up by the Court (Part 5.4)

Address for service in winding up applications

35. (1) Order 7, subrule 6 (1) does not apply to a document filed by a solicitor in relation to proceedings for the winding up of a company under section 459P or 462.

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(2) For the purposes of proceedings referred to in subrule (1), the address given as the address for service of a person who is represented by a solicitor shall—

(a) be within the District in which the winding up application is filed; and

(b) be the address of the solicitor or of a solicitor acting as agent for that solicitor.

Application for a winding up order—section 462

36. (1) This rule applies to an application for a winding up order under section 462, on or after 23 June 1993.

(2) On filing and serving an application, the applicant shall also file and serve—

(a) an affidavit made not earlier than 7 days before the application is filed, setting out the prescribed information, which may be in accordance with Form 128; and

(b) an affidavit made not earlier than 7 days before the application is filed, setting out—

(i) any other material facts to be relied on by the applicant in support of the application; and

(ii) the grounds of the application and a reference to the provision or provisions of section 461 on which the applicant relies.

(3) If an application is made on a ground provided for by paragraph 461 (a), the affidavit referred to in paragraph (2) (a) shall—

(a) include a statement whether, at the date of the application, the company is able to pay all its debts as and when they become due and payable; and

(b) annex the most recent accounts of the company that are lodged with the Commission.

(4) The affidavit referred to in paragraph (2) (b) shall be made by a person who can depose of his or her own knowledge to at least some of the grounds relied on for the winding up of the company.

(5) Subject to subrule (6), at the same time as filing the application and any affidavit in support, the applicant may lodge a nomination in accordance with Form 88 of an official liquidator who will be appointed as liquidator (unless the Court is satisfied that some other official liquidator should be appointed) if an order for the winding up of the company is made.

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(6) Subrule (5) applies to a voluntary winding up occurring under Part 5.5 of the Corporations Law, if for the purposes of winding up the affairs and distributing the property of the company, a person has been nominated to be liquidator—

(a) by the company at its meeting; or

(b) by the creditors of the company at their meeting.

(7) As soon as is practicable after filing the application and any affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve on the company, in a manner permitted by section 220—

(a) a signed and sealed copy of the application;

(b) the affidavits on which it relies; and

(c) any nomination of a liquidator under subrule (5).

(8) Unless the Court orders to the contrary, notice of an application in accordance with Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date a copy of the application was served on the company and not later than 7 days before the day appointed for directions under Order 2A, rule 8.

(9) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8, or a day subsequently appointed for directions in the proceedings.

(10) If the company to which a winding up application relates intends to appear on the day appointed for directions or on the hearing of a winding up application, and to oppose the application, it shall—

(a) file a notice of appearance in accordance with Form 79, specifying the grounds of opposition and an affidavit verifying those grounds in accordance with Form 93A; and

(b) serve a copy of the notice of appearance and affidavit on the applicant, not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

(11) A person (other than the company to which a winding up application relates) who intends to appear on the day appointed for directions, or on the hearing of a winding up application, shall—

(a) file—

(i) a notice of appearance in accordance with Form 79, specifying any grounds of opposition to the application; and

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(ii) if he or she opposes the application—an affidavit verifying the grounds of opposition in accordance with Form 93A; and

(b) serve a copy of the notice of appearance and affidavit on the applicant not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

[See footnote (1) to this Order]

(12) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

(13) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

(a) be permitted by the Registrar to inspect an application to wind up the company, and any affidavits in relation to the application that are in the Registrar's custody; and

(b) on payment of the prescribed fee—be provided with a copy of those documents.

(14) Nothing in this rule shall restrict any power of the Court to appoint more than one liquidator and to declare whether anything that is required by the Corporations Law to be done by the liquidator is to be done by all, or by any one or more, of the persons appointed.

(15) An application to which this rule applies may not be discontinued without the leave of the Court.

Form of affidavit in support of statutory demand—subsection 459E (3)

36A. (1) An affidavit verifying that a debt is due, for the purposes of subsection 459E (3), shall—

(a) be in accordance with Form 93B;

(b) contain the statement headed "Important Note" set out in the form; and

(c) not state a proceedings number.

(2) An affidavit under this rule shall not be filed with the Court unless winding up proceedings have been commenced in the matter to which the affidavit relates.

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(3) Unless the Court orders to the contrary, an affidavit under this rule shall be made by a person who can depose to his or her own knowledge of the indebtedness of the company.

(4) For the purposes of subsection 459E (3), an affidavit in support of a statutory demand that complies with the rules of a Supreme Court of a State or Territory is taken to be an affidavit that complies with this rule.

Application to set aside a statutory demand—section 459G

36B. An application under subsection 459G (1) shall be made in accordance with Form 5 and shall be accompanied by an affidavit—

(a) stating any material facts relied upon by the applicant in support of the application; and

(b) identifying the grounds on which it is said that the Court should make an order under section 459H setting aside the demand.

[See footnote (2) to this Order]

Application for leave to bring a winding up application under subsection 459P (2)

36C. (1) An application by a person described in subsection 459P (2) for leave to bring a winding up application shall be made in accordance with Form 5.

(2) An application for leave shall be accompanied by an affidavit—

(a) setting out the prescribed information; and

(b) specifying the material facts on which the applicant relies, for the purposes of subsection 459P (3), to establish a *prima facie* case that the company is insolvent.

(3) As soon as practicable after filing the application and affidavit, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application and the affidavit on the company to which the application relates.

(4) If the Court grants leave under subsection 459P (2) to an applicant to bring a winding up application—

(a) an application in accordance with Form 93C may be filed in the proceedings in which leave to bring the winding up application was granted; and

(b) the winding up proceedings shall otherwise proceed under rule 37.

Winding up of a company in insolvency under section 459P

37. (1) This rule applies to an application under section 459P for a winding up order.

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(2) An application that relies on a failure to comply with a statutory demand may be made in accordance with Form 93C and shall set out the matters referred to in paragraph 459Q (a) and have attached the documents referred to in paragraph 459Q (b).

(3) An application that does not rely on a failure to comply with a statutory demand may be made in accordance with Form 93C and shall specify the grounds on which the applicant relies to allege that the company is insolvent. [See footnote (3) to this Order]

(4) On filing and serving an application referred to in subrule (2), the applicant shall also file and serve—

(a) an affidavit made not earlier than 7 days before the application is filed, setting out the prescribed information, which may be in accordance with Form 128; and

(b) if the debt is not a judgment debt—an affidavit in or substantially in accordance with Form 94 setting out—

(i) a statement of the debt alleged and details of how and when it was incurred; and

(ii) a statement that the debt is due and payable to the applicant.

(5) On filing and serving an application referred to in subrule (3), the applicant shall also file and serve an affidavit setting out the material facts relied on in support of the application.

(6) Unless the Court orders to the contrary, an affidavit referred to in paragraph (4) (b) or subrule (5) shall be—

(a) made by a person who can depose to the indebtedness of the company, or to the facts relied on in support of the application, as the case may be, to his or her own knowledge; and

(b) served on the company, with the copy of the application.

(7) At the same time that the application and any affidavit in support is filed, the applicant may lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up of the company is made, and unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator.

(8) As soon as is practicable after filing the application and any affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve on the company concerned a copy of any affidavits on which it relies, and any nomination of a liquidator under subrule (7), in a manner permitted by section 220.

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(9) Unless the Court orders to the contrary, notice of an application in accordance with Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date a copy of the application was served on the company and not later than 7 days before the day appointed for directions under Order 2A, rule 8.

(10) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8 or a day subsequently appointed for directions in the proceedings.

(11) If the company to which a winding up application relates intends to appear on the day appointed for directions or on the hearing of a winding up application, and to oppose the application, it shall—

(a) file a notice of appearance in accordance with Form 79, specifying the grounds of opposition and an affidavit verifying those grounds in accordance with Form 93A; and

(b) serve a copy of the notice of appearance and affidavit on the applicant, not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

(12) A person (other than the company to which a winding up application relates) who intends to appear on the day appointed for directions, or on the hearing of a winding up application, shall—

(a) file—

(i) a notice of appearance in accordance with Form 79, specifying any grounds of opposition to the application; and

(ii) if he or she opposes the application—an affidavit verifying the grounds of opposition in accordance with Form 93A; and

(b) serve a copy of the notice of appearance and affidavit on the applicant not later than 2 days before the day appointed for directions or the day of the hearing, as the case may be.

[See footnote (4) to this Order]

(13) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

(14) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member,

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creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

(a) be permitted by the Registrar to inspect an application to wind up the company and any affidavits in relation to the application that are in the Registrar's custody; and

(b) on payment of the prescribed fee—be provided with a copy of those documents.

(15) An application may not be discontinued without the leave of the Court.

(16) Nothing in this rule shall restrict any power of the Court to appoint more than one liquidator and to declare whether anything that is required by the Corporations Law to be done by the liquidator is to be done by all, or by any one or more, of the persons appointed.

Filing in Court of documents in support of an application under section 459P or 462

38. (1) Subject to subrule (2), the applicant shall file either before or at the hearing of an application under section 459P or 462—

(a) an affidavit—

(i) if the company is not the applicant—proving service on the company of the application and any affidavits in support of the application;

(ii) stating that a notice of the making of the winding up application was lodged with the Commission in compliance with paragraph 470 (1) (a), and annexing a copy of that notice as lodged; and

(iii) proving publication of notice of the application in compliance with subrule 36 (8) or 37 (9), as the case may be, and annexing a copy of that notice as published;

(b) an affidavit, made not earlier than 3 days before the day of the final hearing of the application, stating that a search of the company records maintained by the Commission was undertaken not earlier than 3 days before the date on which that affidavit is made, and stating whether or not the search disclosed—

(i) that an administrator had been appointed to the company, and, if so, stating details of that appointment; and

(ii) that a winding up application was pending or a winding up order had been made against the company, and, if so, stating details of that application or order; and

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(c) if the application relies on a failure to comply with a statutory demand—an affidavit in accordance with Form 95, made not earlier than 3 days before the date of the final hearing of the application.

(2) If the applicant seeks the determination of the application at a directions hearing, he or she shall file the documents referred to in subrule (1) either before or at the directions hearing.

Sealing of winding up order and notice of appointment of liquidator

39. If an applicant attends the hearing at which the winding up order is made with a sufficient number of copies of—

(a) an order for the winding up of the company in Form 96; and

(b) a notice of the appointment of a liquidator in Form 99;

the Court may, at the time it makes the order for the winding up of the company, direct that those copies be sealed forthwith.

Court's power to extend time within which application for a company to be wound up in insolvency is to be determined—section 459R

39A. (1) An application under section 459R for an extension of time for determination of a winding up application shall be made by notice of motion in the winding up proceedings.

(2) An application shall be supported by an affidavit setting out the material facts on which the applicant relies.

(3) As soon as practicable after filing the application and affidavit in support, and in any event within 14 days of the date of filing, the applicant shall serve a copy of the application and affidavit in support on the company to which the winding up application relates.

Proceedings after order for winding up is made

40. The number assigned to proceedings relating to an application to wind up a company must be shown on any document filed in proceedings in the winding up of the company after the winding up order is made.

Substituted applicant in winding up application—section 465B

41. (1) An order under section 465B may—

(a) include an order in accordance with Form 97 substituting the person who applied for the order for the person who was formerly the applicant in the proceedings; and

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(b) if the Court sees fit—include an order requiring publication of a notice in accordance with Form 98 in the manner prescribed by rule 104 or in such other manner as the Court directs.

(2) This rule does not limit the powers of the Court under Order 19.

Notice of appointment of liquidator

42. (1) If an order for the winding up of a company is made, the applicant shall—

(a) if a notice of appointment of liquidator in Form 99 has not been sealed after the making of the winding up order under rule 39, obtain a sealed copy of that notice from the Registrar's office not later than the day after the order was made;

(b) serve the sealed notice on the liquidator appointed to the company not later than the day after the order was made;

(c) if the company is not the applicant, serve a copy of the notice on the company by delivering that notice to the registered office of the company or posting that notice by prepaid post not later than the day after the order was made; and

(d) publish a notice in Form 100 in the manner prescribed by rule 104 as soon after the order was made as is practicable.

(2) Unless the Court orders to the contrary, the expense of complying with this rule will be a charge on the assets of the company.

[See footnote (5) to this Order]

Service of winding up order

43. Within 7 days of the making and entry of an order for the winding up of a company, the applicant (unless it is the Commission) must—

(a) lodge an office copy of the sealed order of the Court with the Commission in compliance with paragraph 470 (2) (a); and

(b) serve an office copy of the sealed order on the company in compliance with paragraph 470 (2) (b); and

(c) serve an office copy of the sealed order of the Court on the liquidator appointed in the winding up order in compliance with paragraph 470 (2) (c).

Stay of proceedings on winding up application—subsection 467 (7)

44. If—

(a) a winding up application has been made in relation to a company and a winding up order has not been made; and

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(b) an action or other civil proceeding against the company is pending;

an application to the Court for an order staying or restraining further proceedings in the action or proceeding may be made by notice of motion in that action or proceeding or in the proceedings for the winding up order.

Validation of disposition of property—section 468

45. An application for an order under subsection 468 (3) validating a disposition of property of a company or permitting the business of the company or a portion of that business to be carried on may be made by notice of motion in the proceedings for the winding up order.

Application for leave to commence or continue proceedings against a company—section 471B

46. (1) This rule applies to a proceeding in the Court—

(a) against a company that is being wound up in insolvency or by the Court;

(b) in respect of which a provisional liquidator has been appointed; or

(c) in relation to property of a company that is being wound up in insolvency or by the Court.

(2) If the proceeding was commenced before—

(a) the making of a winding up order; or

(b) the appointment of a provisional liquidator;

an application under section 471B for leave to proceed with the proceeding may be made by notice of motion in the proceeding or in the winding up proceedings.

(3) If a person seeks leave under section 471B to begin a proceeding, the application for leave may be made by notice of motion in the winding up proceedings.

Transitional provisions for winding up applications

47. Rules 36, 37 and 41 set out in Schedule 13A to these Rules apply to an application for a winding up order under section 460 or 461 that is made before 23 June 1993 and to proceedings in relation to such an application.

Division 9—Provisional liquidators

Appointment of provisional liquidator—section 472

48. (1) A creditor or contributory of a company, the company or the Commission may apply for the appointment of a provisional liquidator

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under subsection 472 (2) by notice of motion in the proceedings for a winding up order.

(2) At the time of filing a notice of motion under subrule (1), an applicant for the appointment of a provisional liquidator shall file—

(a) an affidavit setting out the material facts relied upon to support the application;

(b) a nomination in accordance with Form 88 of an official liquidator for appointment as a provisional liquidator;

(c) a draft notice of the appointment of a provisional liquidator in Form 99; and

(d) a draft order for appointment of the provisional liquidator, including a short description of the property of which the provisional liquidator is to take possession.

(3) The applicant (if not the company as to which an order is sought) shall forthwith serve the notice of motion referred to in subrule (1) and the affidavit referred to in subrule (2) on the company concerned.

(4) The Court may order that a provisional liquidator be appointed on such terms and conditions as it thinks fit, and may require that the applicant for the order give an undertaking as to damages.

Notice of appointment of provisional liquidator

49. (1) If an order for the appointment of a provisional liquidator is made, the applicant shall—

(a) obtain a sealed copy of a notice in Form 99 from the Registrar's office not later than the day after the order was made;

(b) serve the sealed notice on the provisional liquidator appointed to the company not later than the day after the order was made;

(c) if the company is not the applicant—serve a copy of the notice on the company by delivering it to the registered office of the company or by posting it by prepaid post not later than the day after the order was made;

(d) lodge a copy of the notice with the Commission within 2 business days after the making of the order; and

(e) publish a notice in Form 100 in the manner prescribed by rule 104 as soon after the order was made as is practicable.

(2) Unless the Court orders to the contrary, the expense of complying with this rule will be a charge on the assets of the company.

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Service of order appointing a provisional liquidator

50. Within 7 days of the making and entry of an order for the appointment of a provisional liquidator to a company, the applicant shall—

(a) serve an office copy of the sealed order of the Court on the provisional liquidator; and

(b) serve an office copy of the sealed order on the company.

Powers of provisional liquidator—section 472

51. (1) Subject to—

(a) the Corporations Law; and

(b) this Order; and

(c) any direction of the Court to the contrary;

a provisional liquidator appointed under subsection 472 (2) has power to carry on the business of the company and has the powers specified in paragraphs 477 (2) (a) to 477 (2) (k) (inclusive).

(2) For the purpose of enabling the provisional liquidator to take out letters of administration of the estate of a deceased contributory or debtor or otherwise to obtain payment of money due from a contributory or debtor or his or her estate under paragraph 477 (2) (h), money due to the company is deemed to be due to the provisional liquidator.

(3) An application under subsection 472 (6) in relation to the exercise or proposed exercise of the powers of a provisional liquidator may be made by notice of motion in the proceedings for the winding up order.

Remuneration of provisional liquidator—subsection 473 (2)

52. (1) Subject to any order of the Court to the contrary, a provisional liquidator is entitled to be paid out of the assets of the company all costs, charges and expenses he or she has properly incurred and such remuneration as the Court determines.

(2) A provisional liquidator must give notice of his or her claim to remuneration to any liquidator of the company (other than himself or herself) and to any committee of inspection before applying to the Court to determine his or her remuneration under subsection 473 (2).

(3) The Court may direct that notice of an application under subsection 473 (2) be given by advertisement or otherwise to such persons as the Court determines, and may adjourn the application for that purpose.

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Division 10—Liquidators and special managers

Resignation of liquidator or provisional liquidator appointed by the Court—subsection 473 (1)

53. (1) If a liquidator or provisional liquidator appointed by the Court seeks to resign his or her office he or she must—

(a) if practicable, obtain the written consent of another official liquidator to act as liquidator or provisional liquidator of the company in his or her place; and

(b) call separate meetings of creditors and contributories of the company to determine the view of the creditors and contributories as to whether the resignation should be accepted; and

(c) apply by notice of motion in the proceedings for the winding up order, for leave of the Court for his or her resignation and for an order appointing another liquidator or provisional liquidator in his or her place.

(2) The notice of motion referred to in paragraph (c) of subrule (1) must be accompanied by an affidavit setting out the liquidator's reasons for seeking leave to resign and by any consent referred to in paragraph (a) of subrule (1).

(3) The Court may grant leave to a liquidator or provisional liquidator to resign although a meeting of creditors or contributories resolved that his or her resignation should not be accepted.

(4) If a liquidator or provisional liquidator who seeks to resign his or her office (in this rule referred to as "the former liquidator") is unable to obtain the consent referred to in paragraph (a) of subrule (1), the Court may direct the Registrar to nominate an official liquidator (in this rule referred to as "the nominated liquidator") to be appointed in place of that liquidator or provisional liquidator if he or she is granted leave to resign. Such a nomination may be made whether before or after that leave is granted.

(5) The former liquidator must file an acknowledgement in Form 89 signed by the nominated liquidator, or an affidavit setting out the reasons why no such acknowledgement could be obtained, within 21 days of the date on which the Court made the direction referred to in subrule (4).

(6) If an order is made for the appointment of an official liquidator to act as liquidator or provisional liquidator ("new liquidator") in place of the former liquidator, the former liquidator must—

(a) give written notice to the new liquidator of his appointment not later than the day after the order was made; and

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(b) publish a notice in Form 101 in the manner prescribed by rule 104 as soon after the order was made as is practicable.

Filling vacancy in office of liquidator—subsection 473 (7)

54. (1) If for any reason there is no liquidator acting in a winding up by the Court, the Court may appoint another liquidator to be the liquidator of the company. Such an appointment may be made—

(a) on application by the Commission, a creditor or a contributory of the company made by notice of motion in the winding up proceedings; or

(b) on the Court's own motion.

(2) A person who applies to the Court for an order that a vacancy in the office of a liquidator appointed by the Court be filled under subsection 473 (7) must publish a notice of intention to apply for that order in the manner prescribed by rule 104 not later than 7 days before the date on which the application is to be heard.

Report as to company's affairs—section 475

55. (1) A liquidator must furnish—

(a) a copy of the prescribed form for a report as to the affairs of a company under section 475; and

(b) instructions for the preparation of the report;

to a person who is required to submit such a report.

(2) A person within the categories specified in subsection 475 (1) or 475 (2) must—

(a) attend at any reasonable time and place appointed by the liquidator for an interview conducted for the purpose of investigating a company's affairs; and

(b) give the liquidator such information as he or she requires.

(3) A copy of a report under subsection 475 (1) or 475 (2) which is filed with the Court under paragraph 475 (7) (a) must be certified by the liquidator in writing as a true copy of the original report.

(4) A person who is required to make or concur in making out a report required under section 475 must apply to the liquidator for approval of any costs or expenses which he or she proposes to incur in preparing and making the report and must submit a statement of the estimated costs and expenses to the liquidator.

(5) A person who incurs costs and expenses in preparing and making a report under section 475 without the approval of the liquidator will not be

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paid those costs and expenses out of the assets of the company under subsection 475 (8) except with the leave of the Court.

(6) In this rule—

"liquidator" includes a provisional liquidator.

Resolutions of meetings of creditors or contributories

57. A liquidator appointed by the Court must file a copy of any resolution of—

(a) a meeting of creditors, contributories or both; or

(b) a committee of inspection;

with the Registrar's office within 14 days after that resolution was passed, and must certify in Form 102 that the copy filed is a true copy of the resolution passed.

Release of liquidator—section 480

58. (1) An application by a liquidator for—

(a) an order of release under paragraph 480 (c); or

(b) an order that he or she be released and the company be dissolved under paragraph 480 (d);

may be made by notice of motion in the winding up proceedings.

(2) An application by a liquidator for an order of release under paragraph 480 (c) must state the grounds on which it is said that the company should not be dissolved.

(3) Unless the Court orders to the contrary, the liquidator must—

(a) send—

(i) a notice in Form 103; and

(ii) a copy of the application for release; and

(iii) a copy of the summary of receipts and payments; and

(iv) a copy of the statement showing the company's position;

by prepaid post to each creditor who has proved his or her debt in the winding up and to each contributory; and

(b) cause notice of his or her application in Form 103 to be published in the *Gazette*.

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(4) Together with any application claiming an order under paragraph 480 (c) or 480 (d), a liquidator must file—

(a) a summary of receipts and payments in the winding up; and

(b) a statement showing the position of the company at the date the application was filed; and

(c) an affidavit or affidavits—

(i) stating whether the whole of the property of the company has been realised, or whether so much of the property of the company has been realised as can be realised without needlessly prolonging the liquidation; and

(ii) stating details of any calls made upon contributories in the course of the winding up; and

(iii) stating details of any dividends paid in the course of the winding up; and

(iv) stating whether the committee of inspection, if any, has passed a resolution approving of the liquidator's release; and

(v) stating whether the Commission has appointed an auditor to report on an account or a statement of the position in the winding up under subsection 539 (2); and

(vi) stating whether the Court has ordered a report on the accounts of the liquidator to be prepared; and

(vii) stating whether any objection has been received by the liquidator to his or her release as liquidator of the company from any auditor appointed by the Commission or by the Court or from any creditor, contributory or other person interested; and

(viii) stating whether any report has been submitted by the liquidator to the Commission under section 533; and

(ix) stating whether the unsecured creditors of the company have been paid more than $0.50 in the dollar and whether it is otherwise necessary to report on the affairs of the company or its officers; and

(x) stating details of any onerous property disclaimed in the course of the winding up; and

(xi) stating details of any costs and expenses payable by the liquidator if the Court grants his or her release; and

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(xii) annexing a copy of—

(A) the notice sent to each creditor and contributory in compliance with paragraph (a) of subrule (3); and

(B) the notice published in the *Gazette* in compliance with paragraph (b) of subrule (3).

(5) A creditor or contributory who wishes to object to the grant of release to a liquidator must file and serve on the liquidator a notice of objection in Form 104 within 21 days of publication of the notice referred to in subrule (3).

Report on accounts of liquidator—section 481

59. (1) If the Court orders that a report on the accounts of a liquidator be prepared under subsection 481 (1), the liquidator must supply all information, books and vouchers required for that purpose to the auditor appointed to make that report.

(2) On completion of his or her report, an auditor reporting on the accounts of a liquidator under subsection 481 (1) must—

(a) file a copy of that report in a sealed envelope; and

(b) serve a copy of that report on the liquidator and on the Commission.

(3) A report filed under subrule (2) must not be inspected or used by any person other than the liquidator or the Commission except with the leave of the Court.

Liquidator's power to require payment of money or transfer of property—section 483

60. An application by a liquidator for an order under paragraph 483 (3) (b) may be made by notice of motion filed in the winding up proceedings.

Application for order for payment of call—section 483

63. (1) Where a liquidator applies for an order under paragraph 483 (3) (b) for payment of a call, the evidence bought in support of the application must include an affidavit in Form 115.

(2) An order for payment of a call under paragraph 483 (3) (b) may be in Form 116.

Powers delegated to liquidator by the Court—section 488

64. (1) Subject to—

(a) the Corporations Law;

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(b) the Corporations Regulations; and

(c) this order;

the powers and duties conferred on the Court by Part 5.4B of the Corporations Law in respect of—

(d) the holding and conduct of meetings to determine the wishes of creditors and contributories;

(e) the payment delivery, conveyance, surrender or transfer of money, property or books to the liquidator;

(f) the adjustment of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it; and

(g) the fixing of a time within which the debts and claims are required to be proved;

may be exercised by the liquidator as an officer of the Court and subject to the control of the Court.

Distribution of surplus—subsection 488 (2)

64A. (1) This rule applies to an application for leave to distribute a surplus under subsection 488 (2).

(2) An application under this rule shall be supported by an affidavit specifying the manner in which the liquidator proposes that the surplus be distributed, including the names and addresses of each person to whom any part of the surplus would be distributed.

(3) Notice of the application shall be given by publication of a notice in accordance with Form 116A in the manner prescribed by rule 104 not later than 14 days before the date set for hearing of the application.

(4) A person who intends to appear at the hearing of the application shall—

(a) file a notice of appearance in accordance with Form 79, together with any affidavit on which he or she intends to rely; and

(b) serve the notice of appearance on the liquidator, not later than 2 days before the date appointed for the hearing.

(5) At the first directions hearing or any subsequent directions hearing, the Court may direct the liquidator, or his or her solicitors, to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

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Appointment of temporary joint liquidator

65. (1) A liquidator of a company (in this rule referred to as the "appointed liquidator") may apply to the Court by notice of motion in the winding up proceedings for the appointment of another official liquidator (in this rule referred to as the "joint liquidator") to have all of the powers and duties of the appointed liquidator jointly and severally with the appointed liquidator for a limited period.

(2) The appointed liquidator must file together with a notice of motion under subrule (1) a consent in writing of the joint liquidator in or substantially in Form 89 together with an affidavit stating—

(a) the reasons why the appointed liquidator seeks the appointment of the joint liquidator; and

(b) that any Committee of Inspection in the winding up has approved the appointment of the joint liquidator.

(3) On hearing an application under subrule (1), the Court may appoint the joint liquidator to be the liquidator jointly and severally with the appointed liquidator for such period as it thinks fit, and on such terms and conditions as it thinks fit.

(4) Within 7 days of the appointment of a joint liquidator under this rule, the appointed liquidator must give notice of that appointment to the Commission.

(5) Any remuneration of a joint liquidator appointed under this rule—

(a) will be dealt with as part of the remuneration of the appointed liquidator; and

(b) must be paid to the joint liquidator by the appointed liquidator when the appointed liquidator receives remuneration for the period during which the joint liquidator held office.

(6) A joint liquidator appointed under this rule is not entitled to apply for release under rule 58 on the conclusion of his or her appointment.

(7) If the appointed liquidator applies for release under rule 58, he or she must also apply for the release of the joint liquidator. In granting a release to the appointed liquidator under rule 58, the court may also release the joint liquidator.

(8) Subrule 58 (4) applies, with such adaptations as may be necessary, to an application for the release of a joint liquidator filed by the appointed liquidator under this rule.

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Taxation of costs of agents of and persons who have provided services to a liquidator

66. (1) Where the costs, charges or expenses of a solicitor, special manager, auctioneer, broker or other person who has provided services to a liquidator appointed by the Court are incurred by that liquidator, the liquidator may request the person who provided the services to deliver to the liquidator a bill of that person's costs, charges or expenses for the purpose of taxation.

(2) A request under subrule (1) must be made in Form 117.

(3) A request by a liquidator that a bill of costs in taxable form be delivered must—

(a) be made a reasonable time before the declaration of a dividend in the winding up; and

(b) specify a time by which the bill should be delivered; and

(c) allow a reasonable time for the person who provided the services to prepare the bill, having regard to the scope of those services.

(4) The person who provided the services must deliver a detailed bill in taxable form giving full particulars of his or her costs, charges or expenses to the liquidator within the time specified in the request by the liquidator.

(5) If the person required to deliver a bill in taxable form under subrule (1) does not deliver such a bill within the time specified in the notice under subrule (3), or within such extended time as the Court may allow—

(a) the liquidator may disregard that person's claim in declaring and distributing a dividend in the winding up; and

(b) that person's claim against the assets of the company for the costs, charges and expenses which were the subject of the request to deliver a bill will be forfeited, unless the Court orders to the contrary.

(6) A liquidator must file a bill delivered under subrule (4) with the Registrar for taxation.

(7) The taxing officer must appoint a time and place for taxation of a bill of costs, charges or expenses and give notice of that time and place to the liquidator.

(8) After receiving the notice referred to in subrule (7), the liquidator must give not less than 10 days' notice of the time and place for taxation to the person who provided the services to which the bill refers.

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(9) On taxation of the bill of costs, charges or expenses, the taxing officer may require the liquidator and the party who provided the services to the liquidator to provide all documents and to give all information relevant to the fixing of proper charges for those services.

(10) Following taxation of the bill, the taxing officer must issue a certificate of taxation to the liquidator and to the person who provided the services to which the bill refers.

(11) Every taxation of costs, charges or expenses and every decision of a taxing officer under this rule is subject to review by a Judge.

(12) An application for review under subrule (11) of a decision of a taxing officer may be made by notice of motion in the winding up proceedings.

(13) On taxation, a liquidator or special manager who is remunerated for his or her services as liquidator or special manager in a winding up by the Court will not be allowed payment for the performance by any other person of duties which would ordinarily be performed by the liquidator or special manager.

(14) A liquidator who is a solicitor may contract that the remuneration for his or her services as liquidator includes all professional services.

(15) Order 65 of these Rules applies so far as it is capable of application and with such adaptations as may be necessary to the taxing of costs under this rule.

Appointment of a special manager—section 484

67. (1) A liquidator may apply for the appointment of a special manager by notice of motion in the winding up proceedings.

(2) A notice of motion filed under this rule must be accompanied by an affidavit setting out—

(a) the circumstances making it proper that a special manager should be appointed; and

(b) details of the remuneration which it is proposed be paid to the special manager; and

(c) whether any committee of inspection in the winding up or a meeting of creditors has approved the appointment of a special manager.

(3) In an order appointing a special manager, the Court may—

(a) limit the powers conferred on the special manager; and

(b) direct the manner in which any security is to be given by the special manager; and

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(c) fix the remuneration of the special manager or the basis on which his or her remuneration is to be assessed; and

(d) direct that the remuneration of the special manager be fixed subsequently by the liquidator, any committee of inspection or a meeting of creditors.

(4) The Court may treat security as sufficiently given by the special manager if it is given in respect of the particular winding up to which he or she is appointed.

(5) The Court may from time to time direct that the amount of the security given by the special manager be varied.

(6) Unless the Court otherwise directs, the costs of furnishing the security given by a special manager in respect of a particular winding up will be expenses of the liquidator personally and must not be charged against the assets of the company as an expense incurred in the winding up.

Accounts of a special manager—section 484

68. (1) Subject to any order of the Court to the contrary, the special manager must furnish accounts to the liquidator under paragraph 484 (2) (a).

(2) Accounts furnished to the liquidator under subrule (1) must include a statutory declaration in Form 118 verifying the accounts.

(3) After the accounts of the special manager have been approved by the liquidator, the total of receipts and payments by the special manager must be included in the liquidator's accounts.

Default by a special manager

69. (1) If—

(a) a special manager fails to comply with a requirement of this Order or with any order or direction of the Court, including an order to give security or give additional security; or

(b) any condition upon which the special manager was appointed or gave security is breached; or

(c) if the liquidator forms the opinion that the value of any security given by the special manager has materially diminished;

the liquidator must apply to the Court for directions in respect of that matter.

(2) An application for directions under subrule (1) may be made by filing a notice of motion in the winding up proceedings together with an affidavit setting out the circumstances giving rise to the failure to comply, the breach of condition or the diminution in the value of the security.

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(3) On an application under subrule (1), the Court may make such orders and give such directions as it thinks fit, including an order terminating the appointment of the special manager and an order as to costs.

(4) Without limiting subrule (3), if a special manager does not pay into the Court any sum shown by his or her account to be due from the special manager as required by these Rules or by an order or direction of the Court, the Court may charge the special manager with interest on that sum while in his or her possession at the rate prescribed for payment of interest by a receiver under Order 52, rule 20.

(5) This rule does not limit the powers of the Court relating to the enforcement of orders or the punishment of contempt.

Division 11—Voluntary winding up (Part 5.5)

Proceedings against company after commencement of a creditors' voluntary winding up—section 500

70. (1) If an action or other civil proceeding was commenced prior to the commencement of a creditors' voluntary winding up of a company, an application under subsection 500 (2) for leave to proceed with that action or proceeding may be made by notice of motion in that action or proceeding.

(2) An application for leave to commence an action or civil proceeding against a company under subsection 500 (2) after the commencement of a creditors' voluntary winding up of a company may be made in Form 5.

Appointment or removal of liquidator in the course of a voluntary winding up—sections 502 and 503

71. (1) An application for—

(a) the appointment of a liquidator under section 502; or

(b) the removal of a liquidator for cause and the appointment of another liquidator under section 503;

may be made by a member, creditor or officer of the company or by the Commission.

(2) Evidence brought by the applicant in support of an application for the removal of a liquidator for cause must include an affidavit—

(a) stating any material facts relied upon by the applicant in support of the application; and

(b) identifying the grounds on which it is said that the liquidator should be removed.

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Application to Court to have question determined or power exercised—section 511

72. (1) An application to the Court for—

(a) a determination of a question arising in the winding up of a company under paragraph 511 (1) (a); or

(b) the exercise of a power by the Court under paragraph 511 (1) (b);

must indicate the question which is sought to be determined or the power which is sought to be exercised.

(2) An application under subrule (1) must be accompanied by an affidavit setting out the prescribed information and any other matters known to the applicant and material to the application, which may be in or substantially in Form 128.

(3) The Court may direct that notice of an application under section 511 be given by advertisement or otherwise to such persons or classes of persons as the Court determines, and may adjourn the application for that purpose.

Division 12—Winding up generally (Part 5.6)

Supervision of liquidators by the Court—section 536

73. (1) A complaint to the Court under paragraph 536 (1) (b) may be made by filing a notice of motion seeking an inquiry in respect of the complaint and an affidavit setting out the relevant circumstances in the proceedings for the winding up order.

(2) A report to the Court by the Commission under subsection 536 (2) may be made by filing—

(a) a notice of motion seeking orders in respect of the report; and

(b) an affidavit setting out the relevant circumstances or annexing a copy of the report;

in the winding up proceedings.

(3) A report made under subsection 536 (2) must not be inspected or used except with the leave of the Court.

(4) The Commission, a creditor or contributory, or a person aggrieved by the conduct of the liquidator may seek an order that the liquidator or any other person be examined under subsection 536 (3) by filing a notice of motion in the proceedings for the winding up order.

(5) Rule 81 applies, with such adaptations as may be necessary, to an examination under subrule (4).

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(6) In this rule—

"liquidator" includes a provisional liquidator.

Appointment of committee of inspection—section 548

75. (1) Any application to the Court to resolve a difference between the determinations of meetings of creditors and of contributories under subsection 548 (2) must be made by filing an application in Form 5 and an affidavit setting out the relevant circumstances.

(2) In proceedings under this rule, the Court may—

(a) appoint a time for hearing the proceedings; and

(b) give directions for service of notice of the hearing or for publication of notice of the hearing or both; and

(c) hear the liquidator, any contributory and any creditor of the company.

Application by liquidator for direction or permission if no Committee of Inspection is appointed—section 552

76. An application to the Court by a liquidator under section 552 must indicate the matter in respect of which the liquidator seeks the action, direction or permission of the Court.

Determination of value of debts and claims of uncertain value in liquidation—section 554A

76A. (1) An application by a liquidator under subsection 554A (2) may be made by notice of motion in the winding up proceedings.

(2) An appeal to the Court under subsection 554A (3) against a liquidator's estimate of the value of a debt or claim—

(a) shall be made in accordance with Form 5; and

(b) shall be supported by an affidavit specifying the value that it is said should be attributed to the debt or claim and the means by which that value is derived.

(3) An appeal to the Court under subsection 554A (6) against the way in which a method determined by the Court was applied by a liquidator—

(a) may be made by notice of motion in the proceedings in which that method was determined; and

(b) shall be supported by an affidavit specifying—

(i) the nature of any error that the liquidator is said to have made in applying the method determined by the Court;

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(ii) the way in which the applicant says the liquidator should have applied the method determined by the Court; and

(iii) the result of the application of the method determined by the Court, in the way in which the applicant says that method should have been applied.

(4) As soon as practicable after filing an application under subrule (2) or a motion under subrule (3), and in any event within 14 days of the date of filing, the applicant shall serve that application or motion and the affidavit in support on the liquidator.

Amendment of valuation of security in proof of debt by secured creditor—section 554G

76B. (1) An application under section 554G for permission to amend a proof of debt by altering the estimated value of the security shall be made in accordance with Form 5.

(2) An application shall be supported by an affidavit setting out the basis on which the amendment of the value of the security is sought and stating the value which the applicant seeks to attribute to that security.

(3) As soon as practicable after filing the application and affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and affidavit in support on the liquidator.

Disclaimer of contract—section 568

77. (1) An application under subsection 568 (1A) for leave to disclaim a contract (other than an unprofitable contract or a lease of land) may be made by notice of motion in the proceedings for the winding up order.

(2) A liquidator who has been required to apply to the Court for leave to disclaim a contract under subsection 568 (1A) shall file an affidavit—

(a) setting out the parties to the contract and any persons who, to the liquidator's knowledge, are interested in the contract; and

(b) stating the reasons why it is said to be just to grant leave to disclaim.

(3) An affidavit filed under subrule (2) shall be served on the parties to the contract and any person interested in the contract.

Application to set aside disclaimer before it takes effect—section 568B

77A. (1) An application under section 568B to set aside a disclaimer before it takes effect shall be made in accordance with Form 5.

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(2) An application under this rule shall be supported by an affidavit stating—

(a) the nature of the applicant's interest in the disclaimed property; and

(b) the grounds on which it is said that the disclaimer should be set aside.

(3) As soon as practicable after filing the application and the affidavit in support, and in any event within the period specified in paragraph 568B (1) (a), (b) or (c), as the case may be, the applicant shall serve a copy of the application on the liquidator.

Application to set aside disclaimer after it has taken effect—section 568E

77B. (1) An application under section 568E to set aside a disclaimer which has taken effect shall be made in accordance with Form 5.

(2) An application under this rule shall be supported by an affidavit stating—

(a) the nature of the applicant's interest in the disclaimed property; and

(b) the reasons why it is said to be just to grant leave to set aside the disclaimer after it has taken effect.

(3) As soon as practicable after filing the application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application on the liquidator.

Vesting of disclaimed property by Court order—section 568F

77C. (1) An application under section 568F shall be made in accordance with Form 5.

(2) The Court may direct that notice of an application be given by advertisement or otherwise to such persons or classes of persons as the Court determines, and may adjourn the application for that purpose.

Application to Court to declare dissolution of company void—section 571

78. (1) Any application for an order declaring the dissolution of a company to have been void must be made in Form 5 and must state—

(a) the nature of the applicant's interest; and

(b) the grounds on which it is said that the dissolution should be declared void.

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(2) Evidence brought by the applicant in support of an application under section 571 must include an affidavit setting out the prescribed information, which may be in or substantially in Form 128.

(3) Unless the Court orders to the contrary, notice in Form 120 of an application must be published in the manner prescribed by rule 104 not later than 7 days before the date appointed for directions under Order 2A, rule 8.

(4) A person who intends to appear on the date appointed for directions under Order 2A, rule 8 must—

(a) file a notice of appearance in Form 79; and

(b) serve that notice of appearance on the applicant;

not later than 2 days before the date appointed for directions.

(5) At the first directions hearing or any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

Winding up Part 5.7 bodies—sections 583 and 585

79. Rules 35 to 78 (inclusive) of this Order apply to the winding up of a body to which Part 5.7 of the Corporations Law applies, with such adaptations as may be necessary.

Application for leave to commence or continue proceedings against a contributory of a Part 5.7 body after a winding up order—section 587

80. (1) Rule 44 of this Order applies, with such adaptations as may be necessary, to an application for an order staying or restraining proceedings under subsection 467 (7), as applied by subsection 587 (1) to an application by a creditor to stay or restrain an action or civil proceeding against a contributory of a Part 5.7 body.

(2) If—

(a) an order has been made for the winding up of a Part 5.7 body; and

(b) an action or other civil proceeding against a contributory of the Part 5.7 body was commenced prior to the making of the order;

an application under subsection 587 (2) for leave to proceed with that action or civil proceeding may be made by notice of motion in that action or proceeding or in the proceedings for the winding up order.

(3) If—

(a) an order has been made for the winding up of a Part 5.7 body; and

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(b) a person seeks leave to commence an action or civil proceedings against a contributory of the Part 5.7 body under subsection 587 (2);

an application for leave may be made by notice of motion in the proceedings for the winding up order.

Division 13—Miscellaneous (Part 5.9)

Issue of summons for examination—sections 596A and 596B

81. (1) An application for the issue of a summons under section 596A or 596B shall—

(a) be made in accordance with Form 5; and

(b) be accompanied by—

(i) a draft of the summons in accordance with Form 122; and

(ii) an affidavit in support of the issue of the summons.

(2) An affidavit in support of the issue of a summons shall set out the material facts on which the applicant relies, to establish—

(a) that the applicant is an eligible applicant for the purposes of paragraph 596A (a) or 596B (a), as the case may be; and

(b) that the person to whom the summons is to be issued—

(i) if the application is under section 596A—is or was an examinable officer of the corporation for the purposes of paragraph 596A (b); or

(ii) if the application is under section 596B—

(A) has taken part, or been concerned in, examinable affairs of the corporation, and has been, or may have been, guilty of misconduct in relation to the corporation; or

(B) may be able to give information about the examinable affairs of the corporation.

(3) An application for the issue of a summons and affidavit in support of that application may, at the option of the applicant, be filed in a sealed envelope marked, as appropriate—

(a) "Application for issue of summons for examination under section 596A of the Corporations Law"; or

(b) "Application for issue of summons for examination under section 596B of the Corporations Law".

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(4) The Court may issue a summons for examination in, or substantially in, accordance with Form 122.

(5) At least 8 days before the date set for the examination, a summons issued under this rule shall be personally served on the person who is to be examined or served in such other manner as the Court may direct.

(6) A person served with a summons may apply to discharge the summons by filing, within 3 days of service of the summons—

(a) a notice of motion in the proceedings in which the summons was issued, seeking an order that the summons be discharged; and

(b) an affidavit setting out the material facts and matters relied on by the person seeking to discharge the summons.

(7) A copy of a notice of motion and affidavit filed under subrule (6) shall forthwith be served on—

(a) the person who applied for the examination; and

(b) unless a person authorised by the Commission applied for the examination—the Commission.

Conduct of examination under Division 1 of Part 5.9

81A. (1) An application under subsection 597 (4) for a direction that an examination be held in private may be made at the commencement of, or in the course of, the examination.

(2) If the Court orders under subsection 597 (13) that a written record be kept of the questions put to a person and of his or her answers at an examination—

(a) the applicant shall file the written record in the Registry; and

(b) if the Court requires that written record be signed by the person who was examined—the person shall sign the record at such time as the Court directs.

(3) A person who is examined may apply in writing to the Registrar to be provided with a copy of the written record of the examination, and shall be given a copy on payment of the prescribed fee.

(4) For the purposes of subsection 597 (14), a transcript of an examination may be authenticated by a certificate, in accordance with Form 124, that the transcript is a correct record of the examination, signed by—

(a) the person who made the transcript; or

(b) a responsible officer of the organisation that is authorised to provide transcription services at the examination.

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Default in relation to an examination under Division 1 of Part 5.9

82. (1) If the powers of the Court in relation to an examination under Division 1 of Part 5.9 of the Corporations Law are exercised by the Master or the Registrar under subrule 81 (17), and a person (in this rule referred to as "the person in default") refuses or fails—

(a) in contravention of subsection 597 (6)—to attend the examination as required by a summons under section 596A or 596B, or to attend from day to day until the conclusion of the examination;

(b) in contravention of subsection 597 (7)—to take the oath or make an affirmation or to answer a question which he or she is directed by the Registrar to answer;

(c) in contravention of subsection 597 (7) or (10A)—to produce books; or

(d) in contravention of a direction made by the Court under subsection 597 (13)—to sign the written record of the examination;

the Master or the Registrar shall, on the request of a person who appeared at the examination, give to that person a signed certificate in Form 125 of the refusal or failure.

(2) On application by a person who appeared at an examination under Division 1 of Part 5.9 of the Corporations Law, made by notice of motion in the proceedings in which the Court ordered that the examination take place, the Court may order the person in default to do the relevant act and to pay any costs resulting from the refusal or failure.

(3) Unless the Court directs to the contrary, an applicant for an order under subrule (2) shall file a certificate given by the Master or the Registrar under subrule (1) in support of the application and need not file any other evidence in support of the application.

(4) If a person who is examined under Division 1 of Part 5.9 of the Corporations Law behaves in a manner which, in the opinion of the Master or the Registrar conducting that examination, may constitute a contempt of court, the Master or the Registrar may adjourn the examination for hearing before a Judge.

(5) For the purposes of subrule (4), a written report by the Master or the Registrar of any relevant matters arising at the examination constitutes *prima facie* evidence of those matters in proceedings before the Judge.

Orders under section 598 or 599

83. (1) This rule applies to an application for an order against a person concerned with a corporation under section 598 and to an application

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for an order prohibiting a person from managing a corporation under section 599.

(2) The evidence in support of the application must include—

(a) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information, which may be in or substantially in Form 128; and

(b) an affidavit made not earlier than 7 days before the application is filed setting out—

(i) any other material facts to be relied upon by the applicant in support of the application; and

(ii) a statement of the grounds of the application.

(3) As soon as practicable after filing the application and the affidavit in support of the application, and in any event not later than 14 days after the date of filing, the applicant must serve the application and that affidavit on—

(a) the person in relation to whom orders are sought; and

(b) the corporation or body corporate to which the application relates and any liquidator, provisional liquidator or official manager of that corporation or body corporate; and

(c) if the Commission is not the applicant, on the Commission.

Division 14—Chapters 6 and 7 of the Corporations Law

Proceedings under Chapter 6 or 7 of the Corporations Law

84. If the Commission is not a party to an application made under Chapter 6 or 7 of the Corporations Law, the applicant shall serve a copy of the application and of any supporting affidavit on the Commission as soon as practicable after filing, and in any event not later than 14 days after the date of filing the application.

Orders in respect of agreement, payment or benefit—section 740

85. (1) An application under section 740 shall be accompanied by an affidavit which—

(a) sets out the grounds on which it is said that section 740 applies to an agreement, payment or benefit entered into, made or provided by a body corporate or a related body corporate; and

(b) if the applicant is a person or persons referred to in subparagraph 740 (5) (b) (iii), states—

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(i) the number of shares in the body corporate or related body corporate held by that person or persons; and

(ii) the grounds on which it is said the applicant falls within that subparagraph.

(2) As soon as practicable after filing—

(a) the application; and

(b) the accompanying affidavit;

and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit or the statement of claim on—

(c) the body corporate concerned;

(d) the person said to have been party to the agreement or to have received the payment or benefit; and

(e) on any other person against whom orders are sought in the application.

Orders in respect of contravention by substantial shareholder—section 741

86. (1) An application under section 741 shall be accompanied by an affidavit setting out—

(a) the grounds on which it is said that the person concerned is or was a substantial shareholder of the company for the purposes of Part 6.7;

(b) the grounds on which it is said that the person concerned contravened section 709, 710 or 711, as the case may be; and

(c) any other material facts to be relied upon by the applicant in support of the application.

(2) As soon as practicable after filing—

(a) the application; and

(b) the accompanying affidavit;

and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(c) the company;

(d) the person said to have been a substantial shareholder; and

(e) any other person against whom orders are sought in the application.

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Application for order of Court declaring that an act, document or matter is not invalid—section 743

87. (1) The evidence in support of an application for an order declaring an act, document or matter not to be invalid because of a contravention of Chapter 6 shall include an affidavit setting out—

(a) the nature of the contravention of Chapter 6 in relation to which the order is sought;

(b) the nature of the applicant's interest in the matter;

(c) the grounds on which it is said that the contravention should be excused, including any matter relevant to subsection 743 (3); and

(d) any other material facts to be relied upon by the applicant in support of the application.

(2) As soon as practicable after filing the application and the affidavit in support of the application and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(a) the Commission; and

(b) any person who, to the knowledge of the applicant, has an interest which is or may be affected by the contravention.

Application for order varying an agreement with a non-licensee—section 799A

88. (1) An application for an order under section 799A shall be accompanied by an affidavit—

(a) setting out details of the agreement between the applicant and a non-licensee which is sought to be varied and annexing a copy of that agreement;

(b) setting out evidence that the applicant has given notice to the non-licensee under section 798;

(c) setting out a statement of the identity of any person (other than the non-licensee) who, to the knowledge of the applicant, has or may have acquired a right or estate in property in the manner specified in section 799, and details of that right or estate in property; and

(d) setting out any other material facts relied upon by the applicant in support of the application.

(2) As soon as practicable after filing the application and accompanying affidavit, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

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(a) the non-licensee; and

(b) on any person who, to the knowledge of the applicant, has or may have acquired a right or estate in property in the manner specified in section 799.

Orders and directions under section 877

89. An application for an order under section 877 and any affidavit on which the applicant intends to rely in support of the application must be served on—

(a) the Commission; and

(b) the person whose bank accounts were subject to the order under section 874.

Proceedings against securities exchange to establish claim against fidelity fund—section 911

90. (1) Where the board of a securities exchange refuses leave to a person to bring proceedings to establish a claim against the fidelity fund of that securities exchange, an application to the Court under subsection 911 (3) for leave to bring proceedings must be accompanied by an affidavit—

(a) setting out any material facts relied upon by the applicant in support of the application for leave; and

(b) setting out the grounds on which it is said that leave should be granted; and

(c) annexing a copy of any reasons given by the board of the securities exchange for refusing leave to bring the proceedings.

(2) A person who takes proceedings under section 911 to establish a claim against the fidelity fund of a securities exchange must file, together with the application commencing the proceedings, an affidavit—

(a) stating whether the board of the securities exchange has disallowed the claim, and annexing any notice of disallowance of the claim given under subsection 911 (4); and

(b) identifying any previous exercise by the applicant of a right of action or other legal remedy of the kind referred to in paragraph 911 (2) (b); and

(c) stating whether the applicant has been given leave by the board of the securities exchange or by the Court to bring proceedings; and

(d) setting out any material facts relied upon by the applicant to establish the claim.

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(3) An applicant who has been given leave by the Court to bring proceedings to establish a claim against the fidelity fund of a securities exchange under subsection 911 (3) may bring that claim in the proceedings in which leave was granted. At the time of granting leave, the Court may give further directions as to—

(a) any further documents to be filed by the applicant in support of the claim; and

(b) the subsequent conduct of the proceedings.

Application for directions by trustee for debenture holders—section 1057

91. (1) An application by the trustee for the holders of debentures of a corporation for—

(a) directions under paragraph 1057 (1) (a); or

(b) for the determination of a question in relation to the interests of debenture holders under paragraph 1057 (1) (b);

must indicate the matters as to which directions are sought or the question which is sought to be determined.

(2) An application under subrule (1) must be accompanied by an affidavit made by a responsible officer of the trustee for debenture holders setting out any matters known to the trustee and material to the application.

Summons for appearance of a person—subsection 1092 (3)

92. (1) A person may apply to the Court for the issue of a summons under subsection 1092 (3) by filing an application in Form 5 and an affidavit setting out the relevant circumstances.

(2) Unless the Court directs to the contrary, an application and any supporting affidavit filed under this rule need not be served on any other person.

(3) Unless the Court orders to the contrary, a summons issued under this rule must be in Form 126.

Orders relating to refusal to register transfer or transmission—section 1094

93. (1) This rule applies to an application for an order that a transfer or transmission of shares in, debentures of, or interests made available by a company be registered; or for any other order under section 1094.

(2) The evidence in support of the application shall include an affidavit made not earlier than 7 days before the application is filed setting out—

(a) the prescribed information; and

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(b) any other material facts relied on by the applicant in support of the application;

which may be in or substantially in Form 128.

(3) As soon as practicable after filing the application and the affidavit in support of the application, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(a) the company; and

(b) any person against whom orders are sought in the application.

Division 15—Chapter 8 of the Corporations Law

Appeal against a decision of a futures exchange or futures association—section 1135

94. (1) An appeal against a decision of a futures exchange or futures association under section 1135 may be brought by an application in Form 5 which—

(a) states whether the whole or part only of the decision is complained of and, if part only, identifies that part; and

(b) states concisely the grounds of appeal.

(2) An application referred to in subrule (1) must be served on the futures exchange or futures organisation concerned.

Application for order varying agreement with a non-licensee—section 1165A

95. (1) An application for an order under subsection 1165A shall be accompanied by an affidavit setting out—

(a) details of the agreement between the applicant and a non-licensee which is sought to be varied, annexing a copy of that agreement;

(b) evidence that the applicant has given notice to the non-licensee under section 1164;

(c) a statement of the identity of any person (other than the non-licensee) who, to the knowledge of the applicant, has or may have acquired a right or estate in property in the manner specified in section 1165 and details of that right or estate; and

(d) any other material facts relied upon by the applicant in support of the application.

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(2) As soon as practicable after filing the application and accompanying affidavit, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on—

(a) the non-licensee; and

(b) any person who, to the knowledge of the applicant, has or may have acquired a right or estate in property in the manner specified in section 1165.

Application for an order under section 1224 or 1226

96. (1) An application under section 1224 must be served on—

(a) the Commission, if the Commission is not the applicant; and

(b) the futures organisation concerned, if that futures organisation is not the applicant; and

(c) the person whose bank accounts would be subject to the order sought.

(2) An application for an order under section 1226 and any affidavit on which the applicant intends to rely in support of the application must be served on—

(a) the Commission; and

(b) the futures organisation concerned, if any; and

(c) the person whose bank accounts are subject to the order made under section 1224.

Proceedings against futures organisation to establish claim against fidelity fund—section 1243

97. (1) Where the board of a futures organisation refuses leave to a person to bring proceedings to establish a claim against the fidelity fund of that futures organisation, an application to the Court under subsection 1243 (3) for leave to bring proceedings must be accompanied by an affidavit—

(a) setting out any material facts relied upon by the applicant in support of the application for leave; and

(b) setting out the grounds on which it is said that leave should be granted; and

(c) annexing a copy of any reasons given by the board of the futures organisation for refusing leave to bring the proceedings.

(2) A person who takes proceedings under section 1243 to establish a claim against the fidelity fund of a futures organisation must file, together with the application commencing the proceedings, an affidavit—

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(a) stating whether the board of the futures organisation has disallowed the claim, and annexing any notice of disallowance of the claim under subsection 1243 (4); and

(b) identifying any previous exercise by the applicant of a right of action or other legal remedy of the kind referred to in paragraph 1243 (2) (b); and

(c) stating whether the applicant has been given leave by the board of the futures organisation or by the Court to bring proceedings; and

(d) setting out any material facts relied upon by the applicant to establish the claim.

(3) An applicant who has been given leave by the Court to bring proceedings to establish a claim against the fidelity fund of a futures organisation under subsection 1243 (3) may bring that claim in the proceedings in which leave was granted. At the time of granting leave, the Court may give further directions as to—

(a) any further documents to be filed by the applicant in support of the claim; and

(b) the subsequent conduct of the proceedings.

Division 16—Powers of the Courts (Part 9.5)

Appeals from the Administrative Appeals Tribunal—section 1317B

98. Order 53 applies to an appeal to the Court from a decision of the Administrative Appeals Tribunal exercising jurisdiction under section 1317B.

Leave to manage a corporation where a person is subject to a civil penalty disqualification—section 1317EF

98A. (1) This rule applies to an application under section 1317EF by a person who is subject to a civil penalty disqualification for leave to manage a corporation.

(2) The evidence in support of the application shall include an affidavit made not earlier than 7 days before the application is filed, setting out the material facts to be relied on by the applicant in support of the application.

(3) As soon as practicable after filing the application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application and the affidavit on—

(a) the corporation concerned; and

(b) the Commission.

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Relief from liability for contravention of civil penalty provisions—section 1317JA

98B. (1) An application under section 1317JA for relief from liability for a contravention of a civil penalty provision shall be accompanied by an affidavit setting out any material facts relied on by the applicant in support of the application.

(2) As soon as practicable after filing an application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a copy of the application and the affidavit on—

(a) the corporation concerned; and

(b) the Commission.

Application for relief under subsection 1318 (2)

99. (1) An application under subsection 1318 (2) for relief from liability must be accompanied by an affidavit setting out—

(a) the nature of the claim in relation to which the applicant seeks relief; and

(b) the basis of the applicant's apprehension that such a claim will or might be made; and

(c) the identity of the persons who, to the knowledge of the applicant, are possible claimants in any such claim; and

(d) which of paragraphs (a)-(d) of subsection 1318 (4) applies to the applicant; and

(e) the name of the corporation in respect of which the applicant occupied a position specified in subsection 1318 (4).

(2) Unless the Court orders to the contrary, the applicant must serve the application and affidavit required by subrule (1) on—

(a) each of the persons specified in that affidavit as a possible claimant; and

(b) the corporation in respect of which the applicant occupied a position referred to in subsection 1318 (4).

Appeals from decisions of administrator, receiver, official manager, liquidator etc.—section 1321

100. (1) An appeal in respect of the act, omission or decision of—

(a) a person administering a compromise, arrangement or scheme referred to in Part 5.1;

(b) a receiver or a receiver and manager of property of a corporation;

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(c) an official manager or deputy official manager; or

(d) a liquidator or provisional liquidator;

may be brought by an application in Form 5 stating the act, omission or decision complained of and stating concisely the grounds of appeal.

(2) Unless the Court grants an extension of time to commence the appeal, an application under section 1321 shall be commenced by filing the application within 21 days of the act, omission or decision from which the appeal is brought.

(3) As soon as practicable after filing the application and accompanying affidavit, and in any event not later than 14 days after the date of filing, the applicant shall serve the application and that affidavit on the person responsible for the act, omission or decision from which the appeal is brought.

(4) As soon as practicable after being served with any application appealing against an act, omission or decision for which he or she was responsible, a person specified in paragraph (1) (a), (b), (c) or (d) shall file an affidavit—

(a) setting out any material upon which he or she based the act, omission or decision which is the subject of appeal; and

(b) annexing copies of all relevant documents which have not been put in evidence by the applicant.

Irregularities—section 1322

101. An application for an order under section 1322 made in or for the purposes of or in relation to any proceedings in the Court may be made by notice of motion in those proceedings.

Intervention by Commission in proceedings—section 1330

102. (1) The Commission may intervene in a proceeding relating to a matter arising under the Corporations Law by—

(a) filing a notice of intervention in Form 127; and

(b) serving a copy of that notice on each other party to the proceedings.

(2) When a notice of intervention is filed by the Commission under subrule (1), the Court may give such directions as it thinks fit as to any affidavits to be filed by the Commission and as to the subsequent conduct of proceedings.

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Meetings ordered by the Court

103. Subject to the Corporations Law, this Order and any direction of the Court to the contrary, the provisions of regulations 5.6.12 to 5.6.36A (inclusive) of the Corporations Regulations apply to meetings ordered by the Court.

Publication requirements and proof of publication

104. (1) Where this Order requires that notice of an application be published in the manner prescribed by rule 104, notice must be published—

(a) once in the *Gazette*; and

(b) once in a prescribed newspaper; and

(c) once in a daily newspaper circulating generally in each State or Territory in which the applicant has reason to believe that the company has carried on business within the previous 6 months.

(2) Where subrule (1) requires that publication be made once in a prescribed newspaper and once in a daily newspaper circulating generally in each State or Territory in which a company has carried on business within the previous 6 months, it will be sufficient compliance if publication is made once in a prescribed newspaper which also circulates generally in every State or Territory in which the company has carried on business within the previous 6 months.

(3) For the purposes of this Order, any publication, advertising or gazettal required by the Corporations Law or by this Order may be proved by filing an affidavit by the person responsible for the publication or gazettal or his or her solicitor annexing copies of the relevant advertisement or gazettal and stating that publication or gazettal occurred on a date stated in the affidavit.

(4) Unless the Court orders to the contrary, any matter which was gazetted or advertised and which was subsequently amended or altered, or any matter which was wrongly or inaccurately gazetted or advertised, must be re-gazetted or re-advertised with the necessary amendments or alterations.

Division 17—Australian Securities Commission Law

Reference of question of law arising at a hearing of the Australian Securities Commission to the Court—section 61 of the ASC Law

105. The procedures specified in Order 50 of the Federal Court Rules apply, with such adaptations as may be necessary, to a reference of a question of law arising at a hearing by the Commission to the Court under section 61.

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Proceedings under section 70 of the ASC Law

106. (1) Proceedings under section 70 of the ASC Law may be commenced by an application in Form 5 claiming an inquiry and orders under that section.

(2) Subject to the Court's power to order to the contrary on such terms and conditions as it sees fit, the evidence in support of the application must be given by affidavit.

(3) The application, the certificate of the Commission under subsection 70 (2) and the affidavit or affidavits in support of the application must be personally served on the person to whom the certificate relates.

Reference of question of law arising at a hearing of the Corporations and Securities Panel to the Court—section 196 of the ASC Law

107. The procedures specified in Order 50 of the Federal Court Rules apply, with such adaptations as may be necessary, to a reference of a question of law arising at a hearing by the Corporations and Securities Panel to the Court under section 196.

Proceedings under section 201 of the ASC Law

108. (1) Proceedings under section 201 of the ASC Law may be commenced by an application in Form 5 claiming an inquiry and orders under that section.

(2) Subject to the Court's power to order to the contrary on such terms and conditions as it sees fit, the evidence in support of the application must be given by affidavit.

(3) The application, the certificate of the Corporations and Securities Panel under subsection 201 (2) and the affidavit or affidavits in support of the application must be personally served on the person to whom the certificate relates.

Proceedings under section 219 of the ASC Law

109. (1) Proceedings under section 219 of the ASC Law may be commenced by an application in Form 5 claiming an inquiry and orders under that section.

(2) Subject to the Court's power to order to the contrary on such terms and conditions as it sees fit, the evidence in support of the application must be given by affidavit.

(3) The application, the certificate of the Companies Auditors and Liquidators Disciplinary Board under subsection 219 (6) and the affidavit or

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affidavits in support of the application must be personally served on the person to whom the certificate relates.

Division 18—Transfer of proceedings

Transfer of proceedings under the Corporations Law

110. (1) Any application for the transfer of proceedings with respect to a civil matter arising under the Corporations Law or of an application in those proceedings must be made by notice of motion, and must be heard and determined by a Judge.

(2) An application under subrule (1) must be supported by an affidavit or affidavits setting out—

(a) a statement of the grounds relied upon to support the application; and

(b) the principal place of business of any body corporate concerned in the proceedings or application; and

(c) the place or places where the events the subject of the proceedings or application took place; and

(d) any other matters relevant to the application.

(3) On the transfer of proceedings under the Corporations Law by another court to this Court, the Registrar must enter and number the documents received in respect of those proceedings so that the proceedings are distinguished by year of filing and number.

(4) Within 28 days of the date on which the order of another court was made transferring the proceedings to this Court, the plaintiff or applicant (as the case may be) must—

(a) file a notice of motion in the proceedings seeking directions as to the subsequent conduct of proceedings; and

(b) serve that notice of motion on each other party to the proceedings.

(5) If the Court makes an order as to the costs of a proceeding before any other court in a proceedings transferred to this Court, the Court may—

(a) specify the amount of the costs to be allowed; or

(b) order that the costs be taxed in accordance with Order 65; or

(c) make orders that the costs be ascertained by taxation or otherwise in that other court.

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(1) NOTE TO APPLICANTS: Section 465C of the Corporations Law provides that a person may not oppose an application for winding up of a company under section 459P, 462 or 464, without the leave of the Court, unless the person has filed and served on the applicant notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice, within the period prescribed by the Rules.

(2) NOTE TO APPLICANTS: Subsection 459G (3) of the Corporations Law provides that an application is made in accordance with section 459G only if, within 21 days after a statutory demand is served on the company, an affidavit supporting the application is filed with the Court and a copy of the application and of the supporting affidavit are served on the person who served the demand on the company.

(3) NOTE TO APPLICANTS: Section 465A of the Corporations Law requires a person who applies for an order that a company be wound up under section 459P, 462 or 464 to lodge a notice in the prescribed form that the application has been made; to serve a copy of it on the company within 14 days after the application is made; and to advertise the application as prescribed in the Rules.

(4) NOTE TO APPLICANTS: Section 465C of the Corporations Law provides that a person may not oppose an application for winding up of a company under section 459P, 462 or 464 without the leave of the Court, unless the person has filed and served on the applicant notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice, within the period prescribed by the Rules.

(5) NOTE TO APPLICANTS: Section 470 of the Corporations Law requires that, within 7 days of the making and entry of an order for the winding up of a company, the applicant shall lodge an office copy of the sealed order of the Court with the Commission, serve an office copy of the sealed order on the company and deliver an office copy of the sealed order of the Court to the liquidator appointed in the winding up order, together with a statement that the order has been served on the company in compliance with paragraph 470 (2) (b) of the Corporations Law.

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PART 7—ADOPTION

ORDER 76

Division 1—Preliminary

Interpretation

1. (1) In this Part, unless the contrary intention appears—

"Act" means the *Adoption Act 1993*;

"Director" means the Director of Family Services appointed under section 7 of the *Children's Services Act 1986*;

"discharging order" means—

(a) an order of the Court under section 26 of the Act discharging an adoption order; or

(b) an order of the Court under subsection 52 (1) of the Act discharging an interim order;

"dispensing order" means an order of the Court under subsection 35 (1) of the Act dispensing with the requirement for consent of a person to an adoption;

"order for access to identifying information" means an order of the Court under section 75 or 76 of the Act;

"Register of Births" means the Register of Births kept under the *Registration of Births, Deaths and Marriages Act 1963*;

"variation order" means an order of the Court under section 41 of the Act varying or revoking a condition of an adoption order.

(2) Unless the contrary intention appears, an expression used in this Part has the same meaning as in the Act.

(3) A reference in this Part to a Form by number is to be read as a reference to the Form in the Eighth Schedule which bears that number.

Division 2—Adoption orders

References to applicants

2. Unless the contrary intention appears, for the purposes of this Division, where an application for an adoption order is made on behalf of the proposed adoptive parent or parents by the Director or by the principal officer of a private adoption agency, the application is to be taken to have been made—

(a) by the proposed adoptive parent; or

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(b) by the proposed adoptive parents jointly;

as the case requires.

Adoption orders—application

3. (1) An application for an adoption order may be made—

(a) by the proposed adoptive parent or parents; or

(b) on behalf of the proposed adoptive parent or parents, by—

(i) the Director; or

(ii) the principal officer of a private adoption agency.

(2) An application for an adoption order shall be—

(a) in accordance with Form 1; and

(b) accompanied by an affidavit under rule 5, together with any documents to be filed under rule 6.

(3) An application for an adoption order and all proceedings in the application shall be entitled in the full name proposed to be given to the child sought to be adopted.

Adoption orders—notice of application

4. (1) Where an application for an adoption order is made otherwise than by the Director, or the principal officer of a private adoption agency, the applicant or applicants shall give notice of the application to the Director in accordance with Form 2 no later than 28 days before the date fixed for hearing the application.

(2) A notice under subrule (1) shall be accompanied by a copy of the affidavit under rule 5, and copies of any documents under rule 6, filed with the application.

(3) A notice of an application for an adoption order for the purposes of section 22 of the Act shall be in accordance with Form 2.

Adoption orders—affidavit in support of application

5. (1) An affidavit accompanying an application for an adoption order shall be made by—

(a) the applicant; or

(b) in the case of a joint application—each applicant jointly.

(2) An affidavit accompanying an application for an adoption order shall include a statement of—

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(a) the following particulars about the applicant:

(i) full name;

(ii) usual place of residence;

(iii) occupation;

(iv) domicile;

(v) date and place of birth;

(vi) state of health;

(vii) financial circumstances;

(b) in the case of a joint application—

(i) the length of the applicants' relationship; and

(ii) the stability of the relationship and the applicant's commitment to the relationship;

(c) the following information about the applicant's children, if any (whether birth children or adopted children):

(i) sex and date of birth;

(ii) the state of health of any living child;

(iii) if any child has died—the date of death;

(d) the likelihood of any children being born to the applicant in the future;

(e) the relationship (if any) to the applicant of the child sought to be adopted;

(f) the period (if any) that the child to be adopted has been living with the applicant;

(g) the full name to be given to the child to be adopted;

(h) the amount and nature of any payment or reward in connection with the proposed adoption that the applicant has given or received, or agreed to give or receive;

(j) whether the applicant has ever been refused an adoption order;

(k) whether an adoption order or an interim order in the applicant's favour has been discharged;

(m) if an arrangement has been made, or is to be made, for the child who is to be adopted to be brought from a place outside Australia

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for the purpose of the adoption—particulars of that arrangement, together with a statement about the matters referred to in paragraphs 20 (2) (a), (b) and (c) of the Act;

(n) if the child to be adopted is an Aboriginal child—that fact, together with a statement about the matters referred to in paragraphs 21 (2) (a) and (b) of the Act; and

(o) any conditions under section 40 of the Act which are sought by any person in relation to the adoption.

(3) Where an affidavit under subrule (2) is made by 2 persons jointly, a reference in that subrule to the applicant is to be taken to be a reference to each of those persons.

Adoption orders—documents in support of application

6. (1) The following documents shall be filed with an application for the adoption of a child:

(a) any instrument of consent to the adoption, together with an affidavit verifying the making of that instrument;

(b) any dispensing order in relation to the application;

(c) the child's birth certificate, together with—

(i) any document identifying the child as the person to whom the certificate relates; or

(ii) an affidavit or statement in writing by the Director that, having made due inquiry, the child is to the best of his or her belief the person to whom the certificate relates;

(d) if the child to be adopted has been, or is to be, brought from a place outside Australia for the purpose of the adoption—any other documents necessary to support the application;

(e) if the child to be adopted is an Aboriginal child—any other documents necessary to support the application.

(2) Any other documents relevant to the matters stated in an affidavit under rule 5, including (where applicable) the applicants' certificate of marriage, may be filed together with the relevant application.

(3) Where it is impracticable to obtain a birth certificate of the child sought to be adopted—

(a) the applicant or applicants shall, in the affidavit under rule 5, state why it is impracticable to obtain such a certificate; or

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(b) if the application is made by the Director, or the principal officer of a private adoption agency, the Director or that principal officer shall, in the report under paragraph 19 (1) (a) of the Act, state why it is impracticable to obtain such a certificate.

(4) If a document filed under this rule is not written in English, there shall be filed with the document—

(a) a translation into English of the document; and

(b) an affidavit by the translator—

(i) stating his or her qualifications;

(ii) verifying that he or she is competent to make the translation; and

(iii) verifying the accuracy of the translation.

(5) In this rule—

"birth certificate", in relation to a child, means a document which is—

(a) the official certificate of birth of the child; or

(b) any other written record of the birth of the child;

"document" includes—

(a) a copy of an original document, being a copy verified as a true copy by a person having the custody of the original;

(b) a copy of an entry in an official register, being a copy verified as a true copy by a person having custody of the register; or

(c) an extract from a record in an official register, being an extract issued under the Convention Concerning the Issue of Certain Extracts from Civil Status Records to be sent Abroad signed at Paris on 27 September 1956.

Adoption orders—entry of appearance opposing application

7. (1) A person who is given notice of an application for an adoption order may enter an appearance to oppose the application by filing with the Court a notice of appearance in accordance with Form 3 within 10 days after the date of service of the notice of the application.

(2) A person entering an appearance to oppose an application for an adoption order shall, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

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(a) except where the application is made by the Director, or the principal officer of a private adoption agency—

(i) the prospective adoptive parent or parents; or

(ii) if the application is made by a solicitor on behalf of the prospective adoptive parents—that solicitor;

(b) if the application is made by the Director—the Director; or

(c) if the application is made by the principal officer of an adoption agency—that principal officer.

(3) Where a notice of an application is served on the Director under rule 4, the Director may enter an appearance to oppose the application by filing with the Court a notice of appearance in accordance with Form 3 within 10 days after the date of service of the notice of the application.

(4) If the Director enters an appearance to oppose an application for an adoption order, he or she shall, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to each person to whom notice of the application is required to be given under section 22 of the Act.

Form of interim order

8. An interim order shall be in accordance with Form 4.

Form of adoption order

9. An adoption order shall be in accordance with Form 5.

Division 3—Orders for dispensing with consent to adoption

Dispensing orders—application

10. (1) An application for a dispensing order shall be—

(a) by motion on notice in accordance with Form 6; and

(b) accompanied by an affidavit setting out the circumstances alleged to justify the requirement for consent to be dispensed with, including any circumstances referred to in paragraph 35 (1) (a), (b), (c) or (d) of the Act.

(2) An affidavit under subrule (1) (b) shall be made by—

(a) the applicant for the order; or

(b) in the case of a joint application—each applicant jointly.

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(3) Unless subsection 35 (3) of the Act applies, an application for a dispensing order shall be made at the same time as the relevant application for an adoption order.

Dispensing orders—notice of application

11. (1) No later than 28 days before the date fixed for hearing an application for a dispensing order, notice of the application, and of that date, shall be given to—

(a) each person interested in the relevant application, or proposed application, for adoption;

(b) except where the application for the dispensing order is made by the Director—the Director; and

(c) if the Court considers it to be in the interests of justice—any person nominated by the Court.

(2) A notice under subrule (1) shall be accompanied by a copy of the relevant affidavit under rule 10.

(3) A notice of an application for a dispensing order shall be in accordance with Form 7.

(4) On application, the Court may dispense with the requirement for giving notice under this rule.

Dispensing orders—entry of appearance opposing application

12. (1) A person who is given notice of an application for a dispensing order may enter an appearance to oppose the application by filing with the Court a notice of appearance in accordance with Form 8 within 10 days after the date of service of the notice of the application.

(2) A person entering an appearance to oppose an application for a dispensing order shall, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

(a) except where the application is made by the Director, or the principal officer of a private adoption agency—

(i) the prospective adoptive parent or parents; or

(ii) if the application is made by a solicitor on behalf of the prospective adoptive parents—that solicitor;

(b) if the application is made by the Director—the Director; or

(c) if the application is made by the principal officer of an adoption agency—that principal officer.

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(3) The Director may enter an appearance to oppose an application for a dispensing order by filing with the Court a notice of appearance in accordance with Form 8 within 10 days after the date of service of the notice of the application.

(4) If the Director enters an appearance to oppose an application for a dispensing order, he or she shall give a copy of the notice of appearance to each person to whom notice of the application is required to be given under paragraphs 11 (1) (a) and (c).

Form of dispensing order

13. A dispensing order shall be in accordance with Form 9.

Division 4—Variation of adoption orders

Variation orders—application

14. An application for a variation order shall be—

(a) by motion on notice in accordance with Form 10; and

(b) accompanied by—

(i) a report from the Director (as required by subsection 41 (2) of the Act); and

(ii) an affidavit by the applicant setting out details of the variation or revocation sought and the circumstances alleged to justify the variation order.

Variation orders—notice of application

15. (1) No later than 28 days before the date fixed for hearing an application for a variation order, notice of the application, and of that date, shall be given to each person interested in the application.

(2) A notice under subrule (1) shall be accompanied by a copy of the relevant affidavit under rule 14.

(3) A notice of an application for a variation order shall be in accordance with Form 11.

(4) On application, the Court may dispense with the requirement for giving notice under this rule.

Variation orders—entry of appearance opposing application

16. (1) A person who is given notice of an application for a variation order may enter an appearance to oppose the application by filing with the Court a notice of appearance in accordance with Form 12 within 10 days after the date of service of the notice of the application.

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(2) A person entering an appearance to oppose an application for a variation order shall, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

(a) the person in whose favour the order is sought; or

(b) if the order is sought by a solicitor on that person's behalf—that solicitor.

Division 5—Discharge of interim orders and adoption orders

Discharging orders—application

17. An application for a discharging order shall be—

(a) by motion on notice in accordance with Form 13; and

(b) accompanied by an affidavit setting out the circumstances alleged to justify the discharging order, including any allegation that the relevant interim order or adoption order, or any consent to the adoption, was obtained by fraud, duress or other improper means.

Discharging orders—notice of application

18. For the purposes of subsection 26 (5) of the Act, a notice of an application for a discharging order shall be—

(a) in accordance with Form 14; and

(b) accompanied by a copy of the relevant affidavit under rule 17.

Discharging orders—entry of appearance opposing application

19. (1) A person who is given notice of an application for a discharging order may enter an appearance to oppose the application by filing with the Court a notice of appearance in accordance with Form 15 within 10 days after the date of service of the notice of the application.

(2) A person entering an appearance to oppose an application for a discharging order shall, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

(a) the person in whose favour the order is sought; or

(b) if the order is sought by a solicitor on that person's behalf—that solicitor.

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Division 6—Access to identifying information

Access to identifying information—application

20. An application for an order for access to identifying information shall be by motion on notice in accordance with Form 16.

Access to identifying information—notice of application

21. (1) Notice of an application for an order for access to identifying information shall be given to—

(a) the Director; and

(b) any person—

(i) whose approval would be sufficient under Division 3 of Part V of the Act to entitle the applicant to the identifying information; and

(ii) who has refused to give that approval.

(2) A notice under subrule (1) shall be in accordance with Form 17.

Access to identifying information—entry of appearance opposing application

22. (1) A person who is given notice of an application for an order for access to identifying information may enter an appearance to oppose the application by filing with the Court a notice of appearance in accordance with Form 18 within 10 days after the date of service of the notice of the application.

(2) A person entering an appearance to oppose an application for an order for access to identifying information shall, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

(a) the person in whose favour the order is sought; or

(b) if the order is sought by a solicitor on that person's behalf—that solicitor.

Form of order for access to identifying information

23. An order for access to identifying information shall be in accordance with Form 19.

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Division 7—General procedures

Applications by motion without notice

24. An application under the Act may be made upon motion without notice, except where—

(a) otherwise provided by the Act or this Order; or

(b) the Court otherwise orders.

Service of notice of applications

25. (1) A notice of an application for an order under the Act shall be served on a person by giving a copy of the notice to the person personally, unless Order 11 applies.

(2) If notice of an application for an order under the Act is required to be served on the Director, or on the principal officer of a private adoption agency, service may be effected for the purposes of the Act and this Order by giving that notice personally to a member of the staff of the Director's office, or to a member of the staff of that agency, as the case requires.

(3) Due service of a notice of an application for an order under the Act shall be proved by the affidavit of the person who served the notice.

(4) An affidavit of personal service shall be in accordance with Form 20.

Chambers hearings

26. Unless the Court otherwise orders, an application for an order under the Act shall be heard in Chambers.

Evidence

27. (1) An application for an order under the Act may be heard on evidence on affidavit.

(2) A party to proceedings on an application for an order under the Act may, after giving 7 days' notice to any other parties, apply to the Court to have the application heard on oral evidence.

(3) The Court may, on an application under subrule (2) or of its own motion, order that an application for an order under the Act be heard—

(a) on oral evidence; or

(b) partly on oral evidence and partly on evidence on affidavit.

(4) The Court may make any other order necessary for carrying out an order under subrule (3).

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Adjournments, extensions of time, directions

28. (1) Upon application by a party to proceedings, the Court may—

(a) extend the time limited by this Order for the doing of an act or the taking of a step in the proceedings (whether or not that period has expired);

(b) adjourn any proceedings under the Act; and

(c) give directions with respect to the proceedings.

(2) An extension of time may be granted subject to such conditions as the Court thinks fit.

(3) The costs of an application under this rule shall be borne by the applicant or applicants.

(4) An application under this rule may be made orally to the Court upon the hearing of the proceedings by the Court.

PART 8—PROCEEDINGS UNDER THE MENTAL HEALTH ACT 1983

ORDER 77

Division 1—Preliminary

Interpretation

1. In this Order, unless the contrary intention appears—

"Director" has the same meaning as in the Act;

"Act" means the *Mental Health Act 1983*;

"prescribed representative" has the same meaning as in the Act.

Hearing in chambers

2. All proceedings under the Act shall be heard in chambers.

Forms

3. (1) A reference in this Order to a form by number shall be read as a reference to the form so numbered in the Tenth Schedule.

(2) Where, under this Order, the use of a form in the Tenth Schedule is required, a form which does not differ materially from the form in the Tenth Schedule shall, unless the Court otherwise orders, be taken to comply with that requirement.

(3) Forms in the Tenth Schedule shall be used where they are applicable to the circumstances, and where they are not applicable forms of like character with such variations as the circumstances shall require shall be used.

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Division 2—Treatment Orders

Applications

4. An application under subsection 28 (2) of the Act shall be by *inter partes* originating summons supported by affidavit.

Form and service of summons

5. The summons may be in Form 2, and shall, together with copies of all affidavits relied on by the applicants, be served on the respondents, being the parties designated in paragraphs 28 (6) (b) (c) (d) and (e) of the Act.

Appearance

6. The person in respect of whom the order is sought may appear to the summons by his prescribed representative.

Form of treatment order

7. A treatment order may be in Form 3.

Division 3—Variation and Discharge of Treatment Orders

Applications

8. An application under section 43 of the Act in respect of an order made under subsection 34 (2) of the Act shall be by notice for further consideration of the summons, supported by affidavit.

Applicant not previously a party

9. If the applicant was not a party to the summons he shall upon filing and serving the notice be deemed to be a party thereto for all purposes.

Form and service of notice

10. The notice may be in Form 4, and shall be filed and served upon all parties to the summons, together with copies of all affidavits relied on.

Division 4—Psychiatric Surgery

Application

11. An application under section 57 of the Act shall be by *inter partes* originating summons supported by affidavit.

Appearance

12. The respondents to the summons shall be the person in relation to whom the application is made, and the Director.

Service of summons

13. The summons together with copies of all affidavits relied on shall be served on the respondents.

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Form of order

14. An order under section 57 may be in Form 5.

PART 9—PROCEEDINGS UNDER THE JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987 OF THE COMMONWEALTH

ORDER 78

Application of Order

1. The other Orders of the Rules apply to proceedings referred to in this Order in so far as they are not inconsistent with the rules contained in it.

Interpretation

2. In these Rules—

"the Act" means the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth.

"cross-vesting law" means any law of the Commonwealth or a State or Territory (including the Act) relating to the cross-vesting of jurisdiction.

"special federal matter" has the same meaning as in the Act.

Applications under the Act

3. (1) An application under the Act shall be made by notice of motion.

(2) A document in proceedings for relief under the Act shall bear above the title, the statement "*Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth".

Applications for transfer of proceedings

4. (1) An application under the Act for the transfer or removal of proceedings shall be heard and determined by a Judge.

(2) If an application for the transfer of proceedings is made by the Attorney-General of the Commonwealth or of a State or Territory, the Attorney-General does not, by reason of the application, become a party to the proceedings in respect of which the application is made.

Removal of Proceedings

5. If an order is made for the removal of a proceeding from a court or tribunal to the Supreme Court under section 8 of the Act, the Supreme Court may give any directions that could have been given by the court or tribunal in which the proceeding was pending.

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Proceedings in which jurisdiction under cross-vesting laws is or may be invoked

6. (1) If a party to a proceeding proposes to invoke a jurisdiction arising under a cross-vesting law, or relies on a cross-vesting law, in any other way—

(a) the statement of claim or the affidavit accompanying the application or a subsequent pleading (in each instance hereinafter called "the pleading") shall include a statement of the provision on which the party relies, of the claim in relation to which the party relies on it and of the grounds on which the party relies on it; and

(b) the party must seek directions as soon as practicable on whether the proceeding should be transferred under the Act.

(2) If a pleading raises a question involving a special federal matter, the pleading must identify the special federal matter as such and state the grounds on which it is a special federal matter.

(3) Proceedings may be served out of the jurisdiction with the leave of the Court if the proceedings include a matter for determination in respect of which jurisdiction under a cross-vesting law may be invoked.

(4) Leave will not be granted under subrule (3) unless the Court is satisfied that the Court may, having regard to the Act, be an appropriate Court to determine the proceedings.

(5) Proceedings may be transferred to another Court under the Act notwithstanding that leave to serve the proceedings outside the jurisdiction has been given.

Proceedings transferred under cross-vesting laws

7. (1) On the transfer of proceedings by the Court under the Act the Registrar shall send to the proper officer of the Court to which the proceedings are transferred all documents filed and orders made in the proceedings.

(2) On the transfer of proceedings to the Court under a cross-vesting law the proper officer shall enter and number the documents received in respect of those proceedings in the cause-book, so that the proceedings are distinguished by year of filing and number.

(3) On the transfer of proceedings to the Court under a cross-vesting law the plaintiff shall lodge (or if the proceedings are *ex parte*, the Registrar shall issue) an application for directions as soon as is practicable.

Conduct of Proceedings

8. (1) If the law of a State or another Territory may be applied under section 11 (1) (b) of the Act in determining a right of action arising under a

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written law of that State or Territory, the pleading shall identify the right of action and the written law under which it arises.

(2) If a party seeks to have rules of evidence and procedure, other than those of the Court, applied under section 11 (1) (c) of the Act in dealing with a matter for determination in the proceeding, the pleading shall include a statement of the relevant rules that the party seeks to have applied.

(3) If a party proposes to claim that the law of a State or another Territory should be applied under section 11 (1) (b) of the Act or that rules of evidence and procedure other than those of the Court should be applied under section 11 (1) (c) of the Act—

(a) the party shall seek directions on that matter before the proceedings are set down for trial;

(b) the Court may at any time give directions in relation to such matter of its own motion and may revoke or vary any direction given by it in relation to any such matter.

PART 10—ELECTION PETITIONS

ORDER 79

Definition

1. In this Order, "member" is a person returned as a member of the Legislative Assembly established under subsection 8 (1) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

Application of Rules

2. These Rules, so far as they are applicable and are not inconsistent with this Order, extend and apply to proceedings in the Court in the exercise of its jurisdiction as the Court of Disputed Returns.

Publication

3. The petitioner shall, forthwith after the filing of a petition—

(a) publish a copy of the petition in the *Gazette*; and

(b) publish in some newspaper circulating in the Territory a notice setting forth the fact of the filing of the petition, the date of filing, the name of the petitioner, the nature of the relief claimed and, as concisely as may be, the grounds on which the election is disputed.

Address for service

4. (1) A person who has been returned as a member may file in the Registry in which the election was held a notice in writing signed by him or

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her stating an address for service upon him or her of a petition under the Order.

(2) The address for service shall comply with the provisions of Order 13.

Service of petition

5. The petitioner shall, within seven days after the filing of the petition, or within such further time as the Court allows, cause a sealed copy of the petition to be served personally upon every person whose election or return is disputed by the petition.

Appearances

6. (1) A person returned as a member whose election or return is disputed by a petition shall, within fourteen days after service of the petition, and a person who voted or had a right to vote at the election to which the petition relates may, within fourteen days after the publication of the petition in the *Gazette*, enter an appearance to the petition.

(2) A person so entering an appearance shall be deemed to be a party to the proceedings upon the petition.

Particulars of votes objected to

7. (1) When the petition, not being a petition merely claiming a fresh count of the votes actually counted at the election, claims the seat for a person who has not been returned as a member, alleging that that person had a majority of valid votes, each party shall, seven days before the day appointed for the trial of the petition, file in the Registry and deliver to the opposite party at his or her address for service a list of the ballot-papers or classes of ballot-papers intended to be claimed or objected to, specifying, in the case of ballot-papers objected to, the grounds of objection on which he or she intends to rely.

(2) An objection shall not be entertained against the validity of a ballot-paper upon a ground not specified in the grounds so filed and delivered except by leave of the Court, and upon such terms as to amendment of the grounds, adjournment of the trial and payment of costs, as the Court orders.

Counter-charges

8. (1) When a petition claims a seat for a person who has not been returned as a member and a party respondent desires to contend that the person for whom the seat is claimed was not duly elected upon some grounds other than those mentioned in the last preceding rule, that party shall, within seven days after entering his or her appearance, or within such further time as the Court allows, file in the Registry and deliver to the

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petitioner at his or her address for service a statement of the grounds on which he or she intends to rely.

(2) The statement shall set forth the grounds in the same manner in which facts relied on to invalidate an election or return are required to be set forth in a petition.

Particulars

9. The Court may order a party to the proceedings upon a petition to deliver to another party particulars, or further and better particulars, of a matter alleged by that party.

Trial

10. (1) The trial of a petition under this Order shall be held at a time and place to be appointed by the Court on the application of a party to the petition.

(2) Fourteen days' notice of trial shall be given by the party obtaining the order to the other parties to the petition, and shall be advertised by the petitioner in some newspaper circulating in the Territory.

(3) An order appointing the time and place of trial may be varied by the Court from time to time.

Withdrawal of petition and substitution of another petitioner

11. (1) A petition may be withdrawn by leave of the Court upon such terms as the Court thinks fit.

(2) Fourteen days' notice of the intention to apply for leave under the last preceding subrule shall be given by the petitioner by advertisement in some newspaper circulating in the Territory.

(3) At the hearing of the application, the Court may allow any other person who was competent to file a petition on like grounds to be substituted for the petitioner, and the proceedings upon the petition shall thereupon be continued as if the person so substituted had been the original petitioner.

Abatement by death of petitioner

12. When a sole petitioner dies before the trial of the petition, the Court may allow some other person who was competent to file a petition on the same grounds to be substituted as petitioner and the proceedings upon the petition shall thereupon be continued as if the person so substituted had been the original petitioner.

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PART 11—CRIMINAL JURISDICTION

ORDER 80

Division 1—Preliminary

Interpretation

1. In this Part, "criminal proceeding" includes a trial on indictment, a proceeding on indictment where a plea of guilty is intended or entered and a committal for sentence pursuant to section 90A of the *Magistrates Court Act 1930*.

Forms

2. (1) A reference in this Part to a form by number shall be read as a reference to the form so numbered in the Eleventh Schedule.

(2) Where, under this Part, the use of a form in the Eleventh Schedule is required, a form which does not differ materially from the form in the Eleventh Schedule shall, unless the Court otherwise orders, be taken to comply with that requirement.

Division 2—Bail

Application for bail

3. (1) Documents filed in an application for bail shall be entitled "In the Supreme Court of the Australian Capital Territory", "In the matter of an application for bail by [*the applicant*]".

(2) On an application for bail the Court may give such directions as to service or otherwise as the case requires.

Division 3—Subpoena

Power to issue

4. In any criminal proceeding, the Court may issue a subpoena to give evidence, a subpoena for production, or a subpoena to give evidence and for production, in the prescribed form or in such other form as the Court directs requiring the attendance or production (or both as the case may be) of or by the person named before the Court.

Conduct Money

5. (1) Where a party serves a subpoena requiring the person named to attend or produce any document or thing on any day on which that person's attendance is required the party shall at the time of service pay or tender to the person named in the subpoena a sum sufficient to enable the person to travel by reasonable means to the Court on that day together with

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an undertaking to pay all reasonable expenses of, and any loss reasonably incurred in, complying with the subpoena.

(2) Where the person named is a corporation the sum mentioned in the preceding subrule may be paid or tendered to any person on whom service of the subpoena may be effected.

(3) Where a person named in a subpoena receives conduct money which he or she considers inadequate to compensate him or her for expense or loss reasonably incurred in attending as required by the subpoena the person may, having given to the person who caused the subpoena to be served not less than 7 days notice in writing of his or her intention to apply, apply in writing to the taxing officer to determine the amount which is sufficient to compensate him or her for such expense or loss and upon the taxing officer certifying that amount the person who caused the subpoena to be served shall forthwith pay it to the applicant.

(4) A certificate issued pursuant to the preceding subrule shall be deemed to be a judgment of the Court against the person who caused the subpoena to be served on the applicant and execution may issue as if it were a judgment under Part 2 of these Rules.

(5) The provisions of Order 65 shall be deemed to apply *mutatis mutandis* to any determination under this rule.

Production by non-party

6. (1) A person required by a subpoena to produce any document or thing in relation to a criminal proceeding, being a subpoena requiring attendance before the Court, may, unless the Court otherwise orders, produce the document or thing to the Registrar not later than the day before the first date on which his or her attendance is required, instead of attending and producing the document or thing as required by the subpoena.

(2) Where a document or thing is produced to the Registrar pursuant to subrule (1), the Registrar shall—

(a) give a receipt to the person producing the document or thing; and

(b) produce the document or thing as the nature of the case requires or as the Court directs.

(3) This rule does not apply to so much of a subpoena as requires the person named to attend to give evidence in any criminal proceeding.

Costs of complying with subpoena

7. (1) Where a person named in a subpoena for production of any document or thing in relation to a criminal proceeding incurs substantial expense or loss over and above that provided for by subrules 5 (1) and (3) in complying with the subpoena the Court dealing with the proceeding may

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order that the party who requested the issue of the subpoena pay to the person so named, in addition to any amount which the person served with the subpoena is entitled to be paid pursuant to subrule 5 (1) or (3), an amount which is sufficient to compensate him or her for such expense or loss reasonably incurred in complying with the subpoena.

(2) Where an order is made under the preceding subrule the Court hearing the matter shall either determine the amount or direct that the amount shall be determined by the taxing officer.

(3) An amount determined by the Court, or the taxing officer, pursuant to the preceding subrule shall be deemed to be a judgment of the Court against the person who caused the subpoena to be served and execution may issue as if it were a judgment under Part 2 of these Rules.

(4) The provisions of Order 65 shall be deemed to apply *mutatis mutandis* to any determination under this rule.

Banker's books

8. (1) Where the person named in a subpoena is an officer of a bank, the bank is not a party to the criminal proceeding, and the subpoena requires the officer to produce any banker's book, the contents of which can be proved under legislation in force in the Territory by means other than the production of the book, the subpoena shall, unless the Court otherwise orders, expressly permit the officer to produce proof of the relevant entries in accordance with that legislation, instead of producing the banker's book.

(2) When issuing a subpoena the Registrar shall not be concerned to inquire whether the preceding subrule applies to the subpoena, but the Court may set aside as irregular a subpoena which does not comply with it.

Inspection

9. (1) Where a party serves a subpoena to produce a document upon a person and that person does not object to its production or to its being made available by the Court for inspection, that party may arrange with that person that the document be sent or delivered to the Registrar.

(2) Where such an arrangement is made, the person shall—

(a) post the document to the Registrar so as to reach him or her before the day specified in the subpoena; or

(b) deliver the document to the Registrar before that day;

together with, in either case, the subpoena or a copy thereof, or a schedule giving brief particulars of the document and containing an adequate reference to the proceeding in which the subpoena was issued and the name and address of the person producing the document, and accompanied by a statement in writing that he or she does not object to the production of the

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document or to its being made available by the Court for inspection by a party.

(3) Where a person served with a subpoena to produce a document objects to its production or to its being made available by the Court for inspection by a party, he or she shall not produce the document to the Registrar in accordance with this rule, but shall answer the subpoena by attending the Court in answer to the subpoena and making his or her objection to the Court.

(4) The Registrar shall not, without the leave of the Court, allow a document produced to him or her in accordance with this rule to be inspected by any party or person, but shall arrange for the document to be available at the hearing for which it is required.

(5) The production of a document to the Registrar in accordance with this rule and pursuant to an arrangement with the party who caused the subpoena to be served shall be a sufficient answer to the subpoena, and shall be treated as being in obedience thereto.

(6) A subpoena to produce a document shall have endorsed thereon or annexed thereto a written statement commencing with the words "Order 80, subrules 9 (1) to (5), inclusive, of the Rules of Court are as follows:" and followed by the text of the five preceding subrules.

(7) The preceding subrule does not apply in any case where it is intended that the procedure provided for in this rule is not to be followed.

Issue—Form of subpoena

10. (1) On request by a party, the Registrar shall, unless the Court otherwise orders, issue a subpoena to give evidence, a subpoena for production or a subpoena for production and to give evidence.

(2) A subpoena shall be issued under seal.

(3) A party requesting the issue of a subpoena shall file a copy of the subpoena, but need not file a praecipe for subpoena.

(4) A subpoena shall be in the form of one of the forms numbered 1 to 4.

Document or thing in custody of a court

11. (1) The Registrar shall not issue a subpoena for production of any document or thing in the custody of the Court or another court.

(2) A party desiring the production of a document or thing in the custody of another court shall request the Registrar to proceed under the following subrule.

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(3) On receipt of a request under the preceding subrule, the Registrar shall request the court holding the document or thing to send it to the Registrar.

(4) The Registrar shall produce the document or thing as the nature of the case requires or as the Court directs.

Service

12. (1) Subject to the following subrule, a subpoena shall be served personally.

(2) Where the person named in a subpoena is a medical expert—

(a) service of the subpoena on the expert may be effected at the place where the expert's practice is carried on, by handing it to some person apparently engaged (whether as servant or otherwise) in the practice and apparently of or above the age of 16 years; and

(b) if, on tender of the subpoena to the person mentioned in paragraph (a), he or she refuses to accept it, the subpoena may be served by putting it down in his or her presence after he or she has been told of the nature of the subpoena; and

(c) where service is effected in accordance with paragraph (a) such service shall be deemed to be personal service on the medical expert.

Setting aside

13. (1) The Court may, on motion by the person named in a subpoena, set aside the subpoena wholly or in part.

(2) Notice of a motion under the preceding subrule shall be filed and served on the party at whose request the subpoena was issued.

Authority of Registrar

14. The jurisdiction of the Court that is exercisable in accordance with subsection 8 (1) of the Act may be exercised by the Registrar in the hearing and determination of an application for leave under section 16 of the *Service and Execution of Process Act 1901* of the Commonwealth which relates to a criminal proceeding.

Division 4—General

Execution of documents

15. Any document required to be executed or any recognisance required to be entered into pursuant to an order or a sentence of the Court made in a criminal proceeding whereby a person binds himself or herself to do or suffer anything may be executed before the Registrar or a Justice of the Peace.

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PART 12—APPEALS FROM THE ADMINISTRATIVE APPEALS TRIBUNAL

ORDER 81

Interpretation

1. In this Order, unless the contrary intention appears—

"Appeals Act" means the *Administrative Appeals Tribunal Act 1989* of the Australian Capital Territory;

"Tribunal" means the Australian Capital Territory Administrative Appeals Tribunal;

"Registrar of the Tribunal" includes the Deputy Registrar of the Tribunal or other officer for the time being performing the duties of the Registrar or Deputy Registrar.

Instituting an appeal—form 79

2. An appeal to the Court under section 46 of the Appeals Act from a decision of the Tribunal may be instituted by filing a notice of appeal in accordance with form 79 in Schedule 1.

Notice of appeal

3. (1) The notice of appeal must be signed by the appellant or the appellant's solicitor and must state—

(a) the decision of the Tribunal from which the appeal is brought, the members constituting the Tribunal and the date when the decision was made;

(b) the question or questions of law to be raised on the appeal;

(c) the order sought; and

(d) briefly, but specifically, the grounds relied upon in support of the order sought.

(2) The Court may, on such terms and conditions as the Court thinks fit, allow a notice of appeal to be amended.

(3) On the hearing of an appeal, the appellant must not, without the leave of the Court—

(a) raise any question of law that is not stated in the notice of appeal; or

(b) rely on any ground in support of the order sought that is not set out in the notice of appeal.

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Appearance

4. If there is a respondent to an appeal, the notice of appeal must include an instruction that before taking any other step in the proceeding the respondent must enter an appearance in the Registry.

Other parties

5. (1) Each party to a proceeding in the Tribunal who would be affected by the order sought by a notice of appeal or who is interested in maintaining the decision under appeal must be joined as a respondent to an appeal.

(2) The Court may order—

(a) the addition of any person to an appeal—

(i) as a respondent; or

(ii) with the consent of the person—as an appellant; or

(b) the removal of any person from an appeal.

Filing and service of notice of appeal

6. (1) To appeal from a decision of the Tribunal, a notice of appeal must be filed in the Registry of the Court within the time specified in paragraph 46 (3) (a) of the Appeals Act.

(2) Not later than 7 days after filing a notice of appeal, the appellant must serve a copy of the notice of appeal personally on each other party to the proceeding in the Tribunal and on the Registrar of the Tribunal.

Extension of time

7. (1) Application may be made to the Court, or a Judge, for an extension of the time specified in paragraph 46 (3) (a) of the Appeals Act either before or after the expiration of the specified time.

(2) An application for extension of time must be in accordance with form 80 in Schedule 1.

(3) An application for extension of time must be accompanied by an affidavit showing—

(a) the nature of the case; and

(b) the questions involved; and

(c) the reason why an extension of time should be given.

Security for costs

8. (1) The Court may, in special circumstances, order that such security for costs of appeal to the Court be given as it thinks fit.

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(2) Subject to subrule (1), no security for costs of an appeal to the Court is required.

Stay

9. (1) Application may be made to the Court, by motion on notice, for an order under section 47 of the Appeals Act staying or otherwise affecting the operation or implementation of a decision subject to appeal.

(2) An application referred to in subrule (1) may, in an urgent case, be made *ex parte*.

Documents to be forwarded

10. (1) Not later than 21 days after service of a notice of appeal on the Registrar of the Tribunal, the appellant must send, or cause to be sent, to the Registry—

(a) a copy of the decision appealed from;

(b) if the Tribunal has given reasons in writing for its decision, a copy of the reasons; and

(c) the transcript, or notes, of proceedings in the Tribunal (if any); and

(d) a list of all documents sent to the Registry in relation to the appeal specifying the documents that were before the Tribunal and specifying—

(i) the documents (if any) in respect of which the Tribunal has made an order under subsection 34 (2) of the Appeals Act; and

(ii) the documents (if any) in respect of which a certificate of the Minister is in force under subsection 26 (7) of the Appeals Act; and

(iii) the documents (if any) in respect of which a certificate of the Minister is in force under subsection 35 (1) of the Appeals Act;

and disclosing whether or not an order was made by the Tribunal under subsection 35 (4) of the Appeals Act in respect of documents referred to in subparagraph (iii) of this subrule.

(2) If the Tribunal has not given reasons in writing for its decision, the appellant must—

(a) obtain from the Tribunal, in accordance with subsection 44 (3) of the Appeals Act, a statement in writing of the reasons for the decision; and

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(b) send a copy of the statement to the Registrar of the Tribunal and to the Registry not later than 10 days after receiving it.

(3) When the documents referred to in subrules (1) and (2) have been received in the Registry, the Registrar must, subject to sections 34 and 35 of the Appeals Act, send a copy of the list of documents to each party to the appeal.

Discontinuance of appeal

11. (1) An appellant may at any time file and serve a notice of discontinuance of the appeal and, on its being filed, the appeal is taken, subject to subrule (2), to be abandoned.

(2) A notice of discontinuance filed by an appellant under subrule (1) does not affect any other appellant in the appeal.

(3) A party filing a notice of discontinuance under subrule (1) is liable to pay the costs of the other party or parties occasioned by the appeal.

(4) A party whose costs are payable under subrule (3) may submit a bill of costs to the taxing officer and if the taxed costs are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs.

Amendment by supplementary notice

12. (1) A notice of appeal may be amended without leave, before the date of the directions hearing, by filing a supplementary notice.

(2) A party who files a supplementary notice under subrule (1) must file and serve it in accordance with rule 6 as if it were a notice of appeal.

Notice of cross appeal

13. (1) A respondent who desires—

(a) to appeal from a part of the decision from which the appellant has appealed; or

(b) to seek a variation of a part of that decision;

need not institute a substantive appeal, but must, not later than 21 days after the service upon that respondent of the notice of appeal, or within such further time as the Court may allow—

(c) file in the Registry a notice of cross-appeal; and

(d) serve a copy of the notice on the appellant and every other party to the proceeding.

(2) A notice of cross-appeal must state—

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(a) what part of the decision the respondent cross-appeals from or contends should be varied; and

(b) the question or questions of law to be raised in the cross-appeal; and

(c) the relief sought in place of the decision appealed from or the variation of that decision which is sought; and

(d) briefly, but specifically, the grounds relied on in support of the relief or variation sought.

(3) It is not necessary to give notice of cross-appeal in accordance with subrule (1) if the respondent—

(a) proposes to contend that a matter of law has been erroneously decided against that respondent, but does not seek a discharge or variation of a part of the decision actually pronounced or made; and

(b) gives notice to the appellant of—

(i) the respondent's contention; and

(ii) the record of evidence or documents before the Tribunal relevant to the respondent's contention; and

(c) at the time when the appeal papers are settled under rule 15, requests that those records of evidence or documents be included in the appeal papers.

Date of directions hearing

14. (1) A notice of appeal must state the date appointed by the Registrar for a directions hearing.

(2) A notice of appeal must, unless the Court otherwise orders, be served on the respondent not less than five days before the date appointed for the directions hearing.

(3) If the Court has made an order under subrule (2), the notice of appeal must bear a note of the order made.

Directions hearing

15. (1) At a directions hearing under this Order, the Court may give such directions in relation to the conduct of the proceeding as the Court thinks proper.

(2) Without prejudice to the generality of subrule (1), the Court may—

(a) determine what documents and matters are to be included in the appeal papers and the order of inclusion; and

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(b) determine what documents and matters were before the Tribunal; and

(c) settle the index of documents comprising the appeal papers; and

(d) determine the number of copies of the appeal papers required; and

(e) direct the joinder of parties; and

(f) direct the place, time and mode of hearing.

(3) In this rule, the jurisdiction exercisable by the Court is exercisable by the Master or the Registrar.

Preparation of appeal papers

16. (1) The preparation of appeal papers must comply with the following requirements to the satisfaction of the Registrar—

(a) the title page of the appeal papers must state the title of the proceeding, the division of the Tribunal from which the appeal is brought, the names of the members constituting the Tribunal, and the names, and addresses for service, of the solicitors for each party;

(b) after the title page there must be the settled index referred to in paragraph 15 (2) (c) showing the date and page number of each document;

(c) the appeal papers must be paginated and must include all documents necessary to enable questions of law raised by the appeal to be determined by the Court;

(d) each document must be headed by its date and a short description of its nature but formal headings are not to be included and jurats and formal identification of exhibits and the like are to be omitted;

(e) the appeal papers need not be in bound and printed form but must be clear, legible and securely fastened.

(2) A copy of the appeal papers in relation to a proceeding must be filed by the appellant together with a certificate by the parties or their solicitors stating that the copy has been examined and is correct.

(3) The appellant must file as many additional copies of the appeal papers as the Registrar directs.

(4) The requirements of this rule are subject to any direction that may be given by the Court, a Judge or the Registrar.

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Setting down appeal

17. The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar's motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.

PART 13—APPLICATIONS UNDER THE ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1989 OF THE AUSTRALIAN CAPITAL TERRITORY

ORDER 82

Interpretation

1. In this Order, unless the contrary intention appears—

"Review Act" means the *Administrative Decisions (Judicial Review) Act 1989* of the Australian Capital Territory.

Application of Rules

2. The provisions of these Rules other than this Order, so far as they are applicable and are not inconsistent with this Order, apply to proceedings in the Court in the exercise of its jurisdiction under the Review Act.

Instituting a review—form 81

3. (1) A review by the Court of a decision to which the Review Act applies may be instituted by filing an application in accordance, with form 81 in Schedule 1.

(2) If the grounds of an application include an allegation of fraud or bad faith, the application must include particulars of the fraud or bad faith relied on.

(3) A copy of an application under this rule must be served on each other party to the review not later than 5 days after filing.

Documents to be filed

4. (1) When filing an application for an order of review of a decision, or as soon afterwards as is practicable, the applicant must file a copy of the following documents (other than a document that is not in the possession of the applicant)—

(a) a statement by the person who made the decision, of the terms of the decision;

(b) a statement under section 13 of the Review Act or section 26 of the *Administrative Appeals Tribunal Act 1989* of the Australian Capital Territory, or any other statement given to the applicant by, or on behalf of, the person who made the decision that purports to set out—

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(i) findings of fact; or

(ii) a reference to the evidence or other material on which findings of fact were based; or

(iii) the reasons for making the decision;

unless a copy of that document has been filed previously in relation to the proceeding.

(2) An applicant who files a copy of a statement under subrule (1) must serve a copy of the statement on each other party to the application not later than 5 days after filing.

Notice of objection to competency

5. A respondent to an application who objects to the competency of the application may, not later than 14 days after service of a copy of the application on that respondent, file, and serve on each other party to the proceeding, a notice of objection to competency stating briefly the grounds of the objection.

Directions

6. In addition to the powers of the Court specified in Order 33, the Court, a Judge, the Master or the Registrar may give directions—

(a) that the applicant serve a copy of the application on the Attorney-General of the Australian Capital Territory; and

(b) that the applicant give notice of the application to such persons or classes of persons in such manner as the Court directs; and

(c) if a notice of objection to the competency of the application has been filed, that the objection be heard and determined before the hearing of the application to which the objection relates.

Staying or dismissing applications

7. (1) If, in an application for an order of review, it appears to the Court that in relation to the application generally or in relation to any claims for relief in the application—

(a) no reasonable basis for the application is disclosed; or

(b) the application is frivolous or vexatious; or

(c) the application is an abuse of the process of the Court;

the Court may order that the application be—

(d) stayed; or

(e) dismissed either generally or in relation to any claim for relief in the application.

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(2) The Court may receive evidence in the hearing of an application for an order under subrule (1).

PART 13A—APPEALS FROM THE GUARDIANSHIP AND MANAGEMENT OF PROPERTY TRIBUNAL

ORDER 82A

Interpretation

1. In this Order, unless the contrary intention appears—

"decision", in relation to the Tribunal, includes an order made, or a direction given, by the Tribunal;

"Guardianship Act" means the *Guardianship and Management of Property Act 1991*;

"Registrar of the Tribunal" includes the Deputy Registrar of the Tribunal or other officer for the time being performing the duties of the Registrar or Deputy Registrar;

"Tribunal" means the Guardianship and Management of Property Tribunal established under the Guardianship Act.

Instituting an appeal

2. An appeal to the Court under section 56 of the Guardianship Act may be instituted by filing a notice of appeal in accordance with Form 1 in Schedule 14.

Notice of appeal

3. (1) A notice of appeal shall be signed by the appellant or the appellant's solicitor and, if the appeal is brought in respect of a question other than a question of law, shall include a request for leave to bring the appeal.

(2) A notice of appeal shall state—

(a) the decision appealed from, the names of the members constituting the Tribunal and the date when the decision was made;

(b) the questions in respect of which the appeal is brought;

(c) the order sought; and

(d) briefly, but specifically, the grounds relied on in support of the order sought.

(3) The Court may, on such terms and conditions as the Court thinks fit, allow a notice of appeal to be amended.

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(4) On the hearing of an appeal, the appellant shall not, without the leave of the Court—

(a) raise any question of law or fact that is not stated in the notice of appeal; or

(b) rely on any ground in support of the order sought that is not set out in the notice of appeal.

Appearance

4. If there is a respondent to an appeal, the notice of appeal shall include an instruction that, before taking any other step in the proceeding, the respondent is required to enter an appearance in the Registry.

Other parties

5. (1) Each person who—

(a) appeared or was entitled to appear before a Tribunal inquiry that is the subject of an appeal; and

(b) would be affected by the order sought by the notice of appeal or is interested in maintaining the decision under appeal shall be joined as a respondent to the appeal.

(2) The Court may order—

(a) the addition of any person to an appeal—

(i) as a respondent; or

(ii) with the consent of the person—as an appellant; or

(b) the removal of any person from an appeal.

Filing and service of notice of appeal

6. (1) A notice of appeal shall be filed in the Registry within the time specified in paragraph 56 (3) (a) or (b) of the Guardianship Act.

(2) An appellant shall, within 7 days after filing a notice of appeal, serve a copy of the notice personally on each other person who appeared or was entitled to appear before the Tribunal inquiry and on the Registrar of the Tribunal.

Extension of time

7. (1) Application may be made to the Court for an extension of the time specified in paragraph 56 (3) (a) or (b) of the Guardianship Act either before or after the expiration of the specified time.

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(2) An application for an extension of time shall be in accordance with Form 2 in Schedule 14.

(3) An application for an extension of time shall be accompanied by an affidavit showing—

(a) the nature of the case;

(b) the questions involved; and

(c) the reasons why an extension of time should be given.

Documents to be forwarded

8. (1) Within 21 days after service of a notice of appeal on the Registrar of the Tribunal, the appellant shall send, or cause to be sent, to the Registry—

(a) a copy of the decision appealed from;

(b) if the Tribunal has given reasons in writing for its decision, a copy of the reasons;

(c) the transcript, or notes, of proceedings in the Tribunal (if any); and

(d) a list of all documents sent to the Registry in relation to the appeal specifying the documents that were before the Tribunal.

(2) If the Tribunal has not given reasons in writing for its decision, the appellant shall—

(a) obtain from the Tribunal under section 45 of the Guardianship Act a statement in writing of the reasons; and

(b) send a copy of the statement to the Registrar of the Tribunal and to the Registry within 10 days after receiving it.

(3) When the documents referred to in subrules (1) and (2) have been received in the Registry, the Registrar shall send a copy of the list of documents to each party to the appeal.

Discontinuance of appeal

9. (1) An appellant may file and serve a notice of discontinuance of the appeal at any time.

(2) Subject to subrule (3), if an appellant files and serves a notice of discontinuance under subrule (1), the appeal is taken to be abandoned.

(3) A notice of discontinuance filed by an appellant under subrule (1) does not affect any other appellant in the appeal.

(4) A party filing a notice of discontinuance is liable to pay the costs of the other parties occasioned by the appeal.

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(5) A party whose costs are payable under subrule (4) may submit a bill of costs to the taxing officer and, if the taxed costs are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs.

Amendment by supplementary notice

10. (1) A notice of appeal may be amended without leave, before the date of the directions hearing, by filing a supplementary notice.

(2) A party who files a supplementary notice shall file and serve it in accordance with rule 6 as if it were a notice of appeal.

Notice of cross appeal

11. (1) A respondent who desires—

(a) to appeal from a part of the decision from which the appellant has appealed; or

(b) to seek a variation of a part of that decision;

need not institute a substantive appeal, but shall, within 21 days after the service on that respondent of the notice of appeal, or within such further time as the Court may allow—

(c) file in the Registry a notice of cross-appeal; and

(d) serve a copy of the notice on the appellant and every other party to the proceeding.

(2) A notice of cross-appeal shall state—

(a) what part of the decision the respondent cross-appeals from or contends should be varied;

(b) the questions of law to be raised in the cross-appeal;

(c) the relief sought in place of the decision appealed from or the variation of that decision that is sought; and

(d) briefly, but specifically, the grounds relied on in support of the relief or variation sought.

(3) It is not necessary to give a notice of cross-appeal in accordance with subrule (1) if the respondent—

(a) proposes to contend that a matter of law has been erroneously decided against that respondent, but does not seek a discharge or variation of a part of the decision actually pronounced or made;

(b) gives notice to the appellant of—

(i) the respondent's contention; and

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(ii) the record of evidence or documents before the Tribunal relevant to the respondent's contention; and

(c) at the time when the appeal papers are settled under rule 13, requests that those records of evidence or documents be included in the appeal papers.

Date of directions hearing

12. (1) A notice of appeal shall state the date appointed by the Registrar for a directions hearing.

(2) A notice of appeal shall, unless the Court otherwise orders, be served on the respondent within 5 days before the date appointed for the directions hearing.

(3) If the Court has made an order under subrule (2), the notice of appeal shall bear a note of the order made.

Directions hearing

13. (1) At a directions hearing under this Order, the Court may give such directions in relation to the conduct of the proceeding as the Court thinks proper.

(2) Without prejudice to the generality of subrule (1), the Court may—

(a) determine what documents and matters are to be included in the appeal papers and the order of inclusion;

(b) determine what documents and matters were before the Tribunal;

(c) settle the index of documents comprising the appeal papers;

(d) determine the number of copies of the appeal papers required;

(e) direct the joinder of parties; and

(f) direct the place, time and mode of hearing.

(3) The jurisdiction exercisable by the Court under this rule is exercisable by the Master or the Registrar.

Preparation of appeal papers

14. (1) The preparation of appeal papers shall comply with the following requirements to the satisfaction of the Registrar:

(a) the title page of the appeal papers shall state the title of the proceeding, the names of the members constituting the Tribunal, and the names, and addresses for service, of the solicitors for each party;

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(b) the settled index referred to in paragraph 13 (2) (c) shall appear after the title page and shall show the date and page number of each document;

(c) the appeal papers shall be paginated and shall include all documents necessary to enable questions of law raised by the appeal to be determined by the Court;

(d) each document shall be headed by its date and a short description of its nature but formal headings shall not to be included and jurats and formal identification of exhibits and the like shall be omitted;

(e) the appeal papers need not be in bound and printed form but shall be clear, legible and securely fastened.

(2) A copy of the appeal papers in relation to a proceeding shall be filed by the appellant together with a certificate by the parties or their solicitors stating that the copy has been examined and is correct.

(3) The appellant shall file as many additional copies of the appeal papers as the Registrar directs.

(4) The requirements of this rule are subject to any direction that may be given by the Court, a Judge or the Registrar.

Setting down appeal

15. The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar's motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.

PART 14—COMMERCIAL ARBITRATION

ORDER 83

Division 1—Awards

Interpretation

1. In this Order, unless the contrary intention appears:

"Arbitration Act" means the *Commercial Arbitration Act 1986* of the Australian Capital Territory;

"proceeding" means a proceeding of any kind in the Court under the Arbitration Act.

Application of Rules

2. The provisions of these Rules other than this Order, so far as they are applicable and are not inconsistent with this Order, apply to proceedings in the Court in the exercise of its jurisdiction under the Arbitration Act.

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Commencement of proceedings

3. A proceeding may be commenced by originating summons.

Appeal under section 38 of Arbitration Act by leave

4. An originating summons for an appeal with the leave of the Court under paragraph 38 (4) (b) of the Arbitration Act ("Judicial review of awards") must include, or be accompanied by, a statement of:

(a) the nature of the case; and

(b) the questions involved; and

(c) the reasons why leave should be given.

Application under section 39 of Arbitration Act

5. (1) Proceedings under subsection 39 (1) of the Arbitration Act ("Determination of preliminary point of law by Supreme Court") must be commenced by the party making the application:

(a) not later than 21 days after the consent, or consents, referred to in that subsection is or are given; or

(b) within such extended time as the Court may allow.

(2) A decision by the Court to entertain or not to entertain an application under paragraph 39 (1) (a) of the Arbitration Act must be given by order.

Time for appeal or application

6. (1) An appeal brought under paragraph 38 (4) (a) of the Arbitration Act ("Judicial review of awards") must be instituted not later than 21 days after:

(a) if, by agreement of the parties to the arbitration agreement, the award is made without inclusion of a statement of reasons—the day the statement of reasons is given to the appellant; or

(b) in any other case—the day notice of the award is given to the appellant;

or within such extended time as the Court allows.

(2) An application for an order:

(a) under paragraph 38 (4) (b) of the Arbitration Act ("Judicial review of awards") granting leave to appeal; or

(b) under subsection 42 (1) of the Arbitration Act ("Power to set aside award") to set an award aside; or

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(c) under section 43 of the Arbitration Act ("Court may remit matter for reconsideration") to remit any matter;

must be made not later than 21 days after:

(d) if, by agreement of the parties to the arbitration agreement, the award is made without inclusion of a statement of reasons the day the statement of reasons is given to the appellant; or

(e) in any other case—the day notice of the award is given to the appellant;

or within such extended time as the Court allows.

(3) An appeal brought under paragraph 38 (4) (b) of the Arbitration Act must be instituted:

(a) not later than 21 days after leave is granted by the Court; or

(b) within such extended or abridged time as the Court determines.

Examination of witnesses

7. Order 39 applies in relation to the examination of a witness in proceedings under the Arbitration Act as if the witness were a witness for the purposes of a trial.

Decision to refuse application for interlocutory order

8. The Court may refuse to make an interlocutory order under section 47 of the Arbitration Act ("General power of Court to make interlocutory orders") if the Court considers that the arbitrator or umpire has power to make the order applied for.

Application for leave to enforce award

9. (1) Unless the Court otherwise orders, an application for leave under subsection 33 (1) of the Arbitration Act ("Enforcement of award") to enforce an award:

(a) must be supported by an affidavit that states:

(i) the extent to which the award has not been complied with at the date the application is made; and

(ii) the usual, or last known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a corporation, its last known registered office; and

(b) may be made without giving notice to any person.

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(2) If leave is given, any party to the award may enter judgment in terms of the award.

Evidence of award for purposes of enforcement

10. Section 9 of the *International Arbitration Act 1974* of the Commonwealth ("Evidence of awards and arbitration agreements") applies in proceedings in which leave of the Court is sought for enforcement of an award under subsection 33 (1) of the Arbitration Act ("Enforcement of award") as that section of the *International Arbitration Act 1974* of the Commonwealth applies in proceedings in which enforcement of a foreign award is sought under the *International Arbitration Act 1974* of the Commonwealth.

Indorsement and service of order for enforcement

11. (1) An order under subsection 33 (1) of the Arbitration Act giving leave to enforce an award must:

(a) be indorsed with a statement that the person on whom the order is served may, before the expiration of 5 days after service (or such longer period as the Court orders) apply to have the order set aside; and

(b) be served on the person against whom it is sought to enforce the award.

(2) An order does not operate to enable an award to be enforced until:

(a) the expiration of the period referred to in subrule (1); and

(b) if the person against whom it is sought to enforce the award applies, within the period referred to in subrule (1), to have the order set aside—the determination of that application.

Division 2—Court-appointed Referees

Interpretation

12. In this Division, unless the contrary intention appears:

"question" includes any question or issue of fact or law arising in any proceeding, whether raised by pleading, agreement of parties or otherwise.

Order referring

13. (1) The Court may, in any proceedings in the Court, at any stage of the proceedings:

(a) on application by a party; or

(b) of its own motion;

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make an order for reference to a referee appointed by the Court:

(c) to inquire into and report on; or

(d) to hear and determine;

the whole of the proceedings or any question arising in the proceedings.

(2) A referee may be:

(a) a Judge; or

(b) the Master; or

(c) the Registrar; or

(d) any other officer of the Court; or

(e) any other person:

(i) agreed by the parties; or

(ii) specified by the Court; or

(iii) specified by a person nominated by the Court to select a suitable referee.

Order referring may be varied or set aside

14. (1) The Court may set aside or vary an order made under subrule 13 (1) on application by the referee or a party to the proceedings under the reference, or of its own motion.

(2) Nothing in this rule affects any other power of the Court to vary or set aside an order made under subrule 13 (1).

Conduct of proceedings under a reference

15. (1) Except as provided by this rule, proceedings under a reference referred to in paragraph 13 (1) (d) are to be conducted as if the reference were an arbitration agreement within the meaning of the Arbitration Act.

(2) An order under subrule 13 (1) may include directions regarding the conduct of proceedings under the reference.

(3) Subject to subrules 14 (1) and (2):

(a) a referee may conduct proceedings under the reference in such manner as the referee thinks fit; and

(b) the referee is not bound by rules of evidence but may inform himself or herself in relation to any matter in those proceedings in such manner as the referee thinks fit; and

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(c) evidence before the referee:

(i) may be given orally or in writing; and

(ii) must, if the referee so requires, be given on oath or affirmation or by affidavit; and

(d) the referee may examine any person in relation to the proceedings; and

(e) each party to the proceedings must, within a time fixed by the referee but in any event before the conclusion of the submission of evidence, give to the referee and each other party a brief statement of the findings of fact and law for which the party contends.

Interlocutory directions

16. The Court may give directions in respect of any matter arising in proceedings under a reference, at any time and from time to time, on motion of the appointed referee or of a party.

Report of referee

17. (1) Unless the Court orders otherwise, a referee under these rules must give to the Court a written report on the proceedings or question referred to the referee:

(a) stating:

(i) the referee's opinion or determination on the matter referred; and

(ii) the reasons for the opinion or determination; and

(b) annexing the statements given under paragraph 15 (3) (e).

(2) The referee's report must be accompanied by sufficient copies for the parties to the proceedings in relation to which the reference was made and, on receipt of the report, the Court must serve a copy on each party.

Proceedings on report of referee

18. (1) In relation to a report referred to in paragraph 13 (1) (c), the Court may:

(a) on application by a party; or

(b) of its own motion after notice to the parties to the proceedings;

on a matter of fact or law or both:

(c) adopt, vary or reject the report in whole or in part; or

(d) require an explanation by way of report from the referee; or

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(e) on any ground, remit for further consideration by the referee the whole or any part of the matter referred for a further report; or

(f) decide any matter on the evidence taken before the referee, with or without additional evidence.

(2) Evidence additional to the evidence taken before the referee may not be adduced before the Court except with leave of the Court.

Remuneration of referee

19. (1) The Court may:

(a) determine the amount of the fees to be paid to a referee; and

(b) direct how, when and by whom the fees, or any part of the fees, are to be payable; and

(c) determine the consequence of contravention of a direction under paragraph (b).

(2) Subrule (1) does not affect the powers of the Court in respect of costs.

Court rooms, etc.

20. The Court may give directions for the provision of:

(a) services of officers of the Court; and

(b) court rooms and other facilities;

for the purpose of a reference under rule 13 ("Order referring").

Division 3—Master

Powers of Master

21. The powers and functions of the Court under the Arbitration Act that may be exercised by the Master are:

(a) under section 10 ("General power of Court to fill vacancy")—make an appointment to fill a vacancy in the office of arbitrator or umpire;

(b) under subsection 18 (1) ("Refusal or failure to attend before arbitrator or umpire, etc.")—order a person in default of a requirement referred to in paragraph 18 (1) (a), (b) or (c) of that Act to attend before the Court for examination, to produce to the Court the relevant document or to do the relevant thing;

(c) under subsection 26 (1) ("Consolidation of arbitration proceedings")—order 2 or more proceedings to be:

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(i) consolidated; or

(ii) heard at the same time; or

(iii) heard one immediately after another;

or order any of them to be stayed until after the determination of any other of them;

(d) under section 30 ("Power to correct award")—make an order correcting an award that contains a defect of a kind referred to in paragraph 30 (a), (b), (c) or (d) of that Act;

(e) under subsection 33 (1) ("Enforcement of award")—give leave that an award be enforced;

(f) under subsection 35 (1) ("Taxation of arbitrator's or umpire's fees and expenses")—order that:

(i) an arbitrator or umpire deliver an award on such terms as to the payment of his or her fees and expenses as the Master considers appropriate; and

(ii) the fees and expenses demanded by the arbitrator or umpire be taxed in the Court;

(g) under subsection 36 (1) ("Costs of abortive arbitration")—make orders that the Master thinks just in relation to the costs of an aborted arbitration;

(h) under subsection 38 (4) ("Judicial review of awards")—give leave to appeal on a question of law arising out of an award;

(j) under subsection 46 (2) ("Delay in prosecuting claims")—to make an order terminating proceedings;

(k) under section 47 ("General power of Court to make interlocutory orders")—to make interlocutory orders;

(l) under subsection 48 (1) ("Extension of time")—to extend the time appointed for doing an act or taking a proceeding;

(m) under subsection 53 (1) ("Power to stay court proceedings")—to make an order staying proceedings in respect of a matter agreed to be referred to arbitration;

(n) under subsection 53 (2) ("Power to stay court proceedings")—to grant leave to apply for a stay of proceedings;

(o) under section 57 ("Service of notices")—direct the manner of service of a notice.

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THE SCHEDULES

FIRST SCHEDULE

FORMS—CIVIL PROCEEDINGS

FORM 1 O. 3 r. 3

WRIT FOR SERVICE WITHIN THE JURISDICTION

IN THE SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY
No. of 193 .

Between A.B., Plaintiff
and
C.D. and *E.F.*, Defendants.

GEORGE THE SIXTH, by the Grace of God, of the United Kingdom of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India:

To *C.D.*, of , and *E.F.*, of .

We command you, That within days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court of the Australian Capital Territory in an action at the suit of A.B., and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness the Honourable *G.H.*, Chief Judge of our said Supreme Court, at Canberra, the day of , 193 .

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards. The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registrar's Office, Canberra.

INDORSEMENTS TO BE MADE ON THE WRIT BEFORE ISSUE THEREOF

The plaintiff's claim is for, &c.

This writ was issued by the plaintiff in person, who as a* and resides at ; *or,*

This writ was issued by *J.K.*, of , solicitor of the said plaintiff, who resides at ; *or,*

This writ was issued by *L.M.*, of , whose address for service is , agent for *P.Q.*, of , solicitor for the said plaintiff, who resides at [*mention the city, town, or place, and also the name of the street and number of the house of the plaintiff's residence, if any*].

INDORSEMENT TO BE MADE ON THE WRIT AFTER SERVICE THEREOF

This writ was served by me at on , the defendant [*or* one of the defendants] on day the day of , 193 .

Indorsed the day of , 193 .

(Signed)
(Address)

---

* State plaintiff's occupation.

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FIRST SCHEDULE—continued

FORM 2

SPECIALLY INDORSED WRIT O. 4 r. 5

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God of the United Kingdom of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India:

To , of .

We command you, That within days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court of the Australian Capital Territory in an action at the suit of .

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness [*as in Form 1*]

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards. Appearance is to be entered at the Registrar's Office, Canberra.

STATEMENT OF CLAIM

The plaintiff's claim is

PARTICULARS

(Signed)

(If the plaintiff's claim is for a debt or liquidated demand only, the following should appear above the signature)

And the sum of $ [*or* such sum as may be allowed on taxation], for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within* , further proceedings will be stayed.

This writ was issued by the said plaintiff, who is a† and resides at ; [*or*] This writ was issued by *G.H.*, of whose address for service is solicitor for the said plaintiff, who resides at ; [*or*] This writ was issued by *J.K.*, of , whose address for service is agent for of solicitor for the said plaintiff, who resides at .

This writ was served by me at on the defendant on the day of , 193 .

Indorsed the day of , 193 .

(Signed)

(Address)

---

* Insert number of days allowed for appearance.

† State plaintiff's occupation.

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FIRST SCHEDULE—continued

FORM 3 O. 3 r. 4

WRIT FOR SERVICE OUT OF THE JURISDICTION, OR WHERE NOTICE IN LIEU OF SERVICE IS TO BE GIVEN OUT OF THE JURISDICTION

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God, &c.—[*as in Form 1*]

To *C.D.*, of

We command you, *C.D.*, that within* days after the service† of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Supreme Court of the Australian Capital Territory in an action at the suit of *A.B.*; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness [*as in Form 1*]

Memoranda and Indorsements as in Form 1.

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is residing out of the jurisdiction of the Court, notice of the writ, and not the writ itself, is to be served upon him.*

---

*Insert number of days directed by Court.

†If notice of the writ is to be served, insert here "of notice".

FORM 4 O. 4 r. 5 and O.12 r. 6

SPECIALLY INDORSED WRIT FOR SERVICE OUT OF THE JURISDICTION

[*Title as in Form 1*]

GEORGE THE SIXTH, by the Grace of God, &c.—[*as in Form 1*]

To *A.B.*, of

We command you, That within* days after service† of this writ on you inclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court of the Australian Capital Territory, in an action at the suit of *C.D.* And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness [*as in Form 1*]

N.B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards. Appearance is to be entered at the Registrar's Office, Canberra.

STATEMENT OF CLAIM

The plaintiff's claim is

PARTICULARS

(Signed)

(If the plaintiff's claim is for a debt or liquidated demand only, the following should appear above the signature)

And the sum of $ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff

or his solicitor or agent within‡ days from service§ hereof, further proceedings will be stayed.

This writ was issued, &c.

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FIRST SCHEDULE—continued

This writ [*or* notice of this writ] was served, & c.

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is resident out of the jurisdiction of the Court, notice of the writ, and not the writ itself, is to be served upon him.*

---

* Insert number of days directed by Court.

† If notice of the writ is to be served, insert here "of notice".

‡ Insert number of days limited for appearance.

§ If notice to be served insert here "of notice".

FORM 5 O. 3 r. 4

NOTICE OF WRIT IN LIEU OF SERVICE TO BE GIVEN OUT OF THE JURISDICTION

[*Title, & c. as in Form 1*]

To *G.H.*, of .

Take notice, that *A.B.*, of has commenced an action against you, *G.H.*, in His Majesty's Supreme Court of the Australian Capital Territory, at Canberra, in the Commonwealth of Australia, by writ of that Court, dated the day of , 19 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said *A.B.* may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Registrar's Office, Canberra.

(Signed)

A.B., of , & c.

[*or*]

X.Y., of , & c.

solicitor for *A.B.*

FORM 6 O. 4 r. 3

INDORSEMENTS OF CHARACTER OF PARTIES

The plaintiff's claim is as executor of the will of [*or* administrator of the estate of] *C.D.*, deceased, for, & c.

The plaintiff's claim is against the defendant *A.B.*, as executor of the will of [*or* administrator of the estate of] *C.D.*, deceased, for, & c.

Executors The plaintiff's claim is against the defendant, *A.B.*, as executor of the will of [*or* administrator of the estate of] *X.Y.*, deceased, for, & c., and against the defendant *C.D.*, in his personal capacity, for, & c.

Trustees The plaintiff's claim is as trustee under the bankruptcy of *A.B.* for .

The plaintiff's claim is as [*or* is against the defendant as] trustee under the will of *A.B.* [*or* under the settlement upon the marriage of *A.B.* and *X.Y.*, his wife].

Principal and surety The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as surety for

Qui tam action The plaintiff's claim is as well for the King as for himself, for .

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FIRST SCHEDULE—continued

FORM 7 O. 9 r. 1

FORM OF MEMORANDUM FOR RENEWED WRIT

[*Heading as in Form 1*]

Seal renewed writ of summons in this action indorsed as follows:

[*Copy original writ and the indorsements*]

FORM 8 O. 12 r. 3

REQUEST FOR SERVICE OF WRIT IN FOREIGN COUNTRY

[*Heading as in Form 1*]

I [*or we*] hereby request that a notice of a writ of summons [*or as the case may be, describing the document*] in this action be transmitted through the proper channel to (a)
for service (b) on the defendant
at or elsewhere in (a) (c) .

And I [*or we*] hereby personally undertake to be responsible for all expenses incurred by the Commonwealth in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I [*or we*] undertake to pay the same to the Treasury and to produce the receipt for such payment to the Registrar of the Supreme Court of the Australian Capital Territory.

Dated this day of , 19 .

.....
(Signature of solicitor)

(a) Name of Country.

(b) Or substituted service.

(c) Add "directly through the Australian diplomatic or consular representative", "directly through the British diplomatic or consular representative" or "by the foreign judicial authority" or the like, as the case may require.

FORM 9 O. 13 r. 7

MEMORANDUM OF APPEARANCE IN GENERAL

[*Heading as in Form 1*]

Enter an appearance for in this action.
Dated this day of .
(Signed) *X.Y.*, of
agent for
of

The place of business of *X.Y.* is*
His address for service is
The address of *C.D.* is* [*or*] *C.D.*, defendant in person
His address for service is

---

* If this address is beyond 10 kilometres from the office of the Registrar an address for service within 10 kilometres thereof must be given.

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FIRST SCHEDULE—continued

FORM 10 O. 13 r. 16

NOTICE LIMITING DEFENCE

[*Heading as in Form 1*]

Take notice that the [*above-named*] defendant *C.D.*, limits his defence to part only of the property mentioned in the writ of summons, that is to say, to the close called "the Big field".

Dated the day of , 19 .

(Signed) *G.H.*,
of
agent for
of
solicitor for the said defendant *C.D.*
[*or*] *C.D.*, defendant in person.

To Mr *X.Y.*, plaintiff's solicitor.

FORM 11 O. 19 r. 18

AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN

[*Heading as in Form 1*]

I, of make oath and say as follows:

A.B., of is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said *A.B.* to act as such guardian is hereto annexed.

Sworn, & c.

[*To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.*]

FORM 12 O. 19 r. 48

MEMORANDUM ON NOTICE OF JUDGMENT

[*Heading as in Form 1*]

To *X.Y.*, of

Take notice that from the time of the service of this notice you [*or, as the case may be*, the infant *or* person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [*or* the said infant *or* person of unsound mind] had been originally made a party, and that you [*or* the said infant, & c.] may, on entering an appearance at the Registrar's office, have liberty to attend the proceedings under the within-mentioned judgment [*or* order]: And that you [*or* the said infant, & c.] may within one month after the service of this notice apply to the Court to discharge vary or add to the judgment [*or* order].

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FIRST SCHEDULE—continued

FORM 13

THIRD PARTY CLAIMING INDEMNITY OR CONTRIBUTION OR OTHER RELIEF OR REMEDY

In the Supreme Court
of the Australian
Capital Territory
No. of 19 .

Between	A.B.	Plaintiff
		and
	C.D.,	Defendant
		and
	E.F.,	Third Party

THIRD PARTY CLAIM

To E.F. of in the of

TAKE NOTICE that the plaintiff has brought an action against the defendant particulars whereof are set out in the documents served upon you herewith.

And take notice that the defendant claims against you contribution or indemnity or relief or remedy as set out in this Third Party Claim.

And take notice that, if you wish to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must cause an appearance to be entered for you at the Registrar's office, Law Courts, Canberra, within days after service of this notice upon you.

In default of your entering an appearance, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and you will be bound by any judgment or decision that may be given in the action to the extent provided by the rules and any such judgment may be enforced against you.

PARTICULARS OF
DEFENDANT'S CLAIM

Dated this day of 19 .

(Signed)
Solicitors for the Defendant.

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FIRST SCHEDULE—continued

FORM 14

THIRD PARTY CLAIM WHEN QUESTION OR ISSUE TO BE DETERMINED

In the Supreme Court
of the Australian
Capital Territory

No. of 19 .

Between A.B., Plaintiff
and
C.D., Defendant
and
E.F., Third Party

THIRD PARTY CLAIM

To E.F. of in the of .

TAKE NOTICE that the plaintiff has brought an action against the defendant particulars whereof are set out in the documents served upon you herewith.

And take notice that the defendant claims that the question or issue set out in this Third Party Claim should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself.

And take notice that, if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, you must cause an appearance to be entered for you at the Registrar's office, Law Courts, Canberra within days after service of this notice upon you.

In default of your entering an appearance, you will be bound by any judgment or decision that may be given in the action on the said question or issue and will be deemed to admit any consequent liability of yourself and judgment may be given against you to the extent provided by the rules and any such judgment may be enforced against you.

PARTICULARS OF QUESTION OR ISSUE

Dated this day of 19 .

(Signed)
Solicitors for the Defendant.

FORM 15 O. 23 r. 5

STATEMENT OF CLAIM (GENERAL FORM)

IN THE SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY

No. of 19 .

Between A.B., Plaintiff
and
C.D., Defendant.

STATEMENT OF CLAIM

(Writ issued the day of , 19 .)

The plaintiff, & c.

[*or*]

The plaintiff's claim is, & c.

[*or*]

The plaintiff claims, & c.

(Signed)

Delivered the day of , 19 , by of .

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FIRST SCHEDULE—continued

FORM 16 O. 23 r. 5

DEFENCE (GENERAL FORM)

[*Heading as in Form 15*]

DEFENCE

1. The defendant, & c.

COUNTER-CLAIM

1. The defendant, & c.

The defendant counter-claims, & c.

(Signed)

Delivered the day of , 19 , by of .

FORM 17 O. 23 r. 5

REPLY (GENERAL FORM)

REPLY

The plaintiff as to the defence, says that—

1. The defendant, & c.

The plaintiff, as to the counter-claim, says that—

1. The defendant, & c.

(Signed)

Delivered the day of , 19 , by of .

FORM 18 O. 25 r. 12

NOTICE OF COUNTER-CLAIM

[*Heading as in Form 1*]

To the within-named *X.Y.*

TAKE NOTICE that if you do not appear to the within counter-claim of the within-named *C.D.* within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at the Registrar's Office, Canberra.

FORM 19 O. 26 r. 1

NOTICE OF PAYMENT INTO COURT

[*Heading as in Form 1*]

TAKE NOTICE that the defendant *C.D.* has paid into Court $, and says that [*or* $, part of] that sum is enough to satisfy the plaintiff's claim [*or* for and $ the other part of that sum is enough to satisfy the plaintiff's claim for] and admits [*or* but denies] liability therefor.

Dated the day of , 19 .

P.Q.,

Solicitor for the defendant *C.D.*

To Mr. *X.Y.*, the plaintiff's solicitor.

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FIRST SCHEDULE—continued

FORM 19A

BOND BY AN INSURER

(Heading as in Form 1)

BY THIS DEED of is held and firmly bound to the Registrar of the Supreme Court of the Australian Capital Territory his successors and assigns for the sum of $ of lawful money of Australia to be paid to the said Registrar, his successors and assigns, for the due payment whereof the said binds itself.

DATED this day of 19 .

The Common Seal of
as hereunto affixed this day of
19 in the presence of— }

CONDITIONS

(a) If the said within seven days after due acceptance of the amount of this Bond under Rule 2 of Order 26 of the Rules of the Supreme Court pays into Court the amount of this Bond;

(b) If the Court shall order the discharge thereof; or

(c) If a consent to the discharge thereof signed by or on behalf of all the parties to the action is filed in the Office of the Registrar,

then this obligation shall be void and of no effect but otherwise shall remain in full force and effect.

FORM 19B

AUTHORITY TO EXECUTE BOND

(Heading as in Form 1)

BY THIS DEED of being an authorized insurer under the *Motor Traffic Act 1936* or that Act as amended (or as the case may be) authorizes being the manager (or as the case may be) of the said corporation to give one or more bonds in or to the effect of the form contained in Form 19A in the First Schedule to the Rules of the Supreme Court of the Australian Capital Territory for and on behalf of the said in any action in the Court (*OR* in suit No. S.C. / 19 between and) and it is acknowledged that this authority shall be of full force and effect and binding until notice of its revocation has been filed in the Registry of the Court.

The Common Seal of the said
was hereunto affixed this day of
19 in the presence of— }

FORM 20

O. 26 rr. 2 and 4

ACCEPTANCE OF SUM PAID INTO COURT

[Heading as in Form 1]

TAKE NOTICE that the plaintiff accepts the sum of $ paid by the defendant *C.D.* into Court in satisfaction of the claim in respect of which it was paid in (and abandons his other claims in this action).

Dated the day of , 19 .

X.Y.,
Solicitor for the plaintiff.

To Mr. *P.Q.*, solicitor for the
defendant *C.D.*, and to Mr. *R.S.*,
solicitor for the defendant *E.F.*

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FIRST SCHEDULE—continued

FORM 22 O. 28 r. 3

CONFESSION OF DEFENCE

[*Heading as in Form 1*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or*, of the defendant's further defence].

FORM 24 O. 34 r. 11

ANSWER TO INTERROGATORIES

[*Heading as in Form 1*]

The answer of the above-named defendant *E.F.* to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E.F.*, make oath and say as follows:

(*Here set out interrogatories and answers as required by Order* 34, *rule* 11).

FORM 25 O. 34 r. 14

AFFIDAVIT AS TO DOCUMENTS

[*Heading as in Form 1*]

I, the above-named defendant *C.D.*, make oath and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto [*state grounds of objection*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when, and what has become of them, and in whose possession they now are*].

5. According to the best of my knowledge, information, and belief I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, and deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

FORM 26 O. 34 r. 18

NOTICE TO PRODUCE DOCUMENTS

[*Heading as in Form 1*]

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit, dated the day of* 19].

Describe documents required.

Dated etc.

X.Y., Solicitor to the

To *Z.*, Solicitor for .

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FIRST SCHEDULE—continued

FORM 27 O. 34 r. 19

NOTICE TO INSPECT DOCUMENTS

[*Heading as in Form 1*]

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [*except the deed numbered in that notice*] at my office on Thursday next the instant between the hours of 12 and 4 o'clock.

Dated etc.

(Signed) Solicitor to the

FORM 28 O. 35 r. 2

NOTICE TO ADMIT DOCUMENTS

[*Heading as in Form 1*]

TO THE DEFENDANT [*or* THE PLAINTIFF *or insert name of party requested to admit documents*]—

Take notice as follows:

1. The plaintiff [*or* defendant *or insert name of party requesting admissions*] proposes to adduce in evidence the documents specified below.

2. You, your solicitor or your agent may inspect those documents
at [*place*]
on [*date*]
between the hours of and [*hours*].

3. You are requested, within 48 hours after the last-mentioned hour, to admit that—

   (a) any of the documents which are specified as originals were written, signed or executed as they purport to have been;

   (b) any of the documents which are specified as copies are true copies; and

   (c) any of the documents which are stated to have been served, sent or delivered were served, sent or delivered as stated.

Dated:

Signed: (Plaintiff [*or* Defendant *or insert name of party requesting admissions*])

or

(Solicitor or agent for the plaintiff [*or* defendant *or insert name of party on whose behalf admissions are requested*])

Documents to be admitted

[*Here describe the documents requested to be admitted, for example as follows:*]

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FIRST SCHEDULE—continued

ORIGINALS

Description of Documents	Dates
Agreement in writing between A.B. and C.D. first part and E.F. second part	January 1, 19 .
Indenture of lease from A.B. to C.D.	February 1, 19 .
Indenture of release between A.B. and C.D. first part, & c.	February 2, 19 .
Letter—defendant to plaintiff	March 1, 19 .
Policy of insurance on goods by ship *Isabella* on voyage from Oporto to London	December 3, 19 .
Memorandum of agreement between C.D., captain of said ship, and E.F.	January 1, 19 .
Bill of exchange for $200 at three months, drawn by A.B. on and accepted by C.D., indorsed by E.F. and G.H.	May 1, 19 .

COPIES

Description of Documents	Dates	Original or Duplicate served, sent or delivered, when, how, and by whom
Register of baptism of A.B. in the parish of X	January 1, 19 .	
Letter—plaintiff to defendant...	February 1, 19 .	Sent by Post, February 2, 19 .
Notice to produce papers.....	March 1, 19 .	Served March 2, 19 , on defendant's attorney by E.F. of

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FIRST SCHEDULE—continued

FORM 29 O. 35 r. 3 (1) (a)

NOTICE TO ADMIT FACTS

[*Heading as in Form 1*]

TO THE DEFENDANT [*or* THE PLAINTIFF *or insert name of party requested to admit facts*]—

Take notice as follows:

1. The plaintiff [*or* defendant *or insert name of party requesting admissions*] proposes to adduce in evidence the facts specified below.

2. You are requested, within 7 days after the service of this notice, to admit those facts.

3. Your admission of those facts is requested for the purposes of these proceedings only, and will only be able to be relied upon by the plaintiff [*or* defendant *or insert name of party requesting admissions*].

Dated:

Signed: (Plaintiff [*or* Defendant *or insert name of party requesting admissions*)]

or

(Solicitor or agent for the plaintiff [*or* defendant *or insert name of party on whose behalf admissions are requested*])

Facts to be admitted

[*Here set out the facts requested to be admitted, for example as follows*:]

1. That John Smith died on the 1st of January, 1890.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1896.
5. That Julius Smith never was married.

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FORM 30 O. 35 r. 3 (2) (a)

ADMISSION OF FACTS, PURSUANT TO NOTICE

[*Heading as in Form 1*]

TO THE PLAINTIFF [*or* THE DEFENDANT *or insert name of party requesting admissions*)]—

1. The defendant [*or* plaintiff *or insert name of party admitting facts*] admits the facts specified below, subject to any specified qualifications.

2. These admissions are subject to the admissibility of those facts in evidence.

3. These admissions are made for the purposes of these proceedings only, and shall not be used by any party to these proceedings other than the party to whom these admissions are given.

Dated:

Signed: (Plaintiff [*or* Defendant *or insert name of party admitting facts*])

or

(Solicitor or agent for the plaintiff [*or* defendant *or insert name of party on whose behalf facts are admitted*])

Facts admitted **Qualifications**

[*Here set out the facts admitted and any qualifications to those admissions, for example as follows*:]

Facts admitted	Qualifications
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1896.
5. That Julius Smith never was married.	5.

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FIRST SCHEDULE—continued

FORM 31 O. 35 r. 8

NOTICE TO PRODUCE

[*Heading as in Form 1*]

Take notice that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, accounts, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this , and particularly—

Dated the day of , 19 .

To the above-named
his solicitor *or* agent } (Signed) , of
solicitor for the above named

FORM 32 O. 36 r. 9

FORM OF ORDER, ACCOUNTS AND INQUIRIES

This Court doth order that the following accounts and inquiry be taken and made, that is to say:

1. An account of the personal estate not specifically bequeathed of *A.B.*, deceased, the testator in the pleadings named, come to the hands of, & c.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the legacies and annuities (if any), given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(*if ordered*)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by etc.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(*If Sale ordered*)

9. An account of what is due to such of the incumbrances as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the judge, & c., & c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

FORM 33 O. 37 r. 6

ENTRY OF SPECIAL CASE

[*Heading as in Form 1*]

Set down the special case dated the day of , 19 , for argument.

Dated, & c.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 34 O. 37 r. 9

ISSUE

[*Heading as in Form 1*]

Whereas *A.B.* affirms, and *C.D.* denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice
that the said question shall be tried [*here state* mode of trial, *whether with or without a jury*], therefore let the same be tried accordingly.

FORM 37 O. 38 r. 24

CERTIFICATE OF ASSOCIATED OR OFFICER AFTER TRIAL

[*Heading as in Form 1*]

I certify that this was tried before the Honourable Mr. Justice on the 12th and 13th days of November, 19 , and occupied the time of the Court as follows:

The Judge directed that judgement should be entered for the plaintiff for $, with costs [*as the case may be*].

Dated the day of 19 .

A.B. [*Title of officer.*]

FORM 38 O. 39 r. 12 (1)

ORDER FOR EXAMINATION WITHIN THE TERRITORY

[*Heading as in Form 1*]

THE COURT ORDERS THAT—

[*name*] of [*address*] be examined on oath or affirmation before [*name and address of examiner, or description*].

Dated the day of , .

.....

(Registrar)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 39 O. 39 rr. 12 (2) and 24B (1)

ORDER FOR EXAMINATION OUTSIDE THE TERRITORY

[*Heading as in Form 1*]

THE COURT ORDERS THAT—

1. [*name*] of [*address*] be examined on oath or affirmation before [*name and address of examiner, or description*] in accordance with the Rules of this Court.

2. The party obtaining this order give to each other party 7 days' notice in writing of the date on which he or she proposed to send this order to the examiner.

3. Not less than 4 days after that notice has been given, each party shall give to the other the name and address of his or her agent to whom notices may be sent.

Dated the day of , .

.....

(Registrar)

FORM 40 O. 39 r. 24B (2)

ORDER FOR ISSUE OF LETTER OF REQUEST

[*Heading as in Form 1*]

THE COURT ORDERS THAT—

A letter of request be sent to the judicial authorities of [*country*] to take or cause to be taken the evidence of [*name*] of [*address*].

Dated the day of , .

.....

(Registrar)

FORM 41 O. 39 r. 24C (1) (b) (ii)

UNDERTAKING—LETTER OF REQUEST

[*Heading as in Form 1*]

1. I [*or* We], [*name(s)*] of [*address(es)*], undertake to be responsible for any reasonable expenses incurred by the Territory, the Commonwealth, or both, in respect of the letter of request dated [*date of issue of letter of request*].

2. On receiving due notification of the amount of such expenses I [*or* we] undertake to pay that amount as directed by the Registrar.

3. The plaintiff's agent in connection with the execution of that letter of request is [*name*] of [*address*].

4. The defendant's agent in connection with the execution of that letter of request is [*name*] of [*address*].

Dated the day of , .

.....

([Solicitors for] Party obtaining order for issue of letter of request.)

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FIRST SCHEDULE—continued

FORM 42 O. 39 r. 24J

ORDER FOR EXAMINATION
UNDER FOREIGN OR INTERSTATE LETTER OF REQUEST

IN THE SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY

No. of .

Before .

In the matter of—

(a) the letter of request dated [*date of issue of letter of request*] in connection with the proceeding pending, or instituted, before [*name of foreign or interstate court or tribunal*] between [*name of plaintiff*] and [*name of defendant*]; and

(b) an application under Part XIIB of the *Evidence Act 1971* in relation to that letter of request;

THE COURT ORDERS THAT—

[*name and address of examiner, or description*] take the examination on oath or affirmation of [*name*] of [*address*] pursuant to the letter of request.

Dated the day of , .

.....
(Registrar)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FORM 43 O. 39 r. 24P

CERTIFICATE OF ORDER AND DEPOSITIONS—EXAMINATION FOR INTERSTATE OR FOREIGN COURT OR TRIBUNAL

I CERTIFY THAT THE FOLLOWING ITEMS ARE ANNEXED:

1. The original order of the Supreme Court of the Australian Capital Territory dated [*date*], made in the matter of—

(a) the letter of request dated [*date of issue of letter of request*] in connection with a proceeding pending, or instituted, before [*name of foreign or interstate court or tribunal*] between [*name of plaintiff*] and [*name of defendant*]; and

(b) an application under Part XIIB of the *Evidence Act 1971* of the Australian Capital Territory in relation to that letter of request.

2. The examination, depositions [and transcripts] taken pursuant to that order on [*date*].

[3. The exhibits produced in the course of that examination, as follows:

[*description of exhibits*]].

Dated the day of , .

.....

(Registrar of the Supreme Court of the Australian Capital Territory)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 45 Order 39, subrule 31 (4)

SUBPOENA TO GIVE EVIDENCE

(*Heading as in Form 1*)

To (*name*)

(*address*)

THE COURT ORDERS that you shall attend for the purposes of giving evidence—

(a) before the Court (*or as the case may be*);

(b) at (*address of Court or place*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending,

but you need not attend on any day unless reasonable expenses have been paid or tendered to you.

Dated this day of 19 .

By the Court

(*Signature and description of officer of the Court*)

Note that failure to comply with this subponea may constitute contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FORM 46 Order 39, subrule 31 (4)

(*Subpoena to a natural person*)

SUBPOENA FOR PRODUCTION

(*Heading as in Form 1*)

To (*name*)

(*address*)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the Schedule for the purposes of evidence—

(a) before the Court (*or as the case may be*);

(b) at (*address of Court or other place*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but—

(i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you;

(ii) if you are not a party to these proceedings, instead of so attending you may produce this subpoena and the documents and things described in the Schedule to the Registrar of the Court at the above place not later than the day before the first day on which you are required to attend; and

(iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and the following legislation, namely (*insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books*) applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that legislation.

SCHEDULE

(*Description of documents and things*)

Dated this day of 19 .

By the Court

(*Signature and description of officer of the Court*)

Note that failure to comply with this subpoena may constitute contempt of court and may result in your arrest or in the case of a corporation an order of sequestration may be made. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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FIRST SCHEDULE—continued

FORM 47 Order 39, subrule 31 (4)

(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession, & c. of documents)

SUBPOENA FOR PRODUCTION AND TO ANSWER QUESTIONS

(Heading as in Form 1)

To *(name of corporation)*

(address)

THE COURT ORDERS that—

(a) you shall produce this subpoena and the documents and things described in the Schedule for the purposes of evidence by causing your proper officer to attend and produce them—

(i) before the Court *(or as the case may be)*;

(ii) at *(address of Court or other place)*;

(iii) on *(insert date)* or, if notice of a later date is given to you, that later date *(or state the commencement and concluding dates of sittings of the Court and that notice would be given of a date during those sittings when the subpoena and documents and things are to be produced)* at *(insert time)* and until the officer is excused from further attending, but—

(A) the officer need not so attend or produce any document or thing on any day unless reasonable expenses have been paid or tendered to one of your officers;

(B) you may produce this subpoena and the documents and things described in the Schedule to the Registrar of the Court at the above place by hand or by post in either case so that he receives them not later than the day before the first day on which your officer is required to attend; and

(C) if you are a bank and are required by this subpoena to produce a banker's book and you are not a party to these proceedings and the following legislation, namely *(insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books)* applies, you need not cause your officer to produce it if you cause him to produce proof of the relevant entries in it in accordance with that legislation; and

(b) the officer who is to attend shall make enquiries for the purpose of answering, and, on attending, shall answer, such questions as the Court requires him to answer concerning possession or custody of those documents and things.

SCHEDULE

(Description of documents and things)

Dated this day of 19 .

By the Court

(Signature and description of officer of the Court)

Note that—

(1) failure to comply with this subpoena may constitute contempt of Court and may result in the sequestration of your property or arrest of one or more of your officers, or in both;

(2) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena, but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;

(3) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;

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(4) if you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

FORM 48 Order 39, subrule 31 (4)

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

(*Heading as in Form 1*)

To (*name*)

(*address*)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the Schedule for the purposes of evidence and that you shall attend for the purposes of giving evidence—

(a) before the Court (*or as the case may be*);

(b) at (*address of Court or place*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but—

(i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you;

(ii) if you are not a party to the proceedings, instead of producing the documents and things described in the Schedule when so attending, you may produce this subpoena and the documents and things described in the Schedule to the Registrar of the Court at the above place not later than the day before the first day on which you are required to attend; and

(iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and (*insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books*) applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that legislation.

SCHEDULE

(*Description of documents and things*)

Dated this day of 19 .

By the Court

(*Signature and description of officer of the Court*)

Note that failure to comply with this subpoena may constitute contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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FIRST SCHEDULE—continued

FORM 50A O. 42 r. 14

[*Heading as in Form 1*]

CERTIFICATE OF JUDGMENT

Causes of action to which the judgment relates	The rate of interest (if any) payable on any amount payable under the judgment	Amount payable under the judgment on date of issue of certificate	Amount of costs ordered to be paid under the judgment	Particulars (if any) required by a foreign tribunal in which it is proposed to register or enforce the judgment	Date of trial	Date of judgment

I certify that this certificate correctly and fully sets forth the particulars of a judgment given in this Court, on (*insert date of judgment*) in a suit wherein (*insert name of plaintiff*) was plaintiff and (*insert name of defendant*) was defendant.

Dated 19 .

.....

Registrar

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 51 O. 43 r. 10

PRAECIPE FOR WRIT OF FIERI FACIAS

[*Heading as in Form 1*]

Seal a writ of *fieri facias* directed to the sheriff of the Territory for the Seat of Government against *C.D.* of , upon a judgment (*or* order) dated the day of for the sum of $ debt and $ costs and interest, & c.

Indorsed to levy $ and interest thereon at 15 per cent per annum from the (*date*) and costs of execution.

X.Y., solicitor for [*party on whose behalf writ is to be issued*].

FORM 52 O. 43 r. 10

PRAECIPE FOR WRIT OF VENDITIONI EXPONAS

[*Heading as in Form 1*]

Seal a writ of *venditioni exponas* directed to the sheriff of the Territory for the Seat of Government to sell the goods and of *C.D.* taken under a writ of *fieri facias* in this action tested day of .

X.Y., solicitor for .

FORM 53 O. 43 r. 10

PRAECIPE FOR WRIT OF POSSESSION

[*Heading as in Form 1*]

Seal a writ of possession directed to the sheriff of the Territory for the Seat of Government to deliver possession to *A.B.* of .

Judgment (*or* order) dated the day of , 19 .

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 54 O. 43 r. 12

WRIT OF FIERI FACIAS

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To the Sheriff of the Territory for the Seat of Government, greeting:

We command you that of the real and personal estate of *C.D.*, in your bailiwick you cause to be made the sum of $ and also interest thereon at the rate of $ per centum per annum from the day of ,* which said sum of money and interest were lately before us in the Supreme Court of the Australian Capital Territory in a certain action [*or* matter there depending intituled "In the Matter of, & c." *or as the case may be*] wherein *A.B.*, is plaintiff and *C.D.* defendant by a judgment [*or* order, *as the case may be*] of our said court, bearing date the day of , adjudged [*or* ordered, *as the case may be*] to be paid by the said *C.D.* to *A.B.*, together with certain costs in the said judgment [*or* order, *as the case may be*] mentioned, and which costs have been taxed and allowed by the taxing officer of our said court at the sum of $ as appears by the certificate of the said taxing officer, dated the day of . And that of the real and personal estate of the said *C.D.* in your bailiwick you further cause to be made the said sum of $ [costs] together with interest thereon at the rate of 15 per cent per annum from the day of * and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said *A.B.* in pursuance of the said judgment [*or* order, *as the case may be*]. And in what manner you shall have executed this our writ make appear to us in our said court immediately after the execution thereof. And have there then this writ.

Witness, & c. (*as in Form 1*) the day of in the year of our Lord One thousand nine hundred and

Indorsement

Levy $ and $ for costs of execution, & c. and also interest on $ at 15 per cent per annum (*or other agreed rate*) from the day of , 19 , till payment, besides Sheriff's poundage, officers' fees, costs of levying, the fees, expenses, and costs mentioned in Order 43, rule 14, if and when incurred, and all other legal incidental expenses.

This writ was issued by of agent for solicitor for the who resides at

The is a and resides at in your bailiwick.

---

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

FORM 55 O. 43 r. 12

WRIT OF VENDITIONI EXPONAS

[*Heading as in Form 1*]

GEORGE THE SIXTH, & c. [*as in Form 54*].

To the Sheriff of the Territory for the Seat of Government greeting:

Whereas by our writ we lately commanded you that of the real and personal estate of *C.D.* [*here recite the* fieri facias *to the end*]. And on the day of , you returned to us in the Supreme Court of the Australian Capital Territory aforesaid, that by virtue of the said writ to you directed you had taken real and personal estate of the said *C.D.* to the value of the money and interest aforesaid, which said real and personal estate remained in your hands unsold for want of buyers. Therefore we, being desirous that the said *A.B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the real and personal estate of the said *C.D.*, by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said court of justice immediately after the execution hereof, to be paid to the said *A.B.* And have there then this writ.

Witness, & c.

[*Indorsement as in Form 54*]

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FIRST SCHEDULE—continued

FORM 56 O. 42 r. 12

WRIT OF POSSESSION

[*Heading as in Form 1*]

GEORGE THE SIXTH, & c. [*as in Form 54*]. To the Sheriff of the Territory for the Seat of Government greeting: Whereas lately in the Supreme Court of the Australian Capital Territory by a judgment of the same court, dated the day of 19 [*A.B.* recovered] or [*E.F.* was ordered to deliver to *A.B.*] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you enter the same, and without delay you cause the said *A.B.* to have possession of the said land and premises with the appurtenances. And in what manner, &c. And have you there then this writ. Witness, &c.

[*Indorsement.* This writ was issued by, &c.]

FORM 56A O. 43 r. 31

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR

[*Title to Proceedings*]

Upon reading the affidavit of made the day of , 19 , and filed herein,

It is ordered that , the abovenamed judgment debtor [the of the abovenamed judgment debtor,] attend before the Registrar at the Law Courts, Knowles Place, City, Canberra in the Australian Capital Territory, on the day of 19 , at o'clock in the noon to be examined orally as to any and what debts are owing to him [it] and whether the said judgment debtor has any and what other property or means of satisfying the judgment [order] signed [made] herein and that he then produce any books or documents in his [its] possession or control relating to the same before the Registrar at the time of the examination.

Dated this day of 19 .

Registrar.

To the abovenamed [name].

Take notice that if you fail to obey the above order to attend for examination at the time and place stated therein or to produce the said books or documents further legal proceedings may be taken against you for your failure to obey the order.

FORM 57 O. 47 r. 5

AFFIDAVIT AS TO STOCK UNDER ORDER 47

In the matter of [*here state the nature of the documents comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document*];

and

In the matter of

I , of , make oath and say that according to the best of my knowledge, information, and belief, I am [*or, if the affidavit is made by the solicitor, A.B., of* , is] beneficially interested in the stock comprised in the [*settlement, will & c.*] abovementioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of *A.B.*, whose address is [*state address for service*].

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FIRST SCHEDULE—continued

FORM 58 O. 47 r. 5

NOTICE AS TO STOCK UNDER ORDER 47

To the [*here add the name of the company*].

Take notice that the stock comprised in and now subject to the trusts of the [*settlement, will, & c.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock, stating the name or names in which it stands*].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [*or*, the receipt of the dividends on the stock as well as the transfer to the stock].

(Signed) A.B.

FORM 59 O. 49 r. 2

WRIT OF DELIVERY

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God, & c. To the Sheriff of the Territory for the Seat of Government, greeting: We command you, that without delay you cause the following chattels, namely [*enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*], to be returned to *A.B.*, which the said *A.B.* lately [*recovered* against *C.D.*, *or* which *C.D.* was ordered to deliver to the said *A.B.*] in this action by a [judgment, *or* order] dated the day of 19 . And we further command you, that if the said chattels cannot be found in your bailiwick you distrain the said *C.D.* by all his lands and chattels in your bailiwick, so that neither the said *C.D.* nor anyone for him do lay hands on the same until the said *C.D.* render to the said *A.B.* the said chattels. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have there then this writ. Witness, & c.

Indorsement

Give delivery of chattels specified, and whether, the same can be delivered or not, levy $ for costs of execution; besides officers' fees, cost of levying and all other legal incidental expenses. This writ was issued by [*solicitor's name and address*], solicitor for who resides at .

The defendant is a [*description*], and resides at in your bailiwick.

FORM 60 O. 52 r. 18

RECEIVER'S SECURITY BY UNDERTAKING

[*Heading as in Form 1*]

I, , of , the receiver (and manager appointed by order dated *or* proposed to be appointed) in this action hereby undertake with the court to duly account for all moneys and property received by me as such receiver (*or* manager) or for which I may be held liable and to pay the balances from time to time found due from me and to deliver any property received by me as such receiver (*or* manager) at such times and in such manner and all in respects as the Court shall direct.

And we hereby jointly and severally (*in the case of a Guarantee or other Company strike out "jointly and severally"*) undertake with the court to be answerable for any default by the said as such receiver (*or* manager) and upon such default to pay to any person or persons or otherwise as the Court shall direct any sum or sums not exceeding in the whole $ that may from time to time be certified by the Registrar of the Court to be due from the said receiver and we submit to the jurisdiction of the court in this action to determine any claim made under this undertaking.

Dated this day of 19 .

[*Signatures of Receiver and his surety or sureties. In the case of a surety being a guarantee or other company, it must be sealed or otherwise duly executed.*]

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FORM 61 O. 52 r. 21

RECEIVER'S ACCOUNT

[*Heading as in Form 1*]

To Accord with the Order } The [ ] account of A.B., the receiver appointed in this cause [*or*, pursuant to an order made in this cause, dated the day of], *to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate* of C.D., the testator [*or*, intestate] in this cause named, from the day of , to the day of .

REAL ESTATE—RECEIPTS

No. of item	Date when received	Tenant's name	Description of premises	Annual rent	Arrears due at	Amount due at	Amount received	Amount remaining due	Observations
				$	$	$	$	$	
1		John Jones	Home Farm, Tharwa						
2		Thomas Jones	House at Tharwa, aforesaid						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

No. of item	Date of payment or allowance	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount
				$
1		Sun Fire Office.....	One year's insurance of, due	
2		Thomas Carpenter.....	Bill for repairs at house let to Thomas Jones	
3			Income.....	
			Total payments.....	

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FORM 61—continued

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE

No. of item	Date when received	Names of persons from whom received	On what account received	Amount received
				$

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE

No. of item	Date when paid or allowed	Names of persons to whom paid or allowed	For what purpose paid or allowed	Amount paid or allowed
				$

SUMMARY

Amount of balance due from receiver on account of real estate on last account		$	$
Amount of receipts on the above account of real estate	$		
Balance of last account paid into Court			
Amount of payments and allowances in the above account of real estate			
Amount of receiver's costs of passing this account as to real estate			
Balance due from the receiver on account of real estate	$		
Amount of balance due from receiver on last account of personal estate		$	$
Amount of receipts on the above account of personal estate	$		
Balance of last account paid into Court			
Amount of payment and allowances on the above account of personal estate			
Amount of receiver's costs of passing this account as to personal estate			
Balance due from the receiver on account of personal estate		$	

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FIRST SCHEDULE—continued

FORM 62 O. 52 r. 22

AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT

[*Heading as in Form 1*]

I, , of , the receiver appointed in this cause, make oath and say as follows:

1. The account marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account *of the rents and profits of the real estate and of the oustanding personal estate of* , the testor [*or* intestate] in this cause, from the day of , 19 , to the day of , 19 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the *said rent and profits accrued due on or before the said day of and on account or in respect of the said personal estate*, except that which is included as received in my former account [*or* accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. *W.X.* and *Y.Z.* , the sureties named in the recognizance dated the of , 19 , are both alive, and neither of them has become bankrupt.

FORM 63 O. 55 r. 14

WRIT OF CERTIORARI

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God, &c., to the greeting:

We, willing for certain causes to be certified of , command you that you send to us in the Supreme Court of the Australian Capital Territory on the day of , the aforesaid, with all things touching the same, as fully and entirely as the same remain in , together with this writ, that we may further cause to be done thereupon, what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, & c.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 64 O. 55 r. 17

WRIT OF MANDAMUS

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God, & c., to , of , greeting:

Whereas by

And whereas we have been given to understand and be informed in the Supreme Court of the Australian Capital Territory before us that [*insert necessary inducement and averments*]. And you the said were then and there required by [*insert demand*] but that you the said , well knowing the premises, but not regarding your duty in that behalf, then and there wholly neglected and refused to [*insert refusal*], nor have you or any of you at any time since , in contempt of us and to the great damage and grievance of , as we have been informed from their complaint made to us. Whereupon we being willing that due any speedy justice should be done in the premises as it is reasonable, do command you the said and every of you, firmly enjoying you that you [*insert command*], or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to us, and how you shall have executed this our writ make known to us in our said court forthwith, then returning to us this our said writ, and this you are not to omit.

Witness, & c. (*as in Form 1*).

By the Court.

FORM 65 O. 55 r. 33

WRIT OF PROHIBITION

[*Heading as in Form 1*]

GEORGE THE SIXTH, by the Grace of God, & c., to the , and to [*name of plaintiff*], of , greeting:

Whereas we have been given to understand that you the said have [entered a plaint against] *C.D.* in the said court, and that the said court has no jurisdiction in the said [*cause*] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said court.

Witness, &c.

FORM 66 O. 56 r. 2

GENERAL FORM OF ORIGINATING SUMMONS

[*Heading as in Form 1*]

[*If the question to be determined arises in the administration of an estate or a trust entitle it also in the matter of the estate or trust.*]

Let of within days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of who claims to be [*state the nature of the claim*], for the determination of the following questions: [*state the questions.*]

Dated the

This summons was taken out by , solicitor for the abovenamed

The defendant may appear hereto by entering appearance either personally or by solicitor at the Registrar's Office, Canberra.

NOTE—If the defendant does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings may be taken as the Judge thinks just and expedient.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 67 O. 56 r. 12

SUMMONS (GENERAL FORM)

[*Heading as in Form 1*]

Let all parties concerned attend at on a day and at a time to be fixed, on the hearing of an application on the part of , for an order .

Dated the day of , 19 .

This summons was taken out by of , solicitor for .

To .

FORM 68 O. 56 r. 15

ORDER (GENERAL FORM)

IN THE SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY

No. of 19 . *Between*

Before the Honourable Mr. Justice in Chambers.

Dated the day of 19 .

Upon hearing and upon reading the affidavit of filed the day of 19 , and it is ordered , and that the costs of this application be .

Registrar

FORM 69 O. 59 r. 16

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION

Take notice that *A.B.* has claimed the goods (*or* certain goods) [*where only certain goods are claimed here enumerate them*] taken in execution by the sheriff of the Territory for the Seat of Government, under the writ of execution issued in this action. You are hereby required to admit or dispute the title of the said *A.B.* to the said goods and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said *A.B.* to the said goods and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated etc.

(Signed)

Sheriff of the Territory for the
Seat of Government.

To the plaintiff.

FORM 70 O. 59 r. 16

NOTICE BY PLAINTIFF OF ADMISSION OR DISPUTE OF TITLE OF CLAIMANT

Take notice that I admit [*or*, dispute] the title of *A.B.* to the goods [*or*, to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment in this action.

(Signed) Plaintiff.
or
Solicitor.

To the Sheriff of the Territory for the
Seat of Government and his
officers.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 71

ORDER NISI TO REVIEW A DECISION OF THE MAGISTRATES COURT

In the Supreme Court
of the Australian
Capital Territory

On Appeal from the Magistrates Court

Between

Appellant

and

Respondent

Before the Honourable Mr Justice

Upon hearing for the appellant and upon reading the affidavit of sworn the day of 19 , and filed herein, it is ordered that the respondent show cause before the Supreme Court of the Australian Capital Territory on the day of 19 , why the decision of the Magistrates Court [*here describe shortly the decision to be reviewed*] should not be reviewed upon the following grounds:

And it is further ordered that .

Dated this day of , 1974.

Registrar.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 72 O. 60 r. 1

NOTICE OF APPEAL

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. of 19 .

ON APPEAL FROM THE
MAGISTRATES COURT

Between

Appellant

and

Respondent

TAKE NOTICE that the appellant appeals from the [*conviction, order, sentence, penalty or order, (as the case requires) by/of*] the Magistrates Court made on [*date*].

[*In the case of an appeal from an order*]

The appeal is from *the whole of the order/*the part of the order whereby [*specify part appealed from*].

Grounds: [*specify grounds*]

Order sought: [*state order sought*]

Dated 19 .

*Appellant/ *Appellant's solicitor

To:

the Registrar of the Magistrates Court; and
the respondent

TAKE NOTICE that the papers in the appeal will be settled by the Registrar at on
(*time and date to be inserted by the Registrar*).

*Omit inapplicable words

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 77 O. 61A, r. 5 (d)

(Appeal from Master—interlocutory judgment)

IN THE SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY

No.
Between: A.B., Plaintiff
and C.D., Defendant

NOTICE OF APPEAL

TAKE NOTICE that the (plaintiff, defendant or other party) appeals from the interlocutory judgment of the Master given herein on (specify date).

Dated this day of .

(signed)
Solicitor for the
(Plaintiff, Defendant
or other party)

FORM 78 O. 61A, r. 6 (b)

(Appeal from Master—other than interlocutory judgment)

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No.
ON APPEAL FROM THE MASTER
Between:

Appellant

and

Respondent

NOTICE OF APPEAL

1. The appellant appeals from the whole (or if from a part, specify part) of the judgment of the Master given herein on (specify date).

GROUNDS

2.

(specify grounds)

3.

ORDER SOUGHT: (state what judgment or order the appellant seeks in lieu of the judgment appealed from).

Dated this day of .

(signed)
Solicitor for the Appellant

To the respondent:

TAKE NOTICE that the papers in the appeal will be settled by the Registrar at on (time and date to be inserted by the Registrar).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 78A O. 74A r. 3

APPLICATION FOR REGISTRATION OF JUDGMENT UNDER THE FOREIGN JUDGMENTS ACT 1991 OF THE COMMONWEALTH

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY No. of 19 .

Between

Applicant

and

Respondent

I, (*insert name of applicant*) apply under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth to have the following judgment registered in the Court.

DETAILS OF JUDGMENT

COURT:
JUDGE:
DATE OF JUDGMENT:
WHERE MADE:

(*If the judgment is a money judgment*)
AMOUNT OF JUDGMENT, INCLUDING INTEREST:

NOTE 1: The application shall state if the applicant wishes the judgment to be registered in the currency in which it is expressed and, if so, the amount of the judgment expressed in that currency.

NOTE 2: If the application does not include a statement of the kind referred to in Note 1, the judgment shall be registered for an equivalent amount in Australian currency, based on the rate of exchange prevailing on the day of application for registration.

See subsection 6 (11) of the *Foreign Judgments Act 1991* of the Commonwealth.

and/or
(*if the judgment is an order or injunction*)
TERMS OF JUDGMENT:

Dated 19 .

.....
Applicant/applicant's solicitor

The applicant's address for service is: _____

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 78B O. 74A r. 5

[*Heading as in Form 78A*]

ORDER FOR REGISTRATION OF MONEY JUDGMENT

JUDGE:
DATE OF ORDER:
WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. The judgment dated (*insert date of judgment*) of the (*insert name of court*) by which it was ordered that (*insert name of respondent*) ("the judgment debtor") pay the sum of (*insert amount in foreign currency or in equivalent Australian currency*) and interest (if any) to (*insert name of applicant*) ("the judgment creditor") be registered under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth.

2. The amount that the judgment debtor is required to pay to the judgment creditor is . The amount includes an amount of interest of .
(*Insert amounts in foreign currency or in equivalent Australian currency*)

3. (*Insert any other orders made under the judgment*)

4. The reasonable costs of, and incidental to, the application for this order and registration of the judgment (fixed at $, or to be taxed) are to be paid by the judgment debtor to the judgment creditor.

5. The judgment debtor may, within days after service of the notice of registration, apply to have the registration set aside.

Dated 19 .

.....
Registrar

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 78C O. 74A r. 5

[*Heading as in Form 78A*]

ORDER FOR REGISTRATION OF NON-MONEY JUDGMENT

JUDGE:
DATE OF ORDER:
WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. The judgment dated (*insert date of judgment*) of the (*insert name of court*) by which it was ordered that (*insert name of respondent*) ("the judgment debtor") (*insert terms of order or injunction*) be registered under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth.

2. The reasonable costs of, and incidental to, the application for this order and registration of the judgment (fixed at $, or to be taxed) are to be paid by the judgment debtor to (*insert name of applicant*) (the "judgment creditor").

3. The judgment debtor may, within days after service of the notice of registration, apply to have the registration set aside.

Dated 19 .

.....
Registrar

FORM 78D O. 74A r. 6

[*Heading as in Form 78A*]

NOTICE OF REGISTRATION OF MONEY JUDGMENT

To: (*Name of respondent*)

1. The judgment dated (*insert date of judgment*) of the (*insert name of court*) that you pay the sum of (*insert amount in foreign currency or in equivalent Australian currency*) and interest (if any) to (*insert name of judgment creditor*) ("the judgment creditor") and (*insert any other terms of judgment*) has been registered in this Court under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth.

2. The amount that you are required to pay to the judgment creditor is . The amount includes an amount of interest of . (*Insert the amounts in foreign currency or in equivalent Australian currency*)

3. You may, within days after service of this notice on you, apply to have the registration set aside.

The address for service of (*insert name of judgment creditor*) is (*state address*).

Dated 19 .

.....
Registrar

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 78E O. 74A r. 6

[*Heading as in Form 78A*]

NOTICE OF REGISTRATION OF NON-MONEY JUDGMENT

To: (*Name of respondent*)

1. The judgment dated (*insert date of judgment*) of the (*insert name of court*) that (*insert terms of order or injunction*) has been registered in this Court under Part 2 of the *Foreign Judgments Act 1991* of the Commonwealth.

2. You may, within days after service of this notice on you, apply to have the registration set aside.

The address for service of (*insert name of judgment creditor*) is (*state address*).

Dated 19 .

.....
Registrar

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 79 O. 81 r. 2

NOTICE OF APPEAL FROM THE

ADMINISTRATIVE APPEALS TRIBUNAL

IN THE SUPREME COURT OF THE)
AUSTRALIAN CAPITAL TERRITORY) No. of 19

On appeal from the Administrative Appeals Tribunal constituted by (*names of the members constituting the Tribunal which made the decision*)

BETWEEN: (*name.*) Appellant

and

(*name.*) Respondent

1. TAKE NOTICE that the appellant appeals from the decision of the Tribunal constituted by (*members constituting the Tribunal*) given on (*date*) at (*place*) whereby the Tribunal decided (*decision appealed from*).

2. QUESTIONS OF LAW raised on the appeal are: (*specify each question of law*)

3. ORDERS SOUGHT are: (*state the orders or relief sought*)

4. GROUNDS relied on are: (*specify grounds relied on in support of the orders or relief sought*)

Dated: 19 .

.....
Appellant (*or* appellant's solicitor)

To the Respondent: (*name and address*)

TAKE NOTICE that a directions hearing in this appeal will be heard by the Court at the time and place specified below. If there is no attendance before the Court by you or your counsel or solicitor, directions may be given and orders made in your absence.

Before taking any step in the proceeding or attending at the directions hearing you must file an appearance in the Registry.

DIRECTIONS HEARING:

Time: (*date and time to be entered by Registry unless fixed by Court*)

Place: (*address of Court*)

(*If the time for service has been abridged, add*)
The time by which this notice of appeal, with its notice of the directions hearing, is to be served has been abridged by the Court to (*specify time*).

Dated: 19 .

By the Court
(*signature and description of officer of the Court*)

The appellant's address for service is (*specify address for service*).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

FIRST SCHEDULE—continued

FORM 80 O. 81 r. 7

APPLICATION FOR EXTENSION OF TIME TO FILE OR SERVE NOTICE OF APPEAL FROM ADMINISTRATIVE APPEALS TRIBUNAL

IN THE SUPREME COURT OF THE)
AUSTRALIAN CAPITAL TERRITORY) No. of 19

BETWEEN: (*name*). Appellant

and

(*name*). Respondent

1. The appellant applies for an extension of time in which to file or serve (*as the case may be*) a notice of appeal from the decision of the Tribunal constituted by (*names of the members constituting the Tribunal*) given on (*date*) at (*place*) whereby the Tribunal decided (*decision sought to be appealed from*).

2. An extension of time is required because a notice of appeal was not filed or served (*as the case may be*) within the time(*s*) specified in subsection 46 (3) of the *Administrative Appeals Act 1989*.

3. This application will be heard by the Court at [*place—to be inserted by Registrar*] on [*date—to be inserted by Registrar*].

4. The grounds of the application appear in the annexed affidavit.

Dated: 19 .

.....
Appellant [*or* appellant's solicitor]

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FIRST SCHEDULE—continued

FORM 81 O. 82 r. 3

APPLICATION FOR AN ORDER OF REVIEW

IN THE SUPREME COURT OF THE)
AUSTRALIAN CAPITAL TERRITORY) No. of 19

BETWEEN: (*name*) Appellant

and

(*name*) Respondent

Application to review the decision of (*the respondent or the first respondent*) that (*specify decision*)

OR

Application to review the conduct of (*the respondent or the first respondent*), being (*identify conduct*)

OR

Application to review conduct in which (*the respondent or the first respondent*) proposes to engage, being
(*identify conduct*)

OR

Application to review the failure of (*the respondent or the first respondent*) to decide that (*specify the decision which it is alleged ought to have been made*)

The applicant is aggrieved by the (*decision or conduct or proposed conduct or failure*) because:

1.

2.

etc. (*reasons*)

The grounds of the application are:

1.

2.

etc. (*particulars of fraud or bad faith, if alleged*)

The applicant claims:

1. An order (*or declaration*) that (*specify relief sought*).

2.

etc.

Dated: 19 .

.....
Appellant (*or* appellant's solicitor)

To the Respondent: (*name and address*)

TAKE NOTICE that a directions hearing in this application will be heard by the Court at the time and place specified below. If there is no attendance before the Court by you or your counsel or solicitor, directions may be given or the application may be dealt with and you will be liable to suffer judgment or order against you in your absence.

Before taking any step in the proceeding or attending at the directions hearing you must file an appearance in the Registry.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

DIRECTIONS HEARING:

Time: (*date and time to be entered by Registrar unless fixed by Court*)

Place: (*address of Court*)

(If *the time for service has been abridged, add:*)

The time by which this application, with its notice of the directions hearing, is to be served has been abridged by the Court to (*specify time*).

Dated: 19 .

By the Court

(*signature and description of officer of the Court*)

The applicant's address for service is (*specify address for service*).

FORM 82 O. 82 r. 4

NOTICE OF OBJECTION TO COMPETENCY

IN THE SUPREME COURT OF THE)
AUSTRALIAN CAPITAL TERRITORY) No. of 19

BETWEEN: (*name*) Appellant

and

(*name*) Respondent

To the Applicant: (*name and address*)

The respondent objects to the jurisdiction of this Court to try this application for an order of review under the *Administrative Decisions (Judicial Review) Act 1989* on the grounds that:

1.

2.

etc. (*set out concisely the whole of the grounds of the objection*)

Dated: 19 .

.....

Respondent (*or* respondent's solicitor)

The respondent's address for service is (*specify address for service*).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

THIRD SCHEDULE

FORMS—ADMINISTRATION AND PROBATE JURISDICTION

FORM 1

NOTICE FOR PROBATE O. 72 r. 3

IN THE SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY
PROBATE JURISDICTION

In the Will of , late of ,
deceased.

Application will be made after 14 days from the publication hereof that Probate of the Will dated of the abovenamed deceased may be granted to ,
the Executor named in the said Will, and all notices may be served at .

(*Solicitor*)
(*Address*)

FORM 2

O. 72 r. 3

NOTICE FOR ADMINISTRATION

[*Heading as in Form 1*]

In the Estate of , late of , deceased (intestate).

Application will be made after fourteen days from the publication hereof, that administration of the estate of the above-named deceased may be granted to ,
the widow [*or as the case may be*] of the said deceased, and all notices may be served at .

(Solicitor)
(Address)

FORM 3

O. 72 r. 4

NOTICE FOR SEALING FOREIGN GRANTS

[*Heading as in Form 1*]

In the Will [*or* Estate] of , late of , deceased.

Application will be made after fourteen days from the publication hereof, that the probate [*or* letters of administration] granted in respect of the above estate, may be sealed with the seal of this Court, and all notices may be served at .

(Solicitor)
(Address)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

THIRD SCHEDULE—continued

FORM 4 O. 72 r. 30

ADMINISTRATION BOND

Know all men by these presents that we—

, of

, of

, of

are jointly and severally held and firmly bound to the Registrar of Probates and Administrations under the *Administration and Probate Act 1929-1934* his successors and assigns, in the sum of to be paid to the said Registrar of Probates and Administrations, his successors and assigns, for the due payment whereof we hereby bind ourselves and each and any two of us, our heirs, executors, and administrators firmly by these presents.

Dated this day of in the year of our Lord One thousand nine hundred and .

The condition of this obligation is such that if the said the administrator of all and singular the property of late of deceased, do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as his administrator, or of any other person or persons for him, and do and shall make or cause to be made a true and perfect inventory of all and singular the property, lands, and hereditaments, goods, chattels and credits of the said deceased, which shall have come to the hands, possession, or knowledge of him, or the hands or possession of any other person or persons for him, and the same so made do and shall sign with his proper handwriting (or mark), and do and shall exhibit and deposit, or cause to be exhibited and deposited, the same inventory in the office of the Registrar of Probates and Administrations, within three calendar months next ensuing the order granting letters of administration; and further do and shall make or cause to be made a true and just account of the administration of the estate which he shall have undertaken so to administer, his receipts and disbursements, and as to what portion shall be retained by him, and what portion shall remain uncollected, and the same so made do and shall sign with his proper handwriting (or mark), and do and shall exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Registrar, within twelve calendar months next ensuing the order granting letters of administration; then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered, &c.

FORM 5 O. 72 r. 30

CREDITOR'S ADMINISTRATION BOND

Know all men [, *&c. as in Form 4*]—

The condition of this obligation is such that if the said *C.D.*, a creditor and administrator of all and singular the property of *A.B.*, late of , who died at aforesaid, on the day of , 19 , do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as such administrator, or of any other person or persons for him, and do and shall out of the said property, lands, and hereditaments, goods, chattels, and credits of the said deceased in a due course of administration rateably and proportionately and according to the priority required by law, and not unduly preferring his own debt or debts of any other of the creditors of the said deceased by reason of his being administrator as aforesaid, and do and shall make or cause to be made a true and perfect inventory of all and singular [*and then as in Form 4.*]

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

THIRD SCHEDULE—continued

FORM 6 O. 72 r. 31

AFFIDAVIT OF JUSTIFICATION

[Heading as in Form 1]

In the Estate of , late of , in the Territory for the Seat of Government, deceased (intestate).

I, , of , in the Territory for the Seat of Government, make oath and say—

1. That I am after payment of all my just debts and liabilities well and truly worth in real and personal property *[or as the case may be]* the sum of $.

*2. That the particulars of my property and the values thereof are as follows:

(NOTE—In setting out the property realty must be distinguished from personalty and a separate gross value for each particular parcel or item thereof must be stated.)

(a) When realty, the location, the area of the land, whether there are buildings on the land, should be stated with sufficient accuracy to identify the land.

(b) When personalty, the following particulars should be given, for example:

(1) Description of lease and number of years to run.

(2) Number of shares in bank, building society, trading company, &c.

(3) Money on deposit or current account, giving name and address of bank, society, &c.

(4) Money lent on mortgage and registered number of same.

(5) Household furniture and where kept.

(6) Stock in trade of a business and premises wherein kept.

(7) Farming implements, &c., where kept, and grain, quantity, and where stored.

(8) Policy of life insurance, number of years in force with surrender value, and age of surety at time of making his affidavit.

(9) Live-stock, number and kind and where depastured or kept.

(10) Good book debts only.

(Cash in hand or in house will not be accepted as sufficient.)

3. That I am not surety in any other matter *[or if a surety in any other matter state in what matter and to what amount]*.

Signed and sworn by the above-named deponent at in the Territory for the Seat of Government this day of One thousand nine hundred and before me—

(Title of person taking affidavit.)

---

* The gross value at which property of deceased was sworn.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

THIRD SCHEDULE—continued

FORM 7 O. 72 r. 39

NOTICE OF FILING ACCOUNTS

[*Heading as in Form 1*]

In the Estate of

NOTICE is hereby given that the accounts in the above estate have this day been filed in my office, and all persons having any claim on the said estate, or being otherwise interested therein, are hereby required to come in before me at my said office on or before the day of at o'clock in the -noon and inspect the same and if they shall think fit object thereto; otherwise if the said accounts be not objected to, the same will be examined by me and passed according to law. **And notice is also hereby given that on the allowance of the said accounts by the Court, commission will be applied for on behalf of the said executor* (or *administrator).*

Dated this day of in the year One thousand nine hundred and .

(Registrar.)

---

*Words in italics to be added if Commission applied for.

FORM 8 O. 72 r. 52

CAVEAT

Take notice that I [*name of caveator in full*] of [*address and description in full*] claiming interest [*state relationship or particulars of interest*] in the estate of [*or* under the will of—*set out full description*] do hereby demand that nothing be done therein without notice to me.

Dated this day of , 19 .

(Signature of caveator or his solicitor.)

Witness—

FORM 9 O. 72 r. 60

AFFIDAVIT IN SUPPORT OF APPLICATION BY CURATOR

[*Heading as in Form 1*]

In the matter of the Intestate Estate of late of , deceased.

I , of , in the Territory for the Seat of Government, make oath, and say as follows:

1. The said died at , on or about the day of , one thousand nine hundred and , intestate, and having at the time of his death estate in the said Territory liable to waste.
2. The said deceased died without leaving any widow or next of kin resident within the said Territory.

Signed and sworn by the above-named deponent, at , in the Territory for the Seat of Government, this day of , 19 , before me—

(Title of person taking affidavit.)

NOTE—If deceased left a widow or next of kin resident out of jurisdiction of the Territory, insert particulars of the same.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

THIRD SCHEDULE—continued

FORM 10 O. 72 r. 60

AFFIDAVIT IN SUPPORT OF APPLICATION BY CURATOR

[*Heading as in Form 1*]

In the matter of the Will of , late of , deceased.

I , of , in the Territory for the Seat of Government, Curator of Deceased Persons' Estates, make oath and say as follows:

1. I am informed, and verily believe, that the said deceased died at , on or about the day of , 19 , as appears by the of death hereto attached, marked A.

2. I verily believe the paper writing hereto annexed, bearing date the day of , 19 , and marked B, to be the last will and testament of the said deceased, and that by the said will appointed executors thereof.

3. The said executor renounced the trusts of the said will, as appears by the deed of renunciation marked , annexed to the affidavit of , sworn herein, this day of , 19 , and filed in support of this application.

Signed and sworn by the above-named deponent, at , in the Territory for the Seat of Government, this day of , 19 , before me—

FORM 12 O. 72 r. 61

RENUNCIATION OF PROBATE IN FAVOUR OF CURATOR

[*Heading as in Form 1*]

In the matter of the Will of , late of , deceased.

Whereas , late of , deceased, died on the day of at , and whereas he duly made and executed his last will and testament, bearing date the day of , 19 , and thereof appointed executor:

Now I the said do hereby declare that I have not intermeddled in the real or personal estate of the said deceased, and will not hereafter intermeddle therein and do hereby expressly renounce all my right and title to probate and execution of the said will and to the trusts, powers, and authorities whatsoever by the said , and hereby request the Curator of Estates of Deceased Persons to apply for an order to collect the estate of the said , deceased, with the will of said annexed.

In witness whereof have hereunto set hand and seal this day of , 19 .

Signed, sealed and delivered by the said in the presence of—

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

THIRD SCHEDULE—continued

FORM 13 O. 72 r. 62

RENUNCIATION OF LETTERS OF ADMINISTRATION IN FAVOUR OF CURATOR

[*Heading as in Form 1*]

In the matter of the Estate of , late of , deceased (intestate).

Whereas , late of , deceased, died on the day of , 19 , at intestate, a widower, leaving his only him surviving :

Now, I the said , do hereby renounce all right and title to letters of administration of the real and personal estate of the said deceased, and request the Curator of Estates of Deceased Persons to administer the said estate.

Signed by the said , on the day of , 19 , in the presence of—

FORM 14 O. 72 r. 63

NOTICE OF APPLICATION FOR REPRESENTATION TO BE GIVEN BY CURATOR

[*Heading as in Form 1*]

To the Curator of Estates of Deceased Persons.

You are hereby requested to take notice that application will be made to the Supreme Court of the Australian Capital Territory on the day of , or so soon thereafter as the same can be heard, for probate of the Will [*or* letters of administration, as the case may be] of the estate of *A.B.*, late of deceased, who died on or about the day of 19 , at (intestate).

Dated this day of 19 .

Proctor for *C.D.*,
a (brother) of the said deceased.

FORM 15 O. 72 r. 69

ACKNOWLEDGEMENT UNDER SECTION 56 OF ACT

Acknowledgement made under the *Administration and Probate Act 1929-1934*, between [*name or names*] executor [*or* executors] of the duly proved Will [*or* administrator] [*or* administrators with the Will annexed], of [*name*] late of [*address and occupation as in Will*] deceased, of the one part, and [*name or names*] [devisee or devisees] under the said Will, of the other part whereby the said executor [*or* executors *or* administrator *or* administrators] doth [*or* do] acknowledge that the said devisee [*or* devisees] is [*or* are] entitled for the estate for which the same is devised to him [*or* them] by the said Will to the real estate described in the said Will as [*described as in Will*].

Dated this day of , 19 .

(Signature or signatures of executor or executors or administrator or administrators.)

Witness—

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

SCHEDULE 4

O. 65 r. 7

COSTS

Item No.	Matter in respect of which charge is made	Charge ($)	
	Instructions		
1	To sue or defend	77.70	
2	For		
	(a) statement of claim, petition or special case;		
	(b) counter-claim	77.70	or such additional amount as the taxing officer thinks fit.
3	For defence	66.50	or such additional amount as the taxing officer thinks fit.
4	For		
	(a) reply;		
	(b) amending a pleading;		
	(c) documents to be brought into the Registrar's office, such as accounts, deeds, etc;		
	(d) adding parties by order;		
	(e) bond or any other deed;		
	(f) retaining counsel, including preparation of retainer	27.70	or such additional amount as the taxing officer thinks fit.
5	For		
	(a) any pleading not otherwise provided for;		
	(b) interrogatories for the examination of a party or witness;		
	(c) affidavit in answer to interrogatories and other special affidavits;		
	(d) discovery, or affidavit of discovery;		
	(e) an application for an order that a matter be heard before the Full Court;		
	(f) brief on application in Chambers	55.40	or such additional amount as the taxing officer thinks fit.

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SCHEDULE 4—continued

Item No.	Matter in respect of which charge is made	Charge ($)	
6	For (a) an application whether in Court, before the Registrar or in Chambers; (b) opposition to an application; (c) the taxing of a bill of costs	55.40	or such additional amount as the taxing officer thinks fit.
7	For brief to advise on evidence	49.90	or such additional amount as the taxing officer thinks fit.
8	For (a) statement of facts in an action; (b) request for particulars; (c) particulars	55.40	or such additional amount as the taxing officer thinks fit.
9	For brief (preparation for trial)	such amount as the taxing officer thinks fit.	
	Drawing		
10	For originating process, or counter-claim	41.40	or if in excess of 7 folios—5.80 per folio
11	For any other pleading, or an amendment of a pleading	27.70	or if in excess of 4 folios—5.80 per folio
12	For (a) notices of interlocutory motion; (b) summonses to attend at judge's chambers; (c) notices to produce documents; (d) notices to admit facts; (e) special case; (f) interrogatories; (g) special affidavits; (h) briefs (including observations)	25.30	or (in each case), if in excess of 4 folios—5.80 per folio
13	Formal affidavits including affidavits of service	19.50	
14	Any other document	11.00	or if in excess of 1 folio—6.50 per folio
	Engrossing		
15	Of documents	1.70	per folio

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SCHEDULE 4—continued

Item No.	Matter in respect of which charge is made	Charge ($)	
	Copies		
16	Of any document, or of multiple documents copied at the same time		
	(a) for each of the first 10 copies	1.50	per page
	(b) for each additional copy (up to 100 copies)	0.60	per page
	(c) for each additional copy (in excess of 100 copies)	0.20	per page
	Perusal		
17	Of (a) any originating process; (b) any pleading; (c) any summons or notice of motion; (d) interrogatories; (e) special case; (f) notice to produce; or (g) notice to admit	19.50	or (in each case) if in excess of 8 folios—2.20 per folio
18	Of any other document	2.20	per folio
18A	Of any documents, where it is not necessary to peruse	3.00	per page or, if the number of pages exceeds 10, such additional amount as the taxing officer thinks fit.
	Attendances		
19	For personal service, where necessary	41.40	or such additional amount as the taxing officer thinks fit.
20	For service (a) at the office of a solicitor on the record or the address for service of a party; (b) by post; (c) where effected through a document exchange	16.70	

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SCHEDULE 4—continued

Item No.	Matter in respect of which charge is made	Charge ($)	
21	For attendance:		
	(a) to instruct Counsel;		
	(b) on taxation of a bill of costs or other matter;		
	(c) at conference with Counsel;		
	(d) on a view;		
	(e) on witness or other persons;		
	(f) to inspect or produce documents for each solicitor or clerk necessarily or properly engaged;		
	(i) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least two years	110.90	per hour
	(ii) by any other solicitor	77.70	per hour
	(iii) by a clerk	38.80	per hour
22	For any other attendance in Court or any hearing without Counsel		
	(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least two years	166.20	per hour
	(b) by any other solicitor	116.40	per hour or such additional amount as the taxing officer thinks fit.
23	For any attendance by a solicitor which involves a high degree of skill and responsibility	166.20	per hour
24	In Court or Chambers or before the Registrar:		
	(a) for the purpose of taking a reserved judgment;		
	(b) to mention a matter;		
	(c) for the purpose of adjournment;		
	(d) for any other reason	44.30	or 110.90 per hour

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SCHEDULE 4—continued

Item No.	Matter in respect of which charge is made	Charge ($)	
25	At the Registry or other office or place for: (a) the purpose of filing, delivering, or bespeaking a document; (b) a purpose not involving the exercise of legal skill or knowledge	13.80	or such additional amount as the taxing officer thinks fit.
26	Formal telephone attendance	13.80	
27	Any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	22.20	or 27.70 per quarter hour
28	Any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	13.80	or 9.60 per quarter hour
29	If the taxing officer is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that: (a) a solicitor has been necessarily absent from the place where he or she carries on practice		an allowance (in addition to reasonable travelling expenses) for each day (other than Saturdays and Sundays) that the solicitor is so absent of such amount as the taxing officer thinks reasonable, not exceeding 647.00
	or (b) a clerk has attended in place of the solicitor		a similar daily allowance, not exceeding 166.00
	Letters		
30	Ordinary letters and telegrams	13.80	or 6.70 per folio
31	Special letters	22.80	or 6.70 per folio
32	Formal letters of acknowledgement	9.30	
33	Circular letters after the first	4.20	
34	Telegram, facsimile copy or telex including attendance to dispatch	21.80	or such fee as is reasonable in the circumstances

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SCHEDULE 4—continued

Item No.	Matter in respect of which charge is made	Charge ($)
35	Receiving and filing any incoming letter (postage and transmission fees properly incurred may be claimed as a disbursement)	5.80
	Witnesses' Expenses	
36	In all cases	To be at the same rates and subject to the same conditions as witnesses' expenses that are, from time to time, prescribed by the Justices of the High Court under section 86 of the *Judiciary Act 1903* of the Commonwealth
	Disbursements	
37	All court fees, counsel's fees and other fees and payments which, in the opinion of the taxing officer, have been properly incurred.	Allowed in full

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EIGHTH SCHEDULE

FORM 1 O. 76 r. 3

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

APPLICATION FOR ADOPTION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Application is hereby made to the Court [*by/*on behalf of] the proposed adoptive parents mentioned below for the adoption of the child mentioned below.

Particulars of proposed adoptive parent(s)

	Adoptive father	Adoptive mother
Full name:		
Occupation:		
Address:		
Date of birth:		
Relationship, if any, to the child:		

Particulars of the child proposed to be adopted

Full name in which the birth of the child is registered:

Sex:

Date of birth:

Place of birth:

Father's full name:

Mother's full maiden name:

Mother's full name at the date of birth of the child:

This application is made—

* personally by the proposed adoptive parent(s).
* on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
* by the Director of Family Services.
* by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

NOTE

If the name of a birth parent of the child to be adopted is unknown to the proposed adoptive parent(s), care should be taken to ensure that this information is not disclosed to the proposed adoptive parent(s) in filling out this form. In such a case, if practicable, this form should be filled out and signed by the solicitor(s) for the proposed adoptive parent(s), by the Director of Family Services or by the principal officer of the relevant adoption agency (as appropriate).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

EIGHTH SCHEDULE—continued

FORM 2 O. 76 r. 4

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPLICATION FOR ADOPTION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: [*full name*], of [*address*]—

An application for the adoption of [*full name in which the birth of the child to be adopted is registered*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

* ~~personally by the proposed adoptive parent(s).~~
* on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
* by the Director of Family Services.
* by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

NOTE

If the name of a birth parent of the child to be adopted is unknown to the proposed adoptive parent(s), care should be taken to ensure that this information is not disclosed to the proposed adoptive parent(s) in filling out this form. In such a case, if practicable, this form should be filled out and signed by the solicitor(s) for the proposed adoptive parent(s), by the Director of Family Services or by the principal officer of the relevant adoption agency (as appropriate).

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EIGHTH SCHEDULE—continued

FORM 3 O. 76 r. 7

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPEARANCE OPPOSING APPLICATION FOR ADOPTION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application for the adoption of [*full name in which the birth of the child to be adopted is registered*].

* [*Full name*] appears in person.

* [*Full name*] appears by [*full name(s) and address*], solicitor(s).

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

FORM 4 O. 76 r. 8

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

INTERIM ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Before:

Date:

An application has been made to the Court [*by/*on behalf of] [*full name, address and occupation of each proposed adoptive parent*] for an order for the adoption of [*full name in which the birth of the child to be adopted is registered*].

The Court is satisfied that it could lawfully make an order for the adoption of the child by the proposed adoptive parents.

The Court therefore orders—

1. That the determination of the application be postponed until [*date*].
2. That [*full name of each proposed adoptive parent*] have the custody of the child until that date.
3. [*Any further orders*].

By the Court: , Registrar

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 5 O. 76 r. 9

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

ADOPTION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Before:

Date:

An application has been made to the Court [*by/*on behalf of] [*full name, address and occupation of each proposed adoptive parent*] for an order for the adoption of [*full name in which the birth of the child to be adopted is registered*].

The Court orders—

1. That the child become, by this order, the adopted child of [*full name of each adoptive parent*].
2. That the child bear, by this order, the following name: [*full name to be given to adopted child*].
3. [*Any further orders*].

By the Court: , Registrar

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 6 O. 76 r. 10

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

APPLICATION FOR DISPENSING WITH CONSENT TO ADOPTION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Application is hereby made to the Court [*by/*on behalf of] [*full name, address and occupation of each proposed adoptive parent*] for the Court to dispense with the requirement for the consent of [*full name*] for the purposes of an application for the adoption of [*full name in which the birth of the child to be adopted is registered*].

This application for a dispensing order is made—

* personally by the proposed adoptive parent(s).
* on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
* by the Director of Family Services.
* by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

NOTE

If the name of a birth parent of the child to be adopted is unknown to the proposed adoptive parent(s), care should be taken to ensure that this information is not disclosed to the proposed adoptive parent(s) in filling out this form. In such a case, if practicable, this form should be filled out and signed by the solicitor(s) for the proposed adoptive parent(s), by the Director of Family Services or by the principal officer of the relevant adoption agency (as appropriate).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

EIGHTH SCHEDULE—continued

FORM 7 O. 76 r. 11

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPLICATION FOR DISPENSING ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: [*full name*], of [*address*]—

An application for the Court to dispense with the requirement for the consent of [*full name*] for the purposes of an application for the adoption of [*full name in which the birth of the child to be adopted is registered*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application for the Court to dispense with the requirement for consent, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

* personally by the proposed adoptive parent(s).
* on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
* by the Director of Family Services.
* by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

NOTE

If the name of a birth parent of the child to be adopted is unknown to the proposed adoptive parent(s), care should be taken to ensure that this information is not disclosed to the proposed adoptive parent(s) in filling out this form. In such a case, if practicable, this form should be filled out and signed by the solicitor(s) for the proposed adoptive parent(s), by the Director of Family Services or by the principal officer of the relevant adoption agency (as appropriate).

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EIGHTH SCHEDULE—continued

FORM 8 O. 76 r. 12

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPEARANCE OPPOSING APPLICATION FOR DISPENSING ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application for the Court to dispense with the requirement for the consent of [*full name*] for the purposes of an application for the adoption of [*full name in which the birth of the child to be adopted is registered*].

* [*Full name*] appears in person.

* [*Full name*] appears by [*full name(s) and address*], solicitor(s).

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

FORM 9 O. 76 r. 13

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

ORDER FOR DISPENSING WITH CONSENT TO ADOPTION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Before:

Date:

An application has been made to the Court [*by/*on behalf of] [*full name, address and occupation of each proposed adoptive parent*] for the Court to dispense with the requirement for the consent of [*full name*] to the adoption mentioned above.

The Court orders that the requirement for [*full name*] to consent to the adoption of [*full name in which the birth of the child to be adopted is registered*] be dispensed with for the purposes of an application by or on behalf of [*full name of each proposed adoptive parent*] for the adoption of that child.

By the Court: , Registrar

* Strike out where inapplicable.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

EIGHTH SCHEDULE—continued

FORM 10 O. 76 r. 14

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

APPLICATION FOR THE VARIATION OF AN ADOPTION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

Application is hereby made to the Court [*by/*on behalf of] [*full name, address and occupation of person in whose favour the variation order is sought*] for the Court to [*vary/*revoke] a condition of the order for the adoption of [*full name of adopted child*] dated [*date*].

This application is made—

* personally by [*full name*] in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].

* by [*full name*], on behalf of [*full name of adopted child*].

* by [*name(s)*], solicitor(s), on behalf of [*full name*] in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 11 O. 76 r. 15

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPLICATION FOR VARIATION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

To: [*full name*], of [*address*]—

An application for the Court to [*vary/*revoke] a condition of the order for the adoption of [*full name of adopted child*] dated [*date*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

* personally by [*full name*], who is seeking the variation of the adoption order in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].

* by [*full name*], on behalf of [*full name of adopted child*].

* by [*name(s)*], solicitor(s), on behalf of [*full name*], who is seeking the variation of the adoption order in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 12 O. 76 r. 16

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPEARANCE OPPOSING APPLICATION FOR VARIATION ORDER

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application for the Court to [*vary/*revoke] a condition of the order for the adoption of [*full name of adopted child*] dated [*date*].

* [*Full name*] appears in person.

* [*Full name*] appears by [*full name(s) and address*], solicitor(s).

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 13 O. 76 r. 17

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

APPLICATION FOR DISCHARGE OF
[*INTERIM ORDER/*ADOPTION ORDER]

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of †[*full name to be given to the child*]
†[*full name of adopted child*]

Application is hereby made to the Court for the discharge of the [*interim order/*adoption order] dated [*date*] in relation to the adoption of the child mentioned above in favour of—

† [*full name, address and occupation of each proposed adoptive parent*].
† [*full name, address and occupation of each adoptive parent*].

This application is made—

* personally by [*full name*] in [*his/*her] capacity as ‡[*state capacity in which application is made*].
* by [*name(s)*], solicitor(s), on behalf of [*full name*] in [*his/*her] capacity as ‡[*state capacity in which application is made*].

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

† Insert where applicable.

‡ (A) In the case of an application for the discharge of an interim order, state the nature of the relationship of the person seeking the discharge to the child who is the subject of the order, or the capacity in which that person is otherwise interested in seeking the discharge of the order.

(B) In the case of an application for the discharge of an adoption order, state whether the application is made by (or on behalf of) the Minister, the Director of Family Services, the Community Advocate, the adopted child, an adopted parent or a birth parent.

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EIGHTH SCHEDULE—continued

FORM 14 O. 76 r. 18

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPLICATION FOR DISCHARGE OF [*INTERIM ORDER/*ADOPTION ORDER]

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of †[*full name to be given to the child*]
†[*full name of adopted child*]

To: [*full name*], of [*address*]—

An application has been made for the discharge of the [*interim order/*adoption order] dated [*date*] in relation to the adoption of—

† [*full name in which the birth of the child proposed to be adopted is registered*].
† [*full name of the adopted child*].

That order was made in favour of—

† [*full name and address of each proposed adoptive parent*].
† [*full name and address of each adoptive parent*].

This application has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

* personally by [*full name*], who is seeking the discharge of the order in his or her capacity as ‡[*state capacity in which application is made*].
* by [*name(s)*], solicitor(s), on behalf of [*full name*], who is seeking the discharge of the order in his or her capacity as ‡[*state capacity in which application is made*].

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

† Insert where applicable.

‡ (A) In the case of an application for the discharge of an interim order, state the nature of the relationship of the person seeking the discharge to the child who is the subject of the order, or the capacity in which that person is otherwise interested in seeking the discharge of the order.

(B) In the case of an application for the discharge of an adoption order, state whether the application is made by (or on behalf of) the Minister, the Director of Family Services, the Community Advocate, the adopted child, an adopted parent or a birth parent.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

EIGHTH SCHEDULE—continued

FORM 15 O. 76 r. 19

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPEARANCE OPPOSING APPLICATION FOR DISCHARGE OF [*INTERIM ORDER/*ADOPTION ORDER]

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of †[*full name to be given to the child*]
†[*full name of adopted child*]

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application for the discharge of the [*interim order/*adoption order] dated [*date*] in relation to the adoption of—

† [*full name in which the birth of the child proposed to be adopted is registered*].
† [*full name of the adopted child*].

* [*Full name*] appears in person.
* [*Full name*] appears by [*full name(s)*], solicitor(s).

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

† Insert where applicable.

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EIGHTH SCHEDULE—continued

FORM 16 O. 76 r. 20

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

APPLICATION FOR ACCESS TO IDENTIFYING INFORMATION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of .....

Application is hereby made to the Court for an order of entitlement to access to, and to apply for, identifying information of the following type in relation to the adoption of [*full name*]:

Particulars of identifying information

[*Here insert particulars*]

This application is made—

* personally by [*full name*] in [*his/*her] capacity as [*state capacity by virtue of which entitlement is claimed*].

* by [*name(s)*], solicitor(s), on behalf of [*full name*] in his or her capacity as [*state capacity by virtue of which entitlement is claimed*].

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 17 O. 76 r. 21

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPLICATION FOR ACCESS TO IDENTIFYING INFORMATION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

To: [*full name*], of [*address*]—

An application for an order of entitlement to access to, and to apply for, identifying information of the following type in relation to the adoption of [*full name*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*]:

Particulars of identifying information

[*Here insert particulars*]

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This application is made—

* personally by [*full name*], who is seeking the order in [*his/*her] capacity as [*state capacity by virtue of which entitlement is claimed*].

* by [*name(s)*], solicitor(s), on behalf of [*full name*], who is seeking the order in [*his/*her] capacity as [*state capacity by virtue of which entitlement is claimed*].

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

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EIGHTH SCHEDULE—continued

FORM 18 O. 76 r. 22

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

NOTICE OF APPEARANCE OPPOSING APPLICATION FOR ACCESS TO IDENTIFYING INFORMATION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application dated [*date*] for an order for entitlement to access to, and to apply for, identifying information in relation to the adoption of [*full name*].

* [*Full name*] appears in person.

* [*Full name*] appears by [*full name(s) and address*], solicitor(s).

Date:

Signature:

Address for service: [*Address of a place not more than 10 kilometres from the office of the Registrar*]

* Strike out where inapplicable.

FORM 19 O. 76 r. 23

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

ORDER FOR ACCESS TO IDENTIFYING INFORMATION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

Before:

Date:

An application has been made to the Court for an order of entitlement to access to, and to apply for, particular identifying information in relation to the adoption of [*full name*].

The Court orders that [*full name of person in whose favour the order is sought*] is hereby entitled to access to, and to apply for, identifying information of the following type in relation to the adoption of [*full name of adopted person*]:

Particulars of identifying information

[*Here insert particulars*]

By the Court: , Registrar

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EIGHTH SCHEDULE—continued

FORM 20 O. 76 r. 25

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

AFFIDAVIT OF PERSONAL SERVICE OF NOTICES OF APPLICATION

In the Supreme Court
of the Australian Capital Territory No. of [*year*]

In the matter of the adoption of

I, [*full name, address and occupation*], [*make oath/*affirm] and say:

1. On [*date of service*], I duly served [*full name of person served*] with a copy of a notice of the application mentioned above by delivering it to that person personally at [*address*].

2. I identified the person served in the following way:

[*Here set out the way in which the deponent identified the person served.*]

*3. I served [*the Director of Family Services/*the principal officer of [*name*], an adoption agency] by giving the copy of the notice to a member of staff of [*the office of the Director/*that adoption agency], that member of staff being identified as such in the following way:

[*Here set out the way in which the deponent determined that the person was such a member of staff.*]

[*Sworn/*Affirmed] by the deponent on [*date*] at [*time*]—

Signature:

Witness: [*Signature, name and title of person before whom affidavit is sworn or affirmed*]

* Strike out where inapplicable.

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TENTH SCHEDULE

FORMS—MENTAL HEALTH ACT 1983

FORM 1 O. 77

HEADING OF APPLICATION UNDER s. 28 (2), s. 43, or s. 57

IN THE SUPREME COURT
OF THE AUSTRALIAN
CAPITAL TERRITORY

No. of 19 .

IN THE MATTER of the *Mental Health Act 1983*

Between:

Applicant(s)

And:

Respondent(s)

FORM 2 O. 77 r. 5

ORIGINATING SUMMONS

(*Heading as in Form 1*)

LET of
and (*names and addresses of other respondents*)
within days after service of this summons on them respectively, inclusive of the day of such service, cause appearances to be entered for them to this summons which is issued upon the application of a psychiatrist and
a Mental Health Officer who apply for a further treatment order in respect of the abovenamed

Dated 19 .

This summons was taken out by
solicitor for the abovenamed applicants.

The respondents may appear hereto by entering appearance either personally or by solicitor in the Registrar's Office, Supreme Court, Knowles Place, Canberra.

NOTE: If a respondent does not enter appearance within the time and at the place abovementioned, such order will be made and proceedings may be taken as the Judge thinks just and expedient.

FORM 3 O. 77 r. 7

TREATMENT ORDER

(*Heading as in Form 1*)

UPON THE APPLICATION of the abovenamed
AND UPON READING the affidavit of (*continue in the normal form of an order of the Court*)
AND THE COURT being satisfied that (*set out the appropriate matters under s. 34 (2) of the Act*)
IT IS ORDERED that (*set out the appropriate directions and specifications under s. 35 of the Act*) AND that (*as required*)

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TENTH SCHEDULE—continued

FORM 4 O. 77 r. 10

NOTICE FOR FURTHER CONSIDERATION

(*Heading as in Form 1*)

TAKE NOTICE that the abovenamed

(*or* a medical practitioner)

(*or* a medical practitioner)

and a Mental Health Officer)

seek(s) further consideration of the originating summons in this matter for the purpose of varying (*or* discharging) the treatment order made herein on the day of 19 .

(*if variation is sought, add* in the following manner *and set out the variations proposed*)

Dated 19 .

Solicitor or party

To the abovenamed applicants (*or as the case may be*)

FORM 5 O. 77 r. 14

ORDER UNDER SECTION 57

(*Heading as in Form 1*)

The form of the order should be in accordance with Form 3, except that

(a) *the matters of which the Court is satisfied under s. 57 must all be set out, describing the person as "the abovenamed"*;

(b) *the substantive part of the order should be* "...DOTH BY ORDER CONSENT to the performance on the abovenamed of psychiatric surgery, being (*a specific procedure or procedures*)".

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ELEVENTH SCHEDULE

FORMS—CRIMINAL PROCEEDINGS

Form 1

Order 80
Subrule 10 (4)

SUBPOENA TO GIVE EVIDENCE

IN THE SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY } No. of 19 .

(*Intitulement as the case requires*)

To *(name)*
(address)

THE COURT ORDERS that you shall attend for the purposes of giving evidence:

(a) before the Court *(or as the case may be)*;

(b) at *(address of Court or place)*;

(c) on *(insert date)* at *(insert time)* and until you are excused from further attending.

If you consider that you have not been paid reasonable expenses of, and any loss reasonably incurred in, complying with this subpoena you may, after having complied with the subpoena, apply, in writing, to the Registrar for a determination of the amount which is sufficient to compensate you for any such expenses or loss, but, before so applying, you must give 7 days notice in writing of your intention so to apply to the person who caused the subpoena to be served on you.

Dated this day of 19 .

By the Court
(Signature and description of officer of the Court)

Note that failure to comply with this subpoena may constitute contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of *(name)*, the applicant's solicitor *(or as the case may be)*.

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ELEVENTH SCHEDULE—continued

Form 2

Order 80
Subrule 10 (4)

(Subpoena to a natural person)

SUBPOENA FOR PRODUCTION

(Heading as in Form 1)

To *(name)*
(addess)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the Schedule for the purposes of evidence:

(a) before the Court *(or as the case may be)*;

(b) at *(address of Court or other place)*;

(c) on *(insert date)* at *(insert time)* and until you are excused from further attending, but:

(i) if you consider that you have not been paid reasonable expenses of, and any loss reasonably incurred in, complying with this subpoena you may, after having complied with the subpoena, apply, in writing, to the Registrar for a determination of the amount which is sufficient to compensate you for any such expenses or loss, but, before so applying, you must give 7 days notice in writing of your intention so to apply to the person who caused the subpoena to be served on you; and

(ii) instead of so attending you may produce this subpoena and the documents and things described in the Schedule to the Registrar of the Court at the above place not later than the day before the first day on which you are required to attend; and

(iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and the following legislation, namely *(insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books)* applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that legislation.

SCHEDULE

(Description of documents and things)

Dated this day of 19 .

By the Court

(Signature and description of officer of the Court)

Note that failure to comply with this subpoena may constitute contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of *(name)*, the applicant's solicitor *(or as the case may be)*.

Form 3

Order 80
Subrule 10 (4)

(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession etc. of documents)

SUBPOENA FOR PRODUCTION AND TO ANSWER QUESTIONS

(Heading as in Form 1)

To *(name of corporation)*
(address)

THE COURT ORDERS that:

(a) you shall produce this subpoena and the documents and things described in the Schedule for the purposes of evidence by causing your proper officer to attend and produce them:

(i) before the Court (*or as the case may be*);

(ii) at *(address of Court or other place)*;

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ELEVENTH SCHEDULE—continued

(iii) on (*insert date*) or, if notice of a later date is given to you, that later date *(or state) the commencement and concluding dates of sittings of the Court and that notice would be given of a date during those sittings when the subpoena and documents and things are to be produced)* at *(insert time)* and until the officer is excused from further attending, but:

(A) if you consider that you have not been paid reasonable expenses of, and any loss reasonably incurred in, complying with this subpoena you may, after having complied with the subpoena, apply to the Registrar for a determination of the amount which is sufficient to compensate you for any such expenses or loss, but, before so applying, you must give 7 days notice in writing of your intention so to apply to the person who caused the subpoena to be served on you; and

(B) you may produce this subpoena and the documents and things described in the Schedule to the Registrar of the Court at the above place by hand or by post in either case so that he or she receives them not later than the day before the first day on which your officer is required to attend; and

(C) if you are a bank and are required by this subpoena to produce a banker's book and the following legislation, namely *(insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books)* applies, you need not cause your officer to produce it if you cause him or her to produce proof of the relevant entries in it in accordance with that legislation; and

(b) the officer who is to attend shall make enquiries for the purpose of answer, and, on attending, shall answer, such questions as the Court requires him or her to answer concerning possession or custody of those documents and things.

SCHEDULE

(Description of documents and things)

Dated this day of 19 .

By the Court

(Signature and description of officer of the Court)

Note that:

(1) failure to comply with this subpoena may constitute contempt of Court and may result in the sequestration of your property or arrest of one or more of your officers, or both;

(2) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena, but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;

(3) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;

(4) if you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of (*name*), the applicant's solicitor *(or as the case may be)*.

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ELEVENTH SCHEDULE—continued

Form 4

Order 80
Subrule 10 (4)

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

(*Heading as in Form 1*)

To *(name)*
(address)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the Schedule for the purposes of evidence and that you shall attend for the purposes of giving evidence:

(a) before the Court (*or as the case may be*);

(b) at (*address of Court or place*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but:

(i) if you consider that you have not been paid reasonable expenses of, and any loss reasonably incurred in, complying with this subpoena you may, after having complied with the subpoena, apply, in writing, to the Registrar for a determination of the amount which is sufficient to compensate you for any such expenses or loss, but, before so applying, you must give 7 days notice in writing of your intention so to apply to the person who caused the subpoena to be served on you; and

(ii) instead of producing the documents and things described in the Schedule when so attending, you may produce this subpoena and the documents and things described in the Schedule to the Registrar of the Court at the above place not later than the day before the first day on which you are required to attend; and

(iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and (*insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books*) applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that legislation.

SCHEDULE

(*Description of documents and things*)

Dated this day of 19 .

By the Court

(*Signature and description of officer of the Court*)

Note that failure to comply with this subpoena may constitute contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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SCHEDULE 12

Order 75B, paragraph 2 (2) (b)

FORM 5

APPLICATION

(Order 75B, rule 5)

On the grounds appearing in the accompanying affidavit the applicant claims (where appropriate):

1.
2.
etc.

AND.....

And the applicant claims by way of interlocutory relief:

1. An order (or declaration) that (etc.)
2.
etc.

Date: e.g. 7 May 19

.....

Signature of applicant or his or her solicitor

To the respondent (address)

A directions hearing in this application (and/or for the applicant's claim for an interlocutory order) will be heard by the Court at the time and the place specified below.

If there is no attendance before the Court by you or your counsel or solicitor, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance you must file an appearance in the Registrar's office.

Time: (Date and time to be entered by Registrar's office unless fixed by the Court).

Place: (Address of Court).

(Where the time for service has been abridged, add:

The time by which this application is to be served has been abridged by the Court to (specify time).)

Date: e.g. 7 May 19

.....

Signature of Registrar

The applicant's address for service is (specify address for service).

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SCHEDULE 12—continued

FORM 75

HEAD OF DOCUMENT

(Order 75B, subrule 4 (1))

IN THE SUPREME COURT OF	)	
THE AUSTRALIAN	)	No. of 19
CAPITAL TERRITORY	)	

IN THE MATTER OF (name of corporation or person to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

AB

Applicant

(specify any further applicants)

CD

Respondent

(specify any further respondents)

(NOTE: The words "(in liquidation)", "(receiver appointed)", "(receiver and manager appointed)", "(under official Management)" or "(under administration)" shall be added to the name of a corporation where applicable. The term "Australian Company Number" has the meaning given in rule 2 of Order 75B of the Rules.)

FORM 76

ABBREVIATED HEAD OF DOCUMENT

(Order 75B, subrule 4 (2))

IN THE SUPREME COURT OF	)	
THE AUSTRALIAN	)	No. of 19
CAPITAL TERRITORY	)	

IN THE MATTER OF (name of corporation or person to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

AB and Others

Applicants

CD and Others

Respondents

(NOTE: The words "(in liquidation)", "(receiver appointed)", "(receiver and manager appointed)", "(under official Management)" or "(under administration)" shall be added to the name of a corporation where applicable. The term "Australian Company Number" has the meaning given in rule 2 of Order 75B of the Rules.)

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SCHEDULE 12—continued

FORM 77

APPLICATION BY PERSON AGGRIEVED UNDER SECTION (complete appropriate section number) OF THE CORPORATIONS LAW

(Order 75B, rule 6)

(Heading in Form 75)

Application to (specify nature of application).

The applicant is aggrieved by (specify the decision or conduct which is the subject of the application) because:

1.
2.
3.
etc.

The grounds of the application are:

1.
2.
3.
etc.

The applicant claims:

1. An order (or declaration) that (specify relief sought).
2.
etc.

Date: e.g. 7 May 19

.....

Signature of applicant's solicitor
Name of applicant's solicitor:

To the Respondent
(address)

If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at that time you must file an appearance in the Registrar's office.

APPOINTMENT FOR DIRECTIONS HEARING

Time: (date and time to be entered by Registrar's office unless fixed by Court)

Place: (Address of Court)

(Where the time for service has been abridged, add—

The time by which this application is to be served has been abridged by the Court to (specify time).)

Date: e.g. 7 May 19

.....

Registrar

The applicant's address for service is (specify address for service).

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SCHEDULE 12—continued

FORM 78

NOTICE OF APPLICATION UNDER SECTIONS 167, 168, 172, 190, 194, 197, 198, 199, 202 OR 1074 OF THE CORPORATIONS LAW

(Order 75B, subrules 12 (5) and 13 (4))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY
NOTICE OF APPLICATION RELATING TO

(Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

(Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) for an order

1. (where an application is made under section 167) for the cancellation of a change of status of (name of company) under section 167;

OR

(where an application is made under section 168) for the cancellation of a change of (name of company) from a public company to a proprietary company (OR from a proprietary company to a public company) under section 168;

OR

(where an application is made under section 172) for the cancellation of an alteration of the memorandum of (name of company) under section 172;

OR

(where an application is made under section 190) confirming the issue of shares in the capital of (name of company) at a discount under section 190;

OR

(where an application is made under section 194) validating an issue of allotment of shares (OR confirming the terms of an issue of allotment of shares) in the capital of (name of company) under section 194;

OR

(where an application is made under section 197 or section 198) setting aside a variation or abrogation of rights attached to shares in the capital of (name of company) under section 197 (OR section 198);

OR

setting aside an alteration of the memorandum of (name of company) under section 197 (OR section 198);

OR

setting aside an alteration of the articles of (name of company) under section 197 (OR section 198);

OR

(where an application is made under section 199) setting aside a variation or abrogation of rights of members of (name of company) under section 199;

OR

setting aside an alteration of the memorandum of (name of company) under section 199;

OR

setting aside an alteration of the articles of (name of company) under section 199;

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OR

(where an application is made under section 202) approving the payment of interest out of the capital of (name of company) under section 202;

OR

(where an application is made under section 1074) confirming a resolution that (specify undertaking, scheme, enterprise or arrangement) be wound up under section 1074;

OR

(state other order sought).

The applicant's address for service is (specify address for service).

Any person intending to appear at the directions hearing shall file a notice of appearance in Form 79 and serving that notice of appearance and affidavit on the applicant at its address for service shown above not later than 2 days before the date appointed for directions.

FORM 79

NOTICE OF INTENTION TO APPEAR AT HEARING
(and insert if applicable)
AND OF GROUNDS OF OPPOSITION TO A WINDING UP APPLICATION

(Order 75B, subrules 12 (6), 13 (5), 14 (18), 20 (7), 22 (9), 33 (6), 36 (10) and (11), 37 (11) and (12), 64A (4) and 78 (4))

(Heading in Form 75)

NOTICE OF INTENTION TO APPEAR AT HEARING RELATING TO

(Name of company in capitals) ("the company")

(Insert where the company to which a winding up application under section 459P, 461, 462 or 464 relates, opposes the application)

1. The company intends to appear at the hearing of the winding up application and to oppose that application. The grounds of opposition to the application are (grounds of opposition).

OR

(Insert where the person appearing is not the company to which the application relates)

1. (Name of person who intends to appear at hearing) of (address of person who intends to appear at hearing) ("the person appearing") intends to appear on the hearing of the application advertised to be heard at (time) on (date) and to

   (if the person appearing intends to support the applicant's application) support the applicant's application.

   OR

   (if the person appearing intends to oppose the applicant's application) oppose the applicant's application.

   (Insert where the person appearing is not the company to which the application relates and intends to oppose the winding up application)

   The grounds of opposition to the application are (grounds of opposition).

(Insert where the person appearing is not the company to which the application relates)

2. The address for service of the person appearing is (address for service).

(Insert where the person appearing is a contributory)

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SCHEDULE 12—continued

3. The person appearing is a contributory holding (number and class of shares held) shares in the company.

OR

(Insert where the person appearing is a creditor)

3. The company is indebted to the person appearing in the sum of $ (specify amount).

OR

(Insert where the person appearing has standing to appear on any other ground)

3. The person appearing has standing to appear at the hearing of the application on the ground that (ground).

Date: e.g. 7 May 19

.....

Signature of person appearing
or his or her solicitor

Name of person appearing
or his or her solicitor:

[*NOTE: Section 465C of the Corporations Law provides that, on the hearing of an application under section 459P, 462 or 464, a person may not, without the leave of the Court, oppose the application unless, within the period prescribed by the Rules, the person has filed and served on the applicant notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.*]

FORM 80

LIST OF PERSONS WHO HAVE GIVEN NOTICE OF INTENTION TO ATTEND HEARING

(Order 75B, subrules 12 (7), 13 (6), 14 (19), 20 (8), 22 (11), 33 (7), 36 (9), 37 (13), 64A (5) and 78 (5))

(Heading in Form 75)

LIST OF PERSONS WHO HAVE GIVEN NOTICE OF INTENTION TO APPEAR AT HEARING RELATING TO

(Name of company in capitals)

The following are the names of those who have given notice of intention to attend the hearing of the application advertised to be heard at (time) on (date).

Name	Address of solicitor	Name and address of creditor	Amount of creditor's debt	Number of shares of contributory	Opposing or supporting application

Date: e.g. 7 May 19

.....

Signature of applicant's solicitor
Name of applicant's solicitor:
The applicant's address for service is (specify address for service).

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SCHEDULE 12—continued

FORM 81

AFFIDAVIT VERIFYING LIST OF CREDITORS

(Order 75B, subrule 14 (4))

(Heading in Form 75)

On (date), I (name address and occupation) say on oath:

1. I am the secretary (OR specify other capacity) of (name of company)

("Company") and am authorised to make this affidavit on its behalf.

2. The document annexed and marked "A" (OR produced to me and marked "A") contains a list of the creditors of and of persons having claims upon the Company (OR a list of the creditors of and of persons having claims upon the Company except those of the following class or classes (set out any excluded class or classes)) on (date fixed by the court) together with their addresses, and the nature and amount of their debts or claim.

3. That list is, to the best of my knowledge and belief, a true and accurate list of persons having claims on that day, and of the nature and amount or estimated value of their debts or claims.

4. To the best of my knowledge and belief there was not at that date, any debt or claim which if that date were the commencement of the winding up of the Company, would be admissible in proof against the Company other than debts and claims set out in that list.

5. I make this statement from facts within my knowledge as the secretary (OR specify other capacity) of the Company, and from information derived on investigation of the books of the Company.

SWORN at

Before me:

.....

A Justice of the Peace

"A"

Name and address of creditors or claimants	Nature of debts or claims	Amount of estimated value of debts or claims

This list of creditors and claimants is the annexure marked "A" referred to in the affidavit of (name) sworn before me at (place) on (date).

OR

This list of creditors and claimants marked "A" was produced and shown to (name) at the time of swearing his or her affidavit before me on (date).

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SCHEDULE 12—continued

FORM 82

NOTICE OF APPLICATION FOR REDUCTION OF CAPITAL AND FOR LIST OF CREDITORS

(Order 75B, subrule 14 (8))

(No heading or title)

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

An application has been made to the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 for an order confirming a resolution of the above company to reduce its capital from $ to $.

A list of persons admitted to leave have been creditors of the company on (specify date fixed by the Court under paragraph 195 (3) (a)) may be inspected at the office of the company at (address) or at the address shown below at any time between the hours of (specify).

A person:

(a) who claims that he or she was on (specify date fixed by the Court under paragraph 195 (3) (a)) and is still a creditor of the company, unless he or she belongs to (set out any excluded class or classes); and

(b) who is not entered on the list of creditors of the company at that date; and

(c) who claims to be entered on that list of creditors;

must on or before (specify date fixed by the Court under paragraph 195 (3) (b)) send his or her name and address, the particulars of his or her debt or claim, and the name and address of his or her solicitor (if any) to the address shown below. A claimant who does not do so will not be entitled to object to the proposed reduction of capital.

Every person who is admitted to be a creditor of the company who does not consent to the proposed reduction of capital is entitled to object to the reduction of capital.

Any creditor who has not received written notification from the company that his or her name is entered on the list of creditors should send particulars of his or her name and address to the address shown below.

.....

Name of applicant's solicitor:
The applicant's address for service is (specify address for service).

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SCHEDULE 12—continued

FORM 83

NOTICE TO CREDITORS

(Order 75B, subrule 14 (8))

(No heading or title)

To: (Name and address of creditor)

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

An application has been made to the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 for an order confirming a special resolution of the above company to reduce its capital from $ to $. Your name is entered as a creditor for (nature and amount or estimated value of debt or claim) in the list of persons admitted by the company to have been its creditors on (date).

If you claim to have been a creditor on that date in a larger amount than is stated above, you must send the particulars of your claim, your name and address (and the name and address of your solicitor, if any) to the address shown below to arrive on or before (specify date fixed by the Court under paragraph 195 (3) (b)). Otherwise, the above entry in the list of creditors will be treated as correct in all proceedings relating to the application to reduce the capital of the company.

Date: e.g. 7 May 19

Name of applicant's solicitor:
The applicant's address for service is (specify address for service).

FORM 84

AFFIDAVIT AS TO CLAIMS

(Order 75B, subrule 14 (10))

(Heading in Form 75)

On (date), we:

(name and address of company secretary), company secretary; and

(name and address of solicitor for the company), solicitor; and

(name and address of managing director or other director of the company), managing director (OR company director),

severally say on oath as follows:

I (name of company secretary) say on oath:

1. I am the company secretary of (name of company) ("Company").

2. On (specify date), I served a copy of the notice annexed and marked "A" (annex notice in Form 83) upon each of the persons whose names, addresses and descriptions appeared in the first column of the list of creditors annexed and marked "B" (annex list of creditors) from affidavit in Form 81), referred to in the affidavit of (name of deponent) filed on (date).

3. I served the copies of the said notice by (specify means of service).

I (name of solicitor for company) say on oath:

4. I am the solicitor for the company.

5. A true copy of a notice, annexed and marked "C" (annex notice in Form 82), was published in the *Gazette* and in (name of newspaper), on (date).

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SCHEDULE 12—continued

6. The document annexed and marked "D" is a list of all claims, the particulars of which were sent to me in response to the notice marked "A", in relation to persons who claim to be creditors of the company for larger amounts than are stated in the list of creditors marked "B".

OR

6. No person has sent to me, in response to the notice marked "A", a claim to be entered on the list of creditors of the company for a larger amount than is stated in the list of creditors marked "B".

7. The document annexed and marked "E" is a list of all claims which were sent to me in response to the notice marked "C", in relation to persons who claim to be creditors of the company on (date) who do not appear on the list of creditors marked "B" and who claim to be entered on that list.

OR

7. No claims have been sent to me in response to the notice marked "C" by persons who do not appear on the list of creditors marked "B" and claim to be entered on that list.

We (name of company secretary) and (name of managing director or other director) say on oath:

8. The first part of the document marked "D" and the document marked "E" set out:
   (a) those of the debts and claims which the company admits in their full amount or in part, and the amount which the company admits to be due in respect of each of those debts; and
   (b) those of the debts which the company admits to be due, or admits to be due in part, but does not admit a particular amount to be due; and
   (c) those of the debts and claims which the company contends are wholly or partly not included in the inquiry in this matter.
9. The second part of the document marked "D" and the document marked "E" set out:
   (a) those of the debts and claims which are wholly disputed by the company; and
   (b) those of the debts and claims which the company contends would be wholly or partly not included in the inquiry in this matter, even if admitted.

And I (name of managing director or other director) say on oath:

10. All rents, rates, taxes, salaries, wages and other incidental expenses current on (specify date fixed by the Court under paragraph 195 (3) (a) of the Corporations Law) and which have since become due have been paid and discharged by the Company.

SWORN at

Before me:

.....

A Justice of the Peace

"D"

LIST OF DEBTS CLAIMS AND LIABILITIES RELATING TO:

(Name of company)

This is the annexure marked "D" referred to in the affidavit of (name of company secretary), (name of solicitor for the company) and (name of managing director or other officer) respectively sworn before me at (place) on (date).

Particulars of the following debts, claims and liabilities were sent to (name of company) by persons claiming to be creditors of the company for amounts larger than the amount stated in the list of creditors prepared by the company.

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SCHEDULE 12—continued

FIRST PART

DEBTS AND CLAIMS WHOLLY OR PARTLY ADMITTED BY THE COMPANY

Names, addresses and descriptions of creditors	Particular of debts or claims	Amounts claimed	Amounts admitted by the company to be owing	Amounts admitted by the company to be owing, which it is contended are not within the inquiry

SECOND PART

DEBTS AND CLAIMS WHOLLY DISPUTED BY THE COMPANY

Names, addresses and descriptions of claimants	Particulars of claims	Amounts claimed	Amounts which it contended would not be within the inquiry, even if admitted

"E"

LIST OF DEBTS AND CLAIMS RELATING TO:
(Name of company)

This is the annexure marked "E" referred to in the affidavit of (name of company secretary), (name of solicitor for the company) and (name of managing director or other officer) respectively sworn before me at (place) on (date).

Particulars of the following debts and claims were sent to (name of company) by persons claiming to be creditors of the company and to be entered on the list of creditors prepared by the company.

FIRST PART

(AS IN ANNEXURE 'D")

SECOND PART

(AS IN ANNEXURE 'D")

(NOTE: Names of creditors and claimants are to be inserted alphabetically in Annexures D and E. If a company admits a debt to be due, or admits a debt to be due in part, but does not admit a particular amount to be due, insert the words "Amount not admitted" in the column headed "Amounts admitted by the company to be owing" in the First Part of Annexures D and E.)

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SCHEDULE 12—continued

FORM 85

NOTICE TO CREDITOR TO PROVE DEBT

(Order 75B, subrule 14 (11))

(No heading or title)

To: (Name and address)

NOTICE REQUIRING PROOF OF DEBT RELATING TO (Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

In respect of Proceedings No. of 19 , you are required to prove the debt claimed by you against the above company by:

(a) filing an affidavit setting out all relevant information in the Registrar's office of the Supreme Court of the Australian Capital Territory at (address), and serving a copy at the address shown below on or before (date); and

(b) attending at the Supreme Court at the above address on (date) at (time) which is the time appointed for hearing the claim; and

(c) producing any securities or documents relating to your claim.

If you do not comply with the above directions the Court may disallow your claim in whole or in part or order that you be treated as a creditor only for the amount set out against your name in the list of creditors prepared by (name of company concerned) in all proceedings relating to the proposed reduction of capital of the company.

Date: e.g. 7 May 19

Name of applicant's solicitor:

The applicant's address for service is (specify address for service).

FORM 86

NOTICE OF APPLICATION UNDER SECTION 195 OF THE CORPORATIONS LAW

(Order 75B, subrule 14 (15))

(No heading or title)

IN THE SUPREME COURT OF

THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

In Proceedings No. of 19 , (name of company) ("Company") will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) for an order confirming a resolution of the Company to reduce its share capital from $ to $ by (specify how time reduction is to be effected).

Any creditor of the Company who has not consented to the proposed reduction of capital and whose debt or claim has not been discharged or secured in full may appear at the hearing and oppose the application, unless the Company has indicated that it is willing to appropriate the amount of that debt or claim in such a manner as the Court directs.

Any person intending to appear at the hearing of the application shall file a notice of appearance in Form 79 together with any affidavit on which he or she intends to rely at the hearing and serve that notice of appearance and affidavit on the Company at its address for service shown below not later than 2 days before the date appointed for the hearing.

The Company's address for service is (specify address for service).

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

SCHEDULE 12—continued

FORM 87

NOTICE OF ORDER CONFIRMING REDUCTION OF CAPITAL

(Order 75B, rule 15)

(No heading or title)

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

IN THE MATTER OF (name of the corporation to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

On (date) the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 made an order approving the reduction of the capital of (name of company) by (set out terms of the reduction).

FORM 88

APPLICATION FOR NOMINATION OF LIQUIDATOR

(Order 75B, subrules 20 (5), 36 (6) and 37 (6))

(Heading in Form 75)

To: The Registrar

Supreme Court of the Australian Capital Territory

(Name of applicant) applies pursuant to (specify relevant rule of Order 75B) for the nomination of an Official Liquidator to act as the liquidator (OR provisional liquidator) of (name of company), if appointed by the Court.

This application is filed by (name of solicitors), solicitors for the applicant, whose address for service is (state address for service).

Date: e.g. 7 May 19

.....

Signature of applicant or his or her solicitor
Name of applicant or his or her solicitor:

NOMINATION OF LIQUIDATOR

To: (Name of applicant or his solicitor)

Of: (Address for service)

Pursuant to your application for the nomination of an Official Liquidator under Order 75B of the Rules of the Supreme Court of the Australian Capital Territory, the Registrar has nominated:

Name: (name of official liquidator) of

Address: (address of official liquidator)

to act as liquidator (OR provisional liquidator) of (name of company), if appointed by the Court.

Signed:

Registrar

Date: e.g. 7 May 19

(NOTE: The name and address of the nominated liquidator is to be completed by the Registrar's office.)

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SCHEDULE 12—continued

FORM 89

ACKNOWLEDGEMENT BY LIQUIDATOR

(OR CONSENT OF PROVISIONAL LIQUIDATOR)

(OR CONSENT OF JOINT LIQUIDATOR)

(Order 75B, subrules 20 (5), 32 (5), 33 (5), 38 (1), 48 (2), 53 (5) and 65 (2))

(Heading in Form 75)

I, (name of nominated liquidator/provisional liquidator/joint liquidator) of (address) am an Official Liquidator registered under section 1283 of the Corporations Law or deemed to be registered as an Official Liquidator under the Corporations Law.

(In the case of appointment as a liquidator) I acknowledge that I have been nominated by the Registrar of the Supreme Court of the Australian Capital Territory to act and I consent to act, as the liquidator of (specify name of company) ("the Company").

OR

(In the case of appointment as a provisional liquidator or joint liquidator) If appointed by the Court, I consent to act as the provisional liquidator (or joint liquidator) of (specify name of company) ("the Company").

To the best of my knowledge, information and belief neither I nor any member or senior employee of my firm have had any social or professional association with the Company or any of its present or past officers (other than (specify any such association)) and no conflict of interest exists (other than (specify any conflict of interest)) which would make it improper for me to act as liquidator (OR provisional liquidator OR joint liquidator) of the Company.

Date: e.g. 7 May 19

.....

Signature of liquidator
Name of liquidator

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SCHEDULE 12—continued

FORM 90

NOTICE OF APPLICATION UNDER SECTION 260 OF THE CORPORATIONS LAW

(Order 75B, subrule 20 (6))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

In Proceedings No. of 19 , (name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of court) for orders under section 260 of the Corporations Law in respect of the above company (and insert where an order for winding up is sought) including an order that the company be wound up.

Subject to the Rules, the Registrar of the Court will permit a contributory, member, creditor or officer of the company to inspect the application and any affidavit in relation to the application and will provide a copy of the application and of any affidavit in relation to the application to a contributory, member, creditor or officer of the company on payment of the prescribed fee.

The applicant's address for service is (specify address for service).

Any person intending to appear at the directions hearing shall file a notice of appearance in Form 79 and serve that notice of appearance on the applicant at its address for service shown above not later than 2 days before the date appointed for directions.

FORM 91

NOTICE OF HEARING OF APPLICATION TO APPROVE A COMPROMISE OR AN ARRANGEMENT UNDER SECTION 411 OF THE CORPORATIONS LAW

(Order 75B, subrule 22 (7))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

To all of the creditors and members of: (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

On (date) at (time) the Supreme Court of the Australian Capital Territory at (address of Court) will hear an application by (name of applicant) in Proceedings No. of 19 for the approval of the compromise or arrangement entered into between the above company and its members and creditors as passed by meetings of the members and creditors of the company held on (date of meetings).

The applicant's address for service is (specify address for service).

Any person wishing to oppose the approval of the compromise or arrangement shall file a notice of appearance in Form 79 together with any affidavit on which he or she intends to rely at the hearing of the application and serve that notice of appearance and affidavit on the applicant at its address for service shown above not later than 2 days before the date appointed for the hearing of the application.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

SCHEDULE 12—continued

FORM 92

NOTICE OF HEARING OF APPLICATION TO VARY OR CANCEL A RESOLUTION TO PLACE A COMPANY UNDER OFFICIAL MANAGEMENT UNDER SECTION 454 OF THE CORPORATIONS LAW

(Order 75B, subrule 33 (5))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

To all of the creditors and members of: (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

On (date) at (time) the Supreme Court of the Australian Capital Territory at (address of Court) will hear an application by (name of applicant) in Proceedings No. of 19 to set aside a resolution passed on (date) determining that the Company be placed under official management (OR to vary a resolution passed on (date) determining that the Company be placed under official management by (specify variation sought)).

The applicant's address for service is (specify address for service).

Any person wishing to oppose the cancellation of the resolution (OR variation of the resolution) shall file a notice of appearance in accordance with Form 79 together with any affidavit on which he or she intends to rely at the hearing of the application and serve that notice of appearance and affidavit on the applicant at its address for service shown above not later than 2 days before the date appointed for the hearing of the application.

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SCHEDULE 12—continued

FORM 92A

NOMINATION OF ADMINISTRATOR

(Order 75B, subrule 34G (2))

(Heading in Form 75)

To: The Registrar

Supreme Court of the Australian Capital Territory

(Name of applicant) nominates (name of person nominated for appointment as administrator) of (address of person nominated for appointment as administrator) to act as the administrator of (name of company) (OR the administrator of a deed of company arrangement relating to (name of company)), if appointed by the Court.

This application is filed by (name of solicitors), solicitors for the applicant, whose address for service is (address for service).

Date: e.g. 7 May 19

.....

Signature of applicant or his or her solicitor
Name of applicant or his or her solicitor:

[NOTE TO APPLICANTS: The Court may determine that an administrator other than the person nominated by the Registrar should be appointed.]

NOMINATION OF ADMINISTRATOR

To: (Name of applicant or his or her solicitor)

Of: (Address for service)

Pursuant to your application for the nomination of an administrator under Order 75B of the Supreme Court Rules, the Registrar has nominated:

Name: (name of administrator) of

Address: (address of administrator)

to act as administrator of (name of company) (OR administrator of a deed of company arrangement relating to (name of company)), if appointed by the Court.

Signed:

Registrar

Date: e.g. 7 May 19

[NOTE TO APPLICANTS: The Court may determine that an administrator other than the person nominated by the Registrar should be appointed.]

[NOTE: The name and address of the nominated administrator is to be completed by the Registry.]

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

SCHEDULE 12—continued

FORM 92B

CONSENT OF ADMINISTRATOR

(Order 75B, subrule 34G (3))

(Heading in Form 75)

1. I, (name of nominated administrator) of (address) acknowledge that I have been nominated by (name of applicant) of the Supreme Court of the Australian Capital Territory to act as the administrator of (name of company) ("the company") (OR as administrator of a deed of company arrangement relating to (name of company) ("the company")).

2. To the best of my knowledge, information and belief, neither I nor my firm has any conflict of interest which would make it improper for me to act as administrator of the company (OR as administrator of the deed of company arrangement relating to the company).

3. I undertake to notify the Court without delay if any conflict emerges.

Dated:

Signature of Administrator
Name of Administrator

FORM 92C

NOTICE OF APPLICATION TO FILL OFFICE OF ADMINISTRATOR OF COMPANY UNDER SECTION 449C OF THE CORPORATIONS LAW

OR

NOTICE OF APPLICATION TO FILL OFFICE OF ADMINISTRATOR OF DEED OF COMPANY ARRANGEMENT UNDER SECTION 449D OF THE CORPORATIONS LAW

(Order 75B, subrule 34G (4))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian company number of the company to which the proceedings relate)

1. (Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) for an order under section 449C of the Corporations Law that a person be appointed as administrator of the above company (OR for an order under section 449D of the Corporations Law that a person be appointed as administrator of a deed of company arrangement).

2. The applicant's address for service is (specify address for service).

3. Any person intending to appear at the hearing shall file a notice of appearance in accordance with Form 79 and serve that notice of appearance on the applicant at its address for service shown above, not later than 2 days before the day appointed for the hearing of the application.

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SCHEDULE 12—continued

FORM 93

NOTICE OF APPLICATION UNDER SECTION 459P (OR 462) OF THE CORPORATIONS LAW

(Order 75B, subrules 36 (8) and 37 (9))

(No heading or title)

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

Notice of application relating to: (Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

(Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date appointed for directions under Order 2A, rule 8) at (address of Court) in Proceedings No. of 19 for an order that (name of company) ("Company") be wound up.

The applicant's address for service is (specify address for service).

Any contributory, member or creditor of the Company may appear at the hearing in person or by counsel or by a solicitor to support or oppose the making of an order to wind up the company.

Any person intending to appear at the directions hearing shall file a notice of appearance in accordance with Form 79 and an affidavit verifying any grounds of opposition to the winding up application in accordance with Form 93B and shall serve the notice of appearance and affidavit on the applicant at its address for service shown above, not later than 2 days before the day appointed for the hearing.

FORM 93A

AFFIDAVIT VERIFYING GROUNDS OF OPPOSITION
TO WINDING UP APPLICATION UNDER
SECTION 459P, 462 or 464

(Order 75B, subrules 36 (10) and (11) and 37 (11) and (12))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. I refer to the Notice of Intention to Appear at a Hearing and of Grounds of Opposition to a Winding Up Application dated (date) signed by (signatory to notice).

2. I believe that the statements of fact in the notice are true.

SWORN at:)
before me:)

.....

A Justice of the Peace

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SCHEDULE 12—continued

FORM 93B

AFFIDAVIT UNDER SECTION 459E OF THE CORPORATIONS LAW

(Order 75B, rule 36A)

(Name of creditor)
Creditor

(Name of company)
Debtor

AFFIDAVIT

On (date), I (name, address and occupation) say on oath:

1. To my knowledge, the amount of $ (amount or amounts) is due and payable by the debtor to the creditor.

2. (Specify details of how and when the debt was incurred).

SWORN at:)
before me:)

.....

A Justice of the Peace

[IMPORTANT NOTE:

(1) This affidavit accompanies a statutory demand under section 459E of the Corporations Law.

(2) No proceedings have been commenced in respect of the debt to which the affidavit relates.

(3) Any questions relating to this affidavit or the debt to which it relates should be directed either to the person named as applicant or the applicant's solicitors.]

FORM 93C

APPLICATION TO WIND UP A COMPANY UNDER SECTION 459P OF THE CORPORATIONS LAW

(Order 75B, subrules 37 (2) and (3))

(Heading in Form 75)

1. The applicant claims:

(a) an order that (name of company) be wound up.

(b) (specify any other orders).

(INSERT THE FOLLOWING, ONLY IF THE WINDING UP APPLICATION RELIES ON A FAILURE TO COMPLY WITH A STATUTORY DEMAND)

2. Pursuant to section 459Q of the Corporations Law, the applicant states as follows:

(If service was on directors of the company)

(a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that (name of director) of (address of director) and (name of second director) of (address of second director) were directors of (name of company) ("the company"). A statutory demand on the form annexed and marked "A" was served on each of (name of first director) on (date) and on (name of second director) on (date).

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SCHEDULE 12—continued

(OR)

(If notice was served at the registered office of the company and an officer or employee received the notice)

(a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that the registered office of (name of company) ("the company") was then situated at (address of registered office). On (date) a statutory demand in the form annexed and marked "A" was left at the registered office of the company with (name of person, if known).

(OR)

(If notice was served at the registered office the company and no officer or employee received the notice)

(a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that the registered office of (name of company) ("the company") was situated at (address of registered office). On (date) a statutory demand in the form annexed and marked "A" was left at the registered office of the company, at which it appeared the company was still carrying on business because (specify reason) (OR with which it appeared the company had the following connection, namely that (specify connection)).

(OR)

(If notice was served by post)

(a) On (date) the applicant (OR the applicant's solicitors) ascertained from records maintained by the Australian Securities Commission that the registered office of (name of company) ("the company") was situated at (address of registered office). On (date) a statutory demand in the form annexed and marked "A" was posted by prepaid mail addressed to the company at its registered office. That notice has not been returned to the applicant or its solicitors by Australia Post as unclaimed.

(If the demand has been varied by an Order under subsection 459H (4) of the Corporations Law.)

(b) Annexed and marked "B" is a copy of an order made by the Supreme Court of the Australian Capital Territory under subsection 459H (4) of the Corporations Law on (date), that varied the statutory demand which is Annexure "A".

(c) The company did not comply with the requirements of the statutory demand which is Annexure "A" (OR the statutory demand which is Annexure "A", as varied by the order which is Annexure "B") within the period for compliance, being the period of 21 days after the demand was served (OR the period specified in an order made by the Supreme Court of the Australian Capital Territory on (date) extending the period for compliance) (OR the period ending 7 days after an application to set aside the statutory demand was finally determined or otherwise disposed of).

(OR, INSERT THE FOLLOWING, ONLY IF THE WINDING UP APPLICATION RELIES ON A FAILURE TO COMPLY WITH A STATUTORY DEMAND)

2. The grounds on which the applicant relies to allege that the company is insolvent are (grounds).

DATED:

Signature of applicant's solicitor

Name of applicant's solicitor:

Address for Service:

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SCHEDULE 12—continued

To the Respondent: (address)

If the Court thinks fit, it may hear and determine the application at the time and place specified below, or on a day subsequently appointed for directions in the proceedings. If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the application may be dealt with and judgment may be given or an order made in your absence.

Before any attendance at that time you must file an appearance in the Registry.

APPOINTMENT FOR DIRECTIONS HEARING

Time: (date and time to be entered by Registry unless fixed by Court)

Place: (address of Court)

Date:

.....

Registrar

The applicant's address for service is (address for service).

The applicant's address is (if a natural person—specify residence or place of business; if a body corporate—specify principal place of business).

FORM 94

AFFIDAVIT VERIFYING DEBT UNDER SECTION 459Q OF THE CORPORATIONS LAW

(Order 75B, subrule 37 (4))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. The amount of $ (amount) is due and payable by the respondent to the applicant.

2. (Specify details of how and when the debt was incurred).

3. The respondent has failed to pay the amount of $ (amount) to the applicant or to secure or compound for that amount to the reasonable satisfaction of the applicant.

SWORN at:)
before me:)

.....

A Justice of the Peace

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

SCHEDULE 12—continued

FORM 95

AFFIDAVIT THAT DEBT REMAINS UNPAID

(Order 75B, subrule 38 (1))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. I am the (specify) of the applicant herein.

(If the debt is not a judgment debt)

2. I refer to my earlier affidavit made on (date on which affidavit under paragraph 37 (4) (b) was made) and filed in these proceedings. As at the date of the affidavit, the respondent was indebted to the applicant in the amount of (specify amount).

(OR)

(If the debt is a judgment debt)

2. On the date on which the application for a winding up order was filed by the applicant in these proceedings, the respondent was indebted to the applicant in the amount of (specify amount) by reason of the judgment of (specify Court) in proceedings number (number) given on (date of judgment). Annexed and marked "A" is a copy of the Court order giving rise to the judgment debt.

3. As at the date of this affidavit, the respondent is indebted to the applicant in the amount of (specify amount). The respondent has failed to pay the amount or to secure or compound for it to the reasonable satisfaction of the applicant.

SWORN at:)
before me:)

.....

A Justice of the Peace

FORM 96

ORDER FOR WINDING UP

(Order 75B, rule 39)

(Heading in Form 75)

JUDGE:

DATE OF ORDER:

WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. (name of company) be wound up by this Court under the provisions of the Corporations Law.

2. (leave blank for name of liquidator appointed by Court) of (leave blank for address of liquidator), an official liquidator, be appointed the liquidator of the company.

3. The applicant's costs (including reserved costs) be taxed and reimbursed out of the property of the company in accordance with subsection 466 (2) of the Corporations Law.

(NOTE: Persons who are liable under section 475 of the Corporations Law to make out or concur in making out the report as to the affairs of the company and whom the liquidator requires to attend upon him or her must do so at the time and place he or she appoints and must give the liquidator all the information he or she requires.)

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SCHEDULE 12—continued

FORM 97

ORDER SUBSTITUTING AN APPLICANT IN A WINDING UP APPLICATION

(Order 75B, subrule 41 (1))

(Heading in Form 75)

JUDGE:

DATE OF ORDER:

WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. (Name of substituted applicant) be substituted as applicant.
2. The substituted applicant amend the application accordingly.
3. The substituted applicant serve on the respondent personally this order, the amended application and any further affidavits on which he or she proposes to rely in support of the application within (specify number of days) of the making of this order.
4. (if applicable) The substituted applicant publish a notice in accordance with Form 98.
5. The proceedings be adjourned to (adjournment date).

FORM 98

NOTICE OF APPLICATION BY SUBSTITUTED APPLICANT UNDER SECTION 459P OR SECTION 462 OF THE CORPORATIONS LAW

(Order 75B, subrule 41 (1))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

1. (Name of substituted applicant), who was, with the leave of the Court, substituted as applicant in respect of Proceedings No. of 19 , will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) for an order that the company to which this application relates be wound up.
2. The address for service of the substituted applicant is (address for service).
3. Any person intending to appear at the directions hearing shall file a notice of appearance in accordance with Form 79 and serve a copy of the notice on the applicant at its address for service shown above not later than 2 days before the date appointed for the hearing.

Dated:

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SCHEDULE 12—continued

FORM 99

NOTICE TO LIQUIDATOR (OR PROVISIONAL LIQUIDATOR) OF APPOINTMENT

(Order 75B, subrules 39 (2), 42 (1), 48 (2) and 49 (1))

(Heading in Form 75)

To: (Name and address of liquidator OR provisional liquidator)

(Insert if liquidator was appointed)

(Name of company) of (address of registered office of company) was wound up by order of the Court made on (date) (name and address of liquidator) was appointed as the liquidator of that company.

(OR)

(Insert if provisional liquidator was appointed)

By order of the Court on (date) (name and address of provisional liquidator) was appointed as provisional liquidator of (name of company) of (address of registered office of company).

.....

Registrar

Date: e.g. 7 May 19

[NOTE: Where a liquidator is appointed by the Court, Order 75B, rule 39 of the Supreme Court Rules permits the Court to direct that copies of this notice be sealed forthwith. If this notice is not sealed after the making of the winding up order under rule 39, subrule 42 (1) requires that the applicant attend at the Registry to obtain a sealed copy of a notice in this form not later than the day after the order was made. The requirements for service of that notice are specified in paragraphs 42 (1) (b) and (c).

Where a provisional liquidator is appointed, subrule 49 (1) requires that the applicant attend at the Registry to obtain a sealed copy of a notice in this form not later than the day after the order was made. The requirements for service and lodgment of that notice are specified in paragraphs 49 (1) (b) to (e), inclusive.]

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SCHEDULE 12—continued

FORM 100

ADVERTISEMENT OF WINDING UP ORDER AND OF APPOINTMENT OF LIQUIDATOR (OR PROVISIONAL LIQUIDATOR)

(Order 75B, subrules 42 (1) and 49 (1))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

IN THE MATTER OF (name of the company to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

(Insert if a liquidator was appointed)

On (date), the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 ordered the winding up of (name of company) and appointed (name of liquidator) of (address) as the liquidator of the company.

(OR)

(Insert if a provisional liquidator was appointed)

On (date), the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 appointed (name of provisional liquidator) of (address) as the provisional liquidator of the company.

Dated:

FORM 101

ADVERTISEMENT OF APPOINTMENT OF LIQUIDATOR (OR PROVISIONAL LIQUIDATOR) IN PLACE OF PREVIOUS LIQUIDATOR (OR PROVISIONAL LIQUIDATOR)

(Order 75B, subrule 53 (5))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

IN THE MATTER OF (name of the company to which the proceedings relate)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

On (date), in Proceedings No. of 19 , the Supreme Court of the Australian Capital Territory appointed (name of liquidator/provisional liquidator) of (address) to act as the liquidator (provisional liquidator) of (name of company) in place of the former (liquidator/provisional liquidator).

Dated:

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SCHEDULE 12—continued

FORM 102

CERTIFICATE OF LIQUIDATOR OF RESOLUTION OF MEETING OF CREDITORS OR CONTRIBUTORIES

(Order 75B, rule 57)

(Heading in Form 75)

I certify that the document annexed and marked "A" is a true copy of the resolution of a meeting of creditors (OR contributories) of (name of company) held at (location of meeting) on (date).

Date: e.g. 7 May 19

.....

Signature of liquidator
Name of liquidator:
Address of liquidator:

FORM 103

NOTICE BY LIQUIDATOR OF INTENTION TO SEEK RELEASE

(Order 75B, subrule 58 (3))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

1. TAKE NOTICE that I (name of liquidator) of (address of liquidator), the liquidator of the above company, intend to apply to the Supreme Court of the Australian Capital Territory in Proceedings No. of 19 for my release as liquidator of the company.

2. If your have any objection to the grant of my release, you must file a notice of objection in accordance with Form 104 and forward a copy of the notice to me at the address shown above, within 21 days of publication of this notice in the *Gazette*.

Dated:

.....
Signature of liquidator
Name of liquidator:

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SCHEDULE 12—continued

FORM 104

NOTICE BY CREDITOR OR CONTRIBUTORY OF OBJECTION TO A LIQUIDATOR'S APPLICATION FOR RELEASE

(Order 75B, subrule 58 (5))

(Heading in Form 75)

(Name of creditor/contributory) of (address of creditor/contributory), a creditor of (name of company) for $(amount) (OR a contributory of (name of company) holding (number) shares in the company) object to the grant of a release to (name of liquidator) of (address of liquidator), who is the liquidator of the above company, on the following grounds:

(set out the grounds upon which objection is made).

This notice is filed by (name of solicitors), solicitors for the objector, whose address for service is (state address for service).

Date: e.g. 7 May 19

.....

Signature of objector or his or her solicitor
Name of objector or his or her solicitor:

FORM 115

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR PAYMENT OF CALL

(Order 75B, subrule 63 (1))

(Heading in Form 75)

On (date) I (name and address), official liquidator, say on oath:

1. I am the official liquidator of (name of company) ("the company").
2. On (date) I made a call of $ (amount) per share on all of the contributories of the company (or specify the class contributories on whom the call was made). Annexed and marked "A" is a copy of the notice of the call. Each of the contributories whose names are shown in the Schedule marked "B" was duly served with notice of the call in the form annexed and marked "A".
3. Each of the contributories of the company whose name is set out in the second column of the Schedule marked "B" has not paid or caused to be paid to me the sum specified opposite his or her name in the fifth column of the Schedule, which is due from that contributory under the call.
4. The amount set out opposite the name of each of the contributories in the sixth column of the Schedule is an estimate of the amount due by that contributory in respect of the costs of applying for and giving effect to the order for payment of the call. The estimate of the costs of applying for and giving effect to the order for payment of the call has been reached by apportioning those costs equally among contributories who have not paid the call.
5. The amount set out opposite the name of each of the contributories in the seventh column of the Schedule is the total of the amount due by that contributory in respect of the call as set out in the fifth column and the amount due in respect of costs as set out in the sixth column.

SWORN at:)
Before me:)

.....

A Justice of the Peace

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SCHEDULE 12—continued

"B"

SCHEDULE

Number on list of contrib-utories	Name	Address	Character in which included in list	Amount of call	Proportion of cost	Total amount payable

---

FORM 116

ORDER FOR PAYMENT OF CALL DUE FROM A CONTRIBUTORY UNDER PARAGRAPH 483 (3) (b) OF THE CORPORATIONS LAW

(Order 75B, subrule 63 (2))

(Heading in Form 75)

JUDGE:

DATE OF ORDER:

WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. Each person named in the second column of the Schedule marked "A" to this order pay to the liquidator of (name of company) at (address) within (number) days of the date of this order the amount set out opposite his or her name in the fifth column of the Schedule, which is the amount due from that person under the call of $ (amount of call) per share duly made on (date of call).

2. Each person named in the second column of the Schedule to this order pay to the liquidator at the address specified above and within the time specified above the sum set out opposite his or her name in the sixth column of the Schedule, which is the proportion of the liquidator's costs of the application for this order and of giving effect to that order attributable to that person.

"A"

SCHEDULE

Number on list of contributories	Name	Address	Character in which included in list	Amount of call	Proportion of costs of application	Total amount payable

---

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SCHEDULE 12—continued

FORM 116A

NOTICE FOR APPLICATION FOR LEAVE
TO DISTRIBUTE A SURPLUS

(Order 75B, subrule 64A (3))

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

Notice of application for leave to distribute a surplus relating to: (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

On (date) at (time) the Supreme Court of the Australian Capital Territory at (address of Court) will hear an application by the liquidator of (name of company) in Proceedings No. of 19 for leave to distribute a surplus in respect of the liquidation of the company. Any person intending to appear at the hearing shall file a notice of appearance in accordance with Form 79 together with any affidavit on which he or she intends to rely and serve a copy of the notice and affidavit on the liquidator at the address shown below not later than 2 days before the date appointed for the hearing of the application.

Name of liquidator:
Address of liquidator:

FORM 117

REQUEST TO DELIVER BILL FOR TAXATION

(Order 75B, subrule 66 (2))

NOTICE OF REQUEST TO DELIVER BILL FOR TAXATION IN RELATION TO
(Name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

Proceedings No. of 19

TO: (Name and address of person who rendered services).

Pursuant to Order 75B, rule 66 of the Rules of the Supreme Court of the Australian Capital Territory, I request that, within (specify time period) of the date of this request, you deliver to me your bill of costs (OR charges OR expenses) as (state nature of employment) employed by me in the winding up of the above company, for the purposes of taxation by the Registrar of the Supreme Court of the Australian Capital Territory.

If your bill of costs is not delivered within the time specified above, or within any extension of that time allowed by the Court, I would be entitled to disregard your claim in declaring and distributing a dividend in the winding up and your claim against the assets of the company for your costs (OR charges OR expenses) would be liable to be forfeited.

Date: e.g. 7 May 19

.....
Signature of Liquidator
Name of Liquidator:
Address of Liquidator:

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SCHEDULE 12—continued

FORM 118

STATUTORY DECLARATION BY SPECIAL MANAGER VERIFYING HIS OR HER ACCOUNTS

(Order 75B, subrule 68 (2))

STATUTORY DECLARATION

I (name) of (address) in the State of (name of state), do solemly and sincerely declare as follows:

1. I am the special manager of the property and business (or as the case may be) of (name of company), Australian Company Number (specify Australian Company Number) ("Company").

2. The account of receipts and payments annexed hereto and marked "A" contains a full and true account of my receipts and payments as special manager from (date) to (date).

3. I have not during that period received or paid any monies on account of the Company other than the items mentioned in that account nor has any other person done so by my order or for my use.

AND I MAKE this solemn declaration by virtue of the *Statutory Declarations Act 1959* of the Commonwealth, and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED

at this day of

before me:

....

A Justice of the Peace

FORM 120

NOTICE OF APPLICATION UNDER SECTION 571 OF THE CORPORATIONS LAW

(Order 75B, subrule 78 (3))

(No heading or title)

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL TERRITORY

NOTICE OF APPLICATION RELATING TO (name of company in capitals)

AUSTRALIAN COMPANY NUMBER: (specify Australian Company Number of the company to which the proceedings relate)

1. (Name of applicant) will apply to the Supreme Court of the Australian Capital Territory at (time) on (date) at (address of Court) in Proceedings No. of 19 for an order under section 571 of the Corporations Law declaring the dissolution of the above company to have been void.

2. The applicant's address for service is (specify address for service).

3. Any person intending to appear at the directions hearing shall file a notice of appearance in accordance with Form 79 and serve a copy of the notice of appearance on the applicant at its address for service shown above not later than 2 days before the date appointed for the hearing.

Dated:

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SCHEDULE 12—continued

FORM 122

SUMMONS TO ATTEND EXAMINATION UNDER SECTION 596A (OR SECTION 596B) OF THE CORPORATIONS LAW

(Order 75B, subparagraph 81 (1) (b) (i) and subrule 81 (4))

(Heading in Form 75)

To: (Name and address of person to be examined)

SUMMONS TO ATTEND EXAMINATION RELATING TO (name of company in capitals)

1. You are required to attend before the Court at the time and place specified below and from day to day until the conclusion of your examination, to be examined on oath or affirmation on any matters relating to the promotion, formation, management, administration or winding up of (name of company)

(Insert if applicable)

and to produce any books in your possession or under your control relevant to those matters.

(Insert if applicable)

You are required to bring with you and produce at the examination all books in your possession, custody or under your control relating to the above company.

2. Subsection 597 (6) of the Corporations Law provides that a person who is summoned to attend before the Court for an examination shall not, without reasonable excuse, fail to attend as required by the summons or fail to attend from day to day until the conclusion of the examination. Subsection 597 (7) of the Corporations Law provides that a person who attends before the Court for an examination shall not—
   (a) without reasonable excuse—refuse or fail to take an oath or make an affirmation;
   (b) without reasonable excuse—refuse or fail to answer a question that the Court directs him or her to answer;
   (c) make a statement that is false or misleading in a material particular; or
   (d) without reasonable excuse—refuse or fail to produce books that the summons requires him or her to produce.
3. Subsection 597 (9) of the Corporations Law provides that the Court may direct a person to produce, at an examination of the person, books that are in his or her possession and are relevant to matters to which the examination relates or will relate. Section 86 of the Corporations Law provides that a thing that is in a person's custody or is under a person's control is in that person's possession. Subsection 597 (9A) of the Corporations Law provides that a person may comply with the direction under subsection 597 (9) by causing the relevant books to be produced at the examination. Subsection 597 (10) of the Corporations Law provides that a person shall not, without reasonable excuse, refuse or fail to comply with a direction under subsection 597 (9).

Date and time of examination: (Date and time to be entered by Registry)

Place: (Address of Court)

Dated:

.....

Registrar

Name of applicant:
Name of applicant's solicitors:
Applicant's address for service:

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SCHEDULE 12—continued

FORM 124

CERTIFICATE AUTHENTICATING A TRANSCRIPT TAKEN ON AN EXAMINATION UNDER SECTION 596A (OR SECTION 596B) OF THE CORPORATIONS LAW

(Order 75B, subrule 81A (4))

(Heading in Form 75)

I CERTIFY that pages to of the transcript annexed hereto are a correct record of the examination of (name of person examined) which occurred before (name of presiding Judge or Registrar) on (date) at (time).

Dated:

.....

Signature

Name of person who made transcript or of responsible officer

FORM 125

CERTIFICATE OF DEFAULT IN RELATION TO AN EXAMINATION UNDER SECTION 596A (OR SECTION 596B) OF THE CORPORATIONS LAW

(Order 75B, subrule 82 (1))

(Heading in Form 75)

I CERTIFY that, in respect of an examination of (name of person examined) that occurred before me on (date) at (time), (name of person examined) refused or failed to attend the examination as required by a summons under section 596A (OR section 596B).

(OR) to attend from day to day until the conclusion of the examination.

(OR) to take the oath or make an affirmation.

(OR) to answer a question which he or she was directed by me to answer.

(OR) to produce books which the summons required him or her to produce at the examination.

(OR) to produce books which the Court directed him or her to produce at the examination.

(OR) to sign the written record of his or her examination.

Dated:

.....

Signature

Name of presiding Judge or Registrar

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SCHEDULE 12—continued

FORM 126

SUMMONS UNDER SUBSECTION 1092 (3) OF THE CORPORATIONS LAW

(Order 75B, subrule 92 (3))

(Heading in Form 75)

TO: (name and address)

You are required to appear before the Supreme Court of the Australian Capital Territory at the time and place specified below and show cause why the document(s) specified in the Schedule should not be delivered up and produced by delivering that document to the office of (name of company) at (address of company) within (period as ordered)

to have that document cancelled

OR

to have that document rectified

OR

as the notice given under subsection 1092 (2) required

OR

to have the transfer of the said document registered

OR

to have that document otherwise dealt with as ordered.

The applicant's address for service is (specify address for service).

Date and time: (Date and time to be entered by the Registrar's office unless fixed by the Court)

Place: (Address of Court)

Date: e.g. 7 May 19

Registrar

SCHEDULE

(Description of document)

FORM 127

NOTICE OF PREVENTION BY THE COMMISSION UNDER SECTION 1330 OF THE CORPORATIONS LAW

(Order 77B, subrules 22 (10) and 102 (1))

(Heading in Form 75)

The Australian Securities Commission of (address for service) intervenes in (specify proceedings).

This notice is given by the Australian Securities Commission of (address) whose address for service is (specify address for service).

.....

Signed:

Name of signatory:

Capacity of signatory:

Date: e.g. 7 May 19

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SCHEDULE 12—continued

FORM 128

AFFIDAVIT OF PRESCRIBED INFORMATION

(Order 75B, subrules 12 (2) and (3), 13 (2), 14 (20), 16 (3), 17 (2), 18 (2), 19 (2), 20 (2), 21 (1), 22 (3) and (4), 33 (3), 36 (2), 37 (4), 72 (2), 78 (2), 83 (2) and 93 (2))

(Heading in Form 75)

On (date), I (name, address and occupation) say on oath:

1. On (specify date, which shall be not earlier than 3 days before the application was filed) I undertook a search at the Australian Securities Commission at (location of ASC office) in respect of (name of company) ("the company").
2. That search indicates that—
   (a) the company was incorporated under (specify relevant statute);
   (b) the date of the company's incorporation was (date of incorporation);
   (c) the general nature of the business carried on by the company as disclosed in its last annual return (OR as disclosed in its annual return dated (date)) is (specify); and
   (d) the address of the registered office of the company is (address).

(Insert the following paragraph only if required for the purposes of—

(i) an application within the scope of Order 75B, rule 12 of the Supreme Court Rules;

(ii) an application under Order 75B, rule 13 for an order confirming a reduction of capital under section 195 of the Corporations Law; or

(iii) an application under Order 75B, rule 22 relating to a compromise with members or creditors under section 411 of the Corporations Law.)

3. That search indicated that the amounts of the authorised and issued share capital of the company, and the classes, if any, of the issued shares are (specify).

SWORN at:)
before me:)

.....

A Justice of the Peace

[NOTE: Order 75B, rule 2 defines "prescribed information", in relation to a company, as—

(a) a statement of the statute under which the company was incorporated; the date of the company's incorporation; and the general nature of any business carried on or previously carried on by the company at any relevant time;

(b) unless the company to which the proceedings relate is the applicant—a statement of the capacity in which the applicant makes the application; and

(c) unless the company to which the proceedings relate is the applicant or has entered an appearance in proceedings—a statement of the address of the company's registered office as determined by a search of records maintained by the Commission made not earlier than 7 days before the application was filed.]

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SCHEDULE 13

Order 75B, rule 7

POWERS AND FUNCTIONS OF THE COURT THAT MAY BE EXERCISED BY THE REGISTRAR AND THE MASTER

PART I

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
1		9	Power to direct the notice be given
2		10	Leave to creditor, contributory or officer to be heard
3		11	Inquiry as to creditors
4	subsection 140 (4)		Power to approve alteration in constituent documents of registered foreign company
5	section 167	12	Order for cancellation of change of status of company
6	section 168	12	Order for cancellation of change from public to proprietary company
7	subsection 170 (1)		Power to determine that company has ceased to be a proprietary company
8	subsection 170 (4)		Power to determine that company has not ceased to be a proprietary company where default was accidental
9	subsection 170 (5)		Leave to convert to proprietary company
10	section 172	12	Order for cancellation of alteration of memorandum
11	section 190	13	Order confirming issue of shares at a discount
12	section 194	12	Order validating issue or allotment of shares
13	section 195	14 and 15	Powers of the Court as to reduction of capital
14	sections 197, 198 and 199	12	Order setting aside variation or abrogation of rights
15	section 198		Order as to rights of holders of shares
16	section 199		Order as to rights of classes of members
17	section 202	12	Order approving payment of interest out of capital of company
18	subsection 205 (12)	16	Application opposing giving of financial assistance
19	subsection 250 (4)		Leave to member of proprietary company to appoint proxy

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
20	subsection 252 (6)		Order that company is not bound to circulate statement containing defamatory matter
21	subsection 266 (4)		Power to extend period for lodgment of notice in respect of charge
21A	section 243ZD	19A	Order sanctioning non-compliance with Part 3.2A
22	subsection 267 (3)	21	Leave to enforce charge
23	section 274		Power to rectify register of charges
24	section 319		Order for inspection of records
25	subsection 342 (9)		Order for restoration of name of registered Australian body to the Register
26	subsection 350 (10)		Order for restoration of name of registered foreign company to the Register
27	section 411	22, 23, 24, 25, 26 and 27	Power to approve compromise or arrangement for Part 5.1 body
28	subsection 411 (6)		Appeal from resolution to place company under official management
28A	section 418A	27A	Declaration as to validity of controller's appointment
29	section 419	28	Power to make order relieving person who incurs liability in belief that properly appointed as a receiver
29A	section 419A	28A	Relief of controller from liability
29B	section 420B	28B	Power to authorise managing controller to dispose of property despite prior charge
29C	section 420C	28C	Power to authorise receiver to carry on corporation's business during the winding up
30	section 423	29	Inquiry as to conduct of controller
31	section 424	30	Controller's application to the court for directions
32	section 425	30A	Power to fix amount of remuneration of a controller
33	subsection 429 (3)		Power to extend time for report
34	section 434A	30C	Removal of redundant controller
35	section 452	32	Inquiry as to conduct of official manager
36	section 454	33	Creditor's appeal against decision to appoint official manager
37	section 456	34	Release of official manager

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
37A	section 438D		Power to direct administrator to lodge a report
37B	section 440B	34A	Power to grant leave to enforce a charge if an administrator has been appointed
37C	section 440C	34A	Power to grant leave to take possession of property
37D	section 440D	34A	Power to grant leave to begin or proceed with a proceeding in a court against a company which is in administration, or in relation to any of its property
37E	section 440F	34A	Power to grant leave to begin or proceed with enforcement process in relation to the property of a company
37F	subsection 440G (2)	34A	Power to authorise a court officer to take action or to make a payment which would be prohibited
37G	section 440J	34A	Power to grant leave to take enforcement action under a guarantee
37H	section 441D	34A	Power to limit powers of chargee in relation to charged property
37I	section 441H	34A	Power to limit powers of receiver etc. in relation to property used by company
37J	section 442C	34A	Power to grant leave to dispose of property of a company under administration which is subject to a charge, or property that is used or occupied by, or is in the possession of, a company under administration but of which someone else is the owner or lessor
37K	section 443B	34A	Power to grant relief of administrator from personal liability for rent
37L	subsection 444B (2)	34A	Power to extend time for execution of deed of company arrangement
37M	section 444C	34A	Power to grant leave to act inconsistently with deed of company arrangement

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
37N	section 444E	34A	Power to grant leave to person bound by a deed of company arrangement to begin or proceed with a proceeding against the company or in relation to any of its property; or to begin or proceed with enforcement process in relation to the property of the company
37O	section 444F	34B	Power to order secured creditor or owner or lessor of property not to take certain actions
37P	section 445B	34A	Power to make an order cancelling a variation of a deed of company arrangement
37Q	section 445D	34A	Power to make orders as to the operation of Part 3.2A in respect of a particular company
37R	section 445G	34C	Power to avoid or validate a deed of company arrangement
37S	section 447A	34A	Power to make an order to bring an administration to an end
37T	section 447B	34A	Power to make order to protect interests of company's creditors during an administration
37U	section 447C	34A	Power to declare whether administrator is validly appointed
37V	section 447D	34D	Power to give directions to an administrator
37W	section 447E	34E	Power to make orders as to supervision of administrator of company or deed of company arrangement
37X	section 449B	34F	Power to make orders as to removal of administrator
37Y	sections 449C and 449D	34G	Power to make orders in respect of vacancy in office of administrator of company or in office of administrator of deed of company arrangement
37Z	section 449E	34A	Power to determine or review the remuneration of an administrator
38	sections 459P, 459R, 461, 462, 464 and 465B, subsections 467 (1) and (3) and section 467A	35 to 42 (inclusive)	Winding up applications

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
39	section 468	45	Validation of disposition of property
40	paragraph 470 (2) (b)		Service of copy of order on another person
42	section 472	48 to 51 (inclusive)	Appointment of provisional liquidator
43	subsection 473 (1)	53	Resignation of liquidator or provisional liquidator
44	subsection 473 (2)	52	Determination of provisional liquidator's remuneration
45	subsections 473 (3) and 473 (5)		Determination or review of liquidator's remuneration
46	subsection 473 (7)	54	Filling vacancy in office of official liquidator
47	subsection 473 (8)		Power to declare what may be done by liquidator, where more than one liquidator is appointed by the Court
48	subsection 474 (2)		Order that property vests in liquidator
49	subsection 475 (8)	55	Power to grant leave for payment of costs and expenses incurred without the liquidator's approval in preparing and making a report under section 475
51	section 480	58	Release of liquidator
52	section 481	59	Report on accounts of liquidator
53	subsection 483 (1)	60	Court's power to require payment of money or transfer of property
54	section 483	63	Court's power to make order for payment of call
54A	subsection 488 (2)	64A	Power to grant leave to distribute a surplus
55		65	Order appointing temporary joint liquidator
56		66	Taxation of costs incurred by agents of and persons employed by liquidator
57	section 484	67, 68 and 69	Appointment of special manager
58	section 486		Order for inspection of books by creditors or contributories
59	section 490		Leave of Court to wind up voluntarily where application has been filed for winding up company on ground that it is unable to pay its debts
60	subsection 495 (4)		Conduct of meeting in course of members' voluntary winding up

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
61	subsection 496 (3)		Order that list of creditors be sent in members' voluntary winding up
62	subsection 497 (3)		Order that list of creditors be sent in creditors' voluntary winding up
63	section 499		Direction where different liquidators chosen
64	section 500		Execution and civil proceedings
65	section 502	71	Appointment of liquidator in voluntary winding up
66	section 503	71	Removal of liquidator
67	section 504		Review of liquidator's remuneration in voluntary winding up
69	subsection 507 (6)		Power to sanction resolution to accept shares as consideration for sale of property of company
70	subsection 507 (9)		Power to give directions necessary for arbitration
71	subsection 507 (10)		Approval to liquidator's exercise of powers in creditors' voluntary winding up
72	subsection 509 (6)		Power to declare date of dissolution
73	subsection 510 (3)		Power to settle dispute as to value of security or lien or amount of debt or set-off
74	paragraph 511 (1) (a)	72	Determination of question in winding up of company
75	paragraph 511 (1) (b)		Application to the Court to exercise powers which might be exercised if a company were being wound up by the Court
76	subsection 532 (2)		Leave of Court for person to be appointed as liquidator
77	section 536	73	Supervision of liquidators
78	paragraph 542 (3) (a)		Directions as to destruction of books
79	subsection 543 (1)		Order as to the investment of surplus funds
80	subsection 544 (2)		Power of Court to order account of funds in hands of liquidator, audit or payment of money by liquidator
81	section 545		Direction to liquidator to incur particular expense
83	section 551		Leave of Court for member of committee of inspection to accept extra benefit

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
84	section 552	76	Power to give direction or permission where no committee of inspection is appointed
85	section 564		Order giving priority to creditor who gives a company an indemnity for costs of litigation
85A	section 554A	76A	Appeals against determination of value of debts and claims of uncertain value in liquidation
85B	section 554G	76B	Power to grant leave to secured creditor to amend valuation of security in proof of debt
86	sections 568 to 568F (inclusive)	77 to 77C (inclusive)	Power to make orders in relation to disclaimer of onerous property
87	section 571	78	Power of Court to declare dissolution of company to be void
88	section 574		Reinstatement of company on application of person aggrieved
88A	Sections 600A to 600D (inclusive)		Powers of Court in relation to creditor's resolutions
89	sections 583 and 585	79	Powers under Part 5.7 in winding up bodies other than companies
90	sections 596A, 596B and 597	81, 81A and 82	Powers of Court in relation to examinations
91	section 743	87	Powers of Court where contravention due to inadvertence
92	subsection 1053 (5)		Power to appoint body corporate as trustee for debenture holders
93	section 1055		Enforcement of security for debentures
94	section 1056		Orders in relation to borrowing corporations
95	section 1057	91	Directions on application of trustee for debenture holders
96	section 1069		Powers as to covenants to be included in deeds relating to prescribed interests
97	section 1074	12	Order confirming resolution that undertaking or scheme be wound up
98	section 1092	92	Summons for appearance of a person
99	section 1093	93	Orders relating to a company's refusal to register a share transfer
100	subsection 1096 (4)		Court's power to make order to remedy default in issuing certificate
101	section 1274		Order that document be lodged

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SCHEDULE 13—continued

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
102	section 1303		Order that books be available for inspection
103	section 1319		Power to give directions with respect to meetings
104	section 1321	100	Appeals from decisions of receivers or liquidators
105	section 1322	101	Irregularities
106	section 1335		Court's power as to costs

PART 2

Column 1 Item No.	Column 2 Provision of the Corporations Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
107		Schedule 13A, rules 36, 37 and 41	Winding up applications

PART 3

Column 1 Item No.	Column 2 Provision of the ASC Law	Column 3 Number of rule in Order 75B	Column 4 Description (For information only)
1	subsection 79 (4)		Power to extend period to give notice of intention to have statements made at examination admitted

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SCHEDULE 13A

Order 75B, rule 47

CORPORATIONS LAW—1993 TRANSITIONAL PROVISIONS UNDER ORDER 75B FOR WINDING UP PROCEEDINGS

Application for a winding up order—former section 461

36. (1) This rule applies to an application made before 23 June 1993 for a winding up order under section 461 of the Corporations Law other than an application to which rule 37 in this Schedule applies.

(2) On filing and serving an application under this rule, the applicant shall also file and serve—

(a) an affidavit made not earlier than 7 days before the application is filed, setting out a statement by a person who has, not earlier than 3 days before the date on which the affidavit is made, undertaken a search of the company records maintained by the Commission, as to whether any winding up application is pending or any winding up order has been made against the company;

(b) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information (within the meaning of Order 75B), which may be in accordance with Form 128; and

(c) an affidavit made not earlier than 7 days before the application is filed setting out—

(i) any other material facts to be relied upon by the applicant in support of the application; and

(ii) the grounds of the application and a reference to the provision or provisions of section 461 on which the applicant relies.

(3) An affidavit made under paragraph (2) (c) shall be made by a person who can depose of his or her own knowledge to at least some of the grounds relied upon for the winding up of the company.

(4) As soon as is practicable after filing the application and any affidavits in support, and in any event not later than 14 days after the date of filing, the applicant shall serve a signed and sealed copy of that application and affidavits on which it relies on—

(a) the company, in a manner permitted by section 220; and

(b) if the company is in the course of being wound up in a voluntary winding up—the liquidator of the company.

(5) Unless the Court orders to the contrary, notice of the application in accordance with Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date a copy of the application was served on the company and not later than 7 days before the date appointed for directions under Order 2A, rule 8.

(6) The applicant—

(a) may, at the same time as filing the application and any affidavit in support, lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up of the company is made and unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator; and

(b) shall, within 14 days of filing, serve a copy of any such nomination on the persons specified in paragraph (4) (a).

(7) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8 or a day subsequently appointed for directions in the proceedings.

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(8) If a person on whom the application has not been served intends to appear on the day appointed for directions under Order 2A, rule 8, he or she shall—

(a) file a notice of appearance in accordance with Form 79; and

(b) serve a copy of the notice on the applicant not later than 2 days before the day appointed for directions.

(9) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

(10) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

(a) be permitted by the Registrar to inspect an application to wind up the company, and any affidavits in relation to the application that are in the Registrar's custody; and

(b) on payment of the prescribed fee—be provided with a copy of those documents.

(11) Form 79, 80, 88, 93 or 128 used in accordance with this rule, and appropriately amended as the circumstances require, is taken to be in compliance with this rule.

Transitional rule applying to winding up of a company under former section 460 or former paragraph 461 (a)

37. (1) This rule applies to an application made before 23 June 1993 for a winding up order—

(a) under section 460—on the ground that a company is unable to pay its debts;

(b) under paragraph 461 (a) if—

(i) a company has, by special resolution, resolved that it be wound up; and

(ii) an officer of the company filed an affidavit at the time the application was made, deposing that the company is unable to pay its debts as they become due; or

(c) under paragraph 460 (2) (a)—on the ground that a company on which demand was served before 23 June 1993 is unable to pay its debts.

(2) On filing and serving an application under this rule, the applicant shall also file and serve—

(a) an affidavit made not earlier than 7 days before the application is filed setting out a statement by a person who has, not earlier than 3 days before the date on which the affidavit is made, undertaken a search of the company records maintained by the Commission, as to whether any winding up application is pending or any winding up order has been made against the company;

(b) an affidavit made not earlier than 7 days before the application is filed setting out the prescribed information (within the meaning of Order 75B), which may be in accordance with Form 128;

(c) an affidavit setting out—

(i) a statement of the debt alleged and details of how and when it was incurred;

(ii) a statement that the company is indebted to the applicant for the amount claimed;

(iii) details of any judgment obtained by the applicant against the company;

(iv) a statement of the grounds relied upon to show that the company is unable to pay its debts; and

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SCHEDULE 13A—continued

(v) a statement of any other material facts to be relied upon by the applicant in support of the application; and

(d) an affidavit proving service of a notice under subsection 460 (2), if applicable, together with copies of any documents exhibited to that affidavit.

(3) Unless the Court orders to the contrary, an affidavit made under paragraph (2) (c) shall be—

(a) made by a person who can depose to the indebtedness of the company to his or her own knowledge; and

(b) served on the company, with the application.

(4) As soon as is practicable after filing the application and the affidavit in support, and in any event not later than 14 days after the date of filing, the applicant (unless it is the company) shall serve a signed and sealed copy of that application and the affidavits on which it relies, on—

(a) the company, in a manner permitted by section 220; and

(b) if the company is in the course of being wound up in a voluntary winding up—the liquidator of the company.

(5) Unless the Court orders to the contrary, notice of the application in Form 93 shall be published in the manner prescribed by rule 104 not earlier than 3 days after the date the application was served on the company and not later than 7 days before the date appointed for directions under Order 2A, rule 8.

(6) The applicant—

(a) may, at the same time as filing the application and any affidavit in support, lodge a nomination in accordance with Form 88 of an official liquidator who, if an order for the winding up of the company is made and unless the Court is satisfied that some other official liquidator should be appointed, will be appointed as liquidator; and

(b) shall, within 14 days of filing, serve a copy of any such nomination on the persons specified in paragraph (4) (a).

(7) If the Court thinks fit, it may hear and determine an application for the winding up of a company on the day appointed for directions under Order 2A, rule 8 or a day subsequently appointed for directions in the proceedings.

(8) If a person on whom the application has not been served intends to appear on the day appointed for directions under Order 2A, rule 8, he or she shall—

(a) file a notice of appearance in accordance with Form 79; and

(b) serve a copy of the notice on the applicant not later than 2 days before the day appointed for directions.

(9) At the first directions hearing or at any subsequent directions hearing, the Court may direct the applicant or its solicitors to prepare and file a list in accordance with Form 80 of the names and addresses of persons who have given notice of their intention to appear in the proceedings.

(10) Without limiting any right of inspection otherwise available under Order 66, rule 11, a person who is or claims to be a contributory, member, creditor or officer of a company, and who makes application in a form approved by the Registrar, shall—

(a) be permitted by the Registrar to inspect an application to wind up the company, and any affidavits in relation to the application that are in the Registrar's custody; and

(b) on payment of the prescribed fee—be provided with a copy of those documents.

(11) Form 79, 80, 88, 93 or 128 used in accordance with this rule, and appropriately amended as the circumstances require, is taken to be in compliance with this rule.

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SCHEDULE 13A—continued

Application for substitution of applicant in winding up application—section 460 or 461

41. (1) If an applicant in proceedings in relation to a winding up order applied for under section 460 or 461 before 23 June 1993—

(a) fails to take all steps required under Order 75B and this Schedule to be taken preliminary to the hearing;

(b) seeks the leave of the Court to discontinue the proceedings;

(c) consents to the proceedings being dismissed;

(d) does not appear at the hearing of the proceedings; or

(e) does not seek or does not obtain a winding up order at the hearing;

the Court may, subject to the Corporations Law, make orders for the further conduct of the proceedings.

(2) Orders made under subrule (1) may—

(a) be made on application by a person who falls within the classes of person specified in subsection 462 (2), as in force before 23 June 1993;

(b) be made on such terms and conditions as the Court thinks fit;

(c) include an order in accordance with Form 97, substituting the person who applied for the orders for the person who was formerly the applicant in the proceedings; and

(d) if the Court sees fit, include an order requiring publication of a notice in accordance with Form 98 in the manner prescribed by Order 75B, rule 104 or in such other manner as the Court directs.

(3) This rule does not limit the powers of the Court under Order 19.

(4) Form 97 or 98, used in accordance with this rule, and appropriately amended as the circumstances require, is taken to be in compliance with this rule.

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SCHEDULE 14

FORMS—APPEALS FROM THE GUARDIANSHIP AND MANAGEMENT OF PROPERTY TRIBUNAL

FORM 1 O. 82A r. 2

NOTICE OF APPEAL FROM THE GUARDIANSHIP AND MANAGEMENT OF PROPERTY TRIBUNAL

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. of 19 .

On appeal from the Guardianship and Management of Property Tribunal constituted by [*names of the members of the Tribunal that made the decision appealed from*].

Between

Appellant

and

Respondent

Take notice that the appellant appeals from the decision of the Tribunal, made on [*date*], that [*decision appealed from*].

The appeal is from *the whole of the decision/ *the part of the decision that requires [*set out part appealed from*].

OR

[*if the appeal is in respect of a question other than a question of law*]

Take notice that the appellant seeks leave to appeal from the decision of the Tribunal, made on [*date*], that [*decision appealed from*].

Questions: [*specify each question of law or fact*]

Order sought: [*state order sought*]

Grounds: [*specify grounds relied on*]

Dated 19 .

.....

*Appellant/ *Appellant's solicitor

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To the respondent:
[*name and address*]

TAKE NOTICE that a directions hearing in this appeal will be heard by the Court at [*time and date*]. If there is no attendance before the Court by you, your counsel or your solicitor, directions may be given and orders made in your absence.

Before taking any other step in the proceeding or attending the directions hearing, you are required to file an appearance in the Registry.

[*if the time for service has been abridged by order*]

The period of time within which this notice is required to be served has been abridged by the Court to [*period*].

Dated 19 .

.....
By the Court
[*signature and description of officer of the Court*]

*Omit inapplicable words

FORM 2 O. 82A r. 7

APPLICATION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL FROM THE GUARDIANSHIP AND MANAGEMENT OF PROPERTY TRIBUNAL

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. of 19 .

Between

Appellant

and

Respondent

The appellant applies for an extension of time in which to file notice of appeal from the decision of the Guardianship and Management of Property Tribunal constituted by [*names of the members of the Tribunal that made the decision appealed from*], made on [*date*], that [*decision appealed from*].

An extension of time is required because a notice of appeal was not filed within the time specified in paragraph 56 (3) (a) or (b) of the *Guardianship and Management of Property Act 1991*.

This application will be heard by the Court on [*date—to be inserted by Registrar*].

The annexed affidavit sets out—

(a) the nature of the case;
(b) the questions involved; and
(c) the reasons why an extension should be given.

Dated 19 .

.....
*Appellant/ *Appellant's solicitor

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NOTES

1. The Supreme Court Rules (in force under the *Supreme Court Act 1933*) as shown in this reprint comprise Statutory Rules 1937 No. 85 of the Commonwealth (as amended by subsequent Commonwealth Statutory Rules and ACT Subordinate Laws).

   The *Australian Capital Territory (Self-Government) Act 1988* (No. 106, 1988) of the Commonwealth subsection 34 (2) and Schedule 2 allowed for the conversion of certain Commonwealth laws to Territory enactments.

   The *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth was, in preparation for its conversion, amended by the *Supreme Court (Transfer) Act 1992* (No. 49, 1992) of the Commonwealth with effect from 1 July 1992 and, as so amended became a Territory enactment on that date. The Rules of the Supreme Court of the Australian Capital Territory in force under the converted Act were also converted with effect from that date.

   For the amendment history of the Rules of the Supreme Court of the Australian Capital Territory of the Commonwealth see Commonwealth Statutory Rules Tables and Commonwealth Statutory Rules of the Parliament Volumes printed annually. A Table showing the amendment history as provided by the Commonwealth as at 1 July 1992 is located at the back of this reprint for the reader's convenience.

   Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table of Subordinate Laws

Rule No.	Date of making	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
16, 1992	31 Aug 1992	1 Sept 1992	1 Sept 1992	—
21, 1992	16 Oct 1992	28 Oct 1992	28 Oct 1992	—
23, 1992	29 Oct 1992	3 Nov 1992	3 Nov 1992	—
34, 1992 (*a*)	14 Dec 1992	18 Dec 1992	18 Dec 1992	—
35, 1992	14 Dec 1992	18 Dec 1992	18 Dec 1992	—
4, 1993	12 Feb 1993	19 Feb 1993	19 Feb 1993	—
11, 1993	22 Mar 1993	29 Mar 1993	1 Apr 1993	R. 6
20, 1993	27 Apr 1993	7 May 1993	7 May 1993	—
22, 1993	20 May 1993	21 May 1993	1 July 1993 (*see* r. 1 and *Gazette* 1993, No. S130)	—
23, 1993	1 June 1993	10 June 1993	10 June 1993	—
28, 1993	26 July 1993	29 July 1993	29 July 1993	—
30, 1993	29 July 1993	30 July 1993	R. 1: 30 July 1993 Remainder: 31 July 1993	R. 3
35, 1993	31 Aug 1993	7 Sept 1993	R. 1 and Part II (rr. 3-5): 7 Sept 1993 Remainder: 23 June 1993	R. 5
46, 1993	25 Nov 1993	2 Dec 1993	2 Dec 1993	—

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NOTES—continued

Table of Rules—continued

(*a*) Rule 2 of Subordinate Law No. 34, 1992 provides as follows:

2. The Principal Rules are amended—

(a) by omitting "Court or Judge" (wherever occurring) and substituting "Court";

(b) by omitting "Court or a Judge" (wherever occurring) and substituting "Court";

(c) by omitting "Court or the Judge" (wherever occurring) and substituting "Court";

The amendments have been incorporated in this reprint but do not appear in the Table of Amendments.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
O. 1 r. 1	am. No. 16, 1992
r. 4	am. Nos. 16, 21 and 34, 1992
O. 2A r. 12	am. No. 35, 1993
O. 4 r. 6	am. No. 11, 1993
O. 10 r. 6	am. No. 35, 1993
O. 13 r. 2	am. No. 23, 1992
r. 5	rs. No. 23, 1993
r. 17	rs. No. 23, 1992
O. 15 r. 2	rs. No. 23, 1993
O. 16 r. 2	rs. No. 23, 1993
O. 26 r. 1	am. Nos. 16 and 34, 1992
O. 30 r. 1	am. No. 35, 1993
O. 32 (rr. 1-11,11A, 12, 13)	rep. No. 4, 1993
O. 32 (rr. 1-14)	ad. No. 4, 1993
r. 1-11	rs. No. 4, 1993
r. 11A	rep. No. 4, 1993
rr. 12, 13	rs. No. 4, 1993
r. 14	ad. No. 4, 1993
O. 33 r. 1A	rep. No. 35, 1993
O. 33A (r.1)	ad. No. 16, 1992
r. 1	ad. No. 16, 1992
O. 33B (rr. 1-4)	ad. No. 16, 1992
rr. 1-4	ad. No. 16, 1992
O. 34 rr. 19, 20	rs. No. 23, 1993
r. 29	rep. No. 35, 1993
O. 34A (rr. 1-8)	ad. No. 21, 1992
r. 1	ad. No. 21, 1992
r. 2	ad. No. 21, 1992
	am. No. 35, 1992
rr. 3-8	ad. No. 21, 1992
O. 35 rr. 2, 3	rs. No. 23, 1993
rr. 4, 5	rep. No. 23, 1993

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NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
O. 36, r. 9	am. No. 34, 1992
Heading to Div. 1 of O. 39	rs. No. 20, 1993
Heading to Div. 2 of O. 39	rs. No. 20, 1993
O. 39 rr. 4-6	rep. No. 20, 1993
Div. 3 of O. 39 (rr. 7-22)	ad. No. 20, 1993
rr. 7-22	rs. No. 20, 1993
Div. 4 of O. 39 (rr. 23, 24, 24A-24F)	ad. No. 20, 1993
rr. 23, 24	rs. No. 20, 1993
rr. 24A-24F	ad. No. 20, 1993
Div. 5 of O. 39 (rr. 24G -24Q)	ad. No. 20, 1993
rr. 24G-24Q	ad. No. 20, 1993
Heading to Div. 3 of O. 39	rep. No. 20, 1993
Heading to Div. 6 of O. 39	ad. No. 20, 1993
Heading to Div. 4 of O. 39	rep. No. 20, 1993
Heading to Div. 7 of O. 39	ad. No. 20, 1993
Div. 5 of O. 39 (rr. 38-44)	rep. No. 20, 1993
rr. 38-44	rep. No. 20, 1993
Heading to Div. 6 of O. 39	rep. No. 20, 1993
Heading to Div. 8 of O. 39	ad. No. 20, 1993
O. 42 r. 14	am. No. 35, 1992
O. 42A r. 1	am. No. 34, 1992 rs. No. 23, 1993
r. 2	rep. No. 23, 1993
O. 52 r. 6	am. No. 34, 1992
r. 23	am. No. 34, 1992
O. 53 r. 4	am. No. 34, 1992
Div. 1 of O. 60 (rr. 1-3, 5-8)	rep. No. 21, 1992
Div. 1 of O. 60 (rr. 1-5)	ad. No. 21, 1992
r. 1	am. No. 16, 1992 rs. No. 21, 1992
rr. 2, 3	rs. No. 21, 1992
r. 4	ad. No. 21, 1992
r. 5	rs. No. 21, 1992
r. 6	rep. No. 21, 1992 ad. No. 4, 1993
rr. 7, 8	rep. No. 21, 1992
r. 13	am. No. 16, 1992
O. 61 r. 3	am. Nos. 16 and 34, 1992; Nos. 28, 35 and 46, 1993
r. 5	am. No. 34, 1992
O. 61A r. 1	am. Nos. 16, 21 and 34, 1992; Nos. 20, 28, 35 and 46, 1993
rr. 2, 3	am. No. 23, 1992
r. 5	am. No. 34, 1992

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NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 6	am. Nos. 23 and 34, 1992
r. 7	am. No. 23, 1992
r. 8	am. Nos. 23 and 34, 1992
r. 9	am. No. 23, 1992
r. 10	am. No. 34, 1992
O. 63 r. 1	am. No. 4, 1993
r. 2	am. No. 4, 1993; No. 22, 1993
O. 65 rr. 4-6	rep. No. 16, 1992
r. 7	am. No. 11, 1993
r. 41	am. No. 11, 1993
r. 58	am. No. 23, 1992
O. 66 r. 11	am. No. 20, 1993
O. 67 r. 2	am. No. 23, 1992
O. 69 r. 3	am. No. 4, 1993
rr. 4, 5	rep. No. 4, 1993
O. 73 r. 2	am. No. 34, 1992
r. 6	am. No. 34, 1992
r. 10	am. No. 34, 1992
Part 5A (O. 74A)	ad. No. 35, 1992
O. 74A (rr. 1-11)	ad. No. 35, 1992
rr. 1-11	ad. No. 35, 1992
O. 75 (rr.1, 1A, 2-218)	rep. No. 35, 1993
rr. 1, 1A, 2-21	rep. No. 35, 1993
r. 22	rs. No. 23, 1993 rep. No. 35, 1993
rr. 23-218	rep. No. 35, 1993
O. 75A (rr. 1-69)	rep. No. 35, 1993
rr. 1-69	rep. No. 35, 1993
O. 75B r. 2	am. No. 34, 1992; No. 35, 1993
r. 4	am. No. 35, 1993
rr. 6, 7	am. No. 35, 1993
rr. 12-14	am. No. 35, 1993
rr. 16, 17	am. No. 35, 1993
Heading to Div. 4 of O. 75B	am. No. 35, 1993
rr. 18, 19	am. No. 35, 1993
r. 19A	ad. No. 35, 1993
r. 20	am. No. 35, 1993
Heading to Div. 6 of O. 75B	rs. No. 35, 1993
r. 27A	ad. No. 35, 1993
rr. 28A-28C	ad. No. 35, 1993
rr. 29, 30	am. No. 35, 1993
rr. 30A-30C	ad. No. 35, 1993

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NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 31	am. No. 23, 1992; No. 35, 1993
rr. 32-34	am. No. 35, 1993
Div. 7A of O. 75B (rr. 34A-34G)	ad. No. 35, 1993
rr. 34A-34G	ad. No. 35, 1993
r. 35	am. No. 35, 1993
r. 36	am. No. 23, 1992 rs. No. 35, 1993
rr. 36A-36C	ad. No. 35, 1993
rr. 37, 38	rs. No. 35, 1993
r. 39	am. No. 21, 1992
r. 39A	ad. No. 35, 1993
r. 41	rs. No. 35, 1993
r. 42	am. No. 35, 1993
rr. 46, 47	rs. No. 35, 1993
rr. 48-52	am. No. 35, 1993
r. 55	am. No. 35, 1993
r. 56	rep. No. 35, 1993
r. 60	rs. No. 35, 1993
rr. 61, 62	rep. No. 35, 1993
r. 64	am. No. 23, 1992; No. 35, 1993
r. 64A	ad. No. 35, 1993
r. 69	am. No. 23, 1992
r. 73	am. No. 35, 1993
r. 74	rep. No. 35, 1993
rr. 76A, 76B	ad. No. 35, 1993
r. 77	rs. No. 35, 1993
rr. 77A-77C	ad. No. 35, 1993
r. 81	rs. No. 35, 1993
r. 81A	ad. No. 35, 1993
rr. 82-88	am. No. 35, 1993
r. 93	am. No. 35, 1993
r. 95	am. No. 35, 1993
rr. 98A, 98B	ad. No. 35, 1993
r. 100	am. No. 35, 1993
r. 103	am. No. 35, 1993
Part 7 (O. 76)	rs. No. 30, 1993
O. 76 rr. 1-17	rs. No. 30, 1993
rr. 18-28	ad. No. 30, 1993
O. 78 r. 6	am. No. 23, 1992
O. 80 r. 3	am. No. 23, 1992
r. 7	am. No. 23, 1992
r. 9	am. No. 23, 1992
O. 81 rr. 8-16	am. No. 23, 1992

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NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 17	rs. No. 21, 1992
rr. 18, 19	rep. No. 21, 1992
O. 82 r. 4	am. No. 23, 1992
r. 7	am. No. 23, 1992
Part 13A (O. 82A)	ad. No. 21, 1992
O. 82A (rr. 1-15)	ad. No. 21, 1992
rr. 1-15	ad. No. 21, 1992
O. 83 r. 11	am. No. 23, 1992
rr. 14, 15	am. No. 23, 1992
rr. 17-19	am. No. 23, 1992
First Schedule	am. Nos. 21, 23 and 35, 1992; Nos. 20 and 23, 1993
Schedule 4	am. No. 28, 1993
Seventh Schedule	am. No. 34, 1992; No. 23, 1993
	rep. No. 35, 1993
Eighth Schedule	rs. No. 30, 1993
Ninth Schedule	am. No. 34, 1992
	rep. No. 35, 1993
Eleventh Schedule	am. No. 23, 1992
Schedules 12, 13	am. No. 16, 1992; No. 35, 1993
Schedule 13A	ad. No. 35, 1993
Schedule 14	ad. No. 21, 1992

2. Order 75, Rules 189 and 190—Now cited as the *Unclaimed Moneys Act 1950.*

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TABLE SHOWING NEW RULE NUMBERS OF THE SUPREME COURT RULES AFTER RENUMBERING BY SUBORDINATE LAW No. 23, 1992

NOTE—This Table does not form part of the Supreme Court Rules and is printed for convenience of reference only.

Column 1 Order	Column 2 Previous provision numbers	Column 3 New provision numbers
61A	1.01, 2.01, 3.01, 4.01, 5.01, 6.01, 7.01, 7.02, 8.01, 8.02, 8.03, 9.01, 9.02, 9.03, 9.04, 10.01, 11.01	1, 2, 3, 4, 5, 6, 7 (1), (2), 8 (1), (2), (3), 9 (1), (2), (3), (4), 10, 11
65	58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 58.07, 58.08, 58.09, 58.10	58 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10)
66	1.01, 2.01, 2.02, 3.01, 4.01, 4.02, 4.03, 4.04, 5.01, 6.01, 6.02, 7.01, 8.01, 9.01, 10.01, 10.02, 11.01, 11.02, 11.03	1, 2 (1), (2), 3, 4 (1), (2), (3), (4), 5, 6 (1), (2), 7, 8, 9, 10 (1), (2), 11 (1), (2), (3)
67	2.01, 2.02, 2.03	2 (1), (2), (3)
78	3.01, 3.02, 4.01, 4.02, 5.01, 6.01, 6.02, 6.03, 6.04, 6.05, 7.01, 7.02, 7.03, 8.01, 8.02, 8.03	3 (1), (2), 4 (1), (2), 5, 6 (1), (2), (3), (4), (5), 7 (1), (2), (3), 8 (1), (2), (3)
80	1.01, 2.01, 2.02, 3.01, 3.02, 4.01, 5.01, 5.02, 5.03, 5.04, 5.05, 6.01, 6.02, 6.03, 7.01, 7.02, 7.03, 7.04, 8.01, 8.02, 9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07, 10.01, 10.02, 10.03, 10.04, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 13.01, 13.02, 14.01, 15.01	1, 2 (1), (2), 3 (1), (2), 4, 5 (1), (2), (3), (4), (5), 6 (1), (2), (3), 7 (1), (2), (3), (4), 8 (1), (2), 9 (1), (2), (3), (4), (5), (6), (7), 10 (1), (2), (3), (4), 11 (1), (2), (3), (4), 12 (1), (2), 13 (1), (2), 14, 15
81	1.01, 2.01, 3.01, 3.02, 3.03, 4.01, 5.01, 5.02, 6.01, 6.02, 7.01, 7.02, 7.03, 8.01, 8.02, 9.01, 9.02, 10.01, 10.02, 10.03, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 13.01, 13.02, 13.03, 14.01, 14.02, 14.03, 15.01, 15.02, 15.03, 16.01, 16.02, 16.03, 16.04	1, 2, 3 (1), (2), (3), 4, 5 (1), (2), 6 (1), (2), 7 (1), (2), (3), 8 (1), (2), 9 (1), (2), 10 (1), (2), (3), 11 (1), (2), (3), (4), 12 (1), (2), 13 (1), (2), (3), 14 (1), (2), (3), 15 (1), (2), (3), 16 (1), (2), (3), (4)
82	1.01, 2.01, 3.01, 3.02, 3.03, 4.01, 4.02, 5.01, 6.01, 7.01, 7.02	1, 2, 3 (1), (2), (3), 4 (1), (2), 5, 6, 7 (1), (2)
83	1.01, 2.01, 3.01, 4.01, 5.01, 5.02, 6.01, 6.02, 6.03, 7.01, 8.01, 9.01, 9.02, 10.01, 11.01, 11.02, 12.01, 13.01, 13.02, 14.01, 14.02, 15.01, 15.02, 15.03, 16.01, 17.01, 17.02, 18.01, 18.02, 19.01, 19.02, 20.01, 21.01	1, 2, 3, 4, 5 (1), (2), 6 (1), (2), (3), 7, 8, 9 (1), (2), 10, 11 (1), (2), 12, 13 (1), (2), 14 (1), (2), 15 (1), (2), (3), 16, 17 (1), (2), 18 (1), (2), 19 (1), (2), 20, 21

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TABLE SHOWING SECTION HISTORY OF THE RULES OF THE SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY AS PROVIDED BY THE COMMONWEALTH

NOTE—This Table does not form part of the Rules of the Supreme Court of the Australian Capital Territory and is printed for convenience of reference only.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Heading to Table of Orders	rep. 1978 No. 173
Table of Orders	am. 1956 No. 135; 1962 No. 47; 1966 No. 132; 1969 Nos. 221 and 222; 1972 No. 189
	rep. 1978 No. 173
O. 1 r. 2	rep. 1956 No. 135
r. 3	am. 1956 No. 135; 1966 No. 132
	rep. 1978 No. 173
r. 4	am. 1968 No. 13; 1977 No. 152; 1978 No. 173; 1986 No. 8; 1990 No. 458
O. 2 r. 1	am. 1981 No. 296
r. 2	ad. 1990 No. 458
O. 2A (rr. 1-14)	ad. 1990 No. 458
rr. 1-14	ad. 1990 No. 458
O. 3 r. 1	am. 1990 No. 458
r. 5	am. 1958 No. 64
	rs. 1977 No. 152
r. 6	am. 1956 No. 135
	rs. 1977 No. 152
O. 4 r. 5	rs. 1989 No. 273
r. 6	am. 1956 No. 135; 1962 No. 76; 1969 No. 57
	rs. 1973 No. 149
	am. 1975 No. 81; 1976 No. 190; 1978 No. 86
	rs. 1980 No. 214
	am. 1981 No. 196; 1982 No. 365; 1984 No. 285; 1986 Nos. 8, 26 and 349; 1987 Nos. 67, 93 and 219; 1988 Nos. 24 and 221; 1989 Nos. 18 and 191; 1990 No. 372; 1992 No. 82
O. 5 rr. 1, 2	am. 1977 No. 152; 1991 No. 108
O. 6 r. 3	rs. 1978 No. 173
Heading to O. 10	am. 1978 No. 173
O. 10 r. 1	rs. 1977 No. 152
r. 2	rs. 1978 No. 173
r. 2A, 2B	ad. 1978 No. 173
r. 6	rs. 1978 No. 173
	am. 1983 No. 27; 1984 No. 281; 1990 No. 458
O. 11 r. 1	rs. 1978 No. 173
r. 2	ad. 1978 No. 173
O. 12 r. 1	rep. 1977 No. 152
r. 10	am. 1968 No. 13

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
O. 13 r. 4	am. 1980 No. 214; 1991 No. 108
r. 5	am. 1980 No. 214
r. 11	am. 1983 No. 27
O. 14 r. 3	am. 1980 No. 214; 1987 No. 67
rr. 5-7	am. 1983 No. 228
r. 7A	ad. 1983 No. 228
O. 15 r. 1	am. 1977 No. 152; 1989 No. 273
r. 8	rep. 1983 No. 228
O. 19 r. 15A	ad. 1981 No. 296
r. 16	am. 1969 No. 66
Heading preceding r. 22	rep. 1978 No. 173
rr. 22-36	rep. 1978 No. 173
r. 39	am. 1980 No. 214
r. 45	am. 1968 No. 13
O. 20 (rr. 1-13)	rep. 1969 No. 66
O. 20 (rr. 1-15)	ad. 1969 No. 66
rr. 1-13	rs. 1969 No. 66
rr. 14, 15	ad. 1969 No. 66
O. 23 r. 4	am. 1983 No. 228
r. 4A	ad. 1983 No. 228
rr. 11, 12	rs. 1969 No. 66
r. 18	rep. 1981 No. 296
r. 22	rep. 1981 No. 296
O. 24 r. 1	am. 1969 No. 66
O. 26 r. 1	am. 1974 No. 25; 1990 No. 129
r. 1A	ad. 1990 No. 129
r. 2	am. 1974 No. 25; 1989 No. 30; 1990 No. 129
r. 4	am. 1980 No. 214
r. 4A	ad. 1989 No. 30
	am. 1990 No. 129
r. 5	am. 1990 No. 129
r. 6	am. 1974 No. 25
r. 8	am. 1967 No. 68
	rs. 1968 No. 13
r. 9	rs. 1968 No. 13
	am. 1974 Nos. 25 and 197
r. 10	rep. 1968 No. 13
O. 27 r. 1	am. 1981 No. 296
r. 2	rs. 1977 No. 152
r. 3	am. 1977 No. 152
r. 4	rep. 1989 No. 30
r. 5	rep. 1983 No. 228
O. 31 rr. 4, 5	am. 1983 No. 228
r. 6	am. 1980 No. 214; 1983 No. 228
O. 32 r. 11A	ad. 1991 No. 251
O. 33 (rr. 1-9)	rep. 1983 No. 228

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
O. 33 (rr. 1-4)	ad. 1983 No. 228
r. 1	rs. 1983 No. 228
r. 1A	ad. 1984 No. 281
rr. 2-4	rs. 1983 No. 228
rr. 5-9	rep. 1983 No. 228
O. 34 r. 1	rs. 1969 No. 66
	am. 1981 No. 296
rr. 5, 6	rep. 1981 No. 296
r. 7	rs. 1969 No. 66
r. 10	rs. 1969 No. 66
r. 11	rs. 1981 No. 296
r. 15A	ad. 1983 No. 228
r. 17A	ad. 1983 No. 228
r. 19	am. 1968 No. 13; 1980 No. 214
r. 29	ad. 1984 No. 281
O. 36A (rr. 1-3)	ad. 1990 No. 2
rr. 1-3	ad. 1990 No. 2
O. 38 r. 1	rep. 1980 No. 214
rr. 3-8	rep. 1989 No. 30
r. 9	rs. 1969 No. 66
	rep. 1989 No. 30
r. 17	am. 1980 No. 214
r. 26	am. 1983 No. 228
r. 27	rep. 1983 No. 228
r. 28	am. 1983 No. 228
O. 39 r. 1A	ad. 1983 No. 27
	am. 1990 No. 2
r. 5	am. 1968 No. 13
r. 6A	ad. 1983 No. 27
rr. 25, 26	rs. 1983 No. 27
r. 26A	ad. 1990 No. 2
rr. 27-32	rs. 1983 No. 27
r. 32A	ad. 1983 No. 27
	am. 1985 No. 69; 1991 No. 251
rr. 32B, 32C	ad. 1985 No. 69
r. 33	rs. 1983 No. 27
r. 33A	ad. 1969 No. 221
r. 41	am. 1968 No. 13
r. 43	am. 1938 No. 99
r. 44	am. 1938 No. 99
	rs. 1983 No. 27
Div. 6 (rr. 45-49)	ad. 1990 No. 2
rr. 45-49	ad. 1990 No. 2
Heading preceding r. 1 of O. 40	rs. 1969 No. 221
O. 40 r. 1	rs. 1969 No. 221

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 2	rs. 1969 No. 221
	am. 1992 No. 79
r. 3	rs. 1969 No. 221
r. 3A	ad. 1969 No. 66
	rs. 1969 No. 221
r. 4	rs. 1969 No. 221
r. 5	am. 1968 No. 13
	rs. 1969 No. 221
rr. 6-15	rs. 1969 No. 221
rr. 16-19	rep. 1969 No. 221
Heading preceding r. 20	rep. 1969 No. 221
rr. 20-23	rep. 1969 No. 221
O. 42 r. 2	rs. 1984 No. 281
rr. 11, 12	ad. 1978 No. 173
r. 13	ad. 1983 No. 228
r. 14	ad. 1990 No. 458
O. 42A (rr. 1, 2)	ad. 1977 No. 152
	rs. 1986 No. 86; 1990 No. 129
r. 1	ad. 1977 No. 152
	rs. 1986 No. 86; 1990 No. 129
	am. 1991 No. 472
r. 2	ad. 1977 No. 152
	rs. 1986 No. 86; 1990 No. 129; 1991 No. 472
O. 43 r. 14	am. 1981 No. 104
r. 15	am. 1980 No. 214; 1987 No. 67; 1990 No. 129
r. 16	am. 1939 No. 61; 1980 No. 214; 1981 No. 104; 1987 No. 67; 1990 No. 129
rr. 31-33	rs. 1969 No. 221
O. 46 r. 1	am. 1968 No. 13
O. 47 r. 2	am. 1968 No. 13
O. 50 r. 9	am. 1968 No. 13
Heading to Div. 1 of O. 52	rs. 1991 No. 294
Div. 2 (rr. 16-24)	rs. 1991 No. 294
O. 52 rr. 16, 17	rs. 1991 No. 294
r. 18	am. 1980 No. 214
	rs. 1991 No. 294
r. 19	rs. 1991 No. 294
r. 20	am. 1980 No. 214; 1990 No. 458
	rs. 1991 No. 294
rr. 21-24	rs. 1991 No. 294
Heading to Div. 3 of O. 52	rs. 1991 No. 294
O. 54 r. 8	rs. 1983 No. 228
r. 9	rep. 1983 No. 228
r. 17	am. 1968 No. 13
O. 55 r. 7	rep. 1969 No. 221
r. 10	am. 1986 No. 8

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 11	am. 1980 No. 214
r. 36	am. 1980 No. 214
r. 41	am. 1980 No. 214
O. 56 r. 8	am. 1984 No. 281
r. 13	am. 1977 No. 152
r. 15	am. 1977 No. 152
O. 56A (rr. 1-3)	ad. 1981 No. 296
rr. 1-3	ad. 1981 No. 296
O. 58 r. 4	am. 1968 No. 13
r. 14	am. 1968 No. 13
rr. 47-49	am. 1980 No. 214; 1987 No. 67
O. 59 r. 7	am. 1980 No. 214
r. 9	am. 1980 No. 214
Heading to Order 60	am. 1986 No. 8
O. 60 (rr. 1-12)	rep. 1974 No. 197
O. 60 (rr. 1-15)	ad. 1974 No. 197
rr. 1, 2	rs. 1974 No. 197
	am. 1986 No. 8
r. 3	rs. 1974 No. 197; 1981 No. 296
	am. 1986 No. 8
r. 4	rs. 1974 No. 197
	rep. 1981 No. 296
r. 5	am. 1938 No. 99
	rs. 1974 No. 197
r. 6	am. 1938 No. 99
	rs. 1974 No. 197
	am. 1986 No. 8
rr. 7, 8	rs. 1974 No. 197
r. 9	rs. 1974 No. 197
	am. 1981 No. 296
r. 10	am. 1938 No. 99
	rs. 1974 No. 197
r. 11	rs. 1974 No. 197
	am. 1986 No. 8
r. 12	am. 1938 No. 99
	rs. 1974 No. 197
r. 13	ad. 1974 No. 197
	am. 1986 No. 8
r. 14	ad. 1974 No. 197
r. 15	ad. 1974 No. 197
	am. 1986 No. 8
O. 61 r. 3	ad. 1981 No. 296
	am. 1983 No. 26; 1984 Nos. 110 and 281; 1988 No. 257; 1991 No. 251
r. 3A	ad. 1990 No. 458
r. 4	ad. 1981 No. 296

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 5	ad. 1981 No. 296
	am. 1990 No. 129
O. 61A (rr. 1.01-11.01)	ad. 1988 No. 257
r. 1.01	ad. 1988 No. 257
	am. 1990 No. 129; 1991 No. 251
rr. 2.01-4.01	ad. 1988 No. 257
r. 5.01	ad. 1988 No. 257
	am. 1990 No. 129
rr. 6.01-11.01	ad. 1988 No. 257
O. 62 r. 1	rs. 1977 No. 152
r. 2	am. 1977 No. 152
O. 63 (rr. 1-3)	rep. 1972 No. 189
O. 63 (rr. 1, 2)	ad. 1972 No. 189
r. 1	rs. 1972 No. 189
r. 1A	ad. 1939 No. 48
	rep. 1972 No. 189
r. 2	rs. 1972 No. 189
	am. 1991 No. 294
r. 3	rs. 1969 No. 66
	rep. 1972 No. 189
O. 64 r. 3	rs. 1969 No. 66
r. 8	rs. 1969 No. 66
r. 12	ad. 1969 No. 66
O. 65 r. 7	am. 1950 No. 22; 1956 No. 135; 1969 No. 57; 1974 No. 197; 1976 No. 190; 1977 No. 152; 1978 No. 86; 1981 No. 196; 1982 Nos. 202 and 316
	rs. 1984 No. 285 (as am. by 1984, No. 313)
	am. 1986 Nos. 26 and 349; 1987 Nos. 93 and 219
	rs. 1988 No. 24
	am. 1988 Nos. 221 and 331; 1989 No. 18; 1990 No. 372; 1992 No. 82
r. 7A	ad. 1969 No. 57
	am. 1982 No. 202; 1986 No. 8
	rs. 1988 No. 331
r. 8	am. 1968 No. 13
r. 16	rep. 1991 No. 108
r. 22	am. 1968 No. 13
r. 34	rs. 1956 No. 135
r. 35A	ad. 1973 No. 95
r. 38	rep. 1981 No. 296
r. 41	am. 1956 No. 135; 1980 No. 214; 1988 No. 24; 1992 No. 82
r. 42	am. 1956 No. 135; 1980 No. 214
r. 47	am. 1968 No. 13
r. 53A	ad. 1983 No. 27
r. 58	rs. 1991 No. 108
r. 71	am. 1956 No. 135
r. 74	rep. 1956 No. 135

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 76	rep. 1969 No. 221
Heading to O. 66	rs. 1992 No. 79
Heading to Div. 1 of O. 66	ad. 1992 No. 79
O. 66 (rr. 1-12)	rep. 1991 No. 251
O. 66 (rr. 1.01-9.01)	ad. 1991 No. 251
r. 1	am. 1980 No. 214
	rep. 1991 No. 251
rr. 2-10	rep. 1991 No. 251
rr. 11.01-12.03	ad. 1991 No. 108
	rep. 1991 No. 251
rr. 1.01-9.01	ad. 1991 No. 251
rr. 10.01, 10.02	ad. 1992 No. 79
Div. 2 of O. 66 (rr. 11.01 -11.03)	ad. 1992 No. 79
rr. 11.01-11.03	ad. 1992 No. 79
rr. 11, 12	ad. 1991 No. 108
	rep. 1991 No. 251
O. 67 r. 2	rs. 1991 No. 108
r. 3	rep. 1991 No. 108
r. 4	am. 1991 No. 108
rr. 5, 6	rep. 1978 No. 173
O. 68 r. 3	am. 1980 No. 214
r. 11	rs. 1980 No. 214
Heading to Order 69A	am. 1986 No. 8
O. 69A (rr. 1, 2)	ad. 1982 No. 202
r. 1	ad. 1982 No. 202
	am. 1986 No. 8
r. 2	ad. 1982 No. 202
O. 70 (rr. 1-4)	rep. 1974 No. 60
r. 1	am. 1956 No. 135
	rep. 1974 No. 60
rr. 2, 3	rep. 1974 No. 60
r. 4	ad. 1956 No. 135
	rep. 1974 No. 60
Part 3 (O. 70)	ad. 1978 No. 173
O. 70 (rr. 1-6)	ad. 1978 No. 173
rr. 1-3	ad. 1978 No. 173
rr. 4-6	ad. 1978 No. 173
	rs. 1981 No. 328
rr. 7-11	ad. 1981 No. 328
Part 3 (O. 71)	rep. 1978 No. 173
O. 71 (rr. 1-130)	rep. 1978 No. 173
rr. 1-10	rep. 1978 No. 173
r. 10A	ad. 1958 No. 64
	rep. 1978 No. 173
rr. 11-130	rep. 1978 No. 173

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
O. 72 r. 1	am. 1956 No. 135
r. 6	am. 1956 No. 135; 1969 No. 66; 1980 No. 214; 1984 No. 405; 1992 No. 79
rr. 7-9	rs. 1984 No. 405
r. 14	am. 1956 No. 135; 1980 No. 214; 1981 No. 296
r. 22	am. 1938 No. 99
r. 24	rep. 1980 No. 214
r. 38	rs. 1992 No. 79
r. 60	am. 1956 No. 135
Part 5 (O. 73, 74)	ad. 1956 No. 135
O. 73 (rr. 1-13)	ad. 1956 No. 135
rr. 1-13	ad. 1956 No. 135
O. 74 (rr. 1, 2)	ad. 1956 No. 135
rr. 1, 2	ad. 1956 No. 135
Part 6 (O. 75)	ad. 1956 No. 135
O. 75 (rr. 1-8)	ad. 1956 No. 135
O. 75 (rr. 1-3)	rep. 1969 No. 222
O. 75 (rr. 1-212)	ad. 1969 No. 222
r. 1	ad. 1956 No. 135
	am. 1962 No. 47
	rs. 1969 No. 222
r. 1A	ad. 1984 No. 281
rr. 2, 3	ad. 1956 No. 135
	am. 1962 No. 47
	rs. 1969 No. 222
Heading preceding r. 4	rep. 1962 No. 47
rr. 4-8	ad. 1956 No. 135
	rep. 1962 No. 47
	ad. 1969 No. 222
rr. 9-21	ad. 1969 No. 222
r. 22	ad. 1969 No. 222
	am. 1980 No. 214
rr. 23-45	ad. 1969 No. 222
r. 46	ad. 1969 No. 222
	rs. 1980 No. 210
rr. 47-49	ad. 1969 No. 222
r. 50	ad. 1969 No. 222
	am. 1980 No. 210
rr. 51-79	ad. 1969 No. 222
rr. 80, 81	ad. 1969 No. 222
	am. 1980 No. 210
rr. 82-94	ad. 1969 No. 222
r. 95	ad. 1969 No. 222
	rs. 1980 No. 210
rr. 96-98	ad. 1969 No. 222

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 99	ad. 1969 No. 222
	rs. 1980 No. 210
rr. 100-115	ad. 1969 No. 222
r. 116	ad. 1969 No. 222
	am. 1980 No. 214
rr. 117-212	ad. 1969 No. 222
rr. 213-218	ad. 1980 No. 210
O. 75A (rr. 1-69)	ad. 1984 No. 281
r. 1	ad. 1984 No. 281
	am. 1989 No. 30
rr. 2-13	ad. 1984 No. 281
rr. 14-15	ad. 1984 No. 281
	am. 1989 No. 30
rr. 16-29	ad. 1984 No. 281
r. 30	ad. 1984 No. 281
	am. 1989 No. 30
rr. 31-44	ad. 1984 No. 281
r. 45	ad. 1984 No. 281
	am. 1989 No. 30
rr. 46-59	ad. 1984 No. 281
r. 59A	ad. 1990 No. 129
rr. 60-68	ad. 1984 No. 281
r. 69	ad. 1984 No. 281
	am. 1989 No. 30; 1991 No. 251
O. 75B (rr. 1-110)	ad. 1990 No. 458
rr. 1-6	ad. 1990 No. 458
r. 7	ad. 1990 No. 458
	am. 1991 Nos. 251 and 294
r. 8	ad. 1990 No. 458
	rep. 1991 No. 294
rr. 9, 10	ad. 1990 No. 458
r. 11	ad. 1990 No. 458
	am. 1991 No. 251
rr. 12-36	ad. 1990 No. 458
rr. 37, 38	ad. 1990 No. 458
	am. 1991 No. 251
r. 39	ad. 1990 No. 458
	am. 1992 No. 79
rr. 49-65	ad. 1990 No. 458
r. 66	ad. 1990 No. 458
	rs. 1991 No. 251
rr. 67-110	ad. 1990 No. 458
Part 7 (O. 76)	ad. 1966 No. 132
O. 76 (rr. 1-18)	ad. 1966 No. 132
rr. 1, 2	ad. 1966 No. 132

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
r. 3	ad. 1966 No. 132
	am. 1969 No. 66
rr. 4, 5	ad. 1966 No. 132
r. 6	ad. 1966 No. 132
	am. 1969 No. 66
rr. 7-17	ad. 1966 No. 132
r. 18	ad. 1966 No. 132
	rep. 1974 No. 60
Part 8 (O. 77)	ad. 1985 No. 27
O. 77 (rr. 1-14)	ad. 1985 No. 27
rr. 1-14	ad. 1985 No. 27
Part 9 (O. 78)	ad. 1988 No. 145
O. 78 (rr. 1, 2, 3.01-8.03)	ad. 1988 No. 145
rr. 1, 2, 3.01-8.03	ad. 1988 No. 145
Part 10 (O. 79)	ad. 1989 No. 30
O. 79 (rr. 1-12)	ad. 1989 No. 30
rr. 1-12	ad. 1989 No. 30
Part 11 (O. 80)	ad. 1989 No. 273
O. 80 (rr. 1.01-15.01)	ad. 1989 No. 273
rr. 1.01-15.01	ad. 1989 No. 273
Part 12 (O. 81)	ad. 1991 No. 252
O. 81 (rr. 1.01-19.03)	ad. 1991 No. 252
rr. 1.01-19.03	ad. 1991 No. 252
Part 13 (O. 82)	ad. 1991 No. 252
O. 82 (rr. 1.01-7.02)	ad. 1991 No. 252
rr. 1.01-7.02	ad. 1991 No. 252
O. 83 (rr. 1.01-21.01)	ad. 1991 No. 416
rr. 1.01-21.01	ad. 1991 No. 416
First Schedule	am. 1939 No. 61; 1968 No. 13; 1969 Nos. 66 and 221; 1973 No. 149; 1974 Nos. 25 and 197; 1977 No. 152; 1980 No. 214; 1981 Nos. 104 and 296; 1983 No. 27; 1986 No. 8; 1987 No. 67; 1988 No. 257; 1989 No. 30; 1991 Nos. 108 and 252
Second Schedule	am. 1958 No. 64
	rep. 1978 No. 173
Third Schedule	am. 1956 No. 135; 1980 No. 214; 1981 No. 296
Fourth Schedule	am. 1950 No. 22
	rs. 1956 No. 135; 1962 No. 76; 1969 No. 57; 1973 No. 95; 1982 No. 316; 1984 No. 285; 1988 No. 24
	rep. 1992 No. 82
Schedule 4	ad. 1992 No. 82
Fifth Schedule	rs. 1956 No. 135
	rep. 1974 No. 60
Sixth Schedule	rep. 1980 No. 214
Seventh Schedule	ad. 1956 No. 135
	am. 1962 No. 47
	rs. 1969 No. 222
	am. 1980 No. 210

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Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Eighth Schedule	ad. 1966 No. 132
	am. 1969 No. 66; 1991 No. 108
Ninth Schedule	ad. 1984 No. 281
	am. 1989 No. 30; 1991 No. 108
Tenth Schedule	ad. 1985 No. 27
Eleventh Schedule	ad. 1989 No. 273
Schedules 12, 13	ad. 1990 No. 458

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Amendment history by the Commonwealth as at 1 July 1992

Table of Statutory Rules

Year and number	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
1937 No. 85	19 Aug 1937	1 Jan 1938	
1938 No. 99	27 Aug 1938	27 Oct 1938	—
1939 No. 48	15 June 1939	15 June 1939	—
61	10 Aug 1939	10 Aug 1939	—
1950 No. 22	4 May 1950	4 May 1950	—
1956 No. 135	24 Dec 1956	31 Dec 1956	Rr. 4 (2), 5 (2), 8 (2), 11 (2) and 23
1958 No. 64	2 Oct 1958	2 Oct 1958	—
1962 No. 47	25 June 1962	25 June 1962	Rr. 5 (2) and 7
76	30 Aug 1962	30 Aug 1962	Rr. 1 (2) and 3
1966 No. 132	22 Sept 1966	22 Sept 1966	—
1967 No. 68	1 June 1967	1 June 1967	—
1968 No. 13	15 Feb 1968	15 Feb 1968	—
1969 No. 57 (*a*)	23 Apr 1969	23 Apr 1969	Rr. 1 (2), (3) and 5
66	8 May 1969	1 June 1969	—
221	30 Dec 1969	1 Feb 1970	—
222	31 Dec 1969	19 Jan 1970	Rr. 3-5
1972 No. 189	16 Nov 1972	27 Nov 1972	—
1973 No. 95 (*b*)	31 May 1973	31 May 1973	R. 3
149	9 Aug 1973	9 Aug 1973	—
1974 No. 25	8 Mar 1974	8 Mar 1974	—
60	18 Apr 1974	18 Apr 1974	—
197	23 Oct 1974	23 Oct 1974	—
1975 No. 81	16 May 1975	16 May 1975	R. 3
1976 No. 190	2 Sept 1976	2 Sept 1976	R. 1 (2)
1977 No. 152	15 Sept 1977	26 Sept 1977	—
1978 No. 86	27 June 1978	27 June 1978	R. 2 (2)
173	26 Sept 1978	16 Oct 1978	—
1980 No. 210	24 July 1980	24 July 1980	—
214	31 July 1980	31 July 1980	R. 2 (2)
1981 No. 104	13 May 1981	13 May 1981	—
196	14 July 1981	14 July 1981	R. 2 (2)
296	16 Oct 1981	1 Nov 1981	—
328	17 Nov 1981	1 Dec 1981	—
1982 No. 202	27 Aug 1982	1 Sept 1982	—
316	23 Nov 1982	23 Nov 1982	R. 3
365	21 Dec 1982	21 Dec 1982	R. 2
1983 No. 26	18 Mar 1983	18 Mar 1983	—
27	18 Mar 1983	18 Mar 1983	—
228	26 Oct 1983	26 Oct 1983	—
1984 No. 110	21 June 1984	21 June 1984	—
281	12 Oct 1984	1 Nov 1984	—
285	16 Oct 1984	1 Nov 1984	R. 6

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Amendment history by the Commonwealth as at 1 July 1992—continued

Table of Statutory Rules—continued

Year and number	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
as amended by			
1984 No. 313	31 Oct 1984	31 Oct 1984	—
1984 No. 405	5 Dec 1984	5 Dec 1984	—
1985 No. 27	15 Mar 1985	15 Mar 1985	—
69	17 May 1985	17 May 1985	R. 3
1986 No. 8	31 Jan 1986	1 Feb 1986	—
26	28 Feb 1986	1 Mar 1986	R. 3 (2)
86	30 Apr 1986	1 May 1986	—
349	28 Nov 1986	1 Dec 1986	R. 3 (2)
1987 No. 67	1 May 1987	1 May 1987	R. 2 (2)
93	29 May 1987	1 June 1987	R. 3 (2)
219	30 Sept 1987	1 Oct 1987	R. 3 (2)
1988 No. 24	29 Feb 1988	1 Mar 1988	Rr. 3 (2) and 7
145	30 June 1988	1 July 1988	—
221	31 Aug 1988	31 Aug 1988	R. 2 (2)
257	31 Oct 1988	1 Nov 1988	—
331	8 Dec 1988	8 Dec 1988	R. 4
1989 No. 18	27 Feb 1989	1 Mar 1989	R. 3 (2)
30	6 Mar 1989	7 Mar 1989	—
191	4 July 1989	4 July 1989	—
273	19 Oct 1989	23 Oct 1989	—
1990 No. 2	25 Jan 1990	1 Feb 1990	—
129	25 June 1990	1 July 1990	—
372	30 Nov 1990	1 Dec 1990	R. 2
458	21 Dec 1990	1 Jan 1991	—
1991 No. 108	31 May 1991	1 June 1991	—
251	26 Aug 1991	1 Sept 1991	—
252	26 Aug 1991	1 Sept 1991	—
294	30 Sept 1991	1 Oct 1991	—
416	19 Dec 1991	1 Jan 1992	—
472	19 Dec 1991	1 Jan 1992	—
1992 No. 79	31 Mar 1992	1 Apr 1992	—
82	31 Mar 1992	1 Apr 1992	—

(*a*) Statutory Rules 1969 No. 57 were made under the *Australian Capital Territory Supreme Court Act 1933-1968* and the *Matrimonial Causes Act 1959-1966* of the Commonwealth.

(*b*) Statutory Rules 1973 No. 95 were made under the *Australian Capital Territory Supreme Court Act 1933-1971* and the *Matrimonial Causes Act 1959-1966* of the Commonwealth.

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