



Australian Capital Territory

# **Supreme Court Rules 1937**

**SL1937-85**

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## About this republication

### The republished law

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Australian Capital Territory

## SUPREME COURT RULES

In force under the *Supreme Court Act 1933*

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 1 February 1999

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Australian Capital Territory

## SUPREME COURT RULES

In force under the *Supreme Court Act 1933*

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

### PART 1—PRELIMINARY

#### ORDER 1

#### PRELIMINARY

**1. Citation**

These Rules may be cited as the *Supreme Court Rules*.<sup>1</sup>

**4.<sup>3</sup> Interpretation**

- (1)** In these Rules, unless the contrary intention appears—

“Act” means the *Supreme Court Act 1933*;

“action” means any proceeding other than a criminal proceeding or an appellate proceeding;

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

“Cause Book” means the Cause Book referred to in Order 2, rule 19;

“criminal proceeding” includes an application in relation to bail;

—ORDER 1—

“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”, in relation to a document, means to place the document on the Court file;

“motor vehicle” means a motor vehicle within the meaning of subsection 4 (1) of the *Motor Traffic Act 1936*;

“negligence”, in relation to an employer, means—

- (a) the negligence of the employer;
- (b) the negligence of another person for whose negligence the employer is liable; or
- (c) a breach of statutory duty by the employer or by another person for whose breach of statutory duty the employer is liable;

“originating application” means an application under Order 2 for the commencement of an action;

“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;

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—ORDER 1A—

“Registrar’s office”, “Registry” or “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 or her 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.

**5. General heading style—First Schedule Forms**

A document made out in accordance with a Form in the First Schedule shall be headed in the manner set out in Form 1 of that Schedule, unless otherwise indicated in the Form.

**PART 2—CIVIL JURISDICTION**

**ORDER 1A**

**APPLICATION OF PART**

**1. Application to jurisdictions generally**

This Part applies in relation to all proceedings in the Court in any of its jurisdictions other than the criminal jurisdiction except in so far as these Rules otherwise provide or the Court otherwise orders.

**ORDER 2**

**COMMENCEMENT OF ACTIONS**

***Division 1—Procedure on originating application***

**1. Commencement by originating application**

All actions shall be commenced by the filing of an originating application pursuant to this Order, unless otherwise provided by these Rules or any other law of the Territory.

**2. Date of commencement**

(1) Where an originating application is filed for the commencement of an action, the action commences on the date the application was first lodged for filing (whether or not it is renewed under Division 3).

(2) Where an action is commenced by oral application under subrule 3 (1), the action commences on the date of the oral application.

**3. Oral applications**

(1) An action may be commenced by oral application to the Court if the Court is satisfied that it is necessary to commence it in this way.

(2) Where an action is commenced by oral application, the plaintiff shall lodge an originating application in writing in the same terms as the oral application for filing pursuant to this Order as soon as practicable afterwards.

**4. Form of originating application**

(1) An originating application shall be in accordance with Form 2 in the First Schedule.

(2) An originating application shall identify the parties to the action.

(3) For the purposes of an originating application—

(a) the party claiming relief (including a relator) shall be referred to as the plaintiff; and

(b) any other party entitled to be heard shall be referred to as a defendant.

(4) An originating application shall include a statement of the following:

(a) if the plaintiff is a natural person—the full name and occupation of the plaintiff, together with his or her full residential or business address;

—ORDER 2—

- (b) if the plaintiff is a body corporate—the information specified under rule 5;
  - (c) if the plaintiff sues, or the defendant is sued, in a representative capacity—that capacity;
  - (d) if the plaintiff sues by a solicitor—
    - (i) the full name, address and telephone number of the solicitor; and
    - (ii) the full name, address and telephone number of any other solicitor acting as agent of the first-mentioned solicitor in relation to the action;
  - (e) in accordance with rule 6—an address for the service of documents related to the proceedings on the application;
  - (f) insofar as the plaintiff knows—
    - (i) if the defendant is a natural person—the full name and occupation of the defendant, together with his or her residential or business address;
    - (ii) if the plaintiff knows the defendant to be a natural person, but does not know the full name of the defendant—the sex of the defendant; and
    - (iii) if the defendant is a body corporate—the information specified under rule 5;
  - (g) the relevant time under rule 7 for the defendant to enter an appearance;
  - (h) the particulars of the action specified under rule 8;
  - (j) the particulars of the relief sought specified under rule 9.
- (5) An originating application shall be signed by the plaintiff, or by the plaintiff's solicitor.

**5. Corporate information**

(1) For the purposes of paragraph 4 (4) (b) and subparagraph 4 (4) (f) (iii), an originating application shall specify the following information about a body corporate:

- (a) if the body is a company—the company's Australian Company Number and the address of its registered office;

—ORDER 2—

- (b) if the body is a registered body within the meaning of the Corporations Law—the body’s Australian Registered Body Number and the address of its registered office in Australia;
  - (c) if the body is an association incorporated under the *Associations Incorporation Act 1991* or a corresponding law of a State or another Territory—the address of the association’s registered office or public officer;
  - (d) if the body is a building society or a foreign building society, within the meaning of the Financial Institutions (ACT) Code—the address of its registered office;
  - (e) if the body is a credit union or a foreign credit union, within the meaning of the Financial Institutions (ACT) Code—the address of its registered office;
  - (f) if the body is a society registered under the *Co-operative Societies Act 1939*—the address of the society’s registered office;
  - (g) if the body is a corporation within the meaning of the *Unit Titles Act 1970*—the address of the corporation.
- (2) In this rule—  
“Financial Institutions (ACT) Code” means the provisions applying because of section 8 of the *Financial Institutions (Application of Laws) Act 1992*.

**6. Address for service**

- (1) If a solicitor acts for a plaintiff, the address for service included in the originating application shall be—
- (a) if the place of business of the plaintiff’s solicitor is within the Territory—the address of that place; or
  - (b) in any other case—the address of a place within the Territory.
- (2) If a plaintiff sues in person, the address for service included in the originating application shall be—
- (a) if the plaintiff’s residence or place of business is within the Territory—the address of that residence or place; or
  - (b) in any other case—the address of a place within the Territory.



—ORDER 2—

- (3) An originating application may include in the address for service—
- (a) the number of an Australian Document Exchange Pty Ltd exchange box in the Territory; or
  - (b) a facsimile machine number.
- (4) The Registrar may refuse to file an originating application if the address for service included in the application is manifestly inconvenient for the defendant or for the Court, notwithstanding whether the address is otherwise in accordance with this rule.

**7. Time for appearance**

An originating application shall specify a time after service within which any defendant is required to enter an appearance, as follows:

- (a) if the *Service and Execution of Process Act 1992* of the Commonwealth applies—as provided under section 17 of that Act;
- (b) if leave is to be sought under Order 12 for the application to be served outside Australia—the time sought to be included in the relevant order under rule 6 of Order 12;
- (c) in any other case—8 days.

**8. Identification of action**

- (1) An originating application shall identify each cause of action sufficiently for the purposes of determining the relevant limitation period under the *Limitation Act 1985*, or under any other applicable law.
- (2) If relief is claimed under a law of the Territory (other than the common law) or a law of the Commonwealth, a State or another Territory, the originating application shall identify the relevant provision of the law.
- (3) The originating application in an action for defamation shall identify each relevant publication.
- (4) An originating application including a claim for the determination or direction of the Court on any question shall include a statement of the question.

**9. Identification of relief sought**

- (1) An originating application shall specify the relief claimed in respect of each cause of action.
- (2) An originating application shall specify any claim for exemplary damages.

—ORDER 2—

- (3) An originating application shall specify any claim for the taking of an account.
- (4) Costs need not be specifically claimed in an originating application.
- (5) A claim for interlocutory relief shall be specified separately in an originating application.
- (6) An originating application may state whether the plaintiff intends to apply for summary judgment.
- (7) An originating application shall state whether a statement of claim is attached.
- (8) If an action includes a claim for debt or a liquidated demand, a statement under rule 11 shall be attached to the originating application.
- (9) If an action includes a claim for damages for death or bodily injury arising out of the use of a motor vehicle, a statement under rule 12 shall be attached to the originating application.
- (10) If an action includes a claim for damages for death or bodily injury arising out of an employer's negligence, a statement under rule 13 shall be attached to the originating application.

**10. Statements of claim**

- (1) A statement of claim shall accompany an originating application in the case of the following claims:
  - (a) a claim for debt or a liquidated demand;
  - (b) a claim for damages in tort other than—
    - (i) a claim for damages for death or bodily injury arising out of the use of a motor vehicle; or
    - (ii) a claim for damages for death or bodily injury arising out of the negligence of an employer;
  - (c) a claim alleging fraud;
  - (d) a claim in respect of a trust (other than an express trust wholly in writing).
- (2) A statement of claim shall not accompany an originating application in the case of the following claims:
  - (a) a claim for damages for death or bodily injury arising out of the use of a motor vehicle;

—ORDER 2—

- (b) a claim for damages for death or bodily injury arising out of the negligence of an employer.
- (3) A statement of claim may accompany an originating application in any other case.

**11. Claims for debt and liquidated demands**

(1) An originating application which includes a claim for debt or a liquidated demand shall have attached a statement in accordance with Form 3 in the First Schedule—

- (a) of the amount of that debt or demand;
  - (b) if interest is claimed—
    - (i) of the rate of interest claimed to be payable as of right (whether by virtue of an agreement or otherwise); or
    - (ii) that the plaintiff applies for a specified order for interest (or a lump sum in lieu of interest) to be included in the sum for which judgment is given;
  - (c) whether taxed costs are claimed;
  - (d) if taxed costs are not claimed—of the amount claimed for costs and disbursements; and
  - (e) to the effect that proceedings on the claim will be stayed under Order 3 upon payment, within the time allowed for appearance, of the debt or demand, together with any amount allowed under that Order for interest and costs.
- (2) In this rule—
- “order”, in relation to a statement under subparagraph (1) (b) (ii), means—
- (a) an order under section 69 of the Act; or
  - (b) an order under another law specified in the statement.

**12. Motor vehicle personal injury claims**

An originating application which includes a claim for damages for death or bodily injury arising out of the use of a motor vehicle shall have attached a statement in accordance with Form 4 in the First Schedule of the following:

- (a) the time, date, place and circumstances of the use of the motor vehicle (including, where possible, the registration particulars of all vehicles involved);

—ORDER 2—

- (b) precise particulars of negligence;
- (c) the nature and extent of the injuries and disabilities resulting from the use of the motor vehicle, so far as is known, sufficient (where possible) to enable the defendant to nominate the type of expert required to examine the plaintiff;
- (d) the name of each health professional who has treated the plaintiff for such injuries and disabilities, and for any condition exacerbated by such an injury or disability;
- (e) the nature of any claim for past or future economic loss, so far as is known, including (where relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the use of the motor vehicle.

**13. Employment personal injury claims**

An originating application which includes a claim for damages for death or bodily injury arising out of an employer's negligence shall have attached a statement in accordance with Form 5 in the First Schedule of the following:

- (a) the time, date, place and circumstances of the negligence, including the acts or omissions constituting the negligence;
- (b) if the negligence was that of a person other than the defendant, for whose negligence the defendant is vicariously liable—particulars of the person, and particulars of the claim for vicarious liability;
- (c) if the cause of action is based upon a breach of statutory duty—particulars of the statutory provision and a precise statement of the acts or omissions constituting the breach;
- (d) the nature and extent of the injuries and disabilities resulting from the acts constituting the negligence, so far as is known, sufficient (where possible) to enable the defendant to nominate the type of expert required to examine the plaintiff;
- (e) the name of each health professional who has treated the plaintiff for such injuries and disabilities, and for any condition exacerbated by such an injury or disability;
- (f) the nature of any claim for past or future economic loss, so far as is known, including (where relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the acts constituting the negligence.

**14. Originating applications with no defendant**

- (1) An originating application in relation to which there is no defendant shall be accompanied by an affidavit setting out evidence in relation to the claim for relief.
- (2) On filing an originating application in relation to which there is no defendant, the Registrar shall provide a hearing date to the plaintiff.

**15. Notice to defendants**

Where there is a defendant to an action, the originating application shall include a statement to the effect that the action may be heard, and the defendant may become liable to suffer judgment or an order against the defendant, unless the defendant enters an appearance in the Registrar's office within the time specified in the application.

**16. Filing and sealing of originating applications**

- (1) On filing an originating application the Registrar shall seal the application and a sufficient number of copies for service and proof of service.
- (2) The Registrar shall ensure that each copy sealed under subrule (1) is endorsed with—
  - (a) the distinguishing number assigned to the relevant proceeding; and
  - (b) the date on which—
    - (i) the application was first lodged for filing; or
    - (ii) if the application was commenced orally—the oral application was made.

**17. Further sealed copies**

- (1) At the request of the plaintiff at any time after an originating application is filed, the Registrar may seal a further copy or copies of the application, if satisfied that it is necessary to do so.
- (2) The Registrar shall ensure that each copy sealed under subrule (1) is endorsed with—
  - (a) the distinguishing number assigned to the proceeding;
  - (b) the date on which—
    - (i) the application was first lodged for filing; or

—ORDER 2—

- (ii) if the application was commenced orally—the oral application was made; and
- (c) the time after service within which the defendant is required to enter an appearance.

**18. Authorisation for service**

If sealed under subrule 16 (1) or 17 (1), a copy of an originating application is duly authorised for the purpose of service under these Rules, or for any other purpose for which an originating application is required to be produced.

**19. Cause book**

- (1) The Registrar shall maintain a Cause Book for the purposes of these Rules.
- (2) The Cause Book may be maintained in electronic form.
- (3) The Cause Book shall be maintained in accordance with the directions of the Court.
- (4) The Registrar shall record in the Cause Book—
  - (a) the date, and a distinguishing number, of each originating application filed; and
  - (b) such other information about each originating application as the Registrar or the Court directs.

**20. Solicitor's declaration as to filing**

Where it appears from an originating application that the applicant sues by a solicitor—

- (a) on the written request of a defendant to the relevant action, the solicitor shall give the defendant a written declaration of whether the application was filed by him or her; and
- (b) if the solicitor declares that he or she did not file the application—on the application of the defendant, the Court may stay the proceeding.

**21. Directions hearings**

Where, under Order 13, a defendant enters an appearance to an originating application, the Registrar shall appoint a date for a directions hearing, except in the following cases:

- (a) a claim for debt or a liquidated demand;

- (b) a claim for damages for death or bodily injury;
- (c) an application for interpleader under Order 59.

**22. Interlocutory hearings**

(1) Where a directions hearing is appointed in relation to a claim in an originating application, any claim for interlocutory relief relevant to that claim and included in the application shall be set down for hearing at the time of the directions hearing, unless the Registrar considers that an earlier date should be set down for reasons of urgency.

(2) On the hearing of a claim for interlocutory relief, the action is to be taken to be before the Court for directions as on a directions hearing.

***Division 2—Duration and renewal  
of originating applications***

**23. Duration of originating applications**

An originating application remains in force for 6 months after it commences, subject to this Division.

**24. Renewal for good cause**

(1) If a defendant in an action is not served with the originating application, the plaintiff may apply for its renewal within 6 months after the action commences.

(2) If an originating application has been renewed or further renewed under this rule, and a defendant in the action is not served with the application, the plaintiff may apply for its further renewal within 3 months after the application is renewed or further renewed.

(3) On application under subrule (1) or (2), the Court may renew or further renew the originating application for such period, not exceeding 3 months, as it thinks fit, if satisfied that—

- (a) reasonable efforts have been made to locate the defendant; or
- (b) there is some other good cause for renewing or further renewing the originating application.

**25. Renewal to avoid statute-bar**

(1) If an action is entered into the List of Inactive Cases under rule 28 or 29, the plaintiff may apply for the renewal of the originating application at any time prior to its dismissal under rule 31 for want of prosecution.

—ORDER 2—

(2) On application under subrule (1), the Court shall renew or further renew the originating application for such period, not exceeding 3 months, as it thinks fit, if satisfied that—

- (a) the commencement of fresh proceedings in the same action would be statute-barred; and
- (b) there is good cause for such renewal or further renewal.

**26. Endorsement of renewal**

If the Court makes an order under this Division for the renewal (or further renewal) of an originating application, the application shall be—

- (a) endorsed in the following form:  
“Renewed under [rule 24 *or* rule 25 ] of Order 2 by order made on [date] by [Judge/Registrar]”; and
- (b) sealed by the Registrar.

***Division 3—Inactive cases***

**27. List of Inactive Cases**

- (1) The Registrar shall maintain a List of Inactive Cases.
- (2) The List of Inactive Cases may be maintained in electronic form.

**28. Entry on List—7 months after commencement of action**

(1) The Registrar shall enter an action in the List of Inactive Cases 7 months after the date of its commencement, where—

- (a) no application has been made for renewal under Division 2, or such an application has been refused;
- (b) no appearance has been entered for any defendant; and
- (c) the plaintiff has not applied to the Court to proceed upon default of appearance under Order 14.

(2) If paragraphs (1) (a), (b) and (c) apply to an action 6 months after the date of its commencement, the Registrar shall give notice to the plaintiff of his or her intention to enter the action in the List of Inactive Cases if those paragraphs continue to apply to the action 7 months after the date of its commencement.

(3) The Registrar shall enter an action in the List of Inactive Cases if—

- (a) an application is made for renewal within 7 months after the date of commencement of the action;



—ORDER 2—

- (b) the application is refused after that period has elapsed; and
- (c) at the time of refusal—
  - (i) no appearance had been entered for any defendant; and
  - (ii) the plaintiff had not applied to the Court to proceed upon default of appearance under Order 14.

**29. Entry on List—4 months after renewal of originating application**

(1) If an originating application is renewed, the Registrar shall enter the action in the List of Inactive Cases 4 months after the date of renewal, where—

- (a) no application has been made for its further renewal under Division 2, or such an application has been refused;
- (b) no appearance has been entered for any defendant; and
- (c) the plaintiff has not applied to the Court to proceed upon default of appearance under Order 14.

(2) If paragraphs (1) (a), (b) and (c) apply to an action 3 months after the date of its renewal, the Registrar shall give notice to the plaintiff of his or her intention to enter the action in the List of Inactive Cases if those paragraphs continue to apply to the action 4 months after the date of its renewal.

(3) The Registrar shall enter an action in the List of Inactive Cases if—

- (a) the originating application is renewed under Division 2;
- (b) an application for further renewal is made within 4 months after the date of that renewal;
- (c) the application for further renewal is refused after that period has elapsed; and
- (d) at the time of refusal—
  - (i) no appearance had been entered for any defendant; and
  - (ii) the plaintiff had not applied to the Court to proceed upon default of appearance under Order 14.

(4) In this rule—

“renewal” includes further renewal.

**30. Removal from List**

The Registrar shall remove an action from the List of Inactive Cases if, within 2 months after the date of its entry on the List—

*Supreme Court Rules*

**—ORDER 3—**

- (a) the originating application is renewed under rule 25;
- (b) an appearance is filed by the defendant;
- (c) the plaintiff applies successfully to the Court to proceed upon default of appearance under Order 14; or
- (d) the Court orders its removal.

**31. Dismissal of action following entry on List**

- (1) If an action remains on the List of Inactive Cases 2 months after the date of its entry on the List, the action is to be taken to be dismissed for want of prosecution.
- (2) If an action is taken to be dismissed under subrule (1)—
  - (a) that dismissal is no bar to the commencement of fresh proceedings in the same action by the plaintiff; and
  - (b) the Court may reinstate the action in special circumstances.

***Division 4—Evidence***

**32. Sealing of originating applications**

- (1) The production of an originating application bearing the imprint of the seal of the Court under rule 16 or 17 is sufficient evidence of—
  - (a) the sealing of the application on the date indicated on the imprint; and
  - (b) the application's being first lodged for filing, or the making of the application orally, as the case may be, on the date endorsed on the application.
- (2) The production of an originating application bearing the imprint of the seal of the Court under rule 26 is sufficient evidence of the sealing and renewal of the application on the date indicated on the imprint.

**ORDER 3**

**UNCONTESTED ACTIONS—  
DEBTS AND LIQUIDATED DEMANDS**

- 1. Payment of amounts claimed in originating applications**  
Where—

*Supreme Court Rules*

—ORDER 3—

- (a) an originating application consists solely of a claim for debt or a liquidated demand;
- (b) the application includes a statement under rule 11 of Order 2; and
- (c) the defendant pays the plaintiff the amount claimed, together with any amounts specified for interest and costs, within the time allowed for appearance;

all further proceedings in the action shall be stayed except taxation of costs and execution to recover costs.

**2. Taxation of costs**

Where rule 1 applies, the defendant may require costs to be taxed if—

- (a) more than \$625 is claimed in the originating application for costs and disbursements;
- (b) the plaintiff claims taxed costs; or
- (c) the action could properly have been brought in the Magistrates Court.

**3. Taxation of costs—judgment in default of appearance**

**(1)** This rule applies where—

- (a) an originating application that is issued on or after 1 January 1998 consists solely of a claim for debt or a liquidated demand;
- (b) the application includes a statement under rule 11 of Order 2; and
- (c) judgment is entered against the defendant in default of appearance.

**(2)** Where this rule applies—

- (a) subject to rule 7A of Order 65, costs shall be allowed without taxation of not more than \$697 for costs and disbursements, together with an additional amount for fees properly paid for service of the application; and
- (b) a claim for more than \$697 for costs and disbursements (other than service fees) shall be subject to taxation.

**(3)** Rule 3 of this Order as in effect immediately before the commencement of this rule continues to apply in respect of an originating application issued before 1 January 1998.

**ORDER 8**

**REPRESENTATION BY SOLICITORS**

**1. Right of proceeding in Court**

- (1) A person may proceed in Court by solicitor or in person, subject to this rule.
- (2) A person under a disability shall proceed by a solicitor.
- (3) A corporation shall proceed in the Court by a solicitor unless the Court grants leave for an officer of the corporation to represent the corporation.
- (4) A relator shall proceed by a solicitor.
- (5) A solicitor shall act for a relator only if the relator has given the solicitor written authority to act in the proceedings, and the authority is filed in the Court.

**2. Notice of change of solicitor**

- (1) A party suing or defending by a solicitor shall, subject to Order 19, rule 34, be at liberty to change his or her 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 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.

**3. Notice of appointment of solicitor**

Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter, on his or her behalf, he or she may, either personally or by his or her 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.

**4. Notice of intention to act in person**

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

**5. Removal of solicitor from the record**

(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 or her 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 or her 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 or she acted as between themselves.

**6. Withdrawal of solicitor from the record**

(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 this Order, the solicitor may, on notice served on the party personally or by registered letter addressed to his or her 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.

(1A) Unless and until the solicitor has complied with paragraph (2) (a) he or she shall (subject to rules 2 and 5) be deemed to be the solicitor of the party.

(2) If an order is made under subrule (1)—

—ORDER 10—

- (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 or her 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 or she acted as between themselves.

**7. Address for service**

Rule 6 of Order 2 applies in relation to an address for service referred to in this Order.

**8. Solicitor not to act for adverse parties**

A solicitor shall not act in any cause or matter for plaintiff and defendant, or for any 2 or more defendants having adverse interests in a cause or matter.

**ORDER 10**

**SERVICE**

**1. Acceptance of service of originating application by defendant's solicitor**

Where the solicitor for a defendant endorses on the originating application a statement that the solicitor—

- (a) accepts service of the application on behalf of the defendant; and
- (b) undertakes to enter an appearance to the action;

the application is to be taken to be duly served on the defendant at the time of the endorsement.

**2. Entry of appearance as sufficient proof of service**

Where an appearance to an action has been entered for a defendant, the originating application is to be taken to have been duly served on the defendant on the day of the appearance, without any proof of service of the application.

**2A. Personal service of applications**

An originating application shall be served personally unless otherwise prescribed by a law of the Territory.

**2B. Meaning of “personal service”**

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.

**3. On husband and wife**

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

**4. Infant defendant**

Service on an infant defendant may be effected by service—

- (a) on a parent or guardian of the infant;
- (b) if an infant has neither parent nor guardian—on a person who is responsible for the care of the infant, or with whom the infant resides;  
or
- (c) if the Court so orders—on the infant;

unless the Court orders otherwise.

**5. Defendant otherwise under a disability**

Service on a defendant under a disability, other than an infant, may be effected by service—

- (a) on a person who is responsible for the care of the defendant; or
- (b) on a person with whom the defendant resides;

unless the Court orders otherwise.

**6. Service on corporation**

**(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—

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—ORDER 10—

- (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
  - (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 1 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 (“Corporations Law”), in any manner permitted by section 220 of the Corporations Law;



—ORDER 10—

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

**7. Application to recover vacant land**

Service of an originating application 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 application upon the door of the dwelling-house or other conspicuous part of the property.

**8. Plaintiff unable to be found**

If a plaintiff sues in person, and no person is able to be found at the address for service specified by the plaintiff in the originating application, any process in the action may be served on the plaintiff by leaving a copy at that address.

**9. Non-personal service**

- (1) If personal service of a document in an action is not required, the document may be served—
- (a) by leaving a copy at the proper address of the person to be served;
  - (b) by sending a copy by pre-paid post addressed to the person to be served at his or her proper address;
  - (c) if the address for service of the person to be served includes a reference to the number of an Australian Document Exchange Pty Ltd exchange box—by leaving a copy of the document addressed to that person in that exchange box or at a collection point of that company for transmission to that exchange box; or

—ORDER 11—

- (d) if the address for service of the person to be served includes a reference to a facsimile machine number—by facsimile transmission directed to that number.
- (2) Service of a document in an action shall be deemed to have been effected—
- (a) if a copy was sent by pre-paid post in accordance with paragraph (1) (b)—3 days after it was posted;
  - (b) if a copy was left in an exchange box or at a collection point in accordance with paragraph (1) (c)—2 days after it was left; or
  - (c) if it was transmitted in accordance with paragraph (1) (d)—1 day after it was transmitted;
- unless the contrary is proved.
- (3) In subrule (1)—
- “proper address”, in relation to a person to be served with a document, means—
- (a) if the person has an address for service—that address; or
  - (b) if the person does not have an address for service—the address of the person’s last known place of residence or business.

**ORDER 11**

**SUBSTITUTED SERVICE**

**1.<sup>3</sup> Substituted service**

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.

**2. Application for order**

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

**SERVICE UNDER THE HAGUE CONVENTION**

**1-9.<sup>3</sup>**       \*                   \*                   \*                   \*                   \*                   \*

**ORDER 12**

**SERVICE OUT OF THE COMMONWEALTH<sup>3</sup>**

**1.<sup>3</sup>       Application of Order**

             \*                   \*                   \*                   \*                   \*                   \*

**2.       Jurisdictional criteria**

On application under rule 4, the Court may allow service of an originating application outside the Commonwealth if—

- (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 or her 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 its terms, ought to be performed within the Territory; or
  - (ii) on a tort committed within the Territory;

—ORDER 12—

- (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; 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.

**3. Jurisdiction by consent**

(1) Notwithstanding anything contained in rule 2, 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
- (b) that service of an originating application in such an 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 an originating application in accordance with paragraph (1) (b) is to be taken to be good and effective service wherever the relevant parties are resident.

(3) Where paragraph (1) (a) applies in relation to an action, in the absence of an agreement about service under paragraph (1) (b), on application under rule 4 the Court may allow service of an originating application in that action out of the Commonwealth.

**4. Application for leave**

An application for leave to serve an originating application 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; and
- (d) stating the grounds upon which the application is made.

**6. Time for appearance**

An order for the service of an originating application out of the Commonwealth shall limit a time after such service within which the defendant is to enter an appearance, and in fixing that time the Court shall have regard to the place where the application is to be served.

**9. Application of Order to other originating process**

This Order applies, with necessary changes, to the service outside the Commonwealth of any originating process of the Court other than an originating application.

**10.<sup>3</sup> Service where a Convention applies**

(1) Where leave is given in a civil or commercial cause or matter to serve a document in any foreign country with which a Convention in that behalf has been or is made and extended to the Commonwealth, the procedure set out in this rule shall, subject to any special provisions contained in the Convention, be adopted.

(2) 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.

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

(4) 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 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.

—ORDER 12—

(5) 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.

**11.<sup>3</sup> Letters of Request**

(1) Where in connection 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 procedure set out in this rule shall, subject to any special provisions contained in the Convention, be adopted.

(2) The service shall be effected by such person as the Judge from time to time appoints for that purpose, or by the authorised 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 a copy of an English translation thereof, in accordance with the provisions of these Rules regulating the service of process.

(3) 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.

(4) The Registrar shall transmit to the Attorney-General of the Commonwealth 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 subrule (3).

**12.<sup>3</sup> Consequential orders**

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

**ORDER 13**

**APPEARANCE**

**1. Entry of appearance**

A defendant in an action shall not take any step in the action, except under rule 17, before entering an appearance.

**2. Mode of appearance**

**(1)** The defendant in an action shall enter an appearance by giving the Registrar a memorandum in duplicate in accordance with Form 9 in the First Schedule, dated on the day on which it is given, and stating—

- (a) whether the defendant is represented by a solicitor;
- (b) if the defendant is represented by a solicitor—the name of the solicitor;
- (c) in accordance with rule 4—an address for the service of documents related to the proceedings in the action; and
- (d) if any particulars of the defendant stated in the originating application are incorrect—the correct particulars.

**(1A)** The Registrar shall seal the duplicate of the memorandum with a seal bearing the words “Appearance Entered” and the date of the appearance, and return the duplicate to the person entering the appearance.

**(1B)** The sealed duplicate of the memorandum is evidence 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.

**3. Notice of appearance**

A defendant shall, on the day of entering an appearance, serve the sealed duplicate of the memorandum of appearance on the plaintiff at the plaintiff's address for service.

**4. Defendant's address for service**

(1) If a solicitor appears for a defendant, the address for service included in the memorandum of appearance shall be—

- (a) if any other solicitor who has a place of business in the Territory is acting as agent of the first-mentioned solicitor in relation to the action—the address of that place; or
- (b) in any other case—the address of the solicitor's place of business in Australia.

(2) If a defendant appears in person, the address for service included in the memorandum of appearance shall be—

- (a) if the defendant's residence or place of business is within Australia—the address of that residence or place; or
- (b) in any other case—the address of a place within Australia.

(3) A memorandum of appearance may include in the address for service—

- (a) the number of an Australian Document Exchange Pty Ltd exchange box in the Territory; or
- (b) a facsimile machine number.

(4) The Registrar may refuse to file a memorandum of appearance if the address for service included in the memorandum is manifestly inconvenient for



the plaintiff or for the Court, notwithstanding whether the address is otherwise in accordance with this rule.

**6. Defective address**

If the memorandum does not contain an address for service in accordance with rule 4 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.

**8. Entry in Cause Book**

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

**9. Several defendants**

If 2 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 a single memorandum.

**10. Appearance not entered on undertaking**

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

**11. Late appearances**

- (1) A defendant may appear at any time before final judgment.
- (2) If a defendant enters an appearance after the time specified for appearance in the originating application, the defendant is not entitled to any additional time for delivering a defence, or for any other purpose, unless the Court otherwise orders.

**12. Actions for the recovery of land—appearance by person not named in the application**

- (1) On the filing of an affidavit under subrule (2), the Court may grant leave, in an action for the recovery of land, for a person in possession of the land to enter an appearance and defend, although the person is not named as a defendant in the plaintiff's originating application.
- (2) For the purposes of subrule (1), an affidavit by the person seeking to appear in the action shall be filed stating the capacity in which the person is in possession of the land.
- (3) Where a Court grants leave under subrule (1) to a person to appear in an action—

—ORDER 13—

- (a) the person is required to enter an appearance under this Order, and to give notice accordingly to the plaintiff, as if the person had been named as a defendant in the action; and
- (b) in all subsequent proceedings in the action, the person is to be taken to be a defendant to the action.

**13. Actions for recovery of land—appearances by persons not in possession**

In an action for the recovery of land, the Court may strike out or confine an appearance or defence by a person who is not in possession of the land in his or her own right or by a tenant.

**14. Actions for recovery of land—statement of landlord’s interest**

Where a person appearing to defend an action for the recovery of land does so in the capacity of landlord, the memorandum of appearance shall include a statement to that effect.

**15. Actions for recovery of land—limitation of defence to part of land**

- (1) A person appearing to defend an action for the recovery of land may limit the defence to part only of the property specified in the originating application, in accordance with this rule.
- (2) In the memorandum of appearance, the defendant shall describe with reasonable certainty the part of the property to which the defence is limited.
- (3) Unless a defence to an action for the recovery of land is limited in accordance with this rule, the defendant’s appearance is to be taken to be an appearance to defend for the whole of the land.

**17. Setting aside originating process etc.**

- (1) On application by a defendant to an originating application, the Court may, by order—
  - (a) set aside the originating application;
  - (b) set aside the service of the originating application on the defendant;
  - (c) declare that the originating application has not been duly served on the defendant;
  - (d) discharge an order giving leave to serve the originating application outside the Territory or confirming service of the originating application outside the Territory;

—ORDER 13—

- (e) discharge an order extending the validity for service of the originating application;
  - (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 an application for an order under subrule (1) is made by a defendant on whom the originating application was served outside Australia, the Court may make the order on the ground that—
- (a) the service of the originating application is not authorised by these Rules; or
  - (b) the Court is an inappropriate forum for the proceedings.
- (3) An application for an order under subrule (1) shall be by notice of motion—
- (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 for an order under subrule (1) 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<sup>3</sup>**

**1. Interpretation—time for appearance**

In this Order, a reference to a failure to enter an appearance to an originating application is to be taken to be a reference to a failure to enter such an appearance within the time specified in the application.

**2. Affidavit of service**

Before taking out proceedings under this Order upon default of appearance, the plaintiff shall file an affidavit of service of the originating application.

**3. Default by defendant under a disability**

(1) This rule applies where no appearance is entered to an originating application for a defendant who is under a disability.

(2) Where this rule applies, the plaintiff shall not proceed with the action unless the Court assigns a guardian by whom the defendant may appear and defend the action.

(3) On the application of the plaintiff, the Court may appoint a guardian for a defendant if—

(a) the originating application was served under rule 4 or 5 (as the case requires) of Order 10; and

(b) after the time has expired for the entry of an appearance to the originating application, notice of the application for the appointment of a guardian has been served under rule 4 or 5 (as the case requires) of Order 10 at least 6 days before the date set down for hearing the application for the appointment of a guardian.

(4) The Court may dispense with the requirement under paragraph (3) (b) at the time of hearing an application for the appointment of a guardian for a defendant.

**4. Claims for debt and liquidated demands—final judgment**

(1) Where an originating application includes a claim for debt or a liquidated demand, the plaintiff may enter final judgment in respect of that claim against any defendant not appearing to the application.

—ORDER 14—

- (2) Final judgment under subrule (1) may be entered for—
- (a) any sum not exceeding the amount specified in the application;
  - (b) interest—
    - (i) at the rate specified in the application to the date of judgment; or
    - (ii) if no interest is specified in the application—interest to the date of judgment, or a lump sum in lieu of such interest, determined by the Court; and
  - (c) costs.
- (3) In determining interest or a lump sum for the purposes of paragraph (2) (b), the Court may have regard to Practice Directions issued by the Court relating to interest up to judgment.
- (4) Where this rule applies, the plaintiff may proceed with the action in respect of a claim for debt or a liquidated demand against any defendant appearing to the application.

**5. Claims for pecuniary damages or for the detention of goods—  
interlocutory judgment**

- (1) Where an originating application includes a claim for pecuniary damages or for the detention of goods, or both, the plaintiff may enter interlocutory judgment for damages, or for the value of the goods to be assessed, in respect of that claim against any defendant not appearing to the application.
- (2) Where this rule applies, the plaintiff may proceed with the action in respect of a claim for pecuniary damages or for the detention of goods against any defendant appearing to the application.

**7A. Trial of action after entry of interlocutory judgment**

Upon the entry of interlocutory judgment under these Rules, 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.

—ORDER 14A—

**8. Possession of land where no appearance**

In case no appearance is entered in an action for the recovery of land, or if an appearance is entered but the defence is limited to part only, the plaintiff may enter a judgment that the person whose title is asserted in the originating application shall recover possession of the land, or of the part thereof to which the defence does not apply.

**9. Recovery of land—mesne profits, damages etc.**

In an action for the recovery of land, where the originating application includes a claim for mesne profits, arrears of rent, double value, damages for breach of contract or wrong or injury to premises, the plaintiff may enter judgment in accordance with rule 8, and sign interlocutory judgment in respect of that claim.

**10. Judgment may be set aside or varied**

Where judgment is entered pursuant to rules 1 to 9 (inclusive), the Court may set aside or vary such judgment upon such terms as are just.

**11. Default of appearance in other cases**

Unless otherwise provided for by this Order, if a defendant does not appear to an originating application, the action may proceed as if the defendant had appeared, subject to Order 18.

**ORDER 14A<sup>3</sup>**

**JUDGMENT IN DEFAULT OF APPEARANCE WHERE  
ORIGINATING PROCESS IS SERVED UNDER THE HAGUE  
CONVENTION**

**1-8.<sup>3</sup>**       \*                       \*                       \*                       \*                       \*

**ORDER 15**

**SUMMARY JUDGMENT UPON STATEMENT OF CLAIM**

**1A. Application of Order**

This Order applies where—

- (a) an originating application is accompanied by a statement of claim; and
- (b) the defendant enters an appearance to the application.

**1. Summary Judgment**

**(1)** Where this Order applies, the plaintiff may apply to the Court for leave to enter judgment whether or not a defence has been delivered.

**(2)** An application under subrule (1) shall be accompanied by—

- (a) the originating application; and
- (b) an affidavit or affidavits which—
  - (i) verify the cause of action;
  - (ii) in the case of a claim for debt or a liquidated demand—verify the amount claimed; and
  - (iii) state that in the belief of the deponent there is no defence to the action except (if relevant) as to the amount of damages claimed.

**(3)** A deponent to an affidavit referred to in paragraph (2) (b) who includes in it an item of hearsay evidence shall—

- (a) adduce evidence of the source of the information; and
- (b) state that the deponent believes the information.

**(3A)** On an application under this rule, the Court may make such order for the entry of judgment as it considers just having regard to the nature of the remedy or relief claimed, unless the Court is satisfied that—

- (a) there is a good defence to the action on the merits;
- (b) sufficient facts are disclosed to entitle the defendant to defend the action generally; or
- (c) subrule (3B) applies.

**(3B)** On an application under this rule, if the Court considers that a statement of claim in relation to a particular claim should not (by virtue of subrule 10 (2) of Order 2) have been attached to the originating application, the Court may—

- (a) amend the originating application to strike out that claim; and
- (b) allow the action to proceed in respect of the remainder of the originating application, subject to these Rules.

**—ORDER 15—**

(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 Court 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.

**2. Application by motion on notice**

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.

**3. Defence**

(1) The defendant may show cause against an application under rule 1—

- (a) by affidavit;
- (b) if the statement of claim relates only to a claim for a debt or liquidated damages—by offering to pay into Court the total amount claimed; or
- (c) with leave of the Court—by the examination on oath of the defendant or any other person.

(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) For the purpose of hearing an application under rule 1, the Court may 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.

**4. Summary judgment for part of claim**

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 or her claim is admitted, the plaintiff shall have judgment forthwith for such part of his or her 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 Court thinks fit, and the defendant may be allowed to defend as to the residue of the plaintiff's claim.



**5. Multiple defendants**

If it appears to the Court 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 or her right to proceed with his or her action against the former defendant.

**6. Leave on terms**

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 Court thinks fit.

**7. Summary disposal**

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

**9. Directions as to trial**

(1) Where leave, whether conditional or unconditional, is given to defend, the Court 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, this rule applies to the counter-claim as if it were an action.

**11. Relief from forfeiture**

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**

**1A. Application of Order**

This Order applies where—

- (a) an originating application includes a claim for specific performance of a written contract for the sale or purchase of property (or any estate or interest in property); and
- (b) the defendant enters an appearance to the application.

**1. Summary Judgment**

(1) Where this Order applies, the plaintiff may apply to the Court for an order for specific performance of the contract and for any necessary consequential orders.

(2) An application under subrule (1) shall be accompanied by—

- (a) the originating application; and
- (b) an affidavit or affidavits which—
  - (i) verify the cause of action; and
  - (ii) state that in the belief of the deponent there is no defence to the action except (if relevant) as to the amount of damages claimed.

(3) A deponent to an affidavit referred to in paragraph (2) (b) who includes in it an item of hearsay evidence shall—

- (a) adduce evidence of the source of the information; and
- (b) state that the deponent believes the information.

(4) On an application under this rule, the Court may make such order for the entry of judgment as it considers just, unless the Court is satisfied that—

- (a) there is a good defence to the action on the merits; or
- (b) sufficient facts are disclosed to entitle the defendant to defend the action generally.

**2. Application by motion on notice**

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

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

—ORDER 17—

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

**3. Defence**

- (1)** The defendant may show cause against an application under rule 1—

- (a) by affidavit; or
- (b) with leave of the Court—by the examination on oath of the defendant or any other person.

- (2)** For the purpose of hearing an application under rule 1, the Court may 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.

**4. Leave on terms**

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 Court thinks fit.

**5. Summary disposal**

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

**6. Directions as to trial**

Where leave, whether conditional or unconditional, is given, the Court 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 17**

**SUMMARY JUDGMENT BY DEFENDANT**

**1. Summary judgment**

- (1)** Within 10 days after entering an appearance to an originating application, or at any later time by leave of the Court, a defendant may apply to the Court for summary judgment.

—ORDER 18—

(2) On an application under this rule, the Court may make an order under subrule (3) if satisfied that—

- (a) the action is frivolous or vexatious;
- (b) there is a good defence to the action on the merits; or
- (c) the action should be finally disposed of summarily, or without pleadings.

(3) On an application under this rule, the Court may—

- (a) order that judgment be entered for the defendant with or without costs;
- (b) order that the plaintiff shall proceed to trial without pleadings; or
- (c) if all parties consent—make an order disposing of the action finally, without appeal, in a summary manner.

**2. Defence by plaintiff**

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

(2) For the purpose of hearing an application under rule 1, the Court may 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.

**3. Directions**

If the Court directs that the action shall proceed to trial, the Court 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**

**1. Order for accounts**

The Court shall make an order for proper accounts, with all necessary inquiries and directions, if—

- (a) an originating application specifies that an account is to be taken; and

- (b) the defendant—
  - (i) fails to appear; or
  - (ii) at a directions hearing or otherwise, fails to satisfy the Court that there is any preliminary question to be tried.

## **ORDER 19**

### **PARTIES**

#### ***1 Generally***

#### **1. Persons claiming jointly, severally, or in the alternative may be plaintiffs**

(1) All persons may be joined in the same 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.

(1A) 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 any of the plaintiffs as are found to be entitled to relief, for such relief as he or she 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.

#### **2. No other action to be brought for same claim**

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.

**3. Plaintiffs may be substituted or added**

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.

**4. Counter-claim or set-off in case of misjoinder**

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 or she may obtain the benefit thereof by establishing his or her 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.

**5. Defendants may be sued jointly, severally, or in the alternative**

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 any of the defendants as are found to be liable according to their respective liabilities, without any amendment.

**6. Defendant having only partial interest**

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 or her, 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 or she has no interest.

**7. Plaintiff may join parties jointly and severally liable**

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

**8. Plaintiff in doubt may join defendants for alternative redress**

Where the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may, in such manner as is mentioned in this order or as is prescribed by any special order, join 2 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.

**9. Trustees, executors, and representative parties**

(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.

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

**10. Where parties are numerous**

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

**11. Power to approve compromise in absence of some of the persons interested**

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.

**12. Amendment on misjoinder of parties**

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

—ORDER 19—

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 or her consent in writing thereto. Every party whose name is so added as defendant shall be served with an originating application 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 application.

**13. Application as to parties**

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.

**14. Change of parties—amendment of application**

Where a defendant is added or substituted the plaintiff shall, unless otherwise ordered by the Court, file an amended copy of the originating application and serve the new defendant with the application in the same manner as original defendants are served.

**15. Probate actions**

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 1 November 1875, shall apply.

**15A. Title of proceedings after change of parties**

(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**

**16. Infants**

(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.

**17. Lunatics and persons of unsound mind**

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.

**18. Appearance of infant**

An infant shall not enter an appearance except by his or her guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance shall make and file an affidavit in accordance with Form 11 in the First Schedule.

**19. Guardian *ad litem* in petitions etc.**

Every infant served with a petition or notice of motion or summons in a matter shall appear on the hearing 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 or she appears shall previously make and file an affidavit as in rule 18.

**20. Written authority of next friend or relator**

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.

**21. Consent on behalf of infants etc.**

(1) 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.

(2) No such consent by any committee of a lunatic shall be valid as between him or her and the lunatic unless given with the sanction of the Court.

**4 Administration and Execution of Trusts**

**37. Heir-at-law, next of kin, class**

(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 a 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.

**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 a person or 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.

**38. Residuary legatees or next of kin**

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.

**39. Legatees where legacy charged on real estate**

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.

**40. Residuary devisee**

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.

**41. *Cestuis que trustent***

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*.

**42. Waste**

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

**43. Executors etc.**

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

**44. Conduct of action**

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 the Court thinks fit, and may make such order in any particular case as the Court 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 or her in the matters in question.

**45. Notice of judgment to be given**

(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 1 month after such service, apply to the Court to discharge, vary, or add to the judgment or order.

**46. Order to attend unnecessary**

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.

**47. Entry of memorandum of service**

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.

**48. Notice of judgment**

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

**49. Service of notice on infant etc.**

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 an originating application.

**50. Heir-at-law not necessary party**

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 or she desires to have the will established against him or her.

**51. Procedure where no personal representative**

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 or her 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.

**52. Parties to administration proceedings**

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 or she thinks fit.

**ORDER 20**

**THIRD PARTY PROCEDURE**

**1. Third Party Claim and Form**

**(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 or she is entitled to contribution or indemnity;
- (b) that he or she 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
- (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 2 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.

**—ORDER 20—**

(4) At the time of the service of the third party claim, the defendant shall serve upon the third party a copy of the originating application and of any pleadings.

(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.

**2. Issuing of claim**

(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.

**3. Service of claim**

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 an originating application 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.

**4. Rights of Third Party in action**

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

**5. Time for appearance**

The time for appearance by a third party after service of the third party claim shall be as provided by rule 7 of Order 2 as if the claim were an originating application.

**6. Appearances**

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

**7. Defence and pleadings after service**

(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 or her defence within 14 days after the expiration of the time limited for his or her 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.

**8. Procedure on default before trial**

(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 or she 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 or her 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.

(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 (1) (b) or subrule (2) on such terms, if any, as it or he or she thinks fit.

**9. Procedure on trial**

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

- (a) the third party, if he or she 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.

**10. Judgment on third party claim**

(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.

**11. Costs**

The Court may decide all questions of costs as between a third party and other parties to the action, and may order any 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.

**12. Fourth and subsequent parties**

(1) A third party may make a claim of the nature referred to in rule 1 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, this Order shall apply *mutatis mutandis* as if the third party were a defendant and the other party were a third party.

(2) A fourth party against whom a claim is made under subrule (1) may similarly make a claim against a person not already a party to the action, and so on, successively.



**13. Service of pleadings**

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.

**14. Counter-claims**

Where, in an action, a counter-claim is made by a defendant, 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.

**15. Co-defendants**

(1) Where a defendant claims against another defendant—

- (a) that he or she is entitled to contribution or indemnity; or
- (b) that he or she 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 2 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.

—ORDER 21—

- (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.**

**1. No abatement by marriage etc.**

- (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.

**2. Parties may be added**

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, 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.

**3. Transfer of estate *pendente lite***

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.

**4. Party added by order on change of interest**

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

**5. Service of order**

An order obtained as mentioned in rule 4 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 or herself the only new party, and the order shall from the time of such service, subject nevertheless to rules 6 and 7, 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 or she had been served with an originating application.

**6. Discharge or variation of order**

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, such person may apply to the Court to discharge or vary such order at any time within 12 days from the service.

**7. Person under disability**

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, such person may, at any time within 12 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 12 days has expired, such order shall have no force or effect as against such last-mentioned person.

—ORDER 22—

**8. Death of party and failure to proceed**

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.

**9. Abatement to be certified and entered**

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 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.

**10. Abated cause to be struck out**

Where any cause or matter has been standing for 1 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**

**1. Joinder of several causes**

Subject to 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.

**3. Claims by trustee in insolvency**

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

**4. Husband and wife**

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

**5. Executors**

Claims by or against an executor or administrator as such may be joined with claims by or against him or her 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.

**6. Joint and separate claims**

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

**7. Subject to rules 1, 8 and 9**

Rules 4, 5 and 6 shall be subject to rules 1, 8 and 9.

**8. Application of defendant to confine action**

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.

**9. Judge may exclude causes inconvenient to be joined**

If, on the hearing of such an application as is mentioned in rule 8, 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**

**1. Pleading rules**

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

**2. Pleadings and particulars not to be prolix**

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.

**3. Set-off or counter-claim**

(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 or herself thereof.

**4. Statements in pleadings**

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 or her 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.

**4A. Name of settling counsel to be included in pleadings**

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”.

**5. Forms of pleading**

(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.

**6. Particulars in pleading**

(1) 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 rule 5, particulars (with dates and items if necessary) shall be stated in the pleading.

(2) If the particulars are of debt, expenses, or damages, and exceed 3 folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

**7. Further statement or particulars**

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.

**8. Letter for particulars**

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.

**9. Time for pleading after particulars**

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 or she 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.

**10. Pleadings to be in writing**

Every pleading shall be in writing.

**11. Delivery and marking of pleadings**

- (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 or she does not act by a solicitor.
- (3) Subrule (1) 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.

**12. Mode of delivery**

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 or she does not appear by a solicitor.

**13. Allegations not denied, admitted except against infants etc.**

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.

**14. Conditions precedent**

Any condition precedent the performance or occurrence of which is intended to be contested shall be distinctly specified in his or her 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 or her pleading.

**15. Special matters to be pleaded**

When there are pleadings, the defendant or plaintiff (as the case may be) must raise by his or her 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.



**16. No departure**

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.

**17. Denial of allegations to be specific**

It shall not be sufficient for a defendant in his or her statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his or her 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 or she does not admit the truth, except damages.

**19. Denial to be substantial answer**

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

**20. Effect of denial of contract**

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.

**21. Contents of document**

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.

**23. Of notice**

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.

**24. Of implied contract or relation**

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 or she may state the same in the alternative.

**25. Presumptions of law**

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

**26. Actions for trespass**

(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 *Land Titles Act 1925*, the reference to the certificate of title in which the land is comprised shall be specified.

**27. Technical objection**

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

**28. Striking out scandals and matters tending to embarrass or delay**

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 or she thinks fit, order the costs of the application to be paid as between solicitor and client.

**ORDER 24**

**STATEMENT OF CLAIM**

**2. Probate actions**

In Probate actions the plaintiff shall, unless otherwise ordered by the Court, deliver his or her statement of claim within 6 weeks from the entry of appearance by the defendant, or from the time limited for his or her appearance, in case he or she has made default, but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of 8 days after the defendant has filed his or her affidavit as to scripts.

**3. Alteration of claim without amendment of writ**

Whenever a statement of claim is delivered, the plaintiff may therein alter, modify, or extend his or her claim without any amendment of the originating application.

**4. Specific relief to be claimed**

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 or her defence.

**5. Several claims and defences**

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.

**6. Account stated**

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.

**7. Probate actions**

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

**ORDER 25**

**DEFENCE AND COUNTER-CLAIM**

**1. Defence to claims for debt and liquidated demands**

(1) A defence to a claim for debt or a liquidated demand shall not merely deny the debt.

(2) A defence to a claim for debt by way of denial shall deny such matters of fact from which the liability of the defendant is alleged to arise as are disputed.

**1A. Defences to motor vehicle and employment personal injuries claims**

(1) This rule applies to a defence to an originating application where the application is accompanied by a statement under rule 12 or 13 of Order 2.

(2) A defence to which this rule applies shall specifically admit or deny every material allegation of fact in the originating application and statement, including any allegation by way of particulars.

(3) Where this rule applies—

- (a) the defendant shall not plead a joinder of issue on any question of fact;
- (b) if no admission or denial of an allegation in the originating application or statement is specifically pleaded in the defence, the allegation is to be taken to be admitted; and
- (c) an allegation in the defence that the defendant does not know and therefore cannot admit a fact alleged in the originating application or statement is to be taken to be a denial.

(4) Where this rule applies and the defendant wishes to prove a version of facts different from that alleged in the originating application or statement, the defendant shall plead that version in the defence.

(5) In a defence to which this rule applies, the defendant shall plead every ground of defence to be relied upon, together with the facts necessary to establish each such ground.

**2. Bills of exchange etc.**

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).

**4. Damages**

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.

**5. Representative capacities specifically traversed**

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 or she shall deny the same specifically.

**6. Time for delivery of defence**

(1) Where a defendant has entered an appearance to an originating application including a claim for debt or a liquidated demand, the defence to that claim or demand shall be delivered—

(a) within 14 days after the time limited for appearance in the application;  
or

(b) within such extended time as the Court allows.

(2) No defence need be delivered if the plaintiff applies for entry of judgment under Order 15.

**7. Leave to defend under**

Where leave has been given to a defendant to defend under Order 15 or Order 16, he or she shall deliver his or her defence (if any) within the time (if any) giving him or her leave to defend, and if no time is thereby limited, then within 8 days after the order.

**8. Time for defence**

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 or her defence within such time (if any) as is specified in such order, or, if no time is specified, within 10 days from the delivery, or filing in default, of the statement of claim, unless in either case the time is extended by the Court.

**9. Costs of improper traverse or refusal to admit**

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.

**10. Counter-claim to be so stated**

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

**11. Defence including person not party**

Where a defendant by his or her defence sets up any counter-claim which raises questions between himself or herself and the plaintiff along with any other persons, he or she shall add to the title of his or her 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 or her statement of defence to such of them as are parties to the action within the period within which he or she is required to deliver it to the plaintiff.

**12. Service on person not party**

Where any such person as is mentioned in rule 11 is not a party to the action, he or she 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 an originating application, and every defence so served shall be indorsed in accordance with Form 18 in the First Schedule.

**13. Must appear**

Any person not already a party to the action, who is served with a defence and counter-claim as mentioned in rule 12, must appear thereto, and may be proceeded against as if he or she had been served with a writ of summons to appear in an action.

**14. May deliver reply**

Any person named in a defence as a party to a counter-claim thereby made, may, without leave, deliver a reply within 10 days from the service upon him or her of a copy of the defence, or within such other time as the Court orders.

**15. Counter-claim may be excluded from action**

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 thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he or she 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.

**16. Counter-claim may proceed though action stayed**

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.

**17. Judgment may be given for defendant for balance**

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 or she is entitled to upon the merits of the case.

**18. Notice in Probate actions**

In Probate actions the party opposing a will may, with his or her defence, give notice to the party setting up the will that he or she 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 or she 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.

**19. No pleading in abatement**

A plea or defence in abatement shall not be pleaded.

**20. Plea of the title unnecessary**

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

(2) Except in the cases mentioned in subrule (1), it shall be sufficient to state by way of defence that he or she is in possession, and it shall be taken to be implied in such statement that he or she 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 or she can prove, except as mentioned in subrule (1).

**21. Defence of judgment recovered**

Where a defendant in his or her defence relies on a judgment recovered he or she shall in the margin of his or her 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 or her 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.



**22. Issue of *nul tiel* record**

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 a 4 days' notice shall be substituted, requiring the defendant to produce the record, otherwise judgment.

**ORDER 26**

**PAYMENT INTO AND OUT OF COURT AND TENDER**

**1. Payment into Court otherwise than by money or bond**

(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 1 action, in satisfaction of 1 or more of the causes of action.

(1A) 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 1 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 3 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 authorised insurer under the *Motor Traffic Act 1936* or that Act as amended or the Nominal Defendant appointed under that Act;
- (ii) a licensed or approved insurer under the *Workers' Compensation Act 1951* or that Act as amended;
- (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 subrule (4), 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, the sum secured in satisfaction of the claim.

**(4B)** Where the Registrar has accepted a security under subrule (4A), 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 this rule may without leave make further payments increasing the sum paid in by him or her.

**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.

**1A. Payment in by defendant who has counterclaimed**

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, 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 or she claims; or
- (b) where 2 or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

**2. Plaintiff may take out money**

**(1)** Where money is paid into Court under rule 1, the plaintiff may, within 14 days after the receipt of the notice of payment into Court, or, where more than 1 payment has been made, within 14 days after receipt of the notice of the last payment, accept the whole sum, or any 1 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 or she 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 14 days after receipt of a notice of acceptance pursuant to subrule (1), 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 or she shall not be entitled to any advantage under the rules by reason of his or her 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 or her the bond or security for the purpose of enforcement.

**(2)** Payment shall be made to the plaintiff, or, on his or her written authority, to his or her 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 1 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 4 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)** The plaintiff may sign judgment for the amount of taxed costs 48 hours after taxation of the 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 specified cause or causes of action in respect of which he or she 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.

**3. Payment out of money remaining in Court**

(1) If money paid into Court is not taken out in accordance with rule 2, the money shall not be paid out except—

- (a) with the consent of all parties to the action; or
- (b) in pursuance of an order of the Court.

(2) An order referred to in paragraph (1) (b) may be made at any time before, during or after the trial of the action.

**4. Several defendants**

(1) Money may be paid into Court under rule 1 by 1 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 or she 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.

**4A. Australian Capital Territory as defendant**

(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.

**5. Payment into Court by defendant to counter-claim**

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.

**6. Non-disclosure of payment into Court**

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 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 rules 1 to 5 (inclusive) 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 or her 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.

**7. Payment in under order**

(1) 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.

(2) Where money has been paid into Court by the defendant pursuant to an order under the provisions of Order 15, he or she may (unless the Court otherwise orders) by his or her 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.

**8. Approval of settlement of action by infant or person of unsound mind**

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.

**9. Money recovered by infant or person of unsound mind**

(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.

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**(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 or her 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 or her solicitor in respect of costs;
- (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 or she 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 subrule (3) 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 or her recommendations, accordingly.

**(5)** A request under subrule (4)—

- (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.

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

(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 1 or more of the securities in which a trustee is authorised 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 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)) on that date.

(11) In this rule, the phrase “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

—ORDER 26—

- (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 \$1.
- (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.
- (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**

**1. Time for delivery of reply**

- (1) Where the plaintiff desires to deliver a reply, he or she shall deliver it within 7 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.

**2. Defence to counter-claim**

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

**3. Close of pleadings**

- (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—

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- (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**

**1. Defence arising before statement of defence**

(1) Where there are pleadings, any ground of defence which has arisen after action brought, but before the defendant has delivered his or her statement of defence and before the time limited for his or her doing so has expired, may be raised by the defendant in his or her 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 counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his or her 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 or she has given, within 8 days after such ground of defence arose, notice in writing to the plaintiff stating the particulars thereof.

**2. Defence arising after statement of defence**

Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his or her 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 8 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.

**3. Confession of defence**

(1) Whenever any defendant, in his or her statement of defence, or in any further statement of defence as in rule 2, or by notice in writing under subrule 1 (1), 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 or she may thereupon sign judgment for his or her costs up to the time of the

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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**

**1. No demurrer allowed**

A demurrer shall not be allowed.

**2. Points of law, how disposed of**

Any party may raise by his or her 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.

**3. Order thereon**

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.

**4. Striking out pleadings**

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.

**5. Declaratory judgment**

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**

**1. May be entire or partial**

(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 15 days after appearance, by notice in writing, wholly discontinue his or her action against all or any of the defendants, or withdraw any part or parts of his or her alleged cause of complaint, and thereupon he or she 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.

**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 or her 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 or her defence, or any part thereof without such leave.

**2. Withdrawal by consent**

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

**3. Costs**

A defendant may enter judgment for the costs of the action if it is wholly discontinued against him or her, 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 4 days after taxation.

**4. Subsequent action stayed until costs paid**

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 or she thinks fit, order a stay of such subsequent action until such costs have been paid.

**ORDER 31**

**DEFAULT OF PLEADING**

**1. Non-delivery of statement of claim**

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.

**2. Claims for debt and liquidated demands**

**(1)** Where an originating application contains only a claim for debt or a liquidated demand, and a defendant fails to deliver a defence within the time required under these rules, the plaintiff may enter final judgment against the defendant.

**(2)** Final judgment under subrule (1) may be entered for—

- (a) any sum not exceeding the amount specified in the application;
- (b) interest—
  - (i) at the rate specified in the application to the date of judgment; or
  - (ii) if no interest is specified in the application—interest to the date of judgment, or a lump sum in lieu of such interest, determined by the Court; and

(c) costs.

**(3)** In determining interest or a lump sum for the purposes of paragraph (2) (b), the Court may have regard to Practice Directions issued by the Court relating to interest up to judgment.

**(4)** Where this rule applies in relation to a defendant to an application, the plaintiff may proceed with the action in respect of a claim for debt or a liquidated demand against any other defendant appearing to the application.

**4. Damages, detention of goods**

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 1, make default as mentioned in rule 2, the plaintiff may enter interlocutory judgment.

**5. On default of 1 or more of several defendants**

When in any such action as is mentioned in rule 4 there are several defendants, if 1 or more of them makes default as mentioned in rule 2, the plaintiff may enter interlocutory judgment against the defendant or defendants so making default, and proceed with his or her action against the others.

**6. Claims for debt and liquidated demands—Interlocutory and final judgments**

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, the plaintiff may enter final judgment for the debt or liquidated demand, interest and costs as under rule 2 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.

**7. Recovery of land**

In an action for the recovery of land, if the defendant makes default as mentioned in rule 2, the plaintiff may enter judgment that the person whose title is asserted in the originating application recover possession of the land, with his or her costs.

**8. Mesne profits**

Where an originating application for the recovery of land includes 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, if the defendant makes default as mentioned in rule 2, or (if there is more than 1 defendant) some or 1 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.

**9. Where a defence is delivered to part of claim only**

(1) 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 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).

(2) 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.

**10. Probate actions**

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

**11. Motion for judgment on default**

In all actions other than those mentioned in rules 1 to 10 (inclusive), 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 originating application or statement of claim, the Court considers the plaintiff is entitled to.

**12. On default of 1 of several defendants**

Where in any such action as is mentioned in rule 11 there are several defendants, then if 1 of such defendants makes such default as is mentioned in rule 11 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 or her at the time when it is entered for trial or set down on motion for judgment against the other defendants.

—ORDER 32—

**13. Default of any other party to issue**

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 or she is bound to deliver, the opposite party may apply to the Court for such judgment (if any) as upon the pleadings he or she 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.

**14. Judgment by default may be set aside**

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, 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.

**ORDER 32**

**AMENDMENT**

**1. By order or with leave**

**(1)** Subject to subrules (2) to (7) (inclusive), the Court may, at any stage of an action, on application by a party or of its own motion—

- (a) order that any document in the action be amended; or
- (b) give leave to any party to amend any document of that party in the action;

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

**(2)** All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the action, of correcting any defect or error in the action or of avoiding multiplicity of actions.

**(3)** If there is a mistake in the name or identity of a party, an amendment may be made to correct the reference to the name of the party notwithstanding that the effect of the amendment is to substitute another person as a party.

**(4)** If—

- (a) an amendment to correct a reference to the name of a party is made pursuant to an order under subrule (1); and
- (b) the effect of the amendment is to substitute another person as a party;



—ORDER 32—

the action shall, unless the Court otherwise orders, be deemed to have commenced with respect to that other person on the day on which the order was made.

(5) An amendment to alter the capacity in which a party sues may be made only if the new capacity is one which the party had when the action was commenced.

(6) If an originating application identifies a cause of action arising out of any facts, an amendment may be made having the effect of adding or substituting a new cause of action arising out of the same or substantially the same facts and specifying the relief claimed in respect of that new cause of action.

(7) Where—

- (a) any relevant period of limitation has expired after an action was commenced; and
- (b) after that expiration, an application for leave to amend a document in accordance with subrule (3), (5) or (6) is made;

leave may be given notwithstanding that the period of limitation has expired if the Court considers it just to do so.

(8) This rule does not apply in relation to an amendment of a judgment or order.

**2. Without leave**

(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. Answering pleading**

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.

**4. Time for filing or amending answering pleading**

(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.

**5. Failure to amend answering pleading**

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.

**6. Time for reply to unamended defence**

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.

**7. Disallowance of amendment**

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.

**8. Scandalous etc. matter**

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

**9. Directions for mode**

(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).

**10. Mode—simple amendment**

(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.

**11. Mode—fresh document**

(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).

(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.

**12. Service after amendment**

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.

**13. Costs**

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.

—ORDER 33—

**14. Judgments and orders: accidental slips or omissions**

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**

**1. Directions**

(1) Any party to a cause may at any time after the commencement of proceedings 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;
- (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.

**2. Form of application**

(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 or she seeks, but the Court shall not be limited to giving the directions specified.

**3. Affidavit not to be used**

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

**4. When application to be made**

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**

**1. Power to stay or dismiss**

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**

**1. Interpretation**

In this Order—

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

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

**2. Application procedure**

(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.

**3. Circumstances in which order may be made**

**(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.

**4. Value and mode of security**

A security ordered under this Order shall be given—

- (a) in such amount;
- (b) in such manner;
- (c) at such time; and
- (d) in such terms (if any);

as the Court directs.

**ORDER 34**

**DISCOVERY AND INSPECTION**

**1A. Privileged documents**

For the purposes of this Order, a document is privileged from production only if it is—

- (a) a document of which evidence could not be adduced, or could not be adduced over the objection of any person, by reason of the operation of Part 3.10 (other than sections 128 and 130) of the *Evidence Act 1995* of the Commonwealth;
- (b) if the party who would otherwise give discovery is a natural person—a document the contents of which may tend to prove that the party—
  - (i) has committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) is liable to a civil penalty;within the meaning of subsection 128 (1) of that Act; or
- (c) a document that relates to matters of state within the meaning of section 130 of that Act unless the court decides that it has ceased to be privileged from production.

**1. Discovery by interrogatories**

- (1) A party to an action 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.

**2. When *ex parte***

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

**3. Offer to discover to be considered**

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 or her approval before delivery.

**4. Costs of unreasonable or vexatious interrogatories**

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.

**7. Interrogatories to corporation or company**

(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 or her to deliver interrogatories to be answered by a specified officer, agent or servant of a body referred to in subrule (1).

**8. Objections may be taken in answer**

Any objection to answering any 1 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.

**9. Applications to set aside**

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 4 days after service of the interrogatories.

**10. Answer**

(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 or her servants and agents and, if he or she 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 or her fellow officers and the servants and agents of the body corporate or other body.

**11. Form of answer**

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.

**12. Order for further answers**

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

**13. Discovery of documents**

(1) 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

—ORDER 34—

documents which are or have been in his or her 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 or her discretion, thought fit.

(2) 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.

**14. Affidavit in opposition**

The affidavit to be made by a party against whom an order as is mentioned in rule 13 has been made shall specify which (if any) of the documents therein mentioned he or she objects to produce, and shall be in accordance with Form 25 in the First Schedule.

**15. Neglect to make discovery**

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.

**15A. Effect of discovery in writing**

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 or her possession, custody or power.

**16. Production of documents**

The Court may at any time during the pendency of any cause or matter, order the production by any party, upon oath, of such of the documents in his or her 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.

**17. Inspection of documents**

Every party to a cause or matter may at any time, by notice in writing, give notice to any other party, in whose originating application (or any accompanying statement), 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 or her solicitor and to permit him or her to take copies, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his or her behalf in such cause or matter unless he or she satisfies the Court that such document relates only to his or her own title, he or she being a defendant to the cause or matter, or that he or she 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.

**17A. Effect of inspection of documents discovered by another party**

(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 or her 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 or she disputes its authenticity or that the original was served, sent or delivered as described; or
- (c) if the Court so orders.

**18. Notice to produce documents for inspection**

Notice to any party to produce any document referred to in his or her originating application (or any accompanying statement), pleading, particulars, or affidavit shall be in accordance with Form 26 in the First Schedule.

**19. Appointment for inspection of documents**

(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;

“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.

**20. Court order for inspection of documents**

**(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 originating application (or any accompanying statement), 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.

**21. Verified copies**

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

(1A) 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 1 or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his or her possession or power, and, if they are not then in his or her possession, when he or she parted with the same, and what has become of them. 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 or her 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.

**22. Question of discovering or inspection may be reserved**

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.

**23. Attachment on failure to comply with order**

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

**24. Service on solicitor**

Service of an order for interrogatories or discovery or inspection made against any party on his or her 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 or she has had no notice or knowledge of the order.

**25. Notice to client**

A solicitor, upon whom an order against any party for interrogatories or discovery or inspection is served under rule 24, who neglects, without reasonable excuse, to give notice thereof to his or her client, shall be liable to attachment.

**26. Answers or part may be used without the rest**

(1) Any party may, at the trial of a cause, matter, or issue, use in evidence any 1 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.

(2) In such case the Judge may look at the whole of the answers, and if he or she 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 or she may direct them to be put in.

**27. Action against or by Sheriff**

In any action against or by the Sheriff in respect of any matters connected with the execution of his or her 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.

**28. Order to apply to infants**

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

**PRELIMINARY DISCOVERY**

**1. Interpretation**

In this Order, unless the contrary intention appears—

“applicant” means an applicant for an order under this Order;

“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.

**2. Privilege**

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.

**3. Discovery to identify defendant**

**(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
- (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.

**4. Conduct money**

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

**5. Discovery from prospective defendant**

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.

**6. Applicant who is party to a proceeding**

(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—

- (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.

**7. Service of application and supporting affidavit**

(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.

**8. Order for inspection, preservation etc. of property**

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 34B**

### **NON-PARTY PRODUCTION**

#### **1. Interpretation**

In this Order—

“notice for non-party production” means a notice under rule 2;

“respondent”, in relation to a notice for non-party production, means the person to whom the notice is directed.

#### **2. Notice for non-party production**

On application by a party to an action, the Registrar shall, unless the Court otherwise orders, issue a notice requiring a person who is not a party to the action to produce for inspection a document in the person’s possession or control relating to a matter in question in the action that the person could be required to produce at the trial of the action.

#### **3. Form of notice**

A notice for non-party production shall be in accordance with Form 27A in the First Schedule.

#### **4. Service of notice**

(1) A notice for non-party production shall be served personally.

(2) Within 2 days after a notice for non-party production is served on the respondent to the notice, a copy of the notice shall be served on each other party to the action who has an address for service by leaving it at that address.

#### **5. Inspection by other parties**

For the purpose of deciding whether to make a claim referred to in paragraph 7 (1) (a), any party to an action on whom a copy of a notice for non-party production is served pursuant to subrule 4 (2) is entitled to inspect a document specified in the notice (other than a document in respect of which any other party makes such a claim) immediately before that document is produced in compliance with the notice.

**6. Application to set aside or vary**

(1) The respondent to a notice for non-party production or any other party to the action may, within 14 days after its service on the respondent, apply to the Court to have the notice set aside or varied.

(2) On an application under subrule (1), the Court may make such orders as the Court thinks fit.

**7. Privilege or objection**

(1) If the respondent to a notice for non-party production or any other party to the action—

(a) claims that a document specified in the notice is privileged from production; or

(b) otherwise objects to its production;

the respondent need not produce the document and the applicant for the notice, the respondent or that other party may apply to the Court for a determination in relation to the claim or objection.

(2) If the respondent to a notice for non-party production fails to produce a document specified in the notice, the applicant for the notice may apply to the Court for a determination in relation to the failure.

(3) On an application under subrule (1) or (2), the Court may make such orders as the Court thinks fit.

**8. Copying produced documents**

(1) The applicant for a notice for non-party production, or his or her solicitor, may copy at the applicant's expense any document produced in compliance with the notice unless the respondent to the notice objects.

(2) If the respondent to a notice for non-party production objects to a document produced in compliance with the notice being copied, the applicant for the notice may apply to the Court for a determination in relation to the objection.

(3) On an application under subrule (2), the Court may make such orders as the Court thinks fit.

**9. Costs**

(1) Any expenses reasonably incurred by the respondent to a notice for non-party production in complying with the notice shall be borne by the applicant for the notice.

—ORDER 35—

- (2) If the respondent to a notice for non-party production has not received an amount that he or she considers adequate to compensate for the expenses reasonably incurred, or expected to be reasonably incurred, in complying with the notice, the respondent may, after having given the applicant for the notice not less than 7 days notice of his or her intention to do so, apply in writing to the taxing officer to determine the amount that is sufficient to compensate for those expenses.
- (3) Upon the taxing officer determining an amount for the purpose of subrule (2), the applicant for the notice for non-party production shall pay that amount to the respondent to the notice.
- (4) A determination for the purpose of subrule (3) shall be deemed to be a judgment of the Court for the amount determined against the applicant for the notice for non-party production and may be enforced accordingly.
- (5) Subrule (1) does not affect the discretion of the Court to order that the costs of and incidental to an application for a notice for non-party production (including any amount paid to the respondent to the notice pursuant to that subrule) are to be paid by any other party to the action.

**ORDER 35**

**ADMISSIONS**

**1. Notice of admission of facts**

Any party to a cause or matter may give notice, by his or her pleading, or otherwise in writing, that he or she admits the truth of the whole or any part of the case of any other party.

**2. Notice to admit documents**

- (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.

—ORDER 35—

- (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).

**3. Notice to admit facts**

- (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—

- (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).

**6. Judgment or order upon admissions of facts**

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 or she 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.

**7. Affidavit of signature to admissions**

An affidavit of the solicitor or his or her 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.

**8. Notice to produce documents**

(1) Notice to produce documents shall be in accordance with Form 31 in the First Schedule.

(2) An affidavit of the solicitor, or his or her 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.

**9. Costs of notice where documents unnecessary**

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.

**ORDER 36**

**ISSUES, INQUIRIES AND ACCOUNTS**

**1. Preparation of issues**

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.

**2. Application for**

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.

**3. Inquiry of account at any stage**

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.

**4. Where account ordered Court may give special directions as to mode of taking same**

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.

**5. Accounts to be verified by affidavit**

Where any account is directed to be taken, the accounting party unless the Court otherwise directs, shall make out his or her 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.

**6. Mode of vouching accounts**

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.



**7. Surcharge**

Any party seeking to charge any accounting party beyond what he or she has by his or her account admitted to have received, shall give notice thereof to the accounting party, stating, so far as he or she is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

**9. Directions to be numbered**

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.

**10. Just allowances**

In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

**11. Registrar to report**

In any case in which there has been undue delay in the proceedings before him or her, the Registrar shall report to the Court the fact of such delay in such proceedings, and shall state, in his or her opinion, the cause.

**12. Delay in prosecution of accounts**

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**

**1. Application**

This Order applies to an action in which a claim for damages for personal injury is made.

**2. Interpretation**

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. Statement of Particulars**

(1) Unless the Court otherwise orders, at the time of the filing of a Certificate of Readiness under the Practice Directions, 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 calculated by reference to a comparison between what the plaintiff has earned since the accident and what the plaintiff alleges he or she would have earned but for the accident, together with the particulars referred to in subrule (1A); and
  - (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.

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**(1A)** For the purposes of subparagraph (1) (d) (iii), the plaintiff shall set out particulars of the comparison of earnings, including, where appropriate—

- (a) particulars of—
  - (i) the earnings of employees engaged in employment similar to that in which the plaintiff alleges he or she would have engaged, but for the accident; and
  - (ii) the identity of those employees; or
- (b) particulars of—
  - (i) payments which the plaintiff alleges he or she would have received under an award or industrial agreement applicable to the employment in which the plaintiff alleges he or she would have engaged, but for the accident; and
  - (ii) the identity of that award or agreement.

**(2)** With the statement the plaintiff shall serve, but not file, copies of all documents available to him or her 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 workers' 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**

**QUESTIONS OF LAW—SPECIAL CASES**

**1A. Interpretation**

**(1)** In this Order—

“party having carriage of the proceeding”, in relation to a proceeding from which a case is to be stated for the consideration of the Court, means—

- (a) the party initiating the request for the case to be stated; or

—ORDER 37—

- (b) if the case is to be stated on referral by a Tribunal of its own motion—the person or body who made the decision to which the proceeding before the Tribunal relates;

“Tribunal” means a tribunal, court, body or person (including the Supreme Court itself) from which a case may be stated for the consideration of the Supreme Court.

- (2) In this Order, a reference to a case stated for the consideration of the Court includes a reference to a question of law reserved by or referred to the Court for consideration.

**1B. Application**

This Order applies to any case stated for the consideration of the Court from proceedings in a Tribunal.

**1. Special case**

- (1) A case to be stated for the consideration of the Court shall be in the form of a special case.

- (2) A special case shall—

- (a) be divided into consecutively numbered paragraphs;
- (b) state the facts concisely; and
- (c) have annexed all documents necessary to enable the Court to decide the questions raised by the special case.

- (3) The Court may draw from the facts stated and the documents annexed any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

**2. Preliminary question of law**

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.

**3. Preparation and filing of special case**

A special case shall—

- (a) be prepared in draft by the party having carriage of the proceeding after consultation with each other party;
- (b) contain an address for service of each party;
- (c) be settled by the Tribunal from which the case is stated;
- (d) be signed by each party to the proceedings from which the case is to be stated; and
- (e) be transmitted by the Tribunal from which the case is stated to the Registrar of the Supreme Court for filing.

**5. Married woman, infant, or person of unsound mind**

A special case in a cause or matter to which a married woman (not being a party 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.

**6. Directions hearings**

After a special case is filed under paragraph 3 (e), the Registrar shall—

- (a) set down the special case for a directions hearing; and
- (b) notify each party of the date appointed for the directions hearing.

**6A. Insufficient statement of case**

(1) This rule applies where it appears to the Court that a special case filed under paragraph 3 (e) does not state the facts and documents sufficiently to enable the Court to decide the questions arising, or otherwise to hear and determine proceedings on the special case.

(2) Where this rule applies, the Court may—

- (a) with the consent of each party, amend the special case;
- (b) send the special case back to the party having carriage of the proceedings from which the special case was referred for that party to amend the special case in a manner specified by the Court; or

—ORDER 37A—

- (c) in relation to civil proceedings only—receive evidence, make findings of fact, and amend the special case accordingly.

**7. Agreement of damages and costs**

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.

**ORDER 37A**

**ISSUES OF FACT WITHOUT PLEADINGS**

**1. Trial of questions of fact by consent**

When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after the action is commenced 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 4 days after the making of such order, and the proper fees and jury fees (if any) payable by him or her 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.

**2. Amount agreed to be paid**

The Court may, by consent of the parties, order that, upon the finding of the affirmative or negative of such issue, as in rule 9 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.

**3. Judgment and execution**

Upon the finding of any such issue as is mentioned in rule 9, judgment may be entered for the sum fixed or ascertained in accordance with the provisions of rule 10, 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.

**4. Proceedings may be recorded**

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**

**2. Place of trial**

Unless the Court otherwise orders, the trial of every suit shall take place at Canberra.

**10. Non-appearance of defendant at trial**

If, when a trial is called on, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his or her claim, so far as the burden of proof lies upon him or her.

**11. Of plaintiff**

If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he or she has no counter-claim, shall be entitled to judgment dismissing the action, but if he or she has a counter-claim, then he or she may prove such counter-claim, so far as the burden of proof lies upon him or her.

**12. Of plaintiff and defendant**

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.

**13. Special defences where no pleadings**

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 or she has given, within 20 days after appearance, notice to the plaintiff stating the grounds and the particulars upon which he or she relies. A copy of any such notice shall be filed by the plaintiff for the use of the Judge at the trial.

**14. Judge may call on defendant for defence in certain cases**

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 or her defence, and, except by leave of the Judge, no other defence shall be open to the defendant beyond that so stated.

**15. Setting aside verdict obtained on party not appearing**

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 7 days after the trial.

**16. Judge may postpone trial**

The Judge may, if he or she thinks it expedient for the interest of justice, postpone or adjourn the trial for such time and upon such terms (if any) as he or she thinks fit.

**17. *Habeas corpus* where adjournment**

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.



**18. Addresses to jury**

Upon a trial with a jury, the addresses to the jury shall be regulated as follows: The party who begins, or his or her counsel, shall be allowed at the close of his or her case, if his or her 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 or her counsel, shall be allowed to open his or her 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*.

**19. Evidence in mitigation of damages in libel and slander**

In actions for libel or slander, in which the defendant does not by his or her 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 7 days at least before the trial he or she furnishes particulars to the plaintiff of the matters as to which he or she intends to give evidence.

**21. Judgment to be entered as directed**

The Judge shall, at or after trial, direct judgment to be entered as he or she thinks right, and a motion for judgment shall not be necessary in order to obtain that judgment.

**22. Note of time occupied**

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.

**23. Associate may enter findings**

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.

**24. Authority for judgment**

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.

**25. Trial with assessors**

Trials with assessors shall take place in such manner and upon such terms as the Court directs.

**26. Writs of trial and inquiry abolished**

No writ of trial or of inquiry shall be necessary or used.

**28. Calculation of damages**

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 or her the amount found by him or her, 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.

**29. Continuing cause of action**

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***

**1A. Interpretation**

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 1 statement, each such statement 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.

**1. Examination of witnesses at trial**

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.

**2. Evidence in another cause**

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 2 days' previous notice to the other parties of his or her intention to read such evidence.

***Division 3—Taking evidence otherwise than at trial—examination of witnesses within Australia***

**7. Application**

**(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*.

**8. Application to Magistrates Court proceedings**

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 202 of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

**9. When order for examination may be made**

An order for examination may be made at any stage of the relevant proceeding.

**10. Application for order**

**(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 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.

**11. Appointment of examiner**

- (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.

**12. Forms of order**

- (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.

**13. Documents for examiner**

- (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.

**14. Appointment for examination**

(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.

(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.

**15. Conduct of examination**

(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.

**16. Examination of additional persons**

(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.

**17. Objections**

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);
- (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.

**18. Recording of depositions**

(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.

**19. Authentication and filing**

(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.

—ORDER 39—

(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—

- (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.

**20. Special report**

(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.

**21. Default of witness**

(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.

**22. Conduct money**

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***

**23. Application of Division**

(1) This Division applies to an order for an examination, or for the issue 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 85C (1) or 85D (1) of the *Evidence Act 1971* or subsection 7 (1) or 10 (1) of the *Foreign Evidence Act 1994* of the Commonwealth; or
- (b) for the purposes of civil proceedings—under section 57 of the *Supreme Court Act 1933*.

**24. When order may be made**

An order to which this Division applies may be made at any stage of the relevant proceeding.

**24A. Application for order**

(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.

—ORDER 39—

(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 85C (2) of the *Evidence Act 1971* as if the application were for an order under subsection 85C (1) of that Act.

(6) In determining whether to make an order, in addition to the matters referred to in subsection 85C (2) of the *Evidence Act 1971*, the Court shall have regard to—

- (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.

**24B. Forms of order**

(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 issue 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.

**24C. Letters of request**

(1) Upon the making of an order for the issue 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
- (b) that the translation is correct.

**24D. Order for payment of expenses—r. 24C (1) (b) (ii)**

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.

**24E. Procedure for taking evidence by examination—application of Division 3 rules**

(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.

(3) The rules referred to in subrule (1) apply subject to any directions which may be given by the Court under subsection 8 (1) of the *Foreign Evidence Act 1994* of the Commonwealth.

**24F. Procedure for taking evidence under a letter of request—application of Division 3 rules**

(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.

(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***

**24G. Application of Division—orders under Part XIIB of the *Evidence Act 1971***

(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.

**24H. Application for order**

(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).

**24J. Form**

An order to which this Division applies shall be made in accordance with Form 42 in the First Schedule.

**24K. Appointment of examiner**

(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;
- (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.

**24L. Attendance at examination by applicant**

The applicant for an order to which this Division applies may attend and take part in the examination held pursuant to the order.

**24M. Procedure for taking evidence—application of Division 3 rules**

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.

**24N. Retention of exhibits**

(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.

**24P. Certificate of order and depositions**

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.

**24Q. Privilege of witnesses**

(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.

**—ORDER 39—**

- (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
  - (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***

**25. Power to issue**

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.

**26. Return date for subpoena for production**

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.

**26A. Power of Registrar to grant leave to inspect documents**

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 proceeding objects, the Registrar may give the parties leave to inspect the documents.

**27. Conduct money**

(1) Where a party causes to be served a subpoena requiring the person named to attend or to produce any document or thing, or both, the party shall, at the time of service, tender to that person—

- (a) an amount sufficient to enable the person to comply with the subpoena; and
- (b) a written undertaking to compensate the person for any expense or loss reasonably incurred in complying with the subpoena.

(2) If the person named in a subpoena is a corporation, the amount and undertaking referred to in subrule (1) may be tendered to any person on whom the subpoena may be served.

(3) Where a person named in a subpoena has not received an amount that he or she considers adequate to compensate for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with the subpoena, the person may, after having given the party who caused service of the subpoena not less than 7 days notice of his or her intention to do so, apply in writing to the taxing officer to determine the amount that is sufficient to compensate for such expense or loss.

(4) Upon the taxing officer determining an amount for the purpose of subrule (3), the person who caused service of the subpoena shall pay that amount to the applicant.

(5) A determination for the purpose of subrule (3) shall be deemed to be a judgment of the Court for the amount determined against the person who caused service of the subpoena and may be enforced accordingly.

**28. Production by non-party**

(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 or her to 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 proceeding.

**29. Costs of complying with subpoena**

(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 or she incurs substantial expense or loss in complying with the subpoena in excess of that provided for by rule 27 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, or pursuant to rule 7 of Order 65 and Schedule 4, an amount which is sufficient to compensate him or her for such expense or loss as is reasonably incurred or lost by that person in complying with the subpoena.

(2) Where an order is made under subrule (1) the Court hearing the matter shall either determine the amount or direct that the amount shall be determined by the taxing officer.

(3) Upon the Court or the taxing officer determining an amount for the purpose of subrule (2), the person who caused service of the subpoena shall pay that amount to the applicant.

(4) An order under subrule (1) shall be deemed to be a judgment of the Court for the amount determined for the purpose of subrule (2) against the person who caused service of the subpoena and may be enforced accordingly.



**30. Banker's books**

(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).

**31. Issue—Forms 45, 46, 47 and 48**

(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.

**32. Document or thing in custody of a court**

(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.

**32A. Service of subpoenas**

(1) Subject to subrule (2), a subpoena shall be served personally.

—ORDER 39—

(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 or her 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 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) 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.

**32B. Notice in lieu of subpoena to medical expert**

(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.

**32C. No abridgement of time prescribed for service**

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.

**33. Setting aside**

(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.

**33A. Delivery of documents to the Registrar**

(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 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 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 or her solicitor that he or she 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 or she 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 or her objection to the Court.

—ORDER 39—

(5) 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.

(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 subrules (1) to (6) (inclusive).

(8) Subrule (7) 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***

**34. Action to perpetuate testimony**

Any person who would, under the circumstances alleged by him or her 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 or her 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.

**35. Where Crown interested**

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.

**36. Action necessary**

Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

**37. Not to be entered for trial**

An action to perpetuate the testimony of witnesses shall not be entered for trial.

***Division 8—Disclosure of experts' reports and hospital reports***

**45. Application**

The Rules contained in this Division apply—

- (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 subrule (1) 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 rule 45 within 3 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 rule 46.

**(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—

—ORDER 39—

- (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 or her report shall not be tendered or otherwise used unless the expert attends or is dead or the Court grants leave to use it.

***Division 9—Matters arising under the Evidence Act 1995 of the Commonwealth***

**50. Evidence of previous representation**

- (1) In this rule, “notice of intention to adduce evidence of previous representation” means a notice under subsection 67 (1) of the *Evidence Act 1995* of the Commonwealth.
- (2) A notice of intention to adduce evidence of previous representation shall be in accordance with Form 49 in the First Schedule.
- (3) A notice of intention to adduce evidence of previous representation may be accompanied by an affidavit setting out the evidence of the previous representation.
- (4) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

**51. Objection to hearsay evidence**

- (1) In this rule, “notice of objection to tender of hearsay evidence” means a notice under subsection 68 (2) of the *Evidence Act 1995* of the Commonwealth.
- (2) A notice of objection to tender of hearsay evidence shall be in accordance with Form 49A in the First Schedule.
- (3) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

**52. Tendency evidence**

- (1) In this rule, “notice of intention to adduce tendency evidence” means a notice under subsection 97 (1) of the *Evidence Act 1995* of the Commonwealth.
- (2) A notice of intention to adduce tendency evidence shall be in accordance with Form 49B in the First Schedule.

(3) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

**53. Coincidence evidence**

(1) In this rule, “notice of intention to adduce coincidence evidence” means a notice under subsection 98 (1) of the *Evidence Act 1995* of the Commonwealth.

(2) A notice of intention to adduce coincidence evidence shall be in accordance with Form 50 in the First Schedule.

(3) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

**ORDER 40**

**I—AFFIDAVITS**

**1. Title of affidavit**

(1) Subject to subrules (2) and (3), 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 1 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 1, 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.

**2. Form of affidavit**

(1) An affidavit shall be expressed in the first person and shall state—

- (a) the address of the deponent and his or her occupation or, if he or she has none, his or her description; and
- (b) if he or she is, or is employed by, a party to the proceeding in which the affidavit is to be used, that fact.

—ORDER 40—

(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.

**3. Contents of affidavit**

(1) An affidavit shall, except as provided by subrule (2), be confined to such facts as the witness is able of his or her 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.

**4. Annexures and exhibits**

(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.

**5. Taking of affidavit**

(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 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.

**6. When affidavit may be taken**

An affidavit for use in a proceeding may be taken before or after the commencement of the proceeding.

**7. Affidavit by 2 or more deponents**

Where an affidavit is made by 2 or more deponents, the names of the persons making the affidavit shall be inserted in the *jurat* except that, if the affidavit is sworn, affirmed or declared by both or all the deponents at the same 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.

**8. Affidavit by illiterate or blind person**

(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 or herself, the person before whom the affidavit is taken shall certify in or below the *jurat* that—

- (a) the affidavit was read in his or her presence to the deponent;
- (b) the deponent seemed to understand it; and
- (c) the deponent made his or her 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 or herself, 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 or she appeared to understand it.

**9. Affidavit by person unable to understand English**

(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 or her 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 or her—

- (a) that he or she 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 or she 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 or her 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 or her 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 or she appeared to understand it.

**10. Alterations in affidavits**

(1) An affidavit which has in the *jurat* or body thereof an interlineation, erasure or other alteration shall not be used in a proceeding 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 or her signature or initials or by a seal inscribed as mentioned in Order 62, rule 1.

(2) Subrule (1) applies to an account verified by affidavit as if the account were part of the affidavit.

**11. Filing of affidavits**

(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.

**12. Copies of affidavits to be served**

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.

**13. Use of defective affidavit**

(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.

**14. Scandalous, etc., matter**

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.

**15. Cross-examination**

(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 or she does not attend, his or her 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 or her.

**III—TRIAL ON AFFIDAVIT**

**24. Evidence on affidavit by consent**

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*.

**25. Affidavits of plaintiff**

Within 7 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 or her affidavits and deliver to the defendant or his or her solicitor a list thereof.

**26. Of defendant**

The defendant, within 7 days after delivery of such list, or within such time as the Court allows, shall file his or her affidavits and deliver to the plaintiff or his or her solicitor a list thereof.

**27. Of plaintiff in reply**

Within 4 days after the expiration of the last-mentioned 7 days, or such other time as is allowed in pursuance of rule 26, the plaintiff shall file his or her affidavits in reply (which shall be confined to matters strictly in reply) and shall deliver to the defendant or his or her solicitor a list thereof.

**28. Cross-examination of deponent**

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 7 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 or her 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.

**29. Compelling attendance of deponent**

The party to whom such notice as is mentioned in rule 28 is given may compel the attendance of the deponent for cross-examination in the same way as he or she might compel the attendance of a witness to be examined.

**MOTION FOR JUDGMENT**

**1. Judgment to be on motion**

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.

**2. Motion where no judgment directed**

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 or she does not so set down a motion and give notice thereof to the other parties within 10 days after the trial, any defendant may set down a motion for judgment, and give notice thereof to the other parties.

**3. Judgment after issues tried**

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 or she does not set down such a motion and give notice thereof to the other parties within 10 days after his or her right so to do has arisen, then after the expiration of such 10 days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

**4. Where certain issues only determined**

(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.

**5. None after a year without leave**

No motion for judgment shall, except by leave of the Court, be set down after the expiration of 1 year from the time when the party seeking to set down the same first became entitled so to do.

**ORDER 42**

**ENTRY OF JUDGMENT**

**1. Judgment Book**

- (1) The Registrar shall maintain a Judgment Book for the purposes of these Rules.
- (2) The Judgment Book may be maintained in electronic form.
- (3) Each judgment shall be entered by the Registrar in the Judgment Book in accordance with the applicable form.

**2. Preparation of judgments and orders**

- (1) Where the entry of a judgment or order is authorised 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* of the Commonwealth, 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.
- (6) A draft of a judgment or order referred to in this rule and the minute referred to in subrule (5) shall—
  - (a) in the case of a draft or minute relating to a judgment, be in accordance with Form 50AA in the First Schedule; or
  - (b) in the case of a draft or minute relating to an order, be in accordance with Form 50AB in the First Schedule.
- (7) Where a judgment or order is entered by consent, the draft or minute, referred to in subrule (6), of the judgment or order shall be in accordance with the relevant form and shall include “BY CONSENT” after “THE COURT ORDERS”.

**3. Where judgment pronounced in Court**

- (1) 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.
- (2) By leave of the Court a judgment may be ante-dated or post-dated.

**4. Judgment under order**

- (1) 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.
- (2) 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.

**5. In other cases**

In all cases not within rules 3 and 4, 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.

**6. Orders for performance of acts to state time**

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 judgment (*or* order).”.

**7. Examination of documents by officer**

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 or she shall enter judgment accordingly.

**8. Judgment pursuant to order or certificate**

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.

**9. Certificate to be filed**

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.

**10. Judgment by consent**

(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 or her 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 or her consent in person, or the consent is in writing and, unless the defendant is a solicitor, is attested by a solicitor.



**11. Consent order or judgment signed by Registrar**

(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 rules 1 to 10 (inclusive) 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 or she is of the opinion that the order or judgment is not such as the Court would make or pronounce by consent.

**12. Consent judgment in Chambers**

(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 rules 1 to 11 (inclusive) 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.

**13. Copy of order of Federal Court may be filed**

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.

**14. Copies**

(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**

**1. Rates of interest**

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<br>30 April 1986—                    | (a) if judgment was entered before 1 October 1977—<br>5% a year for the whole period; or<br>(b) if judgment was entered on or after 1 October 1977—<br>10% a year. |
| 2.   | 1 May 1986 to<br>30 June 1990<br>(inclusive)—      | 15% a year.  |
| 3.   | 1 July 1990 to<br>31 December 1991<br>(inclusive)— | 20% a year.  |
| 4.   | 1 January 1992 to<br>30 June 1993<br>(inclusive)—  | 15% a year.  |
| 5.   | On and after<br>1 July 1993—                       | 12% a year.  |

**ORDER 43**

**EXECUTION**

**1. No demand necessary when judgment directs money to be paid or property transferred**

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, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same, without demand.

**2. Waiver of judgment on condition**

Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he or she shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself or herself, 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.

**3. Judgment may be enforced as heretofore**

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.

**4. Judgment for payment in Court**

A judgment for the payment of money into Court may be enforced by writ of sequestration, or, in cases in which attachment is authorised by law, by attachment.

**5. For recovery of land**

A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

**6. For recovery of other property**

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.

**7. For any other matter**

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.

**8. Judgment on condition, execution**

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 or she 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.

**9. Production of judgment**

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.

**10. *Praecipe***

No writ of execution shall be issued without the party issuing it, or his or her 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 or she does so in person.

**11. Indorsement of name and address**

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.

**12. Form of writ of execution**

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.

**13. Fees and expenses**

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.

**14. Additional fees and expenses**

(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 rule 13, levy the fees and expenses properly paid on registering the judgment, or lodging the writ of *fiery 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 or her solicitor requiring the Sheriff to levy for fees, expenses, and costs under subrule (1), shall file with the Sheriff a specific direction in writing requiring him or her so to levy, together with a receipt from the Registrar-General 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.

**15. Amount to be indorsed on writ of execution**

(1) 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 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.

(2) 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.

**16. Form of indorsement on writ of *fiери facias***

Every writ of *fiери 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.”.

**17. Execution for money or costs on entry of judgment**

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 1 or more writs of *fiери facias* to enforce payment, subject nevertheless as follows:

- (a) if the judgment or order is for payment within a specified period, 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 or she thinks fit.

**18. Separate writs for money and costs**

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 1 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 8 days after the first writ.

**19. Writ in force for 1 year; with power to renew**

A writ of execution, if unexecuted, shall remain in force for 1 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 1 year from the date of such renewal, and so on from time to time during the continuance of the renewed 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 or her 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.

**20. Evidence of renewal**

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 rule 19 showing the same to have been renewed, shall be *prima facie* evidence of its having been so renewed.

**21. Execution within 6 years**

As between the original parties to a judgment or order, execution may issue at any time within 6 years from the recovery of the judgment or the date of the order.

**22. Execution by leave of Court**

In the following cases—

- (a) where 6 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

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- (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 or herself 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.

**23. Order enforceable as judgment**

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.

**24. Execution by or against person not party**

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 or she 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 or she were a party to such cause or matter.

**25. *Audita querela* abolished: Stay of execution**

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.

**26. Former rights reserved**

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.

**27. Order of issue of writs**

Nothing in this Order shall effect the order in which writs of execution may be issued.



**28. Enforcement of mandatory judgment etc.**

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.

**29. Corporation wilfully disobeying order**

Any judgment or order against a corporation which is wilfully disobeyed, may, by leave of the Court, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers of the corporation, or by writ of sequestration against their property.

**30. Enforcing award**

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.

**31. Examination of judgment debtors**

**(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

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- (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) 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 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 or she is required by the order to attend.
- (5) Where a judgment debtor or such an officer fails to attend at the time and place appointed for his or her examination or otherwise disobeys the order or refuses to answer a question which the Registrar allows to be put to him or her 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.

**32. In cases of difficulty, party may apply**

- (1) Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than a judgment or order mentioned in rule 31, 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.

**33. Costs**

The Registrar may make an order for costs in respect of any proceedings brought before him or her under rules 31 and 32 and that order may be enforced as if it were an order of the Court.

**ORDER 44**

**WRITS OF FIERI FACIAS AND SEQUESTRATION**

**1. Effect of *fi. fa.***

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.

**2. Writ of *venditioni exponas***

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*.

**3. Other writs in aid**

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.

**3A. Leave for issue of writs in aid**

(1) Notwithstanding rules 3 and 4, a writ of *venditioni exponas* or other writ in aid of a writ of *fieri facias* shall not be issued except with the leave of the Court.

(2) Application for leave under subrule (1) shall be by motion on notice.

(3) Notice of motion for leave under subrule (1) shall be given to—

- (a) the Sheriff;
- (b) the judgment debtor; and

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- (c) any person known to the Sheriff or the judgment creditor to claim an interest in relation to all or part of the real or personal estate of the judgment debtor, including any occupier of premises constituting all or part of that real estate.
- (4) Leave under subrule (1) may be given on such terms as the Court considers just, including directions with respect to—
  - (a) the issue of subpoenas to give evidence, for production, or both, before the Court or an officer of the Court;
  - (b) the mode of sale of all or part of the real or personal estate of the judgment debtor; and
  - (c) the engagement, for the purpose of such a sale, of valuers or other persons with appropriate expertise.

**4. Against estate of disobedient person**

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.

**5. No subpoena or without leave, sequestration for costs**

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**

**1. As heretofore**

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.

**2. Not to issue without leave**

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**

**1. Order for attachment of debts**

(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 herself or his or her solicitor stating that judgment has been recovered, or the order made, and that it is still 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 or her 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 or her solicitor, and, unless otherwise ordered, on the judgment debtor or his or her solicitor, at least 7 days before the day of hearing.

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(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 or her solicitor, if he or she has appeared by solicitor, or, if there has been no appearance, then at his or her usual residence or place of business, or in such other manner as the Court directs.

**2. Service of summons to bind debts**

Service on the garnishee of a summons issued under rule 1 shall bind all debts owing or accruing from him or her to the debtor.

**3. Execution against garnishee**

If the garnishee does not forthwith pay into Court the amount due from him or her 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 or her to the debtor, or if he or she 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.

**4. Trial of liability of garnishee**

If the garnishee disputes his or her liability, the Court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his or her liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

**5. Lien of third person on debt of garnishee**

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 Court may order such third person to appear, and state the nature and particulars of his or her claim upon such debt.

**6. Trial of claim of third person and order thereon or on non-appearance**

After hearing the allegations of any third person under such order as is mentioned in rule 5 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 rules 1 to 5 (inclusive), 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.

**7. Discharge of garnishee**

Payment made by, or execution levied upon, the garnishee under any proceeding in pursuance of this Order shall be a valid discharge to him or her 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.

**8. Debt-attachment book**

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 may be taken by any person upon application to the Registrar.

**9. Costs of proceedings**

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 or her under the garnishee order, and in priority to the amount of the judgment debt.

**ORDER 47**

**CHARGING ORDERS AND STOP ORDERS**

**1. Order charging stock or shares**

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 the effect shall be such as is provided by the *Judgment Creditors Remedies Act 1901* of the State of New South Wales.

**2. Charge on partnership property**

Every summons by a separate judgment creditor of a partner for an order charging his or her interest in the partnership property and profits under section 28 of the *Partnership Act 1963*, and for such other orders as are thereby authorised to be made, shall be served on the judgment debtor and on his or her 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.

**3. Application by partner of judgment debtor**

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.

**4. Meaning of company and stock**

In this Order the expression “company” includes every public company, whether incorporated or not, and the expression “stock” includes shares, securities, and dividends thereon.

**5. Filing and service of affidavit and notice as to stock**

Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or herself or his or her 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.



**6. Affidavit to state address of claimant**

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.

**7. Service by post**

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.

**8. Alteration of address**

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.

**9. Service of affidavit and filed notice to have same effect as writ of *distringas***

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.

**10. Withdrawal or discharge of notice**

A notice filed under rule 5 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 her, 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.

**11. Effect of notice on transfer of stock or payment of dividend**

If, while a notice filed under rule 5 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 or her behalf or representing him or her, 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 authorised without the order of the Court, to refuse to

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permit the transfer to be made or to withhold the payment of the dividends for more than 8 days after the date of the request.

**12. Amendment of notice**

If the person who files a notice under rule 5 desires to correct the description of the stock referred to in the filed notice, he or she 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.

**13. Costs of stop order**

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.

**14. Service**

Any person moving on notice, or taking out a summons, for any order in pursuance of rule 13, 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**

**1. On a judgment for land**

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.

**2. Affidavit of service and disobedience**

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.

**3. Number of writs for possession**

Upon any judgment or order for the recovery of any land and costs there may be either 1 writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party.

**4. Writ of assistance**

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.

**ORDER 49**

**WRIT OF DELIVERY**

**1. Absolute order for**

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 or her 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.

**2. Form. Execution for damages and costs**

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**

**1. Disclosure of partners' names**

Any 2 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.

**2. Disclosure of partners' names**

When an originating application is made 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 been named as plaintiffs in the writ, but all the proceedings shall, nevertheless, continue in the name of the firm.

**3. Service**

**(1)** Where persons are sued as partners in the name of their firm under rule 1, the originating applications shall be served either upon any 1 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.

(2) In the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the originating application shall be served upon every person within the jurisdiction sought to be made liable.

**4. Notice in what capacity served**

Where an originating application is served against a firm under rule 3, every person upon whom it is served shall be informed by notice in writing, given at the time of such service, whether he or she 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.

**5. Appearance of partners**

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.

**6. No appearance except by partners**

Where an originating application is served under rule 3 upon any person having the control or management of the partnership business, an appearance by him or her shall not be necessary unless he or she is a member of the firm sued.

**7. Appearance under protest of person served as partner**

Any person served as a partner under rule 3 may enter an appearance under protest, denying that he or she 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.

**8. Execution of judgment against a firm**

(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 or her own name under rule 5 or 6, or has admitted on the pleadings that he or she is, or has been adjudged to be, a partner; or
- (c) against any person who has been individually served, as a partner, with the originating application, and has failed to appear.

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**(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 or she 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 action commenced, and has not entered an appearance to the action, unless the member—

- (a) is made a party to the action under the law relating to the service of originating applications out of the jurisdiction; or
- (b) is served with the originating application within the jurisdiction after the action commenced.

**9. Attachment of debts owing from a firm**

**(1)** Debts owing from a firm carrying on business within the jurisdiction may be attached under Order 46, although 1 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.

**10. Application of Rules to actions between co-partners**

Rules 1 to 9 (inclusive) shall apply to actions between a firm and 1 or more of its members, and to actions between firms having 1 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.

**11. Application of Rules to person trading as a firm**

Any person carrying on business within the jurisdiction in a name or style other than his or her 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**

**1. Consolidation of actions**

Where, in relation to 2 or more actions, it appears to the Court that—

- (a) a common question of law or fact arises;
- (b) the relief sought in each of those actions is in respect of, or arises out of, the same transaction or series of transactions; or
- (c) for some other reason it is desirable to make an order under this rule;

the Court may, of its own motion or on the application of a party to any of those actions and on such terms as it thinks just, order that—

- (d) those actions be consolidated;
- (e) those actions be tried together or consecutively; or
- (f) any of those actions be stayed until any other of those actions have been determined.

**ORDER 52**

***Division 1—Interlocutory orders as to mandamus, injunctions, interim preservation of property etc.***

**1. Interim order for preservation of subject of action**

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.

**2. Order for sale of perishable or other property**

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.

**3. Order for detention, preservation, or inspection of property**

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 authorise 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 authorise 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.

**4. Judge may inspect**

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.

**5. Jury may inspect**

The provisions of rule 3 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 or she thinks fit.

**6. Application for order**

An application for an order under section 34 of the Act or under rules 2 or 3, 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, it may be made after notice to the defendant at any time after the commencement of the action, 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.

**7. Application by plaintiff under r. 1**

An application for an order under rule 1 may be made by the plaintiff at any time after his or her 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.



**8. Payment into Court in discharge of lien**

Where an action is brought to recover, or a defendant in his or her 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.

**9. Court may allow whole or part of income**

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 provided for in such action, the Court may, at any time after the commencement of such proceedings, allow the parties interested therein, or any 1 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.

**10. Conduct of sale**

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.

**11. Writ of injunction abolished**

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.

**12. Injunction to restrain repetition or commission of acts of like kind**

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

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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.

**13. Leave to compound penal action**

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.

**14. Order for**

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 or her leave to compound the action.

**15. Crown's half of penalty**

When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Crown's portion of the composition shall be paid into the hands of the Registrar for the use of the Crown.

***Division 2—Receivers***

**16. Interpretation**

In this Division, "Court" includes a Judge.

**17. Application for order**

(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*.

**18. Address for service**

Not later than 7 days after appointment, a receiver must file a notice that specifies the receiver's address for service.

**19. Security**

(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 the First Schedule 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.

## **20. Powers**

- (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.
- (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.

## **21. Remuneration**

A receiver appointed under this rule is allowed the remuneration, if any, fixed by the Court.

## **22. Accounts**

- (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—

—ORDER 52—

- (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.

**23. Default**

(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;
- (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; 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.

**24. Account on death**

(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***

**25. Liquidators**

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.

**ORDER 53**

**SALES BY THE COURT**

**1. Sale of real estate may be directed any time after action**

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.

**2. Mode of carrying out sale, mortgage, partition, or exchange when ordered by Court**

(1) 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 authorise the same to be carried out, either as at present—

- (a) by laying proposals before the Judge in Chambers for his or her 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.

(2) The Judge shall not authorise the proceedings altogether out of the Court, unless and until he or she is satisfied, by such evidence as he or she 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 authorising 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.

**3. Power to make order for sale in debenture-holders' actions at any time**

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 or herself and other debenture-holders, and the Judge is of opinion that there must eventually be a sale, he or she may in his or her discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not.

**4. Sale under order**

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.

**5. Reserved biddings**

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.

**6. Particulars and conditions of sale**

As soon as particulars and conditions of sale settled at Chambers have been printed, 2 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.

**7. Affidavit of result of sale**

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 1 clear day before the day appointed for settling the certificate of the result of the sale.

**8. Opinion of counsel**

The Court may require or receive the opinion of counsel for his or her 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.

**9. Subject to objection**

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**

**1. Application by motion**

Where by these Rules any application is authorised to be made to the Court, such application, if made in Court, shall be made by motion.

**2. Rule to show cause**

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;
- (b) for attachment;
- (c) to answer the matters in an affidavit; or
- (d) against a sheriff to pay money levied under an execution.

**3. Previous notice of motion required**

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, 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.

**4. Notice of motion to set aside award etc.**

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.

**5. Number of clear days between notice and hearing**

Unless the Court gives leave to the contrary, there shall be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

**6. Motion dismissed or adjourned for notice on other persons**

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.



**7. Hearing adjourned**

The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court thinks fit.

**8. Service of notice of motion**

The plaintiff may, without leave, serve any notice of motion or other notice upon any defendant, either with the originating application or before or after the time limited for the appearance of such defendant, and whether such defendant has appeared or not.

**10. No order for return of writ etc. necessary**

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 or her 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.

**11. Notice to Sheriff, out of office**

When the Sheriff, before going out of office, arrests any defendant, and renders return of *sepi corpus*, he or she may be called upon by a notice, as provided by rule 10, to bring in the body within the time allowed by law, although he or she may be out of office before such notice is given.

**12. Order to bear date of making**

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.

**13. Formal order not required**

(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 any document or pleadings;
- (c) for the filing of any document; or
- (d) for any act to be done by any officer of the Court;

—ORDER 54—

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 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.

(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.

**14. Petition to state parties to be served**

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.

**15. Number of clear days between service and hearing**

Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service and the day appointed for hearing a petition.

**16. Affidavit of claim to purchase money paid into Court**

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.

**17. Title and form of petition etc. for advice**

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* of the State of New South Wales, in its application to the Territory, shall be intitled 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.

**18. Proceeding on summons for advice**

At the time when any such summons as is mentioned in rule 17 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.

**19. Time for service**

Every such petition or summons as is mentioned in rule 17 shall be served 7 clear days before the hearing thereof, unless the person served consents to a shorter time.

**20. Opinion to be entered**

The opinion, advice, or direction of the Judge, as is mentioned in rule 17, 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.

**21. Account by solicitor**

Where the relationship of solicitor and client exists, or has existed, a summons may be issued by the client or his or her 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 or she has in his or her 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 or she 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.

**22. Interim certificate**

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.

**ORDER 55**

**CERTIORARI: MANDAMUS: PROHIBITION: QUO WARRANTO:  
HABEAS CORPUS**

*1 General*

**1. 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.

(2) The Court may, in its 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.

**2. Order to be returnable before the Court**

Orders to show cause shall be to show cause before the Court.

**3. Title of affidavits**

Affidavits intended to be used on the application shall be entitled “In the Supreme Court of the Australian Capital Territory” without any other title.

**4. Title of proceedings**

(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 her 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.

**5. Order absolute**

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.

**6. Costs**

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***

**8. Copy, warrant, order etc. to be produced on application**

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.

**9. Objections to be stated in order**

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.

**10. Service**

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.

**11. Security for costs**

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 or her 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 or her to pay.

**12. Order to quash in first instance**

(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 quashed on return without further order, and in that case no security need be given as required by rule 11, 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.

**13. When no cause shown**

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.

**14. Forms**

A writ of Certiorari shall be in accordance with Form 63 in the First Schedule.

**3 Mandamus**

**15. Prosecutor to be named**

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 or her instance as prosecutor.

**16. Persons to show cause**

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 or she does so, shall be liable to costs as if the order had been addressed to him or her.

**17. Form of writ**

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 or she 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.

**18. Time for return of writ**

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 an originating application.

**19. Service**

(1) When a writ of Mandamus is directed to 1 person only, the original writ must be personally served upon him or her by delivering it to him or her.

(2) When the writ is directed to 2 or more persons, it shall be personally served upon all of them but 1 in the manner prescribed for personal service of an originating application, and shall be served upon the remaining one by delivering the original writ to him or her.

**20. Service on justices or corporate bodies**

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.

**21. Return**

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.

**22. Service**

A copy of the return shall be served upon the prosecutor on the same day as it is filed.

**23. Pleading to return**

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 or her defence.

**24. Peremptory writ**

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 commanded, and such writ shall be awarded by the judgment, if any, or, if there is no judgment, by a separate order.

**25. Costs when peremptory writ awarded in the first instance or on obedience**

(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.



(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 4th day of the sittings of the Court held next after the day on which the return is filed.

**26. Proceedings in nature of interpleader**

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 or her 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.

**27. Time**

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 2 months of the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court.

**28. Mandamus by order**

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.

**29. No action against party obeying writ or order**

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**

**30. Pleadings in prohibition**

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 or her claim to the writ is founded, and thereupon the same proceedings shall be had and taken in all respects as in an action.

**31. Proceedings on judgment**

If judgment is given for the prosecutor, the judgment shall include a direction that a writ of Prohibition shall issue.

**32. Writ of Procedendo**

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 as if the writ of Prohibition had not been issued.

**33. Prohibition by order**

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**

**34. Relator to be named**

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 or her 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.

**35. Objections to be stated in order *nisi***

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.

**36. Security for costs**

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.

**37. Form of information**

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.

**38. Signature of service of information**

The information shall be in the name of the Attorney-General or the relator, as the case may be, on behalf of the Sovereign, and shall be 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 or she appeared by solicitor, then upon his or her solicitor.

**39. Defence and subsequent proceedings**

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 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.

**40. Judgment costs**

If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped by him or her.

**41. Disclaimer**

The defendant may, if he or she thinks fit, disclaim the office in question. Such disclaimer shall be signed by the defendant and attested by a person authorised to take an affidavit, and shall be filed, and a copy 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.

**42. Consolidation**

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 or she 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**

**43. How applied for**

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 or matters pending in the Court, in which case they shall also be entitled in the cause or matter.

**44. How granted**

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.

**45. Service**

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 1, 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 or her in obedience to the writ, and pointing out the consequences of making default.

**46. Return to writs of Habeas Corpus**

The person to whom a writ of Habeas Corpus is directed shall, at the time and place specified therein, make his or her 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.

**47. Amendment of return**

The return may be amended by leave of the Court.

**48. Proceedings on return**

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.

**49. Discharging without writ**

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 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.

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**CONSENT ORDERS IN INTERLOCUTORY PROCEEDINGS**

**1. Interlocutory order by consent**

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.

**2. Adjournment by consent**

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.

**3. Adjournment without attendance**

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 1 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.

**DECLARATIONS**

**1. Construction of instruments**

Any person claiming to be interested under a deed, will or other written instrument may apply by originating application for the determination of any question of construction arising under the instrument, and for the declaration of the rights of the persons interested.

**2. Construction of legislation**

Where any person claims any legal or equitable right, and the determination of the question whether he or she 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 application for the determination of that question and for a declaration as to the right claimed.

**3. Service**

The Court may order an originating application in an action under this Order to be served on such persons as it thinks fit.

**4. Evidence**

The originating application shall be supported by such evidence as the Court requires.

**I—ADMINISTRATION AND TRUSTS**

**1. Applications for relief without administration**

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 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 application returnable in Chambers for such relief of the nature or kind following as is specified by the application, 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.

**2. Applications for administration**

Any of the persons named in rule 1 may in like manner apply for and obtain an order for—

- (a) the administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased; or



- (c) the administration of the trust.

**3. Service—applications for administration**

The persons to be served with the originating application under rules 1 and 2 shall, in the first instance, be the following:

- A. Where the originating application is taken out by an executor or administrator or trustee—
  - (a) For the determination of any question under subparagraphs 1 (a), (e), (f), or (g), the persons, or 1 of the persons, whose rights or interest are sought to be affected.
  - (b) For the determination of any question, under subparagraph 1 (b), any member or alleged member of the class.
  - (c) For the determination of any question under subparagraph 1 (c), any person interested in taking such accounts.
  - (d) For the determination of any question under subparagraph 1 (d), any person interested in such money.
  - (e) For relief under subparagraph 2 (a), the residuary legatees, or next of kin, or some of them.
  - (f) For relief under subparagraph 2 (b), the residuary devisees or heirs, or some of them.
  - (g) For relief under subparagraph 2 (c), the *cestuis que trustent*, or some of them.
  - (h) If there is more than 1 executor or administrator or trustee, and they do not all concur in taking out the application, those who do not concur.
- B. Where the originating application is taken out by any person other than the executors, administrators, or trustees, those executors, administrators, or trustees.

**4. Applications for foreclosure or redemption**

(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 application for such relief of the nature or kind following as is specified by the application and as the circumstances of

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the case require, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.

(2) As to any land under the *Land Titles Act 1925*, 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.

**5. Service—applications for foreclosure or redemption**

The persons to be served with the originating application under rule 4 shall be such persons as under these Rules would be proper defendants to an action for the like relief as that specified by the application.

**6. Service on other persons**

The Court may direct such other persons to be served with an originating application under rule 4 as it thinks fit.

**7. Evidence and directions as to trial**

An application under rule 4 shall be supported by such evidence as the Court requires, and directions may be given as it or he or she thinks just for the trial of any questions arising thereout.

**8. Judgment**

The Court may upon an application under rule 4 pronounce such judgment as the nature of the case requires.

**9. Special directions**

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 thinks just.

**10. Decision without judgment for administration**

It shall not be obligatory on the Court to pronounce or make a judgment or order 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.

**11. Orders which may be made on application for administration or execution of trusts**

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—

- (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.

**12. Not to effect power of trustees**

The making of an application under rule 1 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**

**13. Accountants, merchants etc.**

The Judge in Chambers may, in such way as he or she 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 or she thinks fit.

**III—PROCEEDINGS RELATING TO INFANTS ETC.**

**14. Evidence on application to appoint guardian etc.**

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.

**15. Appointment of guardian *ad litem***

At any time during the proceedings at Judge's Chambers under any judgment or order, the Judge may, if he or she 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.

**IV—DOCUMENTS TO BE LEFT AT CHAMBERS**

**16. Proceedings under judgment**

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.

**17. Adjournment to Chambers without order drawn, note sufficient**

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.

**18. Names of solicitors**

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.

**19. Certificate of service and appearance**

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**

**20. Time for bringing in judgment or order directing accounts or inquiries**

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 10 days after the same has been passed and entered, and in default 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.

**21. Summons to proceed with accounts or inquiries**

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, 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.

**22. Settling deed under judgment etc. in case parties differ**

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 or her objections (if any) within 8 days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of that period of 8 days.

**23. Service of notice of judgment or order, where dispensed with**

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 or she thinks fit, wholly dispense with such service, or

may, at his or her discretion, order any substituted service or notice by advertisement or otherwise in lieu of such service.

**24. Power to bind persons, service on whom is dispensed with**

Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the Judge may at any time, if he or she 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.

**25. Advertisements for the creditors may be issued before appearance of all parties**

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.

**26. Course of proceeding**

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**

**27. Judge may nominate 1 solicitor for a class**

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 or she 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 or her, and where any of the parties constituting such class declines to authorise the solicitor so nominated to act for him or her, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his or her 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 or her being represented by a solicitor different from the solicitor so nominated.

**28. Judge may require distinct solicitors to represent parties**

Whenever in any proceeding before the Judge in Chambers the same solicitor is employed for 2 or more parties, the Judge may, at his or her discretion, require that any of those parties shall be represented before him or her by a distinct solicitor, and adjourn such proceeding until such party is so represented.

**29. Attendance of parties other than those directed to attend**

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.

**30. Order to state parties to attend**

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 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**

### **31. Advertisements**

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.

### **32. By whom prepared and signed**

Every advertisement for creditors shall be prepared by the party prosecuting the judgment or order, and shall be signed by his or her solicitor, or, if he or she 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.

### **33. Substance and form of advertisements**

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 or her 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) every claimant shall attend personally, or by his or her solicitor, to support his or her claim. The advertisement shall contain a direction that a claimant not residing in the Territory must send with particulars of his or her 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 or her shall be equivalent to a notice sent to the claimant himself or herself.



**34. Claimants not sending particulars of claims excluded**

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 made upon such terms and conditions as to costs and otherwise as the Court thinks fit.

**35. Service of notices on claimants**

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 or her pursuant to the advertisement, or in case such claimant is represented by a solicitor, to such solicitor at the address given by him or her.

**36. Claimants to produce documents if required**

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 or her claim before the Registrar.

**37. Claimants' affidavits**

Claimants required to file affidavits under rules 38 to 59 (inclusive) 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**

**38. Examination and verification of claims**

(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 or she is able, to which of such claims the estate of the deceased is justly liable, and he or she shall, at least 7 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—

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- (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 or her death and are or may be still due and owing and have come to the knowledge of the executors or 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.

**39. Adjudication on claims**

When adjudicating upon the claims of persons claiming to be creditors, the Judge, in his or her 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 or she 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 or her claim, or any part thereof, and may adjourn the adjudication upon such claims as are not then allowed.

**40. Adjournment. Further evidence**

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.

**41. Notice of claims allowed or disallowed**

- (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 or her claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than 7 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 or her 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 or her claim (except to produce his or her security) unless he or she is served with a notice requiring him or her to do so as provided by this rule.

(4) Every person claiming to be a creditor shall produce the security (if any) held by him or her before the Registrar at such time as is specified in the advertisement for adjudicating on the claims.

**42. Costs**

(1) A creditor who has established his or her debt in the Judge's Chambers under any judgment or order shall be entitled to the costs of so establishing his or her debt, unless the Judge otherwise directs, and the sum to be allowed for such costs shall be fixed by the Judge, unless he or she 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.

**43. List of claims allowed**

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**

**44. Affidavit verifying claims**

In the case of claimants other than creditors, such party as the Judge directs shall, at least 7 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.

**45. Adjudication on claims**

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.

**46. Claimants who have established their claims to be served with notice of judgment**

Where a claimant other than a creditor has established his or her claim, he or she 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, and when he or she has been so served and has entered an appearance, he or she shall, unless the Court otherwise directs, be entitled as part of his or her costs of action (if allowed) to costs properly incurred in proving his or her claim previously to his or her having entered an appearance.

**X—INTEREST**

**47. Rate of interest on debts**

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.

**48. Interest payable out of surplus assets**

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 or her debt at the rate of 15% 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.

**49. Interest on legacies**

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 annum from the end of 1 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**

**50. Directions to be in no particular form**

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.

**51. Not to set out documents etc.**

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.

**52. Form of certificate**

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 or she shall sign the same in testimony of his or her adopting the same.

**53. Where accounts are directed**

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.

**54. Taking of Judge's opinion**

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.

**55. When certificate becomes binding—Application to discharge or vary it**

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 8 clear days after the filing of the certificate.

**56. Discharge or variation of certificate after lapse of any time**

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.

## **XII—FURTHER CONSIDERATION**

### **57. Further consideration**

(1) 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 8 days and within 14 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 14 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 6 clear days before the return.

(2) 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**

### **58. Notes of proceedings**

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.

### **59. Drawing up orders in Chambers**

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**

**1. When granted**

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 or she is, or expects to be, sued by 2 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.

**2. Affidavit**

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 or she 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, is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court directs.

**3. Where claims adverse**

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.

**4. Time defendant may apply**

Where the applicant is a defendant, application for relief may be made at any time after service of the originating application.



**5. Summons to state claim**

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.

**6. Stay of proceedings**

If the application is made by a defendant in an action, the Court may stay all further proceedings in the action.

**7. Order on summons**

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 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.

**8. On consent or request of claimant Court may decide**

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.

**9. Question of law**

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.

**10. Claimant failing to appear etc. barred**

If a claimant, having been duly served with a summons calling on him or her to appear and maintain or relinquish his or her claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his or her appearance, the Court may make an order declaring him or her, and all persons claiming under him or her, for ever barred against the applicant and persons claiming under him or her, but the order shall not affect the rights of the claimants as between themselves.

**11. Issue to be filed**

The plaintiff in an interpleader issue shall file the issue within 4 days after the making of the order under rule 7, 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.

**12. Goods seized in execution**

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 or she 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.

**13. Trial of issue**

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.

**14. Where several causes pending**

Where in any interpleader proceedings it is necessary or expedient to make 1 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.

**15. Costs**

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.

**16. Sheriff's costs**

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 or her 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 4 days after receiving the notice, give notice in accordance with Form 70 in the First Schedule to the Sheriff or his or her officer that he or she admits or disputes the claim. If the execution creditor admits the title of the claimant, and gives notice as directed by this rule, he or she 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.

**17. Withdrawal by Sheriff**

(1) When the execution creditor has given notice to the Sheriff or his or her officer that he or she 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 or her 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 or she so desires, attend the hearing of the same, and if he or she attends, the Judge may, in and for the purposes of such application, make all such orders as to costs as are just and reasonable.

**18. Costs in interpleader**

When the execution creditor does not in due time, as directed by rules 1 to 17 (inclusive), admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his or her claim by notice in writing to the Sheriff or his or her officer, the Sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his or her claim by notice in writing to the Sheriff or his or her 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 61**

**REGISTRAR**

**1. Absence of Registrar**

In the absence of the Registrar from his or her office all acts which he or she is required to do may be done during his or her absence by some person in that behalf appointed by the Judge.

**2. Clerk may perform merely ministerial duties**

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 or her office.

**3. Authority of Registrar**

The jurisdiction of the Court that is exercisable in accordance with subsection 8 (1) of the Act may be exercised by the Registrar—

- (a) in the hearing and determination of applications under any of the following provisions of these Rules:

Order 2, rules 24 and 25

Orders 8, 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.

### **3A. Jurisdiction to be exercised by Judge**

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.

### **4. Reference of application to Judge**

(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.

### **5. Appeals from Registrar's orders**

(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.

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- (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.
  - (ba) The notice of appeal shall be in accordance with Form 76 in the First Schedule.
  - (bb) The Registrar shall endorse the notice of appeal with a date for a motions hearing before a judge, being a date within 3 weeks after the date of the decision from which the appeal is brought.
  - (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 1 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**

**1. Authority of Master**

The jurisdiction of the Court that is exercisable in accordance with subsection 8 (1) of the Act may be exercised by the Master—

- (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

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—ORDER 61A—

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 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

Order 53, except in the circumstances described in paragraph (g)

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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*;



—ORDER 61A—

- (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*;
- (s) in the hearing and determination of applications under Part XX of the *Magistrates Court (Civil Jurisdiction) Act 1982* regarding the transfer of proceedings;
- (t) in the hearing and determination of interlocutory applications under Part XXI of the *Magistrates Court (Civil Jurisdiction) Act 1982* in connection with appeals;
- (ta) in the hearing and determination of applications for interlocutory orders in connection with appeals from any tribunal or other body (other than the Magistrates Court) established by or under a law of the Territory;
- (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 *Land Titles 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);

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- (iii) a vesting order under section 71;
- (iv) an order under paragraph 75 (1) (a) or (b);
- (v) an order or direction under section 81;
- (vi) an order under subsection 95 (2) or (3);
- (vii) an order under subsection 98 (4).

**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.

**5. Appeals from interlocutory judgments of the Master**

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 accordance with Form 77 in the First Schedule.
- (ca) The Registrar shall endorse the notice of appeal with a date for a motions hearing before a judge, being a date within 3 weeks after the date of the decision from which the appeal is brought.
- (d) The notice of appeal need not set out grounds of appeal.
- (e) Unless otherwise ordered by the Court, there shall be at least 3 clear days between service of the notice of appeal and the hearing of the appeal.

**9. Discontinuance of appeal**

**(1)** An appellant under paragraph 9 (2) (a) of the Act may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal shall be abandoned.

—ORDER 62—

(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.

**10. Stay of proceedings**

The institution of an appeal under paragraph 9 (2) (a) of the Act does not operate as a stay of proceedings unless the Court or the Master so orders.

**11. Application of other Orders**

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 under paragraph 9 (2) (a) of the Act from judgments of the Master.

**ORDER 62**

**SEALS, FILING, SEARCHES ETC.**

**1. Sealing of documents issued from the Court**

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.

**2. Office copies etc.**

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.

**3. Petitions etc. to be filed before judgment etc. passed**

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 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.

**4. Date of filing**

The date of filing shall be written upon every pleading or other proceeding which is filed.

**5. Entries on filing documents**

There shall be indorsed on every document delivered at the Registrar's office to be filed, the date of the filing.

**6. Distinguishing marks on documents**

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 the year and the number by which the cause or matter is distinguished in the Cause Book.

**7. Entry of date of judgment**

There shall also be entered in the Cause Books the date of every judgment, order, and certificate made in every cause or matter.

**8. Searches**

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 or her custody, and issue a certificate of the result of the search.

**9. Certificate of state of cause**

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 the dates and general description of the several proceedings which have been taken in such cause or matter in the Registrar's office.

**10. Production of records**

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.

**11. Deposit for officer's expenses**

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 or her attendance shall deposit with him or her a sufficient sum of money to answer his or her 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.

**12. Deposit of deeds**

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.

**13. Impounded documents**

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.

**14. Certificates etc. to be filed**

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 48 hours after the same have been bespoken.

**ORDER 63**

**OFFICES OF THE COURT**

**1. Office hours**

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.

**2. Office hours**

The offices of the Court may be opened at other times for the transaction of business upon payment of a fee.

**ORDER 64**

**TIME**

**1. Certain days not reckoned**

Where any limited time less than 6 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.

**2. Time expiring on Sunday or when offices closed**

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.

**3. Time not reckoned**

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 24 December in 1 year and ends on 2 January in the next succeeding year.

**4. Time for proceedings where security ordered**

The day on which an order for security for costs is served, and the time 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.

**5. Enlargement or abridgment of time**

**(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 subrule (1) to enlarge that time, the Registrar may, on the application of any party, enlarge that time.

(3) The Registrar shall not enlarge the time beyond the next day upon which an application under subrule (1) may be heard by the Court.

**6. Enlargement of time by consent**

The time for delivering, amending, or filing any pleading or document may be enlarged by consent in writing, without application to the Court.

**7. Time for service**

Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of 5 o'clock in the afternoon, except on Saturdays, when it shall be effected before the hour of noon. Service effected after 5 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.

**8. Reckoning of time**

(1) Subject to rule 1, 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.

**9. Proceedings after a year**

(1) In any cause or matter in which there has been no proceeding for 1 year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his or her intention to proceed.

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(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.

**10. Time for setting aside award**

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.

**11. Enlarging time for award**

Where the time for making an award is enlarged, the enlargement shall be deemed to be for 1 month, unless a different time is specified in the order.

**12. “Month” means calendar month**

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**

**1. Costs, with certain exceptions, to be in the discretion of the Court**

(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 or she 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.



**2. Where cause removed**

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.

**3. Solicitor personally liable for costs**

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 or her 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.

**7. Scales of costs**

(1) Subrules (2) and (3) have effect subject to this Order and to any order of the Court.

(2) In respect of work done or services performed on or after 1 January 1998, a solicitor is entitled to charge and be allowed the costs set out in Schedule 4.

(3) Rule 7 of this Order as in effect immediately before the commencement of this rule continues to apply in respect of work done or services performed by a solicitor during the period commencing on 1 April 1993 and ending on 31 December 1997.

(4) Nothing in this rule affects the operation of section 190 or 191 of the *Legal Practitioners Act 1970*.

**7A. Costs and disbursements where amount recovered less than Magistrates Court limit**

(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 |
|----------|----------|
|----------|----------|

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|          |  |
|----------|--|
| \$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 Schedule 4 or the amount specified in Order 3, subrule 3 (2), 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, 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.

**8. Costs improperly incurred etc.**

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 or her client, and also (if the circumstances of the case require) why the solicitor should not repay to his or her 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 or she 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.

**9. Where solicitor appointed guardian *ad litem***

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 1 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 directions for the repayment or allowance of such costs as the justice and circumstances of the case require.

**10. Set-off notwithstanding lien for costs**

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.

**11. Costs out of estate**

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.

**12. Costs as regards particular shares**

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.

**13. Distribution not to be delayed by difficulties as to some shares**

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.

**14. Costs may be ordered out of portion of an estate**

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.

**15. On award**

Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

**17. Where no appearance**

Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his or her solicitor or guardian.

**18. Order to tax to be left with taxing officer**

(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 or she has previously filed such original.

**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.

**19. Drafts directed to be settled by counsel**

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.

**20. Gross sum costs**

(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.

**22. Allowance for work in preparation of documents**

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 or her discretion he or she thinks proper.

**23. Fees to include copy for use**

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.

**24. Further allowance on special grounds**

As to instructions to sue or defend or the preparation of briefs, if the taxing officer on special grounds considers the fee provided inadequate, he or she may make such further allowance as he or she in his or her discretion considers reasonable.

**25. And on affidavit of several deponents**

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 or her discretion thinks fit.

**26. Allowance on affidavits to include attendances**

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.

**27. Where same solicitor for both parties**

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.

**28. Mileage on several writs etc.**

When 2 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 1 only.

**29. Perusals**

As to perusals, the fees are not to apply where the same solicitor is for both parties.

**30. Separate pleadings where same solicitor**

Where the same solicitor is employed for 2 or more defendants, and separate pleadings are delivered or other proceedings had by or for 2 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 or she is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

**31. Procuring evidence**

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.

**32. Agency correspondence**

As to agency correspondence in agency causes and matters, if it is shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he or she may make such special allowance in respect thereof as in his or her discretion he or she thinks proper.

**33. Settling and passing judgments**

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 or she considers reasonable.

**34. In special circumstances higher remuneration may be allowed for attendance at Chambers**

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 or her discretion he or she 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 or her discretion thinks fit.

**35. On non-attendance or neglect by party at Chambers, Judge may order costs**

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 or she thinks reasonable to be paid to the party attending by the party so absent or neglectful, or by his or her 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.

**35A. Attendance by solicitors or clerk in Court or in Chambers to instruct Counsel**

(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 Schedule 4 for such an attendance if he or she is of opinion that, by reason of the importance or difficulty of the matter or because of the responsibility involved in instructing counsel, the attendance of the principal solicitor was warranted, but if

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he or she is not of that opinion, the taxing officer may allow whichever of the amounts shown in Schedule 4 for such an attendance by either an employed solicitor or clerk as he or she 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 Schedule 4 for such an attendance if he or she is of opinion that the attendance was warranted, but if he or she is not of that opinion he or she may allow the amount shown in Schedule 4 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 or she was competent to instruct counsel in the particular matter.

**36. Folios**

A folio shall comprise 72 words, every figure comprised in a column being counted as 1 word.

**37. Costs of procuring advice of counsel**

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 or her discretion thinks just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer in his or her 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 1 fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

**39. Allowance for notice to inspect**

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.

**40. Power to make an interim certificate**

The taxing officer may make 1 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.



**41. Rate of payment for copies of documents**

As to taking copies of documents in possession of another party, or extracts therefrom, under these Rules or any special order, the party 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 or she may by writing require at the rate of \$2 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.

**42. Tender of costs for perusing petition where notice that appearance not required**

Where any petition, notice of motion or summons is served, and notice is given to the party served that in case of his or her appearance in Court his or her costs will be objected to, and is accompanied by a tender of costs for perusing the same, the amount to be tendered shall be \$22.90. The party making such payment shall be allowed the same in his or her 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 or she is to be allowed a fee not exceeding the abovementioned amount.

**43. Court may disallow costs of pleading or matter improper or unnecessary**

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 originating application, 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 or she finds to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary

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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 or she had been specially directed to do so.

**44. Costs may be set-off or adjusted between parties**

In any case in which, under rule 43 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 or she thinks fit, delay the allowance of the costs such party is entitled to receive until he or she has paid or tendered the costs he or she 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.

**45. Note for taxing officer**

Where any question as to any costs is, under rule 43 dealt with at Chambers, the Judge or Registrar shall make a note thereof and state the same on his or her allowance of the fees for attendances at Chambers, or otherwise as is convenient, for the information of the taxing officer.

**46. Disallowance where party not interested etc.**

Where any party appears upon any application or proceeding in Court or at Chambers in which he or she is not interested, or upon which, according to the practice of the Court, he or she ought not to attend, he or she is not to be allowed any costs of such appearance unless the Court expressly directs such costs to be allowed.

**47. Extension of time**

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 1 extension of time, unless he or she 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 or she 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 or she may direct such payment or deal with such costs in the manner provided by rule 44.

**48. Taxing officers may administer oaths**

The taxing officer shall, for the purpose of any proceeding before him or her, 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, 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.

**49. Registrar to be taxing officer**

The Registrar shall be the taxing officer of the Court.

**50. Account in part consisting of bill of costs**

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 or she shall return the same, with his or her opinion thereon, to the Court.

**51. Taxing officer regulates the attendance of parties on taxation**

The taxing officer may arrange and direct what parties are to attend before him or her 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 or her discretion considers unnecessary.

**52. On neglect of party to tax costs, taxing officer may prevent prejudice to other party**

When any party entitled to costs refuses or neglects to bring in his or her 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.

**53. Costs to be allowed on taxation**

On every taxation the taxing officer shall allow all such costs, charges, and expenses as appear to him or her 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.

**53A. Costs incidental to negotiations**

Any costs of and incidental to negotiations for settlement which appear to the taxing officer to have been reasonably and properly incurred shall be allowed on taxation whether or not the negotiations were successful.

**54. Fees for work and labour not otherwise provided for**

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.

**55. Costs in the cause**

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.

**56. Costs of amendments**

Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his or her 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.

**57. Taxation without order to refer**

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 or herself to be aggrieved, prohibits the taxation of such costs.

**58. Where parties differ**

(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.

(3) Service of a bill shall be effected in accordance with Order 67 rule 2 at least 6 weeks before the day on which the bill is to be taxed.

(4) A party on whom a bill is served may by notice object to any item in the bill.

(4A) A notice under subrule (4) shall—

- (a) list each item or part of an item which is objected to;
- (b) state shortly but specifically the nature and ground of each objection;
- (c) state the amount which it is contended should be taxed off; and
- (d) be filed and served on the party entitled to costs and on any other interested party not later than 7 days before the day on which the bill is to be taxed.

(4B) Subject to the discretion of the taxing officer to be exercised in exceptional circumstances, on the taxation of a bill no amount is to be taxed off, and no objection is to be allowed, unless the relevant amount is, or the relevant item, or relevant part of an item, and the relevant ground are (as the case requires) set out in a notice under subrule (4).

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(4C) The taxing officer has a discretion to—

- (a) tax, or fix a lump sum in respect of, the costs of a notice under subrule (4) or of any objection; and
- (b) add to, or deduct from, any sum payable by or to a party to the taxation those taxed costs or a part of those taxed costs, or that lump sum (as the case requires).

(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).

**59. Costs out of fund**

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 or her 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.

**60. Costs of scientific witnesses**

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.

**61. Discretionary fees**

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 or her costs, the taxing officer in taxing the costs may allow a fixed sum for the costs of the judgment.

**62. Power to taxing officer to assess costs at a gross sum**

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 1, or may report the matter to the Judge who may make such order as he or she thinks fit.

- (2) The provisions as to review of taxation shall apply to allowances and certificates of the taxing officer under this rule.

**63. Disallowances where bill reduced by a sixth**

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 6th part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, or for attending the taxation.

**64. Party dissatisfied with taxation may object**

Any party who is dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him or her, 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 or she 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 or her decision upon such objections.

**65. Taxing officer may review taxation**

Upon an application under rule 64, the taxing officer shall reconsider and review his or her taxation upon such objections, and he or she may, if he or she thinks fit, receive further evidence in respect thereof, and, if so required by any party, he or she shall state either in his or her certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his or her decision and any special facts or circumstances relating thereto.

**66. Party dissatisfied with taxing officer may apply to Judge**

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 14 days from the date of the certificate or allocatur, or such other time as the Court, or the taxing officer at the time he or she signs his or her 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.



**67. Evidence**

An application under rule 66 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.

**68. Retainer of counsel**

No retaining fee to counsel shall be allowed on taxation as between party and party.

**69. Conferences**

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.

**70. Allowances of 2 junior counsel**

Where the costs of retaining 2 counsel may properly be allowed, such allowance may be made, although both such counsel may have been selected from the outer bar.

**71. Refreshers**

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 5 hours, an allowance may be made for every 5 hours or part of 5 hours subsequent to the expiration of the first 5 hours, which allowance shall, unless otherwise ordered by the Court be such an amount as the taxing officer thinks fit.

**72. Brief where cause not tried**

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.

**73. Where set down again after being struck out**

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 or she does not obtain the costs of the cause or matter.

**75. Counsel's fees**

A fee to counsel that has, in the opinion of the taxing officer, been properly incurred shall be allowed on taxation whether or not the fee has already been paid.

**77. Of affidavit of discovery**

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.

**78. Delay before taxing officer**

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 or her solicitor to pay such costs as he or she thinks proper, or may deal with them under rule 44.

**79. Where costs out of fund bill to be sent to clients**

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 or she considers there is a reasonable ground for so doing, require the solicitor to deliver or send to his or her 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 or she considers reasonable.

**80. Taxing officer may limit or extend time**

The taxing officer may limit or extend the time for any proceeding before him or her, 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.

**81. Indorsement of name and address of solicitor**

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 or she is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.

**82. Appeal to Judge**

Any person dissatisfied with the decision of the taxing officer in regard to items “Instructions for brief” and “Drawing same”, may, within 14 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.

**83. Fees to barristers and solicitors**

(1) In actions where a barrister and solicitor acts in both capacities, or appears as a barrister, instructed by his or her partner acting as solicitor, neither he or she nor his or her 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 14 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.

**DOCUMENTS**

***Division 1—Style***

**1. Interpretation**

In this Order, “document” means a document prepared by a party to proceedings for use by or in the Court.

**2. Registrar may refuse to file**

(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.

**3. Paper to be used**

A document must be presented on paper that is—

- (a) white; and
- (b) durable; and
- (c) international paper size A4.

**4. Writing requirements**

(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
- (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.

**5. Page margins**

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.

**6. Use of numerals**

- (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.

**7. Pagination**

A document containing more than 1 page must be paginated, the number of each page appearing in the lower right corner of the page.

**8. Backing sheet**

A document need not have a backing sheet.

**9. Identification**

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—
    - (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.

**10. Signature on behalf of solicitor**

- (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:

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- (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***

**11. Restriction on inspection of Registry files**

(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;
- (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

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- (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.**

**1. Service of judgments and orders**

- (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 subrule (1), 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.

**2. Where service not required to be personal**

- (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—
- (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

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- (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.

**4. Where no appearance or address, service by filing**

- (1) Where no appearance has been entered for a party, or where a party or his or her 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 14 days.



(3) Any document so filed must have endorsed on its first page a statement that the document is filed under Order 67.

**7. On solicitor after appearance in person**

Where a party, after having sued or appeared in person, has given notice in writing to the opposite party or his or her solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his or her 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.

**8. On solicitor appearing for person not party**

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.

**9. Affidavit of service**

Affidavits of service shall state when, where, and how and by whom such service was effected.

**ORDER 68**

**SHERIFF'S RULES**

**1. Personal estate to be sold first**

When the Sheriff takes in execution both real and personal estate belonging to the same party, he or she 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 or she shall then sell any estate of leasehold and any real estate.

**2. Portions of property sold first**

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 or she will have sold first, and the portion so pointed out shall be sold first, unless the Judge otherwise orders.

**3. Under \$100, time of sale**

When personal property is taken in execution by the Sheriff under a writ indorsed to levy a sum less than \$100, he or she shall cause the same to be sold as soon as reasonably convenient after 24 hours from the levy thereof, subject to the provisions of rule 4.

**4. Publicity of sale. Other cases**

When the Sheriff intends to put up for sale any property taken in execution, he or she 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.

**5. Place of sale**

(1) The Sheriff shall cause any property taken in execution to be sold at the place of levy, or elsewhere, as he or she deems most advantageous.

(2) 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.

**6. How Sheriff to pay moneys received in certain cases**

In cases not within section 93 of the *Bankruptcy Act 1924* of the Commonwealth, when the Sheriff, by virtue of any writ to whom directed, receives any moneys, he or she shall pay them on demand to the party entitled to receive the same, or his or her solicitor, deducting all lawful charges therefrom, whether such writ be then returnable or not, unless he or she has received from some person claiming to be interested therein notice to retain the same.

**7. Notice to Sheriff not to pay money to execution creditor**

When the Sheriff, by virtue of any writ to him or her 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 or her hands, to abide the order of the Court, and if no application is made by the party giving such notice to the Court, within 4 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.

**8. Suspension of execution**

The Sheriff shall not suspend the execution of any writ or process directed to him or her, except upon an absolute order in writing to that effect lodged with

him or her by the person entitled to the benefit of the same, or his or her 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 writ or process.

**9. Judge's order in vacation to enforce performance of duty**

Where the Sheriff does not execute or return a writ directed to him or her, according to the exigency thereof, or does not pay over money received, or deliver possession of the premises taken by him or her, or bring in the body of a party he or she is directed to arrest or attach, or otherwise neglects or omits to perform any duty incumbent upon him or her, an order may be obtained from the Judge on summons to enforce the performance of such duty.

**10. Persons arrested to be lodged in nearest gaol**

When any person is arrested by the Sheriff on any civil process of the Court, he or she shall be lodged in the gaol nearest to the place of his or her arrest, and be there detained until the Court orders his or her discharge.

**11. Poundage**

(1) In the execution of process, poundage is chargeable under a writ of *feri 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 2½ 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 2½ 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.

**12. Security for costs**

In every action against the Sheriff for anything done or omitted to be done by him or her in the intended execution of his or her duty, the plaintiff shall be compelled to give security for costs.

**13. Duties discharged by Serjeant-at-Arms in England to be discharged by Sheriff**

Except as provided by these Rules, all duties discharged in the Chancery Division of the High Court of Justice in England in respect of 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**

**1. Non-compliance with rules not to render proceeding void**

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.

**2. Application to set aside for irregularity**

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.

**3. Objections of irregularity**

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**

**1. Interpretation**

In this Order, “the Act” means the *Magistrates Court (Civil Jurisdiction) Act 1982*.

**2. Mode of commencement of applications**

**(1)** An application under section 381 of the Act shall be made by motion.

**(2)** An application under section 383 or 384 of the Act shall be made by motion supported by affidavit.

**PART 4—ADMINISTRATION AND PROBATE JURISDICTION**

**ORDER 72**

**I—PRELIMINARY**

**1. Interpretation**

(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;

“The Act” means the *Administration and Probate Act 1929*.

(2) Expressions used in this Part or the Third Schedule, not being expressions defined in subrule (1), shall, unless the contrary intention appears, have the same meaning as in the Act.

(3) In this Part, a reference to a form by number is to be read as a reference to the form so numbered in the Third Schedule.

**2. Title of proceedings**

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”.

**II—APPLICATION FOR REPRESENTATION**

**3. Notice of intended application for representation**

(1) A notice of intended application for probate of the will of a deceased person shall be in accordance with Form 1.

(1A) A notice of intended application for letters of administration with the will annexed of the estate of a deceased person shall be in accordance with Form 2.

(1B) A notice of intended application for letters of administration of the estate of a deceased person shall be in accordance with Form 2A.

(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.

**4. Notice of intended application for reseal of foreign grant**

A notice of intended application for the reseal of a foreign grant of representation shall be in accordance with Form 3.

**5. Form of application**

(1) An application for representation may—

- (a) be made through a solicitor or personally by a person entitled to a grant of administration; and
- (b) unless the Court otherwise orders, be made *ex parte*.

(2) An application for probate of the will of a deceased person shall be in accordance with Form 3A.

(3) An application for letters of administration with the will annexed of the estate of a deceased person shall be in accordance with Form 3B.

(4) An application for letters of administration of the estate of a deceased person shall be in accordance with Form 3C.

(5) An application for the reseal of a foreign grant of representation shall be in accordance with Form 3D.

**6. Application for probate—supporting affidavits**

(1) An application for probate of the will of a deceased person shall be accompanied by affidavits in accordance with Forms 3E and 3H.

(2) The will shall be signed in the margin by the applicant for probate and by the person before whom the affidavit in accordance with Form 3E is sworn.

**7. Proof of execution of will and attestation**

(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.

(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.

**8. Proof of execution of will and blindness of testator etc.**

(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.

**9. Further evidence of due execution etc.**

(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.

(3) Where—

- (a) an applicant for probate seeks to prove a will or codicil;

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- (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.

**10. Deeds etc. referred to in will**

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.

**11. Appearance of the paper**

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.

**12. Application for administration with will annexed—supporting affidavits**

- (1) An application for letters of administration with the will annexed of the estate of a deceased person shall be accompanied by affidavits in accordance with Forms 3F and 3H.
- (2) The will shall be signed in the margin by the applicant and by the person before whom the affidavit in accordance with Form 3F is sworn.

**13. Where will inoperative**

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 or her, so far as is known and material by law to the right to administer or share in his or her property.



**14. Application for administration—supporting affidavits**

(1) An application for letters of administration of the estate of a deceased person shall be accompanied by affidavits in accordance with Forms 3G and 3H.

(2) An affidavit in accordance with Form 3G shall have annexed to it such birth, death, marriage and other certificates as tend to support the statements made in the affidavit.

**14A. Application for reseal of foreign grant—supporting affidavits**

An application for the reseal of a foreign grant of representation shall be accompanied by affidavits in accordance with Forms 3GA and 3H.

**15. Application by creditors**

A creditor who intends to apply for administration shall, before so applying, issue a citation calling upon the spouse and next of kin of the deceased to appear and show cause why administration should not be granted to him or her, and shall, before the return day of the citation, prove his or her debt before the Registrar.

**16. Applications where Public Trustee has obtained order to collect**

An applicant for representation in a matter where the Public Trustee has obtained an order to collect shall give 7 days' notice in writing to the Public Trustee of the intended application, and shall, at the same time, lodge with the Public Trustee, for inspection, all documents in support of the application.

**17. Address for service**

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.

**18. Notice to other next of kin**

(1) Where administration is applied for by 1 or some only of the persons entitled to administration, there being another or other next of kin equally entitled thereto, or a spouse 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.

(2) Where the spouse 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.

**19. Registrar refusing to deal with application**

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 1 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 or she ought to do so; or
  - (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 or she will not deal with the application, and giving his or her 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 7 clear days before the application comes on for hearing.

### III—ADMINISTRATION DURANTE MINORE AETATE

**20. Administration *durante minore aetate***

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.

**21. Election of guardian**

Infants above the age of 7 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 or her election or assignment shall be produced.

**22. Where there are infants both above and under age of 7 years**

In a family where there are infants both above and under the age of 7 years, an elected guardian may act for all the infants without special assignment.

### IV—SMALL ESTATES

**23. Applications in the case of small estates**

- (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.

**25. Applications previously made through solicitor**

Any application which has in the first instance been made through a solicitor shall not be entertained as a personal application.

**26. Where directions of Court obtained**

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.

**27. Affidavits etc. to be filled up by Registrar**

- (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.

**28. Certificate of death to be produced**

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.

**29. Engrossments of wills etc.**

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**

**30. Bond**

The bond of an ordinary administrator and his or her sureties shall be in accordance with Form 4, 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.

**31. Justification by affidavit**

(1) Sureties to administration bonds shall justify by affidavits in accordance with Form 6.

(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 or her 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.

**32. Bond by incorporated company or guarantee society**

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 or herself as to the due execution of the bond.

**33. Price for procuring security**

An administrator shall not be allowed, as an expense of administration, the price he or she pays for procuring the security either of individuals or of a company or society.

**VI—DELAY IN APPLICATION**

**34. Delay in applying for representation**

In every case where probate or administration is, for the first time, applied for after the lapse of 6 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**

**35. Citations**

(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 14 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 or her the original, if required by him or her so to do.

**VIII—SALE AND MANAGEMENT OF REAL ESTATE**

**36. Application as to time and mode of sale etc. of real estate**

(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 1 party is an infant or is of unsound mind, and no guardian or committee of his or her 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 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

### 37. Filing of inventory

Every executor and administrator shall, within 3 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.

### 38. Filing etc. of accounts

(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 (1) 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.

**39. Notice of filing accounts**

(1) Notice of the filing of the accounts of any executor or administrator, in accordance with Form 7, and of the day fixed for passing the accounts, shall be published in a newspaper published and circulating in the Territory, 14 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 or her accounts shall also be served on the sureties to the administration bond.

**40. Objection to passing of accounts**

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 or her intention to object, and also an affidavit stating his or her interest and the nature and grounds of his or her objection.

**41. Order as to service on taking of accounts**

Upon taking the accounts, the Registrar may make such order as to service upon any of the parties interested as he or she thinks fit.

**42. Persons interested may attend upon taking accounts**

Any person interested may attend before the Registrar upon the taking of the accounts.

**43. Certificate as to correctness of accounts**

The Registrar shall give his or her certificate as to the correctness of the accounts, and also as to the amount on which commission is allowable.

**44. Entry of accounts for allowance by Court**

Within 14 days after the signing of the certificate by the Registrar, the accounting party shall, if he or she desires to be allowed commission, enter the accounts for allowance by the Court, and for allowance of commission.

**45. Appeal from finding of Registrar**

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 or she shall, within 7 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 or her appeal.

**46. Application where Registrar refuses accounts**

Where accounts have been filed with the Registrar in pursuance of rule 38 of this Order, and

- (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 or she will not pass the accounts, and giving his or her reasons, and the accounting party may, within 14 days after the service of such notice, apply to the Court to pass the accounts.

**47. Time for instituting appeal**

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 or her appeal pursuant to rule 45 of this Order, he or she shall within 21 days after filing such notice institute the appeal.

**48. Summons in Chambers**

Every application to the Court under rule 46 to pass accounts, and every institution of an appeal under rule 47, shall be made by summons in Chambers, and a copy of the summons shall be served on the Registrar 7 clear days before the return day.

**49. Service of summons**

The Court may order such persons as it thinks fit to be served with the summons.

**50. Failure to comply with provisions**

Should an accounting party who has filed his or her 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, to apply to the Court to pass the accounts, he or she 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 relating to the filing and passing of accounts.



**51. Filing of inventory may be dispensed with**

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 or she is executor or in distribution of the estate of which he or she is administrator; or
- (b) all persons who are beneficially entitled under the will of which he or she is executor or in distribution of the estate of which he or she is administrator are over the age of 21 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.

**51A. Inquiry as to outstanding estate**

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.

**51B. Directions to be numbered**

Whenever by any judgment or order any accounts are directed to be taken or inquiries to be made in relation to the estate of a deceased person, 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 20 in the Third Schedule.

**X—CAVEATS**

**52. Caveats**

(1) Every caveat shall be in accordance with Form 8 and bear date of the day it is entered, and shall remain in force for the space of 6 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 or her solicitor, with his or her proper handwriting.

**53. Return of order *nisi***

Upon the return of any order *nisi* under section 34 of the Act, it shall not be necessary for either party to prove his or her case by witnesses in the first instance, but the caveator shall state generally his or her 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.

**54. Particulars of objection**

Within 4 days from a direction given in pursuance of rule 53, 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;
- (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 or she 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.

**55. Special grounds of objection**

- (1) The caveator shall also state in the particulars any special grounds of objection not included in those specified in rule 54, 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.

**56. Witnesses**

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.

**57. Affidavits to be filed and notice served**

- (1) Either party shall, 4 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 or she 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 or she shall, 2 clear days before the day appointed for hearing, serve a notice requiring the production of the deponent for cross-examination.
- (2) The Court may, at its discretion, specially order variations from this rule.

**58. Discovery and inspection of documents**

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 or her 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 or her 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**

### **59. Suits for revocation of probate or administration**

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 or her to bring in and deposit the grant in the Registrar's office and, within 14 days after notice of the deposit, the party issuing the citation shall file his or her 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 PUBLIC TRUSTEE**

### **60. Application to collect and administer**

(1) An application by the Public Trustee 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 spouse 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 shall be used.

### **61. Renunciation of probate in favour of Public Trustee**

Where the executors named in the will of a deceased person renounced probate in favour of the Public Trustee, the renunciation shall be in accordance with Form 12.

### **62. Persons declining to apply for administration**

Where the persons primarily entitled to administration decline so to apply, with a view to the Public Trustee applying therefor, they shall file in the office of the Public Trustee a document in accordance with Form 13.

**63. Notice of intended application for probate etc.**

Every applicant for probate of the will or administration of the estate of a deceased person whose estate the Public Trustee has obtained an order to collect and administer, shall give 7 days' notice in writing to the Public Trustee of his or her intended application, in accordance with Form 14, and shall at the same time lodge with the Public Trustee, for inspection, the documents in support of the application.

**64. Petitions etc. to be filed in office of Public Trustee**

Whenever it is necessary to take any steps in connexion with any estate being administered by the Public Trustee, and whether the Public Trustee is a party thereto or not, every application, affidavit, summons or other process shall be filed in the office of the Public Trustee, and any *ex parte* order calling upon the Public Trustee to show cause obtained under section 95 of the Act shall state whether proof shall be given orally or upon affidavit.

**65. Notification by Public Trustee**

Upon the filing of the order and affidavits, it shall not be necessary for the Public Trustee to serve copies of any affidavits made by him or her in reply, but he or she shall notify to the person obtaining the order the fact of the affidavits having been filed, and that copies may be obtained upon payment of the ordinary fees as prescribed.

**66. Bills of Costs**

The Public Trustee may refer for taxation any bill of costs that has been incurred by him or her 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**

**67. Service of application**

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**

**68. Substituted service**

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 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 or her usual or last known residence or place of business, or by registered letter, or in such other manner as the Court directs.

**69. Form of acknowledgment under section 56 of Act**

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.

**70. Grants of representation**

(1) A grant of probate of the will of a deceased person shall be in accordance with Form 16.

(2) A grant of letters of administration with the will annexed of the estate of a deceased person shall be in accordance with Form 17.

(3) A grant of letters of administration of the estate of a deceased person shall be in accordance with Form 18.

(4) A reseal of a foreign grant of administration shall be in accordance with Form 19.

**PART 5—FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)**

**ORDER 73**

**REGISTRATION OF FOREIGN JUDGMENTS**

**1. Interpretation**

In this Order, “the Act” means the *Foreign Judgments (Reciprocal Enforcement) Act 1954*.

**2. Application for registration**

An application under section 6 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.

**3. Evidence in support of application**

- (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;
    - (iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 8 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 (1) (b) (iii) or paragraph (1) (c) 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. Security for costs

**5. Title of affidavit and summons**

"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        ."

**(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.

## 8. Notice of registration

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)



—ORDER 73—

- (a) if within the jurisdiction, by personal service as in the case of an originating application, unless another mode of service is ordered by the Court;
  - (b) if out of the jurisdiction, in accordance with law relating to the service of originating applications 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 or her 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.

**9. Endorsement of service**

(1) Within 3 days after the day of service or within such extended period as may, in special circumstances, be allowed by order of 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.

**10. Application to set aside registration**

(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.

(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.

**11. Issue of execution**

(1) Execution shall not issue on a registered judgment until after the expiration of the period which, in accordance with the provisions of subrule 6 (3), 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.

**12. Form of writ of execution**

In the case of a registered judgment the form of a writ of execution shall be varied as follows:

For the words “which 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 in the Supreme Court of the Australian Capital Territory pursuant to the *Foreign Judgments (Reciprocal Enforcement) Act 1954*”.

**13. Determination of certain questions**

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.

**CERTIFIED COPIES OF JUDGMENTS**

**1. Application for certified copy of judgment of the Supreme Court**

(1) An application under section 13 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 or her 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 the following documents:
  - (i) a copy of the originating application by which the proceedings were instituted, together with any accompanying statement;
  - (ii) an affidavit of service of the application on the defendant, or a copy of the memorandum of appearance of the defendant;
  - (iii) copies of any pleadings;
  - (iv) 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.

**2. Issue of certified copies**

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:

“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 13 of the *Foreign Judgments (Reciprocal Enforcement) Act 1954*.

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 originating application by which the proceedings were instituted, together with any accompanying statement;
  - (ii) a copy of the pleadings, if any, in the proceedings; and
  - (iii) a statement showing the manner in which the originating application was served on the defendant, or that the defendant entered an appearance, 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

##### 1. Interpretation

###### (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.

##### 2. Application of Order

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.

**3. Application for an order for registration**

(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*.

**4. Supporting affidavits**

(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;

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- (h) the amount of costs of and incidental to the registration sought to be included in the registered judgment.
- (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.

**5. Registration**

- (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.

**6. Notice of registration**

(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.

(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.

**7. Affidavit of service to be filed**

Before any step is taken to enforce a registered judgment, an affidavit of due service of notice of the registration shall be filed.

**8. Time limit**

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.

**9. Court may give directions**

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.

**10. Security for costs**

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.

**11. Record of registered judgment**

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;

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- (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;
  - (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***

**1. Citation**

This Order may be cited as the Corporations Rules.

**2. Interpretation**

- (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;



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- “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;
- “*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

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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 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.

**3. Application of this Order and other Orders to proceedings under the Corporations Law and under the ASC Law**

(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.

**3A. Application of Order 2**

The Rules apply in relation to an application for the commencement of proceedings under this Order as if the application were an originating application, except as otherwise provided by this Order.

**4. Form of documents**

(1) Subject to subrule (2), all documents (including an application under rule 5 or 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 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.

**5. Commencement of Proceedings**

(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

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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.

**6. Commencement of proceedings by a person aggrieved—sections 350, 574, 777, 1082, 1140 and 1323**

(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
- (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

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- (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
  - (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.

**7. Powers of Registrar and Master**

- (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.

**9. Power to direct that notice be given**

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.

**10. Leave to creditor, contributory or officer to be heard**

**(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
- (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.

**11. Inquiry as to creditors**

- (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***

**12. Applications under sections 167, 168, 172, 194, 197, 198, 199, 202 and 1074**

- (1) This rule applies to an application for—
- (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;

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- (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
  - (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 2, rule 21.
- (6) If a person on whom the application has not been served intends to appear on the date appointed for directions under Order 2, rule 21, 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***

**13. Order confirming the issue of shares at a discount—subsection 190 (3)**

(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 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 2, rule 21.

(5) If a person on whom the application has not been served intends to appear on the date appointed for directions under Order 2, rule 21, 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.

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(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.

**14. Application for order confirming reduction of capital—section 195**

(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;
- (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

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- (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).

(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);

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- (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;
  - (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;

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- (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.
- (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

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- (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.

**(23)** An order confirming a reduction of capital shall contain the particulars required under subsection 195 (6).

**15. Service and advertising of order confirming a reduction of capital**

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.

**16. Application opposing giving of financial assistance—subsection 205 (12)**

**(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.

**17. Application by creditor in relation to a proposed buy-back scheme or buy-back—section 206LD**

(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.

(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)***

**18. Grant of leave to manage a corporation—section 229**

- (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.

**19. Order prohibiting a person from managing a corporation—section 230**

- (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.



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(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.

**19A. Order sanctioning non-compliance with Part 3.2A—section 243ZD**

(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
- (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.

**20. Application for orders in cases of oppression or injustice—section 260**

(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

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- (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.
- (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 2, rule 21.
- (7) If a person on whom the application has not been served intends to appear on the date appointed for directions under Order 2, rule 21, 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 80 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).

**21. Application for leave to enforce a charge—subsection 267 (3)**

(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.

(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)***

**22. Applications relating to compromises with creditors or members—sections 411 and 413**

(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.

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**(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), 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

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- (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 (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—
    - (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 (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.

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**(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), (1A) or (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), (1A) or (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—

- (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—

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- (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.

**23. Service of order approving a compromise or arrangement**

The applicant must lodge an office copy of an order of the Court under subsection 411 (1), (4) or (6) or 413 (1) with the Commission and serve an office copy of the order on any person appointed to administer 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.

**24. Inquiry as to conduct of person administering a compromise or arrangement—subsection 411 (9)**

**(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).

**25. Application to restrain proceedings against Part 5.1 body—  
subsection 411 (16)**

(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.

**26. Review of remuneration of person administering a compromise or arrangement**

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.

**27. Application for directions in relation to compromise or arrangement**

(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)***

**27A. Declaration as to validity of controller’s appointment—section 418A**

(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.

(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.

**28. Power to make order relieving a person from liability if not properly appointed as receiver—subsection 419 (3)**

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).

**28A. Application for relief of controller from liability—subsection 419A (7)**

(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.

**28B. Court's power to authorise managing controller to dispose of property despite prior charge—section 420B**

(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 donee;
- (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
- (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.

**28C. Receiver’s power to carry on a corporation’s business during a winding up—section 420C**

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.

**29. Inquiry as to conduct of a controller—section 423**

**(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 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).

**30. Application by controller for directions—section 424**

- (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.

**30A. Court's power to fix receiver's remuneration—section 425**

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.

**30B. Court's power to remove controller for misconduct—section 434A**

- (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.

**30C. Removal of redundant controller—section 434B**

(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)***

**31. Stay of proceedings where company is under official management—section 444**

(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.

(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.

**32. Inquiry as to conduct of official manager—subsection 452 (4)**

- (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.

**33. Application for variation or cancellation of resolution to place company under official management—section 454**

- (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.
- (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.

**34. Release of official manager—section 456**

- (1) A person who applies for an order of release under subsection 456 (19) or (20) shall give notice of that application to—
  - (a) each creditor who has proved his or her debt; and
  - (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)***

**34A. Applications under Part 5.3A**

- (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<br>Nature of application   | Column 2<br>Persons to be served copy   |
|---|---|
| Application for leave to enforce a charge if an administrator has been appointed<br>(section 440B)                              | The administrator of the company concerned  |
| Application for leave to take possession of property<br>(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<br>(section 440F) | The administrator of the company concerned  |
| Application for leave to take enforcement action under a guarantee<br>(section 440J)  | (a) The person who gave the guarantee concerned; and<br>(b) the administrator of the company concerned. |



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| Column 1  | Column 2   |
|---|--|
| Nature of application   | Persons to be served copy  |
| 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 whom the application is made |
| Application for leave to dispose of—<br>(a) property of a company in administration which is subject to a charge; or<br>(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.<br>(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<br>(b) the administrator of the company (if he or she is not the applicant).   |

| Column 1   | Column 2   |
|--|--|
| Nature of application  | Persons to be served copy  |
| Application by a person bound by a deed of company arrangement to begin, or proceed with—<br>(a) a proceeding against the company or in relation to any of its property; or<br>(b) enforcement process in relation to the property of the company.<br>(section 444E) | The administrator of the company concerned   |
| Application for an order cancelling a variation of a deed of company arrangement<br>(section 445B)   | The administrator concerned  |
| Application for an order terminating a deed of company arrangement<br>(section 445D)   | (a) The administrator of the deed of company arrangement (if he or she is not the applicant); and<br>(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<br>(section 447A)   | (a) If the company is in administration—the administrator of the company (if he or she is not the applicant); and<br>(b) if the company has executed a deed of company arrangement—the deed’s administrator (if he or she is not the applicant). |

| Column 1  | Column 2  |
|---|---|
| Nature of application   | Persons to be served copy   |
| Application for an order to protect interests of a company's creditors during an administration<br>(section 447B) | (a) The administrator of the company (if he or she is not the applicant); or<br>(b) the administrator of the deed of company arrangement concerned (if he or she is not the applicant). |
| Application for the determination, or review, of the remuneration of an administrator<br>(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)                               |

**34B. Court's power to limit rights of secured creditor or owner or lessor of property—subsection 444F (1)**

(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.

**34C. Application to avoid or validate a deed of company arrangement—  
section 445G**

(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—

- (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.

**34D. Application by administrator for directions—section 447D**

(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.

**34E. Supervision of administrator of company or deed of company arrangement—section 447E**

(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.

**34F. Removal of administrator—section 449B**

(1) An application for an order under subsection 449B 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 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.

**34G. Vacancy in office of administrator of a company or of administrator of a deed of company arrangement—sections 449C and 449D**

(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

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- (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)***

**36. Application for a winding up order—section 462**

- (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.

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**(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.

**(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 2, rule 21.

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(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 2, rule 21, 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
  - (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 1 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 1 or more, of the persons appointed.

(15) An application to which this rule applies may not be discontinued without the leave of the Court.

**36A. Form of affidavit in support of statutory demand—subsection 459E (3)**

(1) An affidavit referred to in subsection 459E (3) of the Corporations Law shall—

- (a) be made by the creditor or, if there is more than 1 creditor, by 1 of them;
- (b) set out the facts entitling the deponent to make the affidavit;
- (c) state the source of the deponent’s knowledge of the matters stated in the affidavit concerning the debt or debts;
- (d) state that the deponent believes those matters to be true; and
- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

(2) Where the creditor is a corporation, an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation is taken to be an affidavit by the creditor.

(3) Where the creditor is the Crown, an affidavit by an officer of the Crown having knowledge of the facts as far so they are known to the Crown is taken to be an affidavit by the creditor.

(4) Where the creditor is a company to which a liquidator or provisional liquidator has been appointed, an affidavit by the liquidator or provisional liquidator is taken to be an affidavit by the creditor.

(5) An affidavit under this rule shall—

- (a) be in accordance with Form 93B;
- (b) contain the note set out in the form; and
- (c) not state a proceedings number.

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- (6) An affidavit under this rule shall not be filed.
- (7) Notwithstanding subrule (1), for the purposes of subsection 459E (3) of the Corporations Law, an affidavit referred to in that subsection that complies with the rules of the Supreme Court of the State or Territory in which the registered office of the company to be served is situated is taken to be an affidavit that complies with this rule.
- (8) In this rule—  
“Crown” means the Crown in right of the Commonwealth, in right of a State or in right of a Territory.

**36B. Application to set aside a statutory demand—section 459G**

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]

**36C. Application for leave to bring a winding up application under subsection 459P (2)**

- (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.

**37. Winding up of a company in insolvency under section 459P**

(1) This rule applies to an application under section 459P for a winding up order.

(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 which—
  - (i) is in accordance with Form 94;
  - (ii) is made by the applicant, or if there is more than 1 applicant, by 1 of them;
  - (iii) sets out the facts entitling the deponent to make the affidavit;
  - (iv) states the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts;
  - (v) states that the deponent believes those matters to be true; and
  - (vi) states that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

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**(5)** Where the applicant is a corporation, an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation is taken to be an affidavit by the applicant.

**(5A)** Where the applicant is the Crown, an affidavit by an officer of the Crown having knowledge of the facts so far as they are known to the Crown is taken to be an affidavit by the applicant.

**(5B)** Where the applicant is a company to which a liquidator or provisional liquidator has been appointed, an affidavit by the liquidator or provisional liquidator is taken to be an affidavit by the applicant.

**(6)** On filing and serving an application referred to in subrule (3), the applicant shall also file and serve an affidavit which—

- (a) sets out the material facts relied on in support of the application; and
- (b) unless the Court orders otherwise—was made by a person who has knowledge of the facts relied on to support 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 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, in a manner permitted by section 220, on the company—

- (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 (7).

**(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, 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 1 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 1 or more, of the persons appointed.

(17) In this rule—

“Crown” means the Crown in right of the Commonwealth, in right of a State or in right of a Territory.

**38. Filing in Court of documents in support of an application under section 459P or 462**

(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

(c) if the application relies on a failure to comply with a statutory demand—

- (i) an affidavit in accordance with Form 95, made not earlier than 3 days before the date of the final hearing of the application; and
- (ii) an affidavit of service on the company of the statutory demand and, if the debt is not a judgment debt, of the affidavit required by paragraph 37 (4) (b).

(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.

**39. Sealing of winding up order and notice of appointment of liquidator**

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.

**39A. Court’s power to extend time within which application for a company to be wound up in insolvency is to be determined—section 459R**

(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.

**40. Proceedings after order for winding up is made**

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.

**41. Substituted applicant in winding up application—section 465B**

- (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
  - (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.

**42. Notice of appointment of liquidator**

- (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]

**43. Service of winding up order**

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).

**44. Stay of proceedings on winding up application—subsection 467 (7)**

If—

- (a) a winding up application has been made in relation to a company and a winding up order has not been made; and
- (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.

**45. Validation of disposition of property—section 468**

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.

**46. Application for leave to commence or continue proceedings against a company—section 471B**

(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.

**47. Transitional provisions for winding up applications**

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***

**48. Appointment of provisional liquidator—section 472**

(1) A creditor or contributory of a company, the company or the Commission may apply for the appointment of a provisional liquidator 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.

**49. Notice of appointment of provisional liquidator**

(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;

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- (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.

**50. Service of order appointing a provisional liquidator**

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.

**51. Powers of provisional liquidator—section 472**

(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.

**52. Remuneration of provisional liquidator—subsection 473 (2)**

(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.

***Division 10—Liquidators and special managers***

**53. Resignation of liquidator or provisional liquidator appointed by the Court—subsection 473 (1)**

(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.

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(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 or her appointment not later than the day after the order was made; and
- (b) publish a notice in Form 101 in the manner prescribed by rule 104 as soon after the order was made as is practicable.

**54. Filling vacancy in office of liquidator—subsection 473 (7)**

(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.

**55. Report as to company's affairs—section 475**

(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 (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 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.

**57. Resolutions of meetings of creditors or contributories**

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.

**58. Release of liquidator—section 480**

**(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*.

**(4)** Together with any application claiming an order under paragraph 480 (c) or (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

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- (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
- (xii) annexing a copy of—
  - (A) the notice sent to each creditor and contributory in compliance with paragraph (3) (a); and
  - (B) the notice published in the *Gazette* in compliance with paragraph (3) (b).

**(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).



**59. Report on accounts of liquidator—section 481**

(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.

**60. Liquidator's power to require payment of money or transfer of property—section 483**

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.

**63. Application for order for payment of call—section 483**

(1) Where a liquidator applies for an order under paragraph 483 (3) (b) for payment of a call, the evidence brought 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.

**64. Powers delegated to liquidator by the Court—section 488**

(1) Subject to—

(a) the Corporations Law;

(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.

**64A. Distribution of surplus—subsection 488 (2)**

- (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.

**65. Appointment of temporary joint liquidator**

- (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.

**66. Taxation of costs of agents of and persons who have provided services to a liquidator**

(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.

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- (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.
- (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.

**67. Appointment of a special manager—section 484**

- (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
  - (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.

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(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.

**68. Accounts of a special manager—section 484**

(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.

**69. Default by a special manager**

(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.

(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)***

**70. Proceedings against company after commencement of a creditors' voluntary winding up—section 500**

(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.

**71. Appointment or removal of liquidator in the course of a voluntary winding up—sections 502 and 503**

(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.

**72. Application to Court to have question determined or power exercised—section 511**

(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)***

**73. Supervision of liquidators by the Court—section 536**

(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).

(6) In this rule—

“liquidator” includes a provisional liquidator.

**75. Appointment of committee of inspection—section 548**

(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.

**76. Application by liquidator for direction or permission if no Committee of Inspection is appointed—section 552**

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.

**76A. Determination of value of debts and claims of uncertain value in liquidation—section 554A**

(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;
  - (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.

**76B. Amendment of valuation of security in proof of debt by secured creditor—section 554G**

- (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.

**77. Disclaimer of contract—section 568**

- (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.

**77A. Application to set aside disclaimer before it takes effect—section 568B**

- (1) An application under section 568B to set aside a disclaimer before it takes 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 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.

**77B. Application to set aside disclaimer after it has taken effect—section 568E**

- (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.

**77C. Vesting of disclaimed property by Court order—section 568F**

- (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.

**78. Application to Court to declare dissolution of company void—section 571**

- (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

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- (b) the grounds on which it is said that the dissolution should be declared void.
- (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 2, rule 21.
- (4) A person who intends to appear on the date appointed for directions under Order 2, rule 21 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.

**79. Winding up Part 5.7 bodies—sections 583 and 585**

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.

**80. Application for leave to commence or continue proceedings against a contributory of a Part 5.7 body after a winding up order—section 587**

- (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;

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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
- (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)***

**81. Issue of summons for examination—sections 596A and 596B**

**(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.

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(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”.

(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.

**81A. Conduct of examination under Division 1 of Part 5.9**

(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.

**82. Default in relation to examination under Division 1 of Part 5.9**

(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, 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.

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(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.

**83. Orders under section 598 or 599**

(1) This rule applies to an application for an order against a person concerned with a corporation under section 598 and to an application 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***

**84. Proceedings under Chapter 6 or 7 of the Corporations Law**

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.

**85. Orders in respect of agreement, payment or benefit—section 740**

(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—
  - (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.

**86. Orders in respect of contravention by substantial shareholder—section 741**

(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.

**87. Application for order of Court declaring that an act, document or matter is not invalid—section 743**

**(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.

**88. Application for order varying an agreement with a non-licensee—section 799A**

(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—

- (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.

**89. Orders and directions under section 877**

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.

**90. Proceedings against securities exchange to establish claim against fidelity fund—section 911**

(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

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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.

**(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.

**91. Application for directions by trustee for debenture holders—section 1057**

**(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.

**92. Summons for appearance of a person—subsection 1092 (3)**

- (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.

**93. Orders relating to refusal to register transfer or transmission—section 1094**

- (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
- (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***

**94. Appeal against a decision of a futures exchange or futures association—section 1135**

(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.

**95. Application for order varying agreement with a non-licensee—section 1165A**

(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.

(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.

**96. Application for an order under section 1224 or 1226**

(1) An application under section 1224 must be served on—

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- (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.

**97. Proceedings against futures organisation to establish claim against fidelity fund—section 1243**

- (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—
- (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

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- (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)***

**98A. Leave to manage a corporation where a person is subject to a civil penalty disqualification—section 1317EF**

- (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.

**98B. Relief from liability for contravention of civil penalty provisions—section 1317JA**

- (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.

**99. Application for relief under subsection 1318 (2)**

(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) to (d) (inclusive) 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).

**100. Appeals from decisions of administrator, receiver, official manager, liquidator etc.—section 1321**

(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;
- (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.

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(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.

**101. Irregularities—section 1322**

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.

**102. Intervention by Commission in proceedings—section 1330**

(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.

**103. Meetings ordered by the Court**

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.

**104. Publication requirements and proof of publication**

(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***

**105. Reference of question of law arising at a hearing of the Australian Securities Commission to the Court—section 61 of the ASC Law**

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.

**106. Proceedings under section 70 of the ASC Law**

- (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.

**107. Reference of question of law arising at a hearing of the Corporations and Securities Panel to the Court—section 196 of the ASC Law**

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.

**108. Proceedings under section 201 of the ASC Law**

(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.

**109. Proceedings under section 219 of the ASC Law**

(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 affidavits in support of the application must be personally served on the person to whom the certificate relates.

***Division 18—Transfer of proceedings***

**110. Transfer of proceedings under the Corporations Law**

(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.

(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

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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.

**PART 7—ADOPTION**

**ORDER 76**

*Division 1—Preliminary*

**1. Interpretation**

**(1)** In this Part, unless the contrary intention appears—

“Act” means the *Adoption Act 1993*;

“Director” means the Director of Family Services under 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

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(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***

**2. References to applicants**

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

(b) by the proposed adoptive parents jointly;

as the case requires.

**3. Adoption orders—application**

(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

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- (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.
- (4) The Rules apply in relation to an application for an adoption order as if the application were an originating application, except as otherwise provided by this Division.

**4. Adoption orders—notice of application**

- (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.

**5. Adoption orders—affidavit in support of application**

- (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—
  - (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 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.

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(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.

**6. Adoption orders—documents in support of application**

(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
- (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—

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- (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.

**7. Adoption orders—entry of appearance opposing application**

- (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—
- (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

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- (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.

**8. Form of interim order**

An interim order shall be in accordance with Form 4.

**9. Form of adoption order**

An adoption order shall be in accordance with Form 5.

***Division 3—Orders for dispensing  
with consent to adoption***

**10. Dispensing orders—application**

- (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.
- (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.

**11. Dispensing orders—notice of application**

- (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—

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- (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.

**12. Dispensing orders—entry of appearance opposing application**

- (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.
- (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.

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(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).

**13. Form of dispensing order**

A dispensing order shall be in accordance with Form 9.

***Division 4—Variation of adoption orders***

**14. Variation orders—application**

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.

**15. Variation orders—notice of application**

(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.

**16. Variation orders—entry of appearance opposing application**

(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.

(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***

**17. Discharging orders—application**

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.

**18. Discharging orders—notice of application**

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.

**19. Discharging orders—entry of appearance opposing application**

(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.

***Division 6—Access to identifying information***

**20. Access to identifying information—application**

An application for an order for access to identifying information shall be by motion on notice in accordance with Form 16.

**21. Access to identifying information—notice of application**

(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.

**22. Access to identifying information—entry of appearance opposing application**

(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.

**23. Form of order for access to identifying information**

An order for access to identifying information shall be in accordance with Form 19.



***Division 7—General procedures***

**24. Applications by motion without notice**

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.

**25. Service of notice of applications**

(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.

**26. Chambers hearings**

Unless the Court otherwise orders, an application for an order under the Act shall be heard in Chambers.

**27. Evidence**

(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.

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(4) The Court may make any other order necessary for carrying out an order under subrule (3).

**28. Adjournments, extensions of time, directions**

(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 9—PROCEEDINGS UNDER THE JURISDICTION OF COURTS  
(CROSS-VESTING) ACT 1987 OF THE COMMONWEALTH**

**ORDER 78**

**1. Application of Order**

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.

**2. Interpretation**

In these Rules—

“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.

**3. Applications under the Act**

(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”.

**4. Applications for transfer of proceedings**

(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.

**5. Removal of Proceedings**

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.

**6. Proceedings in which jurisdiction under cross-vesting laws is or may be invoked**

(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.

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(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.

**7. Proceedings transferred under cross-vesting laws**

(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.

**8. Conduct of Proceedings**

(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 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—DISPUTED ELECTIONS AND QUESTIONS REFERRED BY  
THE LEGISLATIVE ASSEMBLY—ELECTORAL ACT 1992**

**ORDER 79**

***Division 1—Preliminary***

**1. Interpretation**

In this Order, unless the contrary intention appears—

“Act” means the *Electoral Act 1992*;

“application”, “Court”, “election” and “file” have the same respective meanings as in Part XVI of the Act;

“MLA” means a member of the Legislative Assembly;

“proceeding” has the same meaning as in Part XVI of the Act;

“respondent” has the meaning given by subsection 262 (2) of the Act.

**2. Application of Rules**

(1) The Rules apply in relation to an application as if the application were an originating application, except as otherwise provided by the Act and this Order.

(2) The Rules apply in relation to a reference to the Court under Division 4 of Part XVI of the Act as if a statement under section 276 of the Act setting out a question referred by the Assembly were an originating application, except as otherwise provided by the Act and this Order.

***Division 2—Disputed elections***

**3. Deposit as security for costs**

For the purposes of subsection 260 (1) of the Act, the amount that an applicant must deposit with the Registrar as security for costs is \$1,000.

**4. Public notice of application**

(1) As soon as practicable after filing an application, the applicant shall—

- (a) publish a copy of the application in the *Gazette*; and
- (b) publish a notice of the filing in a daily newspaper circulating in the Territory.

(2) The notice referred to in paragraph (1) (b) shall specify—

- (a) the applicant’s name, the date of filing and the declaration sought; and

- (b) as concisely as practicable, the facts relied on to invalidate the election.

**5. Parties to proceeding**

The parties to a proceeding under Division 3 of Part XVI of the Act are—

- (a) the applicant; and
- (b) each other person who—
  - (i) is entitled under section 262 or 263 of the Act to appear in the proceeding; and
  - (ii) enters an appearance in accordance with Order 13.

**6. Particulars of contested ballot papers**

**(1)** Where an application—

- (a) seeks—
  - (i) a declaration that a person who has been declared elected was not duly elected; or
  - (ii) a declaration that a person who has not been declared elected was duly elected; and
- (b) specifies a claim or an objection to ballot papers or a class of ballot papers;

each party to the proceeding shall, not later than 7 days before the day appointed for the hearing of the application, file and deliver to each other 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 the latter ballot papers, the ground on which the objection is made.

**(2)** An objection shall not be entertained against the validity of a ballot-paper on a ground not specified in the grounds so filed and delivered except by leave of the Court, and on such terms as to amendment of the grounds, adjournment of the hearing and payment of costs, as the Court orders.

**7. Counter-charges**

**(1)** A respondent to an application referred to in rule 6 who intends to oppose the application on a ground not mentioned in a list referred to in rule 6 shall, within 7 days after entering his or her appearance, or within such further time as the Court allows, file and deliver to the applicant 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 out the facts relied on with sufficient particularity to identify the ground on which the respondent opposes the application.

**8. Evidence of voting in Antarctica**

(1) Where a matter raised in an application relates to voting in Antarctica, the Commissioner shall—

- (a) file the statement prepared under paragraph 175 (c) of the Act in respect of the election concerned; and
- (b) deliver a copy of the statement to each other party to the proceeding at his or her address for service.

(2) The Commissioner shall comply with subrule (1)—

- (a) where the Commissioner is the applicant—within 7 days after the day on which the application is filed; and
- (b) in any other case—within 7 days after the day on which he or she is served with a copy of the application.

**9. Trial**

(1) The trial of an application shall be held at a time and place appointed by the Court.

(2) Where the Court makes an order appointing the time and place for the trial, the applicant shall—

- (a) give each other party written notice of the order; and
- (b) publish notice of the trial in a daily newspaper circulating in the Territory;

not later than 14 days before the date appointed.

(3) An order appointing the time and place of the trial may be varied by the Court from time to time.

**10. Substitution of applicant**

The Court may—

- (a) when determining whether to grant leave under section 263 of the Act for the withdrawal of an application disputing the validity of an election; or
- (b) where a sole applicant disputing the validity of an election dies before the trial of the application;

allow any other person who was entitled to dispute the validity of the election on like grounds to be substituted for the applicant, and the proceedings on the application shall thereupon be continued as if the person substituted had been the applicant.

**11. Withdrawal and substitution of respondent**

(1) For the purpose of paragraph 263 (9) (a) of the Act, the respondent's notice of intention not to oppose an election application within the meaning of that section shall be filed.

(2) For the purpose of paragraph 263 (9) (e) of the Act, the period within which a notice of appearance is to be filed by a person seeking to become a respondent is the period of 7 days commencing on the day on which notice that a person has ceased to be a respondent is published in accordance with subparagraph 263 (9) (d) (i) of the Act.

**12. Inspection of list of applications**

For the purposes of section 264 of the Act, a copy of the list of applications disputing the validity of an election may be inspected during ordinary office hours at the Registrar's office.

***Division 3—Questions referred by Legislative Assembly***

**13. Parties to proceeding**

Each person who—

- (a) is entitled under section 277 of the Act to appear in a proceeding under Division 4 of Part XVI of the Act; and
- (b) enters an appearance in accordance with Order 13;

is a party to the proceeding.

***Division 4—Miscellaneous***

**14. Further particulars**

The Court may order a party to a proceeding to deliver to another party particulars, or further and better particulars, of a matter alleged by that party.



**PART 11—CRIMINAL JURISDICTION**

**ORDER 80**

***Division 1—Preliminary***

**1. Interpretation**

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*.

**2. Forms**

(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***

**3. Application for bail**

(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***

**4. Power to issue**

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.

**5. Conduct money**

(1) Where a party causes to be served a subpoena requiring the person named to attend or to produce any document or thing, or both, the party shall, at the time of service, tender to that person—

- (a) an amount sufficient to enable the person to comply with the subpoena; and
- (b) a written undertaking to compensate the person for any expense or loss reasonably incurred in complying with the subpoena.

(2) If the person named in a subpoena is a corporation, the amount and undertaking referred to in subrule (1) may be tendered to any person on whom the subpoena may be served.

(3) Where a person named in a subpoena has not received an amount that he or she considers adequate to compensate for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with the subpoena, the person may, after having given the party who caused service of the subpoena not less than 7 days notice of his or her intention to do so, apply in writing to the taxing officer to determine the amount that is sufficient to compensate for such expense or loss.

(4) Upon the taxing officer determining an amount for the purpose of subrule (3), the person who caused service of the subpoena shall pay that amount to the applicant.

(5) A determination for the purpose of subrule (3) shall be deemed to be a judgment of the Court for the amount determined against the person who caused service of the subpoena and may be enforced accordingly.

(6) Order 65 shall be deemed to apply *mutatis mutandis* in relation to any determination for the purpose of subrule (3).

**6. Production by non-party**

(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.

**7. Costs of complying with subpoena**

- (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 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 subrule (1) the Court hearing the matter shall either determine the amount or direct that the amount shall be determined by the taxing officer.
- (3) Upon the Court or the taxing officer determining an amount for the purpose of subrule (2), the person who caused service of the subpoena shall pay that amount to the applicant.
- (4) An order under subrule (1) shall be deemed to be a judgment of the Court for the amount determined for the purpose of subrule (2) against the person who caused service of the subpoena and may be enforced accordingly.
- (5) Order 65 shall be deemed to apply *mutatis mutandis* in relation to any determination for the purpose of subrule (2).

**8. Banker's books**

- (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.

—ORDER 80—

(2) When issuing a subpoena the Registrar shall not be concerned to inquire whether subrule (1) applies to the subpoena, but the Court may set aside as irregular a subpoena which does not comply with it.

**9. Inspection**

(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 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 subrules (1) to (5).

(7) Subrule (6) does not apply in any case where it is intended that the procedure provided for in this rule is not to be followed.

**10. Issue—Form of subpoena**

(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.

**11. Document or thing in custody of a court**

(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.

(3) On 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.

**12. Service**

(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.

**13. Setting aside**

(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 at whose request the subpoena was issued.

**14. Authority of Registrar**

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***

**15. Execution of documents**

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.

**PART 11A—REGISTRATION OF ORDERS UNDER THE MUTUAL  
ASSISTANCE IN CRIMINAL MATTERS ACT 1987 OF THE  
COMMONWEALTH**

**ORDER 80A**

**1. Interpretation**

In this Order—

“foreign order” means a foreign forfeiture order, a foreign pecuniary penalty order or a foreign restraining order within the meaning of the Act;

“register” means the register kept pursuant to rule 2;

“the Act” means the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth.

**2. Register**

A register of foreign orders shall be kept in the Registrar’s office.

**3. Registration**

A copy of a foreign order, or a copy of an amendment of a foreign order, referred to in subsection 34 (9) of the Act is registered when it is included in the register.

**4. Proceedings for registration**

(1) An application for the registration of a foreign order or of an amendment of a foreign order shall be by motion on notice joining the person against whom the foreign order was made as the respondent.

(2) The applicant shall file with the notice of motion an affidavit setting out such particulars as are necessary to enable the Court to comply with subsection 23A (2) of the *Proceeds of Crime Act 1987* of the Commonwealth.

(3) The applicant may, unless the Court otherwise orders, proceed without serving a copy of the notice of motion on the respondent.

(4) Where the applicant includes in the notice of motion a request that the application be granted under this subrule, the Court may make an order for the registration of the foreign order or of the amendment of the foreign order in camera and without any appearance by or on behalf of the applicant.

(5) Where an order is made for the registration of a foreign order or of an amendment of a foreign order, the applicant shall serve a copy of the order for registration and of the registered foreign order or registered amendment on the respondent.

(6) The registration of a foreign order is cancelled when a note of its cancellation is endorsed on the copy of the order included in the register.

**PART 11B—REGISTRATION OF ORDERS UNDER THE PROCEEDS  
OF CRIME ACT 1991**

**ORDER 80B**

**1. Interpretation**

In this Order—

“interstate order” means an interstate restraining order or an interstate forfeiture order within the meaning of the Act;

“register” means the register kept pursuant to rule 2;

“the Act” means the *Proceeds of Crime Act 1991*.

**2. Register**

A register of interstate orders shall be kept in the Registrar's office.

**3. Registration**

A copy of an interstate order, or a copy of an amendment of an interstate order, referred to in section 78 or 84 of the Act is registered when it is included in the register.

**4. Proceedings for registration**

(1) An application for the registration of an interstate order or of an amendment of an interstate order shall be by motion on notice joining the person against whom the interstate order was made as the respondent.

(2) The applicant may, unless the Court otherwise orders, proceed without serving a copy of the notice of motion on the respondent.

(3) Where the applicant includes in the notice of motion a request that the application be granted under this subrule, the Court may make an order for the registration of the interstate order or of the amendment of the interstate order in camera and without any appearance by or on behalf of the applicant.

(4) Where an order is made for the registration of an interstate order or of an amendment of an interstate order, the applicant shall serve a copy of the order for registration and of the registered interstate order or registered amendment on the respondent.

(5) The registration of an interstate order is cancelled when a note of its cancellation is endorsed on the copy of the order included in the register.

**5. Amendments, ancillary orders or directions**

For the purposes of subsections 81 (1) and 87 (1) of the Act, particulars of any amendments made to an interstate order or of any ancillary order or direction made by a court shall be communicated to the Court by filing a sealed copy of the amendment, order or direction.



**PART 11C—MATTERS ARISING UNDER THE EVIDENCE AND  
PROCEDURE (NEW ZEALAND) ACT 1994 OF THE  
COMMONWEALTH**

**ORDER 80C**

**PRELIMINARY**

**1. Interpretation**

**(1)** In this Part—

“Act” means the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth.

**(2)** Unless the contrary intention appears, an expression that is used in this Part and in the Act has the same meaning in this Part as in the Act.

**(3)** In this Part, a reference to a form by number is to be read as a reference to the form so numbered in Schedule 13B.

**ORDER 80D**

**SERVICE OF SUBPOENA IN NEW ZEALAND**

**1. Application for leave to serve**

An application for leave to serve a subpoena in New Zealand shall be—

- (a) if the subpoena was issued by the Court in proceedings—by motion in the proceedings; or
- (b) if the subpoena was issued by the Magistrates Court—by originating motion in the Court.

**2. Supporting affidavit**

An application referred to in rule 1 shall be supported by an affidavit to which is annexed a copy of the subpoena and stating—

- (a) the name, designation or occupation, and address, of the person named and, if an individual, whether he or she is over 18 years of age;
- (b) the nature and significance of the evidence required from, or of the document or thing required to be produced by, the person named;

—ORDER 80D—

- (c) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person named;
- (d) the date by which it is intended to serve the subpoena;
- (e) details of—
  - (i) the calculation of the amount sufficient to compensate the person named for expense or loss reasonably incurred in complying with the subpoena; and
  - (ii) how that amount (whether as money or otherwise) is to be paid to the person named;
- (f) in the case of a subpoena to give evidence—an estimate of the time that will be required for the person named to attend for that purpose; and
- (g) details of any facts or circumstances known to the deponent which may provide cause for the subpoena to be set aside under subsection 14 (2) or (3) of the Act.

**3. Ex parte hearing**

A motion referred to in rule 1 shall be heard *ex parte*.

**4. Undertaking about expenses**

Before granting leave to serve a subpoena in New Zealand, the Court may require the applicant to undertake to compensate the person named (not being a party to the proceedings in which the subpoena was issued) for any expense or loss reasonably incurred in complying with the subpoena.

**5. Leave to search etc.**

A document filed relating to an application referred to in rule 1 is not to be searched, inspected or copied, other than by a party to the proceedings in which the subpoena was issued or by the person named, without leave of the Court.

**ORDER 80E**

**FAILURE TO COMPLY WITH SUBPOENA**

**1. Issue of certificate**

(1) A certificate under section 16 of the Act in accordance with Form 1 may be issued of the Court's own motion or on the application of a party to the proceedings in which the subpoena was issued.

(2) A certificate shall be under the seal of the Court.

**2. Application for issue of certificate**

An application for the issue of a certificate under section 16 of the Act may be—

- (a) in the proceedings in which the subpoena was issued—made orally; or
- (b) by motion;

and shall be accompanied by a draft certificate.

**3. Supporting affidavit**

A motion referred to in rule 2 shall be supported by—

- (a) an affidavit of service of the subpoena and of the order and notice referred to in subsection 10 (3) of the Act; and
- (b) an affidavit stating—
  - (i) particulars of the order giving leave to serve the subpoena;
  - (ii) whether an application was made for the subpoena to be set aside and, if so, particulars of the application and any consequential orders made; and
  - (iii) that the subpoena was not complied with.

**ORDER 80F**

**SETTING ASIDE SUBPOENA**

**1. Application to set aside**

(1) An application under section 13 of the Act shall be made by affidavit stating the facts and grounds on which the application is based.

(2) The affidavit shall—

**—ORDER 80G—**

- (a) be headed with the heading appearing on the copy of the order giving leave to serve the subpoena;
  - (b) state the address, telephone number and, if applicable, the fax number, of the applicant; and
  - (c) be filed by lodgment or by fax.
- (3)** If an affidavit filed by fax is clear and legible, the Registrar shall acknowledge, by fax, having received a copy of the affidavit.

**2. Copy of affidavit to party**

The Registrar shall cause a copy of an affidavit referred to in rule 1 to be served, by post or by fax, on the party who obtained leave for the subpoena to be served in New Zealand.

**3. Determination of application**

An application under section 13 of the Act shall be determined at a time and place and in a manner directed by the Court.

**4. Objection to no hearing**

An objection under subsection 14 (4) of the Act shall be made by filing a notice in accordance with Form 2 not later than 7 days after—

- (a) if the objection is by the applicant for the subpoena to be set aside—the date on which the application was filed; or
- (b) if the objection is by the party who obtained leave to serve the subpoena in New Zealand—the date on which the application was served on that party.

**5. Hearing by video link or telephone**

A request under subsection 14 (6) of the Act that is not made in the application for the subpoena to be set aside shall be made by filing a notice in accordance with Form 3.

**ORDER 80G**

**EVIDENCE BY VIDEO LINK OR TELEPHONE**

**1. Application for direction**

An application for a direction under section 25 of the Act may be made orally or by motion on notice in the proceedings.

**2. Supporting affidavit**

An application referred to in rule 1 shall be supported by an affidavit stating—

- (a) the reasons why it is desirable that the evidence be taken or submissions made by video link or telephone from New Zealand;
- (b) the nature of any evidence to be taken;
- (c) the number of any witnesses to be examined;
- (d) whether issues of character are likely to be raised;
- (e) the expected duration of any such evidence or submissions;
- (f) a description of the facilities that are available, or that can reasonably be made available, for the evidence to be taken or the submissions to be made; and
- (g) that the requirements of section 26 or 27, as the case requires, of the Act can be satisfied.

**3. Relevant considerations**

In deciding whether to grant an application referred to in rule 1, the Court may have regard to, in addition to the matters set out in the applicant's affidavit, any other matters that the Court considers to be material, including cost and convenience to the witnesses and parties.

**4. Directions**

(1) If the Court gives a direction under section 25 of the Act, the Court may direct the Registrar to arrange for and coordinate the use of the appropriate facilities in Australia and New Zealand.

(2) Without limiting the generality of subrule (1), the Court may direct that—

- (a) the Registrar arrange for the evidence to be given, or the submissions to be made, at the High Court of New Zealand or at another place approved by that court for the purpose; and
- (b) an officer of the High Court of New Zealand or another person approved by that court for the purpose be requested to be present to assist in the transmission of the evidence or submissions and, in particular, to—
  - (i) introduce witnesses or legal representatives;
  - (ii) assist with the administration of oaths, if necessary; and

—ORDER 80H—

- (iii) assist with the implementation of any directions given or requests made by the Judge hearing the proceedings.

**ORDER 80H**

**FAX COPIES**

**1. Application of Part 6 of Act**

For the purpose of proceedings in the Court, Part 6 of the Act applies in relation to a fax of a document in the same way as it applies in relation to the original of the document (whether or not that original is itself a copy or an extract of a document).

**2. Filed copy of fax**

If a fax of a document is adduced in evidence under rule 1, the party adducing that evidence shall file a copy of the fax on paper of durable quality measuring approximately 297 mm long by 210 mm wide on which the writing is permanent, unless the fax meets those specifications.

**PART 12—APPEALS**

**ORDER 81  
APPEAL RULES**

**1. Interpretation**

In this Order, unless the contrary intention appears—

“appeal” means an appeal to the Court to which this Order applies by virtue of rule 2;

“decision” means a decision of a Tribunal from which an appeal may be brought, and includes any order, direction or judgment of the Tribunal from which an appeal may be brought;

“Registrar of the Tribunal” means—

- (a) the Registrar, or other officer, in charge of the administration of the relevant Tribunal, and includes a Deputy Registrar of the Tribunal and any other officer for the time being performing the duties of the Registrar of the Tribunal or a Deputy Registrar of the Tribunal; or

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- (b) in relation to an appeal from the Court, or an appeal from a decision of the Registrar of the Court—the Registrar of the Court;

“relevant Act”, in relation to an appeal, means the Act under which the appeal is brought;

“Tribunal” means a tribunal, court, body or person from which an appeal may be brought, and includes—

- (a) the Supreme Court when constituted by the Master, in relation to an appeal from the Court referred to in rule 2; and
- (b) the Registrar of the Supreme Court, in relation to an appeal from the Registrar referred to in rule 2.

**2. Application—appeals from Tribunals and other bodies**

(1) This Order applies to appeals to the Court from the tribunals, bodies or persons listed in the first column of the following table brought under the respective corresponding statutory provisions referred to in the second column of the table:

| <b>Tribunal</b>                                     | <b>Statutory provision</b>   |
|---|--|
| 1. Administrative Appeals Tribunal                  | <i>Administrative Appeals Tribunal Act 1989</i><br>Section 46  |
| 2. Australian Capital Territory Credit Tribunal     | <i>Consumer Credit (Administration) Act 1996</i><br>Section 94   |
| 3. Guardianship and Management of Property Tribunal | <i>Guardianship and Management of Property Act 1991</i><br>Section 56  |
| 4. Magistrates Court                                | <i>Community and Health Services Complaints Act 1993</i><br>Subsection 39G (1)<br><i>Consumer Credit (Administration) Act 1996</i><br>Section 95<br><i>Health Records (Privacy and Access) Act 1997</i><br>Subsection 32 (1) |

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| <b>Tribunal</b>                              | <b>Statutory provision</b>  |
|--|---|
|  | <i>Magistrates Court Act 1930</i><br>Part XI, Divisions 1 and 2<br><i>Magistrates Court (Civil Jurisdiction) Act 1982</i><br>Part XXI |
| 5. Mental Health Tribunal                    | <i>Mental Health (Treatment and Care) Act 1994</i><br>Section 141   |
| 6. Registrar of the Supreme Court            | <i>Criminal Injuries (Compensation) Act 1983</i><br>Section 28  |
| 7. Small Claims Court                        | <i>Small Claims Act 1974</i><br>Part III  |
| 8. Supreme Court (constituted by the Master) | <i>Supreme Court Act 1933</i><br>Paragraph 9 (2) (b)  |
| 9. Tenancy Tribunal                          | <i>Tenancy Tribunal Act 1994</i><br>Section 58  |

(2) This Order applies to an appeal subject to the relevant Act, and to any direction of the Court on the application of a party to the appeal.

**3. Institution of appeals**

An appeal may be instituted by filing a notice of appeal in accordance with Form 1 in Schedule 14.

**4. Notice of appeal**

(1) A notice of appeal shall state—

- (a) the decision of the Tribunal, the member or members constituting the Tribunal, and the date of the decision;
- (b) the order sought; and
- (c) briefly, but specifically—the grounds relied on in support of the order sought.

(2) A notice of appeal from a decision of the Small Claims Court shall include a request for leave to appeal to the Supreme Court.

(3) A notice of appeal from a decision of the Guardianship and Management of Property Tribunal on a question other than a question of law shall include a request for leave to appeal to the Court.



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- (4) A notice of appeal shall be signed by the appellant or the appellant's solicitor.
- (5) The Court may allow a notice of appeal to be amended on such terms and conditions as it thinks fit.
- (6) On the hearing of an appeal, the appellant shall not, without the leave of the Court—
  - (a) raise any question 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.

**5. Appearance**

- (1) 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 shall enter an appearance in the Registry of the Court.
- (2) A respondent to an appeal shall enter an appearance in accordance with Order 13 as if the notice of appeal were an originating application, the appellant were a plaintiff and the respondent were a defendant.

**6. Other parties**

- (1) Each person shall be joined as a respondent to an appeal who—
  - (a) appeared or was granted leave to appear before the Tribunal at the proceeding in which the decision was made; and
  - (b) would be affected by the order sought by the notice of appeal, or is interested in maintaining the decision.
- (2) If an unincorporated organisation or association appeared or was granted leave to appear before the Tribunal at a proceeding in which a decision was made—
  - (a) a reference in subrule (1) to a person is to be read as a reference to a person or persons acting on behalf of such an organisation or association; and
  - (b) paragraph (1) (b) is to be taken to require that the interests of the organisation or association, as ascertained by reference to its objects or purposes, would be affected by the order sought by the notice of appeal or by the maintenance of the decision.
- (3) The Court may order—

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- (a) the addition of any person as a party to an appeal; or
- (b) the removal of any person as a party from the appeal.

**7. Lodgment of notice of appeal**

A notice of appeal from a Tribunal shall be lodged with the Registry of the Court, subject to rule 8—

- (a) within the time provided by the relevant Act;
- (b) within such further time as the Court allows in accordance with the relevant Act; or
- (c) where no time is provided by the relevant Act—within 21 days after the date of the decision appealed from, or within such further time as the Court allows on application at any time.

**8. Extension of time**

(1) Application may be made to the Court for an extension of time within which an appeal may be brought either before or after the expiration of the time referred to in rule 7.

(2) An application for the extension of time shall be in accordance with Form 2 in the Second Schedule.

(3) An application for the extension of time shall be accompanied by an affidavit showing—

- (a) the nature of the case in summary form;
- (b) each question involved; and
- (c) the reason why the extension of time should be given.

**9. Date for settling appeal papers**

On filing a notice of appeal, the Registrar shall appoint a date for settling the appeal papers by endorsement.

**10. Service of notice of appeal**

(1) An appellant shall, within the time specified under subrule (2), serve a copy of the notice of appeal personally on each respondent, and on the Registrar of the Tribunal.

(2) A copy of a notice of appeal shall be served under subrule (1) within 7 days after the notice is filed, but no later than 5 days before the date endorsed for settling the appeal papers, unless the Court orders otherwise.

(3) If the Court makes an order under subrule (2), the Registrar shall endorse the notice of appeal with a note of the order made.

**11. Security for costs**

(1) No security for the costs of an appeal is required, except where subrule (2) applies.

(2) In special circumstances, the Court may order that security for the costs of an appeal be given as it thinks fit.

**12. Stay of decision**

(1) The institution of an appeal does not operate as a stay of the decision appealed from unless the relevant Act or these rules provide otherwise.

(2) Where the relevant Act provides for an application to the Court for an order staying or otherwise affecting the operation or implementation of a decision appealed from, that application may be made by motion on notice.

(3) On application by motion on notice by a person affected by a decision of the Magistrates Court or the Master which is appealed from, the Court may make an order staying or otherwise affecting the operation or implementation of the decision.

(4) In an urgent case, an application for a stay of proceedings may be made *ex parte*, accompanied by an affidavit setting out the grounds relied on in support of the application.

**13. Documents**

(1) Not later than 21 days after service of a notice of appeal on the Registrar of the Tribunal, the appellant shall cause to be sent to the Registrar of the Court—

- (a) a copy of the decision appealed from;
- (b) if the Tribunal has given written reasons for its decision—a copy of the reasons;
- (c) any transcript, or notes, of proceedings in the Tribunal; and
- (d) a list, certified by the Registrar of the Tribunal, of the documents and any other exhibits that were before the Tribunal.

(2) After being served with a notice of appeal, the Registrar of a Tribunal shall cause to be sent to the Registrar of the Court all documents and exhibits which were before the Tribunal in connection with the proceedings from which the appeal is brought.

—ORDER 81—

(3) When the documents and exhibits referred to in subrule (2) have been received by the Registrar of the Court, the Registrar shall send a copy of the list referred to in paragraph (1) (d) to each party to the appeal.

(4) Where an appeal is brought against a decision of the Administrative Appeals Tribunal, the list referred to in paragraph (1) (d) shall—

- (a) specify any documents which were the subject of an order under subsection 34 (2) of the *Administrative Appeals Tribunal Act 1989*;
- (b) specify any documents in respect of which a certificate of the Minister is in force under subsection 26 (7) of that Act;
- (c) specify any documents in respect of which a certificate of the Minister is in force under subsection 35 (4) of that Act; and
- (d) where a document is specified under paragraph (c)—disclose whether an order was made by the Tribunal under subsection 35 (4) of that Act in respect of the document.

(5) If the Tribunal has not given written reasons for the decision, the appellant shall, if entitled to do so under the relevant Act—

- (a) obtain a statement of written reasons for the decision; and
- (b) send a copy of the statement to the Registrar of the Tribunal and to the Registrar of the Court no later than 10 days after receiving it.

**14. Discontinuance of appeal**

(1) An appellant may discontinue the appeal at any time by lodging and serving on each other party to the appeal a notice of discontinuance, subject to subrule (3).

(2) A notice of discontinuance lodged and served by an appellant under subrule (1) does not affect any other appellant.

(3) An appeal from a decision of the Magistrates Court shall only be discontinued with leave of the Supreme Court.

(4) Subject to subrules (2) and (3), if a notice of discontinuance of an appeal is lodged and served under subrule (1), the appeal is to be taken to be abandoned.

(5) A party lodging a notice of discontinuance is liable to pay the costs of the other parties occasioned by the appeal, unless the Court orders otherwise.

(6) A party whose costs are payable under subrule (5) may submit a bill of costs to the taxing officer for taxing.

(7) If the costs payable under subrule (5), as taxed, are not paid within 14 days after service of the certificate of taxation, the party submitting the bill may enter judgment for the taxed costs.

**15. Amendment of notice of appeal**

(1) A notice of appeal may be amended without leave by the filing of a supplementary notice before the date appointed by the Registrar of the Court for settling the appeal papers.

(2) A supplementary notice shall be lodged for filing and served under rules 7 and 10 as if it were a notice of appeal.

**16. Cross-appeals**

(1) This rule applies where a respondent to an appeal 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.

(2) Where this rule applies, the respondent may institute a cross-appeal by lodging for filing a notice of cross-appeal within 21 days after the service on the respondent of the notice of the appeal.

(3) The respondent shall serve a copy of a notice of cross-appeal on the appellant and each other party to the appeal.

(4) A notice of cross-appeal shall state—

- (a) what part of the decision is cross-appealed from, or is sought to be varied;
- (b) the order sought; and
- (c) briefly, but specifically—the grounds relied on in support of the order sought.

**17. Notice of contention**

(1) This rule applies where a respondent—

- (a) desires to contend that a matter of law has been erroneously decided against the respondent in the decision appealed from by the appellant; and
- (b) does not desire to seek a discharge or variation of a part of the decision.

(2) Where this rule applies, the respondent shall give notice to the appellant of the respondent's contention.

(3) When the appeal papers are settled under rule 18, the appellant shall, at the request of the respondent, include in the appeal papers that part of the record of evidence, and any documents, before the Tribunal which are relevant to the respondent's contention.

### **18. Settling of appeal papers**

(1) On settling the appeal papers, the Court may give such directions about the conduct of the appeal as the Court thinks proper.

(2) Without limiting the generality of subrule (1), on settling the appeal papers, the Court has the following powers:

- (a) to determine what documents and matters were before the Tribunal;
- (b) to determine what documents and matters are to be included in the appeal papers, and the order of inclusion;
- (c) to settle the index of documents to be included in the appeal papers;
- (d) to determine the number of copies of the appeal papers required;
- (e) to direct the joinder of parties;
- (f) to direct the place, time and mode of hearing.

(3) The Master or the Registrar may exercise the jurisdiction of the Court for the purposes of this rule.

### **19. Preparation of appeal papers**

(1) The appeal papers shall be prepared, to the satisfaction of the Registrar, as follows:

- (a) the title page shall state the title of the appeal, the name or names of the person or persons constituting the Tribunal, and the names and addresses for service of the parties and their solicitors (if any);
- (b) the index settled under paragraph 18 (2) (c) shall appear after the title page, and shall show the date and page number of each document;
- (c) the appeal papers shall include each document necessary to enable the questions raised by the appeal to be determined by the Court;
- (d) the appeal papers shall be paginated;

—ORDER 81A—

- (e) the appeal papers shall be clear, legible and securely fastened, but need not be bound or printed.
- (2) The appellant shall lodge for filing a copy of the appeal papers together with a certificate by the parties (or their solicitors) stating that the copy has been examined, and is correct.
- (3) The appellant shall lodge for filing as many additional copies of the appeal papers as the Registrar directs.
- (4) This rule is subject to any direction of the Court or the Registrar.

**20. Setting down appeal for hearing**

When the Registrar is satisfied that an appeal is ready for hearing, the date for hearing the appeal may be fixed by the Registrar—

- (a) on the motion of the Registrar; or
- (b) on application by any party.

**ORDER 81A**  
**ORDER NISI TO REVIEW**

**1. Interpretation**

In this Order—

“application” means an application under rule 2 for an order *nisi*;

“order *nisi*” means an order *nisi* to review a decision of the Magistrates Court.

**2. Applications**

An application for an order *nisi* shall be—

- (a) made orally to the Supreme Court, within 21 days after the decision is made;
- (b) made *ex parte*; and
- (c) supported by an affidavit under rule 3.

**3. Affidavits**

The affidavit accompanying an application shall—

- (a) set out the material circumstances, each statutory ground relied on and a concise statement of the matter relied on under each ground; and

- (b) be entitled “In the Supreme Court of the Australian Capital Territory, in the matter of an order *nisi* to review a decision of the *Magistrates Court Act 1930*”, or to similar effect.

**4. Service of applications**

The Court may direct that notice of an application be given to a person interested in maintaining the relevant decision of the Magistrates Court.

**5. Parties**

A party served with an application is entitled to be heard on the application.

**6. Form of order *nisi***

An order *nisi* shall be in accordance with Form 3 in the Second Schedule.

**7. Service of order *nisi***

Within 7 days after an order *nisi* is made, the order *nisi* and each supporting affidavit shall be—

- (a) served on each person called upon by the order to show cause, or the solicitor accepting service on the person’s behalf;
- (b) if the Court directs—served on any other person as directed; and
- (c) left with the Registrar of the Magistrates Court.

**8. Appearance to order *nisi***

A person served with an order *nisi* shall enter an appearance to oppose the making absolute of the order, or to be heard in that matter, in accordance with Order 13 as if the order were an originating application, the applicant for the order were a plaintiff and the person served with the order were a defendant.

**9. Application to revoke order *nisi***

(1) An application to revoke an order *nisi* shall be made by motion on notice, supported by affidavit.

(2) An application to revoke an order *nisi*, together with any affidavit referred to in subrule (1), shall be served on—

- (a) the applicant for the order; and
- (b) any person on whom the application for the order was directed to be served under rule 4.



**PART 13—APPLICATIONS UNDER THE ADMINISTRATIVE  
DECISIONS (JUDICIAL REVIEW) ACT 1989**

**ORDER 82**

**1. Interpretation**

In this Order, unless the contrary intention appears—

“Review Act” means the *Administrative Decisions (Judicial Review) Act 1989*.

**2. Application of Rules**

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.

**3. Instituting a review—form 81**

(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 the First Schedule.

(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.

**4. Documents to be filed**

(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*, or any other statement given to the applicant by, or on behalf of, the person who made the decision that purports to set out—

(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.

**5. Notice of objection to competency**

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.

**6. Directions**

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; 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.

**7. Staying or dismissing applications**

(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.

- (2) The Court may receive evidence in the hearing of an application for an order under subrule (1).

## **PART 14—COMMERCIAL ARBITRATION**

### **ORDER 83**

#### ***Division 1—Awards***

#### **1. Interpretation**

In this Order, unless the contrary intention appears:

“Arbitration Act” means the *Commercial Arbitration Act 1986*;

“proceeding” means a proceeding of any kind in the Court under the Arbitration Act.

#### **2. Application of Rules**

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.

#### **3. Commencement of proceedings**

A proceeding may be commenced by originating summons.

#### **4. Appeal under section 38 of Arbitration Act by leave**

An application 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.

#### **5. Application under section 39 of Arbitration Act**

(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.

—ORDER 83—

(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.

**6. Time for appeal or application**

(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
  - (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.

**7. Examination of witnesses**

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.

**8. Decision to refuse application for interlocutory order**

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.

**9. Application for leave to enforce award**

(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.

(2) If leave is given, any party to the award may enter judgment in terms of the award.

**10. Evidence of award for purposes of enforcement**

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.

**11. Indorsement and service of order for enforcement**

(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.

—ORDER 83—

- (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***

**12. Interpretation**

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.

**13. Order referring**

(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;

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.

**14. Order referring may be varied or set aside**

- (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).

**15. Conduct of proceedings under a reference**

- (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
  - (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.

**16. Interlocutory directions**

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.

**17. Report of referee**

(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.

**18. Proceedings on report of referee**

(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
- (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.

**19. Remuneration of referee**

(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.

**20. Court rooms, etc.**

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***

**21. Powers of Master**

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:
  - (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;

*Supreme Court Rules*

**—ORDER 84—**

- (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.

**PART 15—SERVICE OF FOREIGN DOCUMENTS<sup>3</sup>**

**ORDER 84**

**DOCUMENTS FROM A CONVENTION COUNTRY**

**1-6.<sup>3</sup>**

\* \* \* \* \*

*Supreme Court Rules*

—ORDER 85—

**ORDER 85**

**DOCUMENTS FROM A COUNTRY THAT IS NOT A PARTY TO THE  
HAGUE CONVENTION**

**1-5.**<sup>3</sup>       \*               \*               \*               \*               \*               \*

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*Supreme Court Rules*

**THE SCHEDULES**

**FIRST SCHEDULE**

FORMS—CIVIL PROCEEDINGS

FORM 1

O. 1 r. 5

GENERAL HEADING STYLE

FORM [*Number of particular form*]

AUSTRALIAN CAPITAL TERRITORY

[*Title of particular form*]

In the Supreme Court  
of the Australian Capital Territory  
No. of [*year*]

[*name*]

Plaintiff

[*name(s)*]

Defendant(s)\*

\* Strike out where inapplicable.

FORM 2O.

2

r.

4

ORIGINATING APPLICATION

[*Heading as in Form 1*]

Application is hereby made to the Court for the plaintiff, against the defendant (if any), and in the action, set out below.

**Plaintiff**<sup>1</sup>

*If the plaintiff is a natural person—*

Full name:

Occupation:

Residential\*/Business\* address:

*If the plaintiff is a body corporate—*<sup>2</sup>

Name:

Australian Company Number\*/Australian Registered Body Number\*:

Type of body:

Address:

Representative capacity in which plaintiff sues:\*

*If the plaintiff is represented by a solicitor—*

Solicitor's full name:

Solicitor's full business address:

Solicitor's telephone no.:

Name, address & telephone no. of agent solicitor:\*

Service of documents—<sup>3</sup>

Address for service:

Australian Document Exchange Box No.:\*

Facsimile machine no.:\*

*Supreme Court Rules*  
**SCHEDULES—continued**

**Defendant (insofar as known)\***

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*If the defendant is a natural person—*

Full name:

If the defendant's name is unknown to plaintiff—

Defendant's sex:

Occupation:

Residential\*/Business\* address:

*If the defendant is a body corporate—<sup>4</sup>*

Name:

Australian Company Number\*/Australian Registered Body Number\*:

Type of body:

Address:

Representative capacity in which defendant is sued:\*

**Action**

---

Nature of action:<sup>5</sup>

Relief claimed:<sup>6</sup>

Interlocutory relief claimed:\*

Summary judgment [is\* / is not\*] to be applied for.

Statement of claim: [Attached\* / Not attached\*].<sup>7</sup>

Other attachments—\*

Debt or liquidated demand:\*

A Form 3 statement is attached.<sup>8</sup>

Motor vehicle personal injury claim:\*

A Form 4 statement is attached.<sup>9</sup>

Employment personal injury claim:\*

A Form 5 statement is attached.<sup>10</sup>

No defendant to action:\*

An affidavit of evidence is attached.

**Appearance\***

---

Time within which defendant is required to appear:<sup>11</sup>

*Notice to defendant*

**If you do not enter an appearance in the Registrar's office within the time specified here—**

- **proceedings in this action may be heard in your absence; and**
- **you may become liable to suffer judgment or an order against you.**

Date:

Signature of plaintiff\*/plaintiff's solicitor\*:

\* Strike out where inapplicable.

NOTES

<sup>1</sup> In the case of a relator action, include particulars of relator here.

*Supreme Court Rules*  
**SCHEDULES—continued**

- <sup>2</sup> See Order 2, rule 5.
  - <sup>3</sup> See Order 2, rule 6.
  - <sup>4</sup> See Order 2, rule 5.
  - <sup>5</sup> See Order 2, rule 8.
  - <sup>6</sup> See Order 2, rule 9.
  - <sup>7</sup> See Order 2, rule 10.
  - <sup>8</sup> See Order 2, rule 11 and Form 3.
  - <sup>9</sup> See Order 2, rule 12 and Form 4. If the claim involves a motor vehicle accident in the course of employment, it is necessary to complete both Form 4 and Form 5.
  - <sup>10</sup> See Order 2, rule 13 and Form 5. If the claim involves a motor vehicle accident in the course of employment, it is necessary to complete both Form 4 and Form 5.
  - <sup>11</sup> See Order 2, rule 7.
-

*Supreme Court Rules*

**SCHEDULES**—continued

FORM 3

O. 2 r. 11

CLAIM FOR DEBT OR LIQUIDATED DEMAND  
STATEMENT TO ACCOMPANY ORIGINATING APPLICATION

*[Heading as in Form 1]*

In an originating application dated *[date]*, the plaintiff claims for debt\*/makes a liquidated demand\* as follows:

- The amount claimed is \$ .
- *If interest is claimed*—details of interest claimed are as follows:<sup>1</sup>
- Taxed costs [are\* / are not\*] claimed.
- *If taxed costs are not claimed*—  
the amount claimed for costs and disbursements is \$ .\*

*Notice to defendant*

|  |
|--|
| <p><b>Proceedings on this claim will be stayed (under Order 3 of the Rules) if you pay—</b></p> <ul style="list-style-type: none"><li>• <b>the amount claimed; and</b></li><li>• <b>any amount allowed for interest and costs.</b></li></ul> |
|--|

Date:

Signature of plaintiff\*/plaintiff's solicitor\*:

|                                  |
|----------------------------------|
| * Strike out where inapplicable. |
|----------------------------------|

NOTES

<sup>1</sup> See Order 2, paragraph 11 (1) (b).

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 4

O. 2 r. 12

**MOTOR VEHICLE PERSONAL INJURY CLAIM  
STATEMENT TO ACCOMPANY ORIGINATING APPLICATION**

*[Heading as in Form 1]*

In an originating application dated *[date]*, the plaintiff claims damages for death or bodily injury in relation to the use of a motor vehicle.

Details of that claim are as follows:

- Time, date, place and circumstances of the use of the motor vehicle (including, where possible, registration details of all vehicles involved):
  - Precise particulars of the defendant's negligence:
  - Injuries and disabilities suffered by the plaintiff:<sup>1</sup>
  - Plaintiff's health professionals:<sup>2</sup>
  - Nature of claims for past or future economic loss:\*
- If a claim is made for economic loss—the name and address of each employer of the plaintiff during a reasonable period before and since the use of the motor vehicle:\**

Date:

Signature of plaintiff\*/plaintiff's solicitor\*:

\* Strike out where inapplicable.

NOTES

<sup>1</sup> See Order 2, paragraph 12 (c).

<sup>2</sup> See Order 2, paragraph 12 (d).



*Supreme Court Rules*

**SCHEDULES—continued**

FORM 5

O. 2 r. 13

**EMPLOYMENT PERSONAL INJURY CLAIM  
STATEMENT TO ACCOMPANY ORIGINATING APPLICATION**

*[Heading as in Form 1]*

In an originating application dated *[date]*, the plaintiff claims damages for death or bodily injury in relation to an employer's negligence.

Details of that claim are as follows:

- Time, date, place, circumstances and acts or omissions constituting negligence:
  - *If the claim is based on the defendant's vicarious liability—\**
    - particulars of any person for whose negligence the defendant is vicariously liable:
    - particulars of the claim for vicarious liability:
  - *If the action is based on a breach of statutory duty—\**
    - particulars of the statutory provision:
    - acts or omissions constituting the breach:
  - Injuries and disabilities suffered by the plaintiff:<sup>1</sup>
  - Plaintiff's health professionals:<sup>2</sup>
  - Nature of claims for past or future economic loss:\*
- If a claim is made for economic loss—the name and address of each employer of the plaintiff during a reasonable period before and since the acts constituting the negligence:\**

Date:

Signature of plaintiff\*/plaintiff's solicitor\*:

|                                  |
|----------------------------------|
| * Strike out where inapplicable. |
|----------------------------------|

NOTES

<sup>1</sup> See Order 2, paragraph 13 (d).

<sup>2</sup> See Order 2, paragraph 13 (e).

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 8

O. 12 r. 3

**REQUEST FOR SERVICE OF ORIGINATING APPLICATION OUTSIDE THE COMMONWEALTH**

*[Heading as in Form 1]*

I [*or we*] hereby request that a notice of an originating application 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.
-

*Supreme Court Rules*  
**SCHEDULES—continued**  
FORM 9  
MEMORANDUM OF APPEARANCE  
*[Heading as in Form 1]*

O. 13 r. 2

1. The defendant<sup>1</sup> set out below appears in this action.
2. Particulars of the defendant, the defendant's solicitor\* and the defendant's address for service are as set out below.
3. In an action for the recovery of land, note the particulars set out below.<sup>2</sup> \*
4. The defendant does\* / does not\* submit to the orders of the Court, except as to costs.<sup>3</sup>

**Particulars of defendant**

---

Full name:

*If the particulars of the defendant set out in the originating application are incorrect—*

The correct particulars are as follows:

*If the defendant is represented by a solicitor—*

Solicitor's full name:

Solicitor's full business address:

Solicitor's telephone no.:

Name, address & telephone no. of agent solicitor:\*

Service of documents—

Address for service:<sup>4</sup>

Australian Document Exchange Box No.:\*

Facsimile machine no.:\*

**Particulars in an action for the recovery of land\***

---

The defendant appears in the capacity of landlord of the property:\*

The defence is limited to the following part of the property:<sup>5</sup>\*

Date:

Signature of defendant\*/defendant's solicitor\*:

|                                  |
|----------------------------------|
| * Strike out where inapplicable. |
|----------------------------------|

NOTES

- <sup>1</sup> A single memorandum of appearance may be filed for a number of defendants appearing by the same solicitor—see Order 13, rule 9.
- <sup>2</sup> In an action for the recovery of land, “defendant” includes a person given leave to appear under Order 13, rule 12.
- <sup>3</sup> See Order 13, subrules 2 (2)-(5).
- <sup>4</sup> See Order 13, rule 4.
- <sup>5</sup> See Order 13, rule 15.

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 11

O. 19 r. 18

**AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN**

*[Heading as in Form 1]*

On *(date)* I, *(name)* of *(address)*, *(occupation)*, say on oath:

*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 infant, and the consent of *A.B.* to act as such guardian is hereto annexed.

Sworn etc.

*[To this Affidavit shall be annexed the document signed by such guardian in testimony of his or her 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 infant or person of unsound mind*] had been originally made a party, and that you [*or the infant etc.*] 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 infant etc.*] may within 1 month after the service of this notice apply to the Court to discharge vary or add to the judgment [*or order*].

---

*Supreme Court Rules*  
**SCHEDULES**—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.

\_\_\_\_\_

## FORM 14

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

To E.F. of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_

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 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 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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

(Signed)  
Solicitors for the Defendant.

FORM 15

Q. 23 r. 5

IN THE SUPREME COURT  
OF THE AUSTRALIAN  
CAPITAL TERRITORY

No. of 19 .

*Between A.B.,*           Plaintiff  
                                    and  
*C.D.,*                   Defendant.

## STATEMENT OF CLAIM

(Originating application filed the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.)  
The plaintiff etc.

[or]

The plaintiff's claim is etc.

[*or*]

*Supreme Court Rules*  
**SCHEDULES—continued**

The plaintiff claims etc.

Delivered the                      day of                      , 19                      , by                      (Signed)                      of                      .

FORM 16

O. 23 r. 5

DEFENCE (GENERAL FORM)

*[Heading as in Form 15]*

DEFENCE

1. The defendant etc.

COUNTER-CLAIM

1. The defendant etc.

The defendant counter-claims etc.

Delivered the                      day of                      , 19                      , by                      (Signed)                      of                      .

FORM 17

O. 23 r. 5

REPLY (GENERAL FORM)

REPLY

The plaintiff as to the defence, says that—

1. The defendant etc.

The plaintiff, as to the counter-claim, says that—

1. The defendant etc.

Delivered the                      day of                      , 19                      , by                      (Signed)                      of                      .

*Supreme Court Rules*  
**SCHEDULES**—continued  
FORM 18  
NOTICE OF COUNTER-CLAIM  
*[Heading as in Form 1]*

O. 25 r. 12

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 8 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  
NOTICE OF PAYMENT INTO COURT  
*[Heading as in Form 1]*

O. 26 r. 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.

Dated the                      day of                      , 19                      .

*P.Q.*,  
Solicitor for the defendant *C.D.*

To Mr. *X.Y.*, the plaintiff's solicitor.

---



**SCHEDULES—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 or her successors and assigns for the sum of \$ of lawful money of Australia to be paid to the Registrar, his or her successors and assigns, for the due payment 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 \_\_\_\_\_ within 7 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 authorised insurer under the *Motor Traffic Act 1936* or that Act as amended (or as the case may be) authorises \_\_\_\_\_ being the manager (or as the case may be) of the corporation to give 1 or more bonds in or to the effect of the form contained in Form 19A in the First Schedule to the Supreme Court Rules for and on behalf of \_\_\_\_\_ 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 \_\_\_\_\_  
 was hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_  
 19\_\_\_\_ in the presence of— \_\_\_\_\_ }  
 \_\_\_\_\_ }

FORM 20  
ACCEPTANCE OF SUM PAID INTO COURT  
[Heading as in Form 1]

O. 26 rr. 2 and 4

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 or her 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.*

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 22  
CONFESSION OF DEFENCE  
[*Heading as in Form 1*]

O. 28 r. 3

The plaintiff confesses the defence stated in the \_\_\_\_\_ paragraph of the defendant's defence [*or, of the defendant's further defence*].

FORM 24  
ANSWER TO INTERROGATORIES  
[*Heading as in Form 1*]

O. 34 r. 11

The answer of the above-named defendant *E.F.* to the interrogatories \_\_\_\_\_ for his or her examination by the above-named plaintiff.

In answer to the interrogatories, on (*date*) I, (*name*) of (*address*), (*occupation*), say on oath:  
(*Here set out interrogatories and answers as required by Order 34, rule 11*).

FORM 25  
AFFIDAVIT AS TO DOCUMENTS  
[*Heading as in Form 1*]

O. 34 r. 14

On (*date*) I, (*name*) of (*address*), (*occupation*), the above named defendant, say on oath:

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the 1st and 2nd parts of the first schedule.
2. I object to produce the documents set forth in the 2nd part of the first schedule [*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.
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 first and second schedules.

FORM 26  
NOTICE TO PRODUCE DOCUMENTS  
[*Heading as in Form 1*]

O. 34 r. 18

Take notice that the [plaintiff *or* defendant] requires you to produce for his or her inspection the following documents referred to in your [originating application *or* statement attached to the originating application *or* statement of claim *or* affidavit, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_].

*Describe documents required.*

Dated etc.

X.Y., Solicitor to the

To Z., Solicitor for \_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES—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 27A

O. 34B r. 3

**NOTICE FOR NON-PARTY PRODUCTION**

*[Heading as in Form 1]*

To *(name)* of *(address)*

Take notice that you are required to produce to the \*[plaintiff/ defendant] in this action for inspection the document/s specified in the Schedule in your possession or control relating to a matter in question in the action that you could be required to produce at the trial of the action.

The document/s must be produced at your, or your solicitor's, place of business during ordinary business hours, or at another time and place agreed between the \*[plaintiff/ plaintiff's solicitor/ defendant/ defendant's solicitor] and you, within \*[14 days/ *(period longer than 14 days)*] after service of this notice on you.

If you fail to produce \*[the/ a] specified document, the \*[plaintiff/ defendant] may apply to the Court for a determination in relation to the failure.

The \*[plaintiff/ defendant] or the solicitor is entitled to copy the document/s produced unless you object. If you do object, the \*[plaintiff/ defendant] may apply to the Court for a determination in relation to the objection.

You may, within 14 days after service of this notice on you, apply to the Court to have it set aside or varied.

If you claim that \*[the/ a] specified document is privileged from production or otherwise object to its production, you need not produce the document and you may apply to the Court for a determination in relation to the claim or objection.

*Supreme Court Rules*

**SCHEDULES—continued**

Any expenses reasonably incurred by you in complying with this notice, including costs of facilitating the copying of any document/s, shall be borne by the \*[plaintiff/ defendant]. If you have not received an amount that you consider adequate to compensate you for expenses reasonably incurred, or expected to be reasonably incurred, in complying with this notice, you must still comply with this notice and you may apply in writing to the Registrar under Order 34B subrule 9 (2) of the Supreme Court Rules for a determination of the amount that is sufficient to compensate you for those expenses but, before so applying, you must give 7 days notice in writing of your intention to do so to the applicant for this notice.

You must notify the \*[plaintiff/ plaintiff's solicitor/ defendant/ defendant's solicitor] of the place and time at which the document/s will be available for inspection. The \*[name of the \*[plaintiff's/ defendant's] solicitor is (*name*) and the] relevant address and telephone number is (*address and telephone number*).

**SCHEDULE**

(*description of document/s*)

(*If a copy of the notice is to be served on another party pursuant to Order 34B subrule 4 (2) of the Supreme Court Rules*)

\*[To (*name of other party*) of (*address*)

You may, within 14 days after service of this notice on the respondent to the notice, apply to the Court to have it set aside or varied.

If you claim that \*[the/ a] specified document is privileged from production or otherwise object to its production, you may apply to the Court for a determination in relation to the claim or objection.]

Dated:

By the Court

Registrar

\*(*Delete if, or whichever is, inapplicable*)

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 28  
NOTICE TO ADMIT DOCUMENTS  
*[Heading as in Form 1]*

O. 35 r. 2

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:*]

*Supreme Court Rules*  
**SCHEDULES—continued**  
ORIGINALS

| Description of Documents   | Dates            |
|--|------------------|
| Agreement in writing between A.B. and C.D. 1st part and E.F. 2nd 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 etc. ....  | February 2, 19 . |
| Letter—defendant to plaintiff .....  | March 1, 19 .    |
| Policy of insurance on goods by ship <i>Isabella</i> on voyage from Oporto to London                         | December 3, 19 . |
| Memorandum of agreement between C.D., captain of 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                 |

*Supreme Court Rules*  
**SCHEDULES**—continued  
FORM 29  
NOTICE TO ADMIT FACTS  
*[Heading as in Form 1]*

O. 35 r. 3 (1) (a)

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 1 January 1890.
2. That he or she died intestate.
3. That James Smith was his or her only lawful son.
4. That Julius Smith died on 1 April 1896.
5. That Julius Smith never was married.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—continued

FORM 30  
ADMISSION OF FACTS, PURSUANT TO NOTICE  
[*Heading as in Form 1*]

O. 35 r. 3 (2) (a)

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 1 January 1870.     | 1.  |
| 2. That he or she died intestate.              | 2.  |
| 3. That James Smith was his or her lawful son. | 3. But not that he or she was his or her only lawful son. |
| 4. That Julius Smith died.                     | 4. But not that he or she died on 1 April 1896.           |
| 5. That Julius Smith never was married.        | 5.  |



FORM 31  
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—

his or her solicitor *or* agent

} (Signed) \_\_\_\_\_, of  
 solicitor for the above named

O. 36 r. 9

1. The following accounts be taken and, *(as the case may be)* inquiries made:
  - (a) an account *(specify it)*;
  - (b) *(Specify any other accounts in numbered paragraphs)*.
2. The defendant on or before (date) file and serve \*[his/her] detailed account (with each item numbered consecutively and verified by affidavit) of all monies received and disbursed by the defendant or any other person on \*[his/her] behalf.
3. Such account shall specify in respect of each payment or receipt—
  - (a) the date and amount;
  - (b) the person to whom the payment was made; and
  - (c) the purpose for which or the account to which the amount was paid or received as the case may be.
4. The plaintiff be at liberty to serve notice of objections to the defendant's account within 35 days after service on \*[him/her] of copies of the account and affidavit verifying it.
5. *(Such further directions as to interrogatories, oral examination before the Registrar, vouching out of court, access to books and records, interim payment and other appropriate matters as the nature of the case may require).*

O. 37 r. 6

Set down the special case \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
for argument.  
Dated etc. \_\_\_\_\_

**SCHEDULES**—continued

O. 37 r. 9

[Heading as in Form 1]

FORM 37

O. 38 r. 24

[Heading as in Form 1]

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*A.B. [Title of officer.]*

O. 39 r. 12 (1)

[Heading as in Form 1]

[ *name* ] of [ *address* ] be examined on oath or affirmation before [ *name and address of examiner, or description* ].

*Supreme Court Rules*

**SCHEDULES—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.

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 issued to the judicial authorities of [ *country* ] to take or cause to be taken the evidence of [ *name* ] of [ *address* ].

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.)

*Supreme Court Rules*

**SCHEDULES**—continued

FORM 42

O. 39 r. 24J

ORDER FOR EXAMINATION  
UNDER INTERSTATE OR FOREIGN LETTER OF REQUEST

*[Heading as in Form 1]*

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 [ *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* ].

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*Supreme Court Rules*

**SCHEDULES—continued**

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* 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)

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—continued**  
FORM 45  
SUBPOENA TO GIVE EVIDENCE  
(Heading as in Form 1)

Order 39, subrule 31 (4)

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.

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.

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) of the Supreme Court Rules for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

Note that any questions relating to the requirements of this subpoena should be addressed to (*name of party who requested the issue of the subpoena, or that party's solicitor*) and not to the Court.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

FORM 46  
(Subpoena to a natural person)  
SUBPOENA TO PRODUCE  
(Heading as in Form 1)

Order 39, subrule 31 (4)

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—
  - (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 1st 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 section 48 of the *Evidence Act 1995* of the Commonwealth applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

*Supreme Court Rules*  
**SCHEDULES—continued**

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.

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) of the Supreme Court Rules for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

Note that original documents (where available) are to be produced to the Court in compliance with this subpoena unless otherwise indicated below:

☐ photocopies of documents are acceptable  
*(the party who requested the issue of the subpoena,  
or that party's solicitor, should tick box if applicable)*

If photocopies of documents are indicated as being acceptable (see above) and are produced to the Court in compliance with this subpoena you may elect to have the photocopies returned to you or destroyed by the Court on completion of the matter:

☐ the photocopies should be returned  
☐ the photocopies should be destroyed  
*(please tick appropriate box if applicable)*

Note that documents and things produced by you in accordance with this subpoena may be returned by post to you at the above address but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you or that you be informed when they are available for collection. Note that any questions relating to the requirements of this subpoena should be addressed to *(name of party who requested the issue of the subpoena, or that party's solicitor)* and not to the Court.

Issued at the request of *(name)*, the applicant's solicitor *(or as the case may be)*.

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 47

Order 39, subrule 31 (4)

*(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession etc. of documents)*

**SUBPOENA TO PRODUCE 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—
    - (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 1st 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 section 48 of the *Evidence Act 1995* of the Commonwealth 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 Act; 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 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 1 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 addressed to *(name of party who requested the issue of the subpoena, or that party's solicitor)* and not to the Court;
- (4) if you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.



*Supreme Court Rules*

**SCHEDULES—continued**

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) of the Supreme Court Rules for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

Note that original documents (where available) are to be produced to the Court in compliance with this subpoena unless otherwise indicated below:

☐ photocopies of documents are acceptable  
(the party who requested the issue of the subpoena,  
or that party's solicitor, should tick box if applicable)

If photocopies of documents are indicated as being acceptable (see above) and are produced to the Court in compliance with this subpoena you may elect to have the photocopies returned to you or destroyed by the Court on completion of the matter:

☐ the photocopies should be returned  
☐ the photocopies should be destroyed  
(please tick appropriate box if applicable)

Issued at the request of (name), the applicant's solicitor (or as the case may be).

FORM 48

Order 39, subrule 31 (4)

**SUBPOENA TO PRODUCE 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—
  - (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 1st 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 section 48 of the *Evidence Act 1995* of the Commonwealth applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

*Supreme Court Rules*  
**SCHEDULES—continued**

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.

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) of the Supreme Court Rules for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

Note that original documents (where available) are to be produced to the Court in compliance with this subpoena unless otherwise indicated below:

☐ photocopies of documents are acceptable  
*(the party who requested the issue of the subpoena,  
or that party's solicitor, should tick box if applicable)*

If photocopies of documents are indicated as being acceptable (see above) and are produced to the Court in compliance with this subpoena you may elect to have the photocopies returned to you or destroyed by the Court on completion of the matter:

☐ the photocopies should be returned  
☐ the photocopies should be destroyed  
*(please tick appropriate box if applicable)*

Note that if you produce the documents and things to the Registrar you are still required to attend for the purpose of giving evidence.

Issued at the request of *(name)*, the applicant's solicitor *(or as the case may be)*.

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 49

O. 39 r. 50

NOTICE OF INTENTION TO ADDUCE EVIDENCE OF PREVIOUS REPRESENTATION

*[Heading as in Form 1]*

To *(name)* of *(address)*

Pursuant to subsection 67 (1) of the *Evidence Act 1995* of the Commonwealth, I, *(name)* give notice that I intend to adduce evidence of a previous representation.

I intend to rely on subsection \*[63 (2)/ 64 (2)] of the Act in arguing that the hearsay rule does not apply to the evidence.

The substance of the evidence of a previous representation that I intend to adduce is as follows:

*(substance of that evidence—note that it is sufficient compliance to refer to an accompanying affidavit)*

The substance of all other relevant representations made by the person who made the previous representation, so far as they are known to me, is as follows:

*(substance of those other representations)*

Particulars of—

- (a) the date, time, place and circumstances on, at or in which each of the representations mentioned above was made; and
- (b) the names and addresses of the persons by whom, and the persons to whom, those representations were made;

so far as they are known to me, are as follows:

*(particulars)*

*(If it is intended to rely on paragraph 63 (2) (a) or (b) of the Evidence Act 1995 of the Commonwealth)*

\*[Particulars of the facts on the basis of which it is alleged that the person who made the representation is not available to testify concerning the fact to be proved by adducing evidence of that representation are as follows:

*(particulars)]*

*(If it is intended to rely on paragraph 64 (2) (a) or (b) of the Evidence Act 1995 of the Commonwealth)* \*[It

would \*[cause undue expense/ cause undue delay/ not be reasonably practicable] to call the person who made the representation to give evidence. Particulars of the facts that I will rely on to establish the \*[that ground/ those grounds] are as follows:

*(particulars)]*

Date:

*(name of party or party's solicitor)*

*(address)*

*\*(Delete if, or whichever is, inapplicable)*

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 49A

O. 39 r. 51

**NOTICE OF OBJECTION TO TENDER OF HEARSAY EVIDENCE**

*[Heading as in Form 1]*

To *(name)* of *(address)*

Pursuant to subsection 68 (1) of the *Evidence Act 1995* of the Commonwealth, I, *(name)* give notice that I object to the tender of \*[the/ a part of the] evidence referred to in the notice of intention to adduce evidence of previous representation dated *(date)* given by *(name)* to me.

\*[The part of the evidence the tender of which is objected to is as follows:

*(description of part of evidence)*]

The grounds on which the objection is made are as follows:

*(grounds)*

Date:

*(name of party or party's solicitor)*

*(address)*

*\*(Delete if, or whichever is, inapplicable)*

FORM 49B

O. 39 r. 52

**NOTICE OF INTENTION TO ADDUCE TENDENCY EVIDENCE**

*[Heading as in Form 1]*

To *(name)* of *(address)*

Pursuant to subsection 97 (1) of the *Evidence Act 1995* of the Commonwealth, I, *(name)* give notice that I intend to adduce evidence of \*[the [character/ reputation/ conduct] of *(name)*/ a tendency that *(name)* [has/had]] to prove that \*[he/she] \*[has/had] a tendency to \*[act in a particular way/ have a particular state of mind].

The substance of the evidence that I intend to adduce is as follows:

*(substance of the evidence)*

Particulars of the \*[character/ reputation/ conduct/ tendency] of which evidence is to be adduced are as follows:

*(particulars)*

*(If that evidence consists of, or includes, evidence of the conduct of a person) \*[Particulars of—*

(a) the date, time, place and circumstances on, at or in which the conduct occurred; and

(b) the names and addresses of the persons who saw, heard or otherwise perceived the conduct;

so far as they are known to me, are as follows:

*(particulars)*

Particulars of the tendency sought to be proved by the evidence are as follows:

*(particulars)*

Date:

*(name of party or party's solicitor)*

*(address)*

*\*(Delete if, or whichever is, inapplicable)*

*Supreme Court Rules*  
**SCHEDULES**—continued

FORM 50

O. 39 r. 53

NOTICE OF INTENTION TO ADDUCE COINCIDENCE EVIDENCE

*[Heading as in Form 1]*

To *(name)* of *(address)*

Pursuant to subsection 98 (1) of the *Evidence Act 1995* of the Commonwealth, I, *(name)* give notice that I intend to adduce evidence that *(number)* related events occurred to prove that, because of the improbability of the events occurring coincidentally, *(name)* \*[did a particular act/ had a particular state of mind].

The substance of the evidence that I intend to adduce is as follows:

*(substance of the evidence)*

Particulars of—

- (a) the date, time, place and circumstances on, at or in which each of those events occurred; and
- (b) the names and addresses of the persons who saw, heard or otherwise perceived those events;

so far as they are known to me, are as follows:

*(particulars)*

Particulars of any additional evidence to be relied on to establish the improbability of the events having occurred coincidentally are as follows:

*(particulars)*

Particulars of the \*[act/ state of mind] sought to be proved by the evidence are as follows:

*(particulars)*

Date:

*(name of party or party's solicitor)*  
*(address)*

*\*(Delete whichever is inapplicable)*

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—continued  
FORM 50AA  
GENERAL FORM OF JUDGMENT  
*[Heading as in Form 1]*

O. 42 r. 2 (6)

JUDGE:  
DATE OF ORDER:  
ORIGINATING PROCESS:  
HOW OBTAINED:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

THE COURT ORDERS THAT:

- 1.
- 2.

THE JUDGMENT OF THE COURT IS THAT:

- 1.
- 2.

DATE ENTERED

REGISTRAR

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*Supreme Court Rules*  
**SCHEDULES**—continued  
FORM 50AB  
GENERAL FORM OF ORDER  
*[Heading as in Form 1]*

O. 42, r. 2 (6)

JUDGE:  
DATE OF ORDER:  
ORIGINATING PROCESS:  
HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

THE COURT ORDERS THAT:

- 1.
- 2.

DATE ENTERED

REGISTRAR

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*Supreme Court Rules*

**SCHEDULES**—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 etc.

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 .

*Supreme Court Rules*  
**SCHEDULES—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 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 etc." 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 court, bearing date the                      day of                      , adjudged [*or ordered, as the case may be*] to be paid by *C.D.* to *A.B.*, together with certain costs in the judgment [*or order, as the case may be*] mentioned, and which costs have been taxed and allowed by the taxing officer of our court at the sum of \$                      as appears by the certificate of the taxing officer, dated the                      day of                      . And that of the real and personal estate of *C.D.* in your bailiwick you further cause to be made the sum of \$                      [costs] together with interest thereon at the rate of 15% per annum from the                      day of                      \* and that you have that money and interest before us in our court immediately after the execution hereof to be paid to *A.B.* in pursuance of the 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 court immediately after the execution thereof. And have there then this writ.

Witness etc. (*as in Form 1*) the                      day of                      in the year of our Lord 19                     

*Indorsement*

Levy \$                      and \$                      for costs of execution etc. and also interest on \$                      at 15% 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 etc. [*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, that by virtue of the writ to you directed you had taken real and personal estate of *C.D.* to the value of the money and interest, which real and personal estate remained in your hands unsold for want of buyers. Therefore we, being desirous that *A.B.* should be satisfied his or her money and interest, command you that you expose to sale and sell, or cause to be sold, the real and personal estate of *C.D.*, by you in form taken, and every part, for the best price that can be gotten for the same, and have the money arising from such sale before us in our court of justice immediately after the execution hereof, to be paid to *A.B.* And have there then this writ.

Witness etc.

*[Indorsement as in Form 54]*

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 56  
WRIT OF POSSESSION  
[Heading as in Form 1]

O. 42 r. 12

GEORGE THE SIXTH etc. [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 A.B. to have possession of the land and premises with the appurtenances. And in what manner etc.. And have you there then this writ. Witness etc.

[Indorsement. This writ was issued by etc.]

FORM 56A  
ORDER FOR EXAMINATION OF JUDGMENT DEBTOR  
[Heading as in Form 1]

O. 43 r. 31 (2)

THE COURT ORDERS THAT:

1. (name) the abovenamed (plaintiff or defendant or as the case may be), the judgment debtor [or, in the case of a company, (name), a director (as the case may be) of the abovenamed (plaintiff or defendant or as the case may be), the judgment debtor] attend before the Registrar at the Supreme Court, Knowles Place, Canberra City in the Australian Capital Territory, on (date) at (time) to be examined as to any and what debts are owing to \*[him/her/it] and whether the judgment debtor has any and what other property or means of satisfying the judgment given on (date).
2. He/She then produce any books or documents in \*[his/her/its] possession or control relating to the debts and property of the judgment debtor before the Registrar at the time of the examination.

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 or to produce the books or documents further legal proceedings may be taken against you for your failure to obey the order.

\*(Delete whichever is inapplicable)

FORM 57  
AFFIDAVIT AS TO STOCK UNDER ORDER 47

O. 47 r. 5

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

On (date) I, (name) of (address), (occupation), say on oath 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 etc.] abovementioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice annexed.

This affidavit is filed on behalf of A.B., whose address is [state address for service].

*Supreme Court Rules*  
**SCHEDULES—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 etc.*] 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 etc. 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 A.B. lately [*recovered against C.D., or which C.D. was ordered to deliver to A.B.*] in this action by a [*judgment, or order*] dated the

day of \_\_\_\_\_ 19 \_\_\_\_.

And we further command you, that if the chattels cannot be found in your bailiwick you distrain C.D. by all his or her lands and chattels in your bailiwick, so that neither C.D. nor anyone for him or her do lay hands on the same until C.D. render to A.B. the chattels. And in what manner you shall have executed this our writ make appear to us in our Court immediately after the execution hereof. And have there then this writ. Witness etc.

*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 \_\_\_\_\_ 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 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 or her surety or sureties. In the case of a surety being a guarantee or other company, it must be sealed or otherwise duly executed.*]

O. 52 r. 21

[Heading as in Form 1]

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 |             |                |               |                 |                      |              |

*Supreme Court Rules*

**SCHEDULES**—continued

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

| No.<br>of item | Date of payment<br>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 .....                          |        |

*Supreme Court Rules*  
**SCHEDULES**—continued  
 FORM 61—continued

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE

| No. of<br>item | Date when<br>received | Names of persons<br>from whom<br>received | On what account<br>received | Amount<br>received | No. of<br>item | Date when paid<br>or allowed | Names of persons<br>to whom paid or<br>allowed | For what<br>purpose paid<br>or allowed | Amount paid<br>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 .....         |    |    |    |





*Supreme Court Rules*

**SCHEDULES—continued**

FORM 62

O. 52 r. 22

**AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT**

*[Heading as in Form 1]*

On (date) I, (name) of (address), the receiver appointed in this cause, say on oath:

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 outstanding 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 *rent and profits accrued due on or before* day of and on account or in respect of the *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 account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the account mentioned.

3. The 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 etc., 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 , 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, what of right we shall see fit to be done.

Witness etc.

This writ was issued by etc.

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 64

O. 55 r. 17

**WRIT OF MANDAMUS**

*[Heading as in Form 1]*

GEORGE THE SIXTH, by the Grace of God etc., 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

were then and there required by *[insert demand]* but that you

\_\_\_\_\_, 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 \_\_\_\_\_ and

every of you, firmly enjoying you that you *[insert command]*, or that you show us cause to the contrary, 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 court, then returning to us this our writ, and this you are not to omit.

Witness etc. (*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 etc., to the \_\_\_\_\_, and to *[name of plaintiff]*, of \_\_\_\_\_, greeting:

Whereas we have been given to understand that you \_\_\_\_\_ have *[entered a plaint against] C.D.* in the court, and that the court has no jurisdiction in the *[cause]* or to hear and determine the *[plaint]* by reason that *[state facts showing want of jurisdiction]*.

We therefore hereby prohibit you from further proceeding in the *[action]* in the court.

Witness etc.

*Supreme Court Rules*

**SCHEDULES—continued**

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 required to admit or dispute the title of *A.B.* to the goods and give notice thereof in writing to the sheriff within 4 days from the receipt of this notice, failing which the sheriff may issue an interpleader summons. If you admit the title of *A.B.* to the goods and give notice thereof in manner aforesaid to the 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 or her officers.

*Supreme Court Rules*  
**SCHEDULES**—continued

FORM 76

O. 61, r. 5 (1) (ba)

NOTICE OF APPEAL  
FROM INTERLOCUTORY ORDER OF THE REGISTRAR

In the Supreme Court  
of the Australian Capital Territory

No.    of 19    .

BETWEEN:                      *[name]*                                      Plaintiff  
   and  
   *[name]*    Defendant

To:

the Registrar

the [\*defendant/\*plaintiff]

\* the solicitor for the [\*defendant/\*plaintiff], *[insert name of solicitor]*

On *[date]*, the [\*plaintiff/\*defendant] intends to appeal against the following decision of the Registrar:  
*[specify the decision appealed against, and the date and time of the decision]*

Date:

.....

\* Plaintiff

\* Defendant

\* Solicitor for [\*plaintiff/\*defendant]

|                                 |
|---------------------------------|
| * Strike out where inapplicable |
|---------------------------------|

*Supreme Court Rules*  
**SCHEDULES**—continued

FORM 77

O. 61A, r. 5 (c)

(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 on (specify date).

Dated this                      day of                      .

(signed)  
Solicitor for the  
(Plaintiff, Defendant  
or other party)

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—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: \_\_\_\_\_

O. 74A r. 5

## ORDER FOR REGISTRATION OF MONEY JUDGMENT

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.

3. *(Insert any other orders made under the judgment)*

5. The judgment debtor may, within \_\_\_\_\_ days after service of the notice of registration, apply to have the registration set aside.

---

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 78C

O. 74A r. 5

[Heading as in Form 78A]

ORDER FOR REGISTRATION OF NON-MONEY JUDGMENT

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)*.
3. The judgment debtor may, within                      days after service of the notice of registration, apply to have the registration set aside.

\_\_\_\_\_

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



*Supreme Court Rules*  
**SCHEDULES**—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

\_\_\_\_\_

FORM 81  
APPLICATION FOR AN ORDER OF REVIEW

IN THE SUPREME COURT OF THE )  
 AUSTRALIAN CAPITAL TERRITORY )      No.      of 19  
 BETWEEN:      (*name*)      Appellant  
                          and  
                          (*name*)      Respondent

*Supreme Court Rules*  
**SCHEDULES—continued**

**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).

*Supreme Court Rules*  
**SCHEDULES—continued**  
**THIRD SCHEDULE**

FORM 1

NOTICE OF INTENDED APPLICATION FOR PROBATE

O. 72 r. 3

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL  
TERRITORY  
PROBATE JURISDICTION

In the Estate of *(name)*, late of *(last address,*  
*occupation)*, deceased

Application will be made not earlier than 14 days after the publication of this notice that probate of the will dated *(date)* \*[and codicil/s dated *(date/s)*] of the abovenamed deceased be granted to *(name/s)*, the executor/s named in the will \*[and codicil/s].

All notices may be served at the address below.

Creditors of the estate of the deceased are required to send particulars of their claims to:

*(name of applicant or applicant's solicitor)*  
*(address)*

*\*(Delete if inapplicable)*

\_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES**—continued

FORM 2

O. 72 r. 3

NOTICE OF INTENDED APPLICATION FOR LETTERS OF ADMINISTRATION WITH WILL  
ANNEXED

[*Heading as in Form 1*]

In the Estate of *(name)*, late of *(last address,*  
*occupation)*, deceased

Application will be made not earlier than 14 days after the publication of this notice that letters of administration with the will dated *(date)* \*[and codicil/s dated *(date/s)*] annexed of the estate of the abovenamed deceased be granted to *(name)* for the reason that *(reason)*.

All notices may be served at the address below.

Creditors of the estate of the deceased are required to send particulars of their claims to:

*(name of applicant or applicant's solicitor)*  
*(address)*

\*(Delete if inapplicable)

\_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 2A

O. 72 r. 3

**NOTICE OF INTENDED APPLICATION FOR LETTERS OF ADMINISTRATION**

*[Heading as in Form 1]*

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

Application will be made not earlier than 14 days after the publication of this notice that letters of administration of the estate of the abovenamed deceased be granted to *(name)*, \*[the *(relationship)* of the deceased].

All notices may be served at the address below.

Creditors of the estate of the deceased are required to send particulars of their claims to:

*(name of applicant or applicant's solicitor)*  
*(address)*

\*(Delete if inapplicable)

FORM 3

O. 72 r. 4

**NOTICE OF INTENDED APPLICATION FOR RESEAL OF FOREIGN GRANT**

*[Heading as in Form 1]*

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

Application will be made not earlier than 14 days after the publication of this notice that \*[probate of the will/ letters of administration of the estate/ an order to collect and administer the estate] of the abovenamed deceased granted by *(name of court)* to *(name)* be sealed with the seal of this Court.

All notices may be served at the address below.

Creditors of the estate of the deceased are required to send particulars of their claims to:

*(name of applicant or applicant's solicitor)*  
*(address)*

\*(Delete whichever is inapplicable)

*Supreme Court Rules*  
**SCHEDULES**—continued  
FORM 3A  
APPLICATION FOR PROBATE  
[Heading as in Form 1]

O. 72 r. 5

No. P                      of 19   .

In the Estate of (*name*), late of (*last address*,  
*occupation*), deceased

Application is hereby made to the Registrar that probate of the will dated (*date*) \*[and codicil/s dated (*date/s*)] of the abovenamed deceased be granted to (*name/s*), the executor/s named in the will \*[and codicil/s].

The address for service of all notices in this matter is (*address*).

Dated:

(*name of applicant or applicant's solicitor*)

\*(Delete if inapplicable)

FORM 3B

O. 72 r. 5

APPLICATION FOR LETTERS OF ADMINISTRATION WITH WILL ANNEXED  
[Heading as in Form 1]

No. P                      of 19   .

In the Estate of (*name*), late of (*last address*,  
*occupation*), deceased

Application is hereby made to the Registrar that letters of administration with the will dated (*date*) \*[and codicil/s dated (*date/s*)] annexed of the estate of the abovenamed deceased be granted to (*name*) for the reason that (*reason*).

The address for service of all notices in this matter is (*address*).

Dated:

(*name of applicant or applicant's solicitor*)

\*(Delete if inapplicable)

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 3C

O. 72 r. 5

APPLICATION FOR LETTERS OF ADMINISTRATION

*[Heading as in Form 1]*

No. P                      of 19   .

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

Application is hereby made to the Registrar that letters of administration of the estate of the abovenamed deceased be granted to *(name)*, \*[the *(relationship)* of the deceased] \*[and that the requirement for an administration bond be dispensed with in respect of \*[a portion of] the estate].

The address for service of all notices in this matter is *(address)*.

Dated:

*(name of applicant or applicant's solicitor)*

*\*(Delete if inapplicable)*

FORM 3D

O. 72 r. 5

APPLICATION FOR RESEAL OF FOREIGN GRANT

*[Heading as in Form 1]*

No. P                      of 19   .

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

Application is hereby made to the Registrar that \*[probate of the will/ letters of administration of the estate/ an order to collect and administer the estate] of the abovenamed deceased granted by *(name of court)* to *(name)* be sealed with the seal of this Court.

The address for service of all notices in this matter is *(address)*.

Dated:

*(name of applicant or applicant's solicitor)*

*\*(Delete whichever is inapplicable)*



*Supreme Court Rules*  
**SCHEDULES—continued**  
FORM 3E  
AFFIDAVIT OF APPLICANT FOR PROBATE  
[Heading as in Form 1]

O. 72 r. 6

No. P                      of 19   .

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

On *(date)* I, *(name)* of *(address)* say on oath:

- 1 The document dated *(date)* signed in the margin by me and by the person before whom this affidavit is sworn is, I believe, the last will of the abovenamed deceased.
- 2 I am \*[the/an] executor named in the will and I have attained the age of 18 years.
- 3 I believe that the will has not been revoked and I am not aware of the existence of any other document purporting to embody the testamentary intentions of the deceased \*[except for *(description of document)*].
- 4 My means of identifying the will are *(means of identification)*.
- 5 The attesting witnesses to the will are *(name)* and *(name)*.
- 6 \*[The other executor/s named in the will \*[is/are] *(name/s and, if known, address/es)*.
- 7 \*[The reason/s why the other executor/s named in the will \*[is/are] not applying for probate \*[is/are] *(reason/s)*].
- 8 The deceased died on *(date)*.
- 9 I believe that the deceased is *(name as in certificate)* referred to in the certificate of registration of death annexed and marked “A”.
- 10 The deceased \*[did/did not] marry after the will was made \*[namely, to *(name)* on *(date)*].
- 11 \*[The deceased’s marriage to *(name)* was terminated after the will was made, namely, on *(date)*].
- 12 \*[The deceased had attained the age of 18 years when the will was made./ The will was made in reliance on section 8 of the *Wills Act 1968*.]
- 13 The deceased \*[left/did not leave] property within the Australian Capital Territory.
- 14 \*\*[I believe that the deceased considered that \*[his/her] domicile was in the Australian Capital Territory. The reason for my belief is *(reason)*.]
15. An inventory of all property of the deceased of which I am presently aware is annexed and marked “B”. I will disclose to the Court any other property of the deceased which comes to my notice.
- 16 The estate has a gross value of \$ *(amount)*.
- 17 If I am granted probate of the will of the deceased I will administer the estate according to law and if required I will give a true account of my administration of the estate to the Registrar.

*Supreme Court Rules*

**SCHEDULES—continued**

- 18 Notice of intention to make this application was published on *(date)* in the *(name)* which is a daily newspaper published and circulating within the Australian Capital Territory. A copy of the notice as published is annexed and marked “C”.

SWORN at )  
Before me )

*\*(Delete if, or whichever is, inapplicable)*

*\*\* (Delete if deceased left property within the Australian Capital Territory)*

---

ANNEXURE “B”

INVENTORY OF PROPERTY

of the estate of *(name)* of *(last address, occupation)*, deceased

| <u>Description</u>                | <u>Estimated or known value</u> |
|-----------------------------------|---------------------------------|
| <i>(description sufficient to</i> | \$                              |
| <i>identify property)</i>         | <i>(amount)</i>                 |
|                                   | <i>(total)</i>                  |

---

FORM 3F

O. 72 r. 12

AFFIDAVIT OF APPLICANT FOR ADMINISTRATION WITH WILL ANNEXED

*[Heading as in Form 1]*

No. P of 19 .

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

On *(date)* I, *(name)* of *(address)* say on oath:

- 1 The document dated *(date)* signed in the margin by me and by the person before whom this affidavit is sworn is, I believe, the last will of the abovenamed deceased.
- 2 I have attained the age of 18 years *\*[and I am (relationship) of the deceased]*.
- 3 I believe that the will has not been revoked and I am not aware of the existence of any other document purporting to embody the testamentary intentions of the deceased *\*[except for (description of document)]*.
- 4 My means of identifying the will are *(means of identification)*.
- 5 The attesting witnesses to the will are *(name)* and *(name)*.
- 6 *\*[The executor/s named in the will \*[is/are] (name/s and, if known, address/es).*
- 7 *\*[The reason/s why the executor/s named in the will \*[is/are] not applying for probate \*[is/are] (reason/s)].*

*Supreme Court Rules*  
**SCHEDULES—continued**

- 8 The deceased died on *(date)*.
- 9 I believe that the deceased is *(name as in certificate)* referred to in the certificate of registration of death annexed and marked “A”.
- 10 The deceased *\*[did/did not]* marry after the will was made *\*[namely, to (name) on (date)]*.
- 11 *\*[The deceased’s marriage to (name) was terminated after the will was made, namely, on (date)]*.
- 12 *\*[The deceased had attained the age of 18 years when the will was made./ The will was made in reliance on section 8 of the Wills Act 1968.]*
- 13 The deceased *\*[left/did not leave]* property within the Australian Capital Territory.
- 14 *\*\*[I believe that the deceased considered that \*[his/her] domicile was in the Australian Capital Territory. The reason for my belief is (reason).]*
- 15 *\*[I am a creditor of the estate. Particulars of the debt are \*[as follows: (particulars of debt)/ set out in the annexed document marked “B”.]*
- 16 An inventory of all property of the deceased of which I am presently aware is annexed and marked “C”. I will disclose to the Court any other property of the deceased which comes to my notice.
- 17 The estate has a gross value of \$ *(amount)*.
- 18 If I am granted administration of the estate of the deceased I will administer the estate according to law and if required I will give a true account of my administration of the estate to the Registrar.
- 19 Notice of intention to make this application was published on *(date)* in the *(name)* which is a daily newspaper published and circulating within the Australian Capital Territory. A copy of the notice as published is annexed and marked “D”.

SWORN at )  
Before me )

*\*(Delete if, or whichever is, inapplicable)*

*\*\* (Delete if deceased left property within the Australian Capital Territory)*

\_\_\_\_\_  
ANNEXURE “C”  
INVENTORY OF PROPERTY  
of the estate of *(name)* of *(last address, occupation)*, deceased

| <u>Description</u>                                   | <u>Estimated or known value</u> |
|--|---------------------------------|
| <i>(description sufficient to identify property)</i> | \$                              |
|  | <i>(amount)</i>                 |
|  | <i>(total)</i>                  |

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 3G

O. 72 r. 14

AFFIDAVIT OF APPLICANT FOR ADMINISTRATION

*[Heading as in Form 1]*

No. P                      of 19 .

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

On *(date)* I, *(name)* of *(address)* say on oath:

- 1 The abovenamed deceased died on *(date)*.
- 2 I have attained the age of 18 years \*[and I am *(relationship)* of the deceased].
- 3 I believe that the deceased is *(name as in certificate)* referred to in the certificate of registration of death annexed and marked “A”.
- 4 I believe that the deceased did not leave a will and I am not aware of the existence of any other document purporting to embody the testamentary intentions of the deceased \*[except for *(description of document)*].
- 5 The following steps have been taken to ascertain whether the deceased left a will or whether there is any other document purporting to embody the testamentary intentions of the deceased:  
*(description of searches, enquiries, etc.)*
- 6 At the time of \*[his/her] death the deceased was \*[not married/ married to *(name)*].
- 7 The deceased \*[left/did not leave] property within the Australian Capital Territory.
- 8 \*\*[I believe that the deceased considered that \*[his/her] domicile was in the Australian Capital Territory. The reason for my belief is *(reason)*.]
- 9 The following persons are entitled to share in the administration or distribution of the estate:  
*(in respect of each such person—name, address, age, relationship to the deceased and entitlement—supporting certificates or other documents to be annexed)*
- 10 \*[I am a creditor of the estate. Particulars of the debt are \*[as follows: *(particulars of debt)*/ set out in the annexed document marked “B”.]
- 11 I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate.
- 12 An inventory of all property of the deceased of which I am presently aware is annexed and marked “C”. I will disclose to the Court any other property of the deceased which comes to my notice.
- 13 The estate has a gross value of \$ *(amount)*.
- 14 If I am granted administration of the estate of the deceased I will administer the estate according to law and if required I will give a true account of my administration of the estate to the Registrar.

*Supreme Court Rules*

**SCHEDULES—continued**

- 15 Notice of intention to make this application was published on *(date)* in the *(name)* which is a daily newspaper published and circulating within the Australian Capital Territory. A copy of the notice as published is annexed and marked “D”.

SWORN at )  
Before me )

\*(Delete if, or whichever is, inapplicable)

\*\* (Delete if deceased left property within the Australian Capital Territory)

ANNEXURE “C”

INVENTORY OF PROPERTY

of the estate of *(name)* of *(last address, occupation)*, deceased

| <u>Description</u>                | <u>Estimated or known value</u> |
|-----------------------------------|---------------------------------|
| <i>(description sufficient to</i> | \$                              |
| <i>identify property)</i>         | <i>(amount)</i>                 |
|                                   | <i>(total)</i>                  |

FORM 3GA

O. 72 r. 14A

AFFIDAVIT OF APPLICANT FOR RESEAL OF FOREIGN GRANT

*[Heading as in Form 1]*

No. P of 19 .

In the Estate of *(name)*, late of *(last address, occupation)*, deceased

On *(date)* I, *(name)* of *(address)* say on oath:

- 1 \*[Probate of the will/ letters of administration of the estate/ order to collect and administer the estate] of the abovenamed deceased was granted by *(name of court)* to \*[me/ *(name)*] on *(date)*. The grant has not been revoked. A true copy of the grant is annexed and marked “A”.
- 2 \*[I am \*[the/a] person to whom \*[probate was/ letters of administration were/ the order to collect and administer was] granted.]
- 3 \*[I am authorised, under a power of attorney, by the \*[executor of the will/ administrator of the estate] of the abovenamed deceased to make this application. I have not received any notice of revocation of the power of attorney. A true copy of the power of attorney is annexed and marked “B”.]
- 4 The deceased \*[left/did not leave] property within the Australian Capital Territory.
- 5 An inventory of all property of the estate in the Australian Capital Territory of which I am presently aware is annexed and marked “C”. I will disclose to the Court any other property of the estate in the Australian Capital Territory which comes to my notice.
- 6 The estate has a gross value of \$ *(amount)*.
- 7 If this application is granted I will administer the estate according to law and if required I will give a true account of my administration of the estate to the Registrar.

*Supreme Court Rules*

**SCHEDULES—continued**

- 8 Notice of intention to make this application was published on (*date*) in the (*name*) which is a daily newspaper published and circulating within the Australian Capital Territory. A copy of the notice as published is annexed and marked “D”.

SWORN at )  
Before me )

*\*(Delete if, or whichever is, inapplicable)*

ANNEXURE “C”

INVENTORY OF PROPERTY IN THE AUSTRALIAN CAPITAL TERRITORY

of the estate of (*name*) of (*last address, occupation*), deceased

| <u>Description</u><br>( <i>description sufficient to<br/>identify property</i> ) | <u>Estimated or known value</u><br>\$<br>( <i>amount</i> )<br>( <i>total</i> ) |
|--|--|
|--|--|

FORM 3H

O. 72 r. 6, 12, 14 and 14A

AFFIDAVIT OF SEARCH

[*Heading as in Form 1*]

No. P of 19 .

In the Estate of (*name*), late of (*last address,  
occupation*), deceased

On (*date*) I, (*name*) of (*address*) say on oath:

I have searched in the Office of the Registrar of this Court today and find as follows:

- 1 No caveat against the application for the \*[grant of probate of the will of/ grant of administration of the estate of/ reseal of a foreign grant of administration of the estate of] the abovenamed deceased has been lodged.
- 2 No application for the \*[grant of probate of the will of/ grant of administration of the estate of/ reseal of a foreign grant of administration of the estate of] the abovenamed deceased has been made to the Court or the Registrar of Probates.
- 3 \*[[Probate of the will of/ Administration of the estate of] the abovenamed deceased has not been granted by the Court or the Registrar of Probates.]
- 4 \*[A foreign grant of representation of the estate of the abovenamed deceased has not been sealed with the seal of the Court.]

SWORN at )  
Before me )

*\*(Delete if, or whichever is, inapplicable)*

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 4

O. 72 r. 30

**ADMINISTRATION BOND**

Know all persons 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* his or her  
successors and assigns, in the sum of to be paid to  
Registrar of Probates and Administrations, his or her successors and assigns, for the due payment whereof  
we hereby bind ourselves and each and any 2 of us, our heirs, executors, and administrators firmly by these  
presents.

Dated this day of in the year of our Lord 19 .

The condition of this obligation is such that if 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 deceased at the time of his or her death  
which shall come to the power or control, hands, or possession of him or her as his or her administrator, or  
of any other person or persons for him or her, 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  
deceased, which shall have come to the hands, possession, or knowledge of him or her, or the hands or  
possession of any other person or persons for him or her, and the same so made do and shall sign with his  
or her 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 3  
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 or she shall have  
undertaken so to administer, his or her receipts and disbursements, and as to what portion shall be retained  
by him or her, and what portion shall remain uncollected, and the same so made do and shall sign with his  
or her proper handwriting (or mark), and do and shall exhibit and deposit, or cause to be exhibited and  
deposited, the same account in the office of the Registrar, within 12 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 etc.

FORM 5

O. 72 r. 30

**CREDITOR'S ADMINISTRATION BOND**

Know all men [*etc. as in Form 4*]—

The condition of this obligation is such that if *C.D.*, a creditor and administrator of all and singular the  
property of *A.B.*, late of , who died at , 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 deceased at the  
time of his or her death which shall come to the power or control, hands, or possession of him or her as such  
administrator, or of any other person or persons for him or her, and do and shall out of the property, lands,  
and hereditaments, goods, chattels, and credits of the deceased in a due course of administration rateably  
and proportionately and according to the priority required by law, and not unduly preferring his or her own  
debt or debts of any other of the creditors of the deceased by reason of his or her 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.*]

*Supreme Court Rules*

**SCHEDULES—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).

On *(date)* I, *(name)* of *(address)*, *(occupation)*, say on oath:

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 etc.
  - (3) Money on deposit or current account, giving name and address of bank, society etc.
  - (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 etc. 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 or her 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]*.

SWORN at \_\_\_\_\_ )  
Before me \_\_\_\_\_ ) :

(Title of person taking affidavit.)

---

\* The gross value at which property of deceased was sworn.



*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 7  
NOTICE OF FILING ACCOUNTS  
*[Heading as in Form 1]*

O. 72 r. 39

In the Estate of

NOTICE is given that the accounts in the above estate have this day been filed in my office, and all persons having any claim on the estate, or being otherwise interested, are required to come in before me at my office on or before the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_-noon and inspect the same and if they shall think fit object; otherwise if the accounts be not objected to, the same will be examined by me and passed according to law.

*\*And notice is also given that on the allowance of the accounts by the Court, commission will be applied for on behalf of the executor (or administrator).*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Registrar.)

---

*\*Words in italics to be added if Commission applied for.*

FORM 8  
CAVEAT

O. 72 r. 52

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 demand that nothing be done without notice to me.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature of caveator or his or her solicitor.)

Witness—

FORM 9

O. 72 r. 60

AFFIDAVIT IN SUPPORT OF APPLICATION BY PUBLIC TRUSTEE  
*[Heading as in Form 1]*

In the matter of the Intestate Estate of \_\_\_\_\_ late of \_\_\_\_\_, deceased.

On (*date*) I, (*name*) of (*address*), (*occupation*), say on oath:

1. \_\_\_\_\_ died at \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, intestate, and having at the time of his or her death estate in the Territory liable to waste.
2. The deceased died without leaving any spouse or next of kin resident within the Territory.

SWORN at \_\_\_\_\_)

Before me \_\_\_\_\_):

(Title of person taking affidavit.)

NOTE—If deceased left a spouse or next of kin resident out of jurisdiction of the Territory, insert particulars of the same.

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 10

O. 72 r. 60

**AFFIDAVIT IN SUPPORT OF APPLICATION BY PUBLIC TRUSTEE**

*[Heading as in Form 1]*

In the matter of the Will of \_\_\_\_\_, late of \_\_\_\_\_, deceased.

On *(date)* I, *(name)* of *(address)*, *(occupation)*, say on oath:

1. I am informed, and verily believe, that \_\_\_\_\_ deceased died at \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as appears by the \_\_\_\_\_ of death attached, marked A.
2. I verily believe the paper writing annexed, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and marked B, to be the last will and testament of the deceased, and that \_\_\_\_\_ by the will appointed \_\_\_\_\_ executors.
3. The executor \_\_\_\_\_ renounced the trusts of the will, as appears by the deed of renunciation marked \_\_\_\_\_, annexed to the affidavit of \_\_\_\_\_, sworn, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and filed in support of this application.

SWORN at \_\_\_\_\_ )

Before me \_\_\_\_\_ ) :

FORM 12

O. 72 r. 61

**RENUNCIATION OF PROBATE IN FAVOUR OF PUBLIC TRUSTEE**

*[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 or she duly made and executed his or her last will and testament, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and appointed \_\_\_\_\_ executor:

Now I \_\_\_\_\_ do declare that I \_\_\_\_\_ have \_\_\_\_\_ not intermeddled in the real or personal estate of the deceased, and will not hereafter intermeddle therein and do expressly renounce \_\_\_\_\_ all my right and title to probate and execution of the will and to the trusts, powers, and authorities whatsoever by \_\_\_\_\_, and request the Public Trustee to apply for an order to collect the estate of \_\_\_\_\_, deceased, with the will of \_\_\_\_\_ annexed.

In witness whereof \_\_\_\_\_ have hereunto set \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed, sealed and delivered by \_\_\_\_\_ in the presence of—

*Supreme Court Rules*

**SCHEDULES—continued**

FORM 13

O. 72 r. 62

**RENUNCIATION OF LETTERS OF ADMINISTRATION IN FAVOUR OF PUBLIC TRUSTEE**

*[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 spouse, leaving  
\_\_\_\_\_ his or her only \_\_\_\_\_ him or her surviving

:

Now, I \_\_\_\_\_, do renounce all right and title to letters of administration of  
the real and personal estate of the deceased, and request the Public Trustee to administer the estate.

Signed by \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
in the presence of—

FORM 14

O. 72 r. 63

**NOTICE OF APPLICATION FOR REPRESENTATION TO BE GIVEN BY PUBLIC TRUSTEE**

*[Heading as in Form 1]*

To the Public Trustee.

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 deceased.

FORM 15

O. 72 r. 69

**ACKNOWLEDGMENT UNDER SECTION 56 OF ACT**

Acknowledgement made under the *Administration and Probate Act 1929*, 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 1 part, and [name or names] [devisee  
or devisees] under the Will, of the other part whereby the executor [or executors or administrator or  
administrators] acknowledge that the devisee [or devisees] is [or are] entitled for the estate for which the  
same is devised to him or her [or them] by the Will to the real estate described in the Will as [described as  
in Will].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature or signatures of executor or executors or  
administrator or administrators.)

Witness—

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 16  
GRANT OF PROBATE  
[Heading as in Form 1]

O. 72 r. 70

No. P of 19 .

In the Estate of (*name*), late of (*last address*,  
*occupation*), deceased

**PROBATE**

PROBATE of the will dated (*date*) \*[and codicil/s dated (*date/s*)] of the abovenamed deceased, \*[a true copy/ true copies] of which \*[is/are] annexed, is granted to (*name/s*), the executor/s named in the will \*[and codicil/s].

Deceased died on (*date*).

Estate sworn under (\$ *value*).

Dated:

By the Court

Registrar

\*(Delete if, or whichever is, inapplicable)

FORM 17  
GRANT OF LETTERS OF ADMINISTRATION WITH WILL ANNEXED  
[Heading as in Form 1]

O. 72 r. 70

No. P of 19 .

In the Estate of (*name*), late of (*last address*,  
*occupation*), deceased

**LETTERS OF ADMINISTRATION WITH WILL ANNEXED**

LETTERS OF ADMINISTRATION with the will dated (*date*) \*[and codicil/s dated (*date/s*)] annexed of the estate of the abovenamed deceased, \*[a true copy/ true copies] of which \*[is/are] annexed, are granted to (*name*).

Deceased died on (*date*).

Estate sworn under (\$ *value*).

Dated:

By the Court

Registrar

\*(Delete if, or whichever is, inapplicable)

*Supreme Court Rules*

**SCHEDULES**—continued

FORM 18

O. 72 r. 70

GRANT OF LETTERS OF ADMINISTRATION

[*Heading as in Form 1*]

No. P                      of 19   .

In the Estate of (*name*), late of (*last address*,  
*occupation*), deceased

LETTERS OF ADMINISTRATION

LETTERS OF ADMINISTRATION of the estate of the abovenamed deceased are granted to (*name*).

Deceased died on (*date*).

Estate sworn under (\$ *value*).

Dated:

By the Court

Registrar

---

FORM 19

O. 72 r. 70

RESEAL OF FOREIGN GRANT

[*Heading as in Form 1*]

No. P                      of 19   .

In the Estate of (*name*), late of (*last address*,  
*occupation*), deceased

RESEAL OF \*[PROBATE/ LETTERS OF ADMINISTRATION/ ORDER TO COLLECT AND  
ADMINISTER]

\*[PROBATE of the will/ LETTERS OF ADMINISTRATION of the estate/ ORDER to collect and administer the estate] of the abovenamed deceased granted by (*name of court*) to (*name*), a true copy of which is annexed, is SEALED with the seal of this Court.

Deceased died on (*date*).

Estate sworn under (\$ *value*).

Dated:

By the Court

Registrar

\*(*Delete whichever is inapplicable*)

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 20  
FORM OF ORDER, ACCOUNTS AND INQUIRIES

O. 72 r. 51B

THE COURT ORDERS THAT:

1. The following accounts be taken and inquiries made:
  - (a) an account of the property of (*name of deceased*) deceased (“the testator”) not specifically [devised or] bequeathed and received by the defendant the executor of \*[his/her] will or by any other person or persons by the order or for the use of the defendant or which without the wilful default of the defendant might have come to \*[his/her] hands;
  - (b) an account of the debts of the testator;
  - (c) an account of the funeral and testamentary expenses of the testator;
  - (d) an account of the legacies and annuities (if any) given by the testator’s will;
  - (e) an inquiry as to what parts (if any) of the testator’s personal estate are outstanding or undisposed of [and whether any part of such personal property so outstanding or so undisposed of is subject to any and what encumbrance].
2. The testator’s personal estate not specifically bequeathed be applied in payment of \*[his/her] debts and funeral expenses in due course of administration, and then in payment of the legacies and annuities, if any, given by \*[his/her] will.
3. The following further inquiries be made and accounts taken:
  - (a) an inquiry as to what real estate the testator was seised of or entitled to at the time of \*[his/her] death;
  - (b) an inquiry as to what encumbrances, if any, affect [or did affect] the testator’s real estate and as to what are the priorities of the encumbrances;
  - (c) an account of what was due on (*the date of death*) and what is presently due to encumbrancers;
  - (d) an inquiry as to what real estate was sold by the defendant and an account as to the proceeds of the sale received by the defendant;
  - (e) an account of the rents and profits of the testator’s real estate received by the defendant (*insert details*).
4. [The testator’s real estate be sold (*if appropriate and with any directions, including a requirement for the approval of the Court as may be appropriate*)].
5. Further consideration of this cause be adjourned and any of the parties be at liberty to apply on 2 clear days’ notice as they may be advised.
6. [The plaintiff’s costs of and incidental to this motion be allowed and taxed as between solicitor and client and paid out of the estate of the testator (*or as the case may be*)].

*\*(Delete whichever is inapplicable)*

*Supreme Court Rules*  
**SCHEDULES**—continued

**SCHEDULE 4**

0. 65 r. 7

COSTS

| Item No.            | Matter in respect of which charge is made   | Charge (\$) |  |
|---------------------|---|-------------|--|
| <i>Instructions</i> |   |             |  |
| 1                   | To sue or defend  | 91.10       |  |
| 2                   | For statement of claim, petition, special case or counter-claim   | 91.10       | or such additional amount as the taxing officer thinks fit |
| 3                   | For defence   | 78.00       | or such additional amount as the taxing officer thinks fit |
| 4                   | For—<br>(a) reply;<br>(b) amending a pleading;<br>(c) a document to be brought into the Registrar's office, such as an account, deed, etc.;<br>(d) adding parties by order;<br>(e) a bond or any other deed; or<br>(f) retaining counsel, including preparation of retainer   | 32.50       | or such additional amount as the taxing officer thinks fit |
| 5                   | For—<br>(a) a pleading not otherwise provided for;<br>(b) interrogatories for the examination of a party or witness;<br>(c) affidavit in answer to interrogatories or other special affidavit;<br>(d) discovery, or affidavit of discovery;<br>(e) an application for an order that a matter be heard before the Full Court; or<br>(f) brief on application in Chambers | 65.00       | or such additional amount as the taxing officer thinks fit |

*Supreme Court Rules*

**SCHEDULES—continued**

|   |  |   |  |
|---|--|---|--|
| 6 | For—<br>(a) an application whether in Court,<br>before the Registrar or in<br>Chambers;<br>(b) opposition to an application; or<br>(c) the taxing of a bill of costs | 65.00   | or such additional amount<br>as the taxing officer thinks<br>fit |
| 7 | For brief to advise on evidence  | 58.50   | or such additional amount<br>as the taxing officer<br>thinks fit |
| 8 | For—<br>(a) a statement of facts in an action;<br>(b) request for particulars; or<br>(c) particulars   | 65.00   | or such additional amount<br>as the taxing officer thinks<br>fit |
| 9 | For brief in preparation for trial   | such amount as the taxing officer<br>thinks fit |  |

*Drawing*

|    |  |       |  |
|----|--|-------|--|
| 10 | For originating process or counter-<br>claim   | 48.60 | or if in excess of 7<br>folios—6.80 per folio                    |
| 11 | For any other pleading, or an<br>amendment of a pleading   | 32.50 | or if in excess of 4 folios—<br>6.80 per folio                   |
| 12 | For—<br>(a) a notice of interlocutory motion;<br>(b) a summons to attend at judge's<br>chambers;<br>(c) a notice to produce documents;<br>(d) a notice to admit facts;<br>(e) a special case;<br>(f) interrogatories;<br>(g) a special affidavit; or<br>(h) a brief (including observations) | 29.70 | or (in each case), if in<br>excess of 4 folios—6.80<br>per folio |
| 13 | A formal affidavit, including an<br>affidavit of service   | 22.90 |  |
| 14 | Any other document   | 12.90 | or if in excess of 1 folio—<br>7.60 per folio                    |

*Engrossing*

|    |               |      |           |
|----|---------------|------|-----------|
| 15 | Of a document | 2.00 | per folio |
|----|---------------|------|-----------|



*Supreme Court Rules*  
**SCHEDULES**—continued

*Copies*

|    |  |      |          |
|----|--|------|----------|
| 16 | Of any document, or of multiple documents copied at the same time, where the copies are made on or after 1 January 1998— |      |          |
|    | (a) for each of the first 10 copies  | 1.75 | per page |
|    | (b) for each additional copy up to 100 copies; or  | 0.70 | per page |
|    | (c) for each additional copy in excess of 100 copies   | 0.25 | per page |

*Perusal*

|     |  |       |   |
|-----|--|-------|---|
| 17  | Of—  | 22.90 | or (in each case) if in excess of 8 folios—2.60 per folio                                     |
|     | (a) originating process;                               |       |   |
|     | (b) any pleading;                                      |       |   |
|     | (c) a summons or notice of motion;                     |       |   |
|     | (d) interrogatories;                                   |       |   |
|     | (e) a special case; or                                 |       |   |
|     | (g) a notice to admit                                  |       |   |
| 18  | Of any other document, where it is necessary to peruse | 2.60  | per folio   |
| 18A | Of any document, where it is not necessary to peruse   | 3.50  | or, if the number of pages exceeds 10, such additional amount as the taxing master thinks fit |

*Attendances*

|    |   |       |  |
|----|---|-------|--|
| 19 | For personal service, where necessary   | 48.60 | or such additional amount as the taxing officer thinks fit |
| 20 | For service—  | 19.60 |  |
|    | (a) at the office of a solicitor on the record or the address for service of a party; |       |  |
|    | (b) by post; or   |       |  |
|    | (c) effected through a document exchange  |       |  |

*Supreme Court Rules*  
**SCHEDULES—continued**

|    |  |                  |   |
|----|--|------------------|---|
| 21 | For attendance—<br>(a) to instruct Counsel;<br>(b) on taxation of a bill of costs or other matter;<br>(c) at conference with Counsel;<br>(d) on a view;<br>(e) on witness or other person; or<br>(f) to inspect or produce a document, for each solicitor or clerk necessarily or properly engaged, where the attendance is— |                  |   |
|    | (i) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years;  | 130.00           | per hour  |
|    | (ii) by any other solicitor; or  | 91.10            | per hour  |
|    | (iii) by a clerk   | 45.50            | per hour  |
| 22 | For any other attendance in Court or any hearing without Counsel—<br>(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or<br>(b) by any other solicitor  | 195.00<br>136.50 | per hour<br>per hour or such additional amount as the taxing officer thinks fit |
| 23 | For any attendance by a solicitor that involves a high degree of skill and responsibility  | 195.00           | per hour  |

*Supreme Court Rules*

**SCHEDULES—continued**

|    |  |       |  |
|----|--|-------|--|
| 24 | In Court or Chambers or before the Registrar—<br>(a) for the purpose of taking a reserved judgment;<br>(b) to mention a matter;<br>(c) for the purpose of adjournment;<br>or<br>(d) for any other reason   | 52.00 | or 130.00 per hour   |
| 25 | At the Registry or other office or place for—<br>(a) the purpose of filing, delivering, or bespeaking a document; or<br>(b) a purpose not involving the exercise of legal skill or knowledge   | 16.20 | or such additional amount as the taxing officer thinks fit.  |
| 26 | Formal telephone attendance  | 16.20 |  |
| 27 | Any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)   | 26.00 | or 32.50 per quarter hour  |
| 28 | Any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)   | 16.20 | or 11.25 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—<br>(a) a solicitor has been necessarily absent from the place where he or she carries on practice; or<br><br>(b) a clerk has attended in place of the solicitor |       | 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 759.00<br><br>a similar daily allowance, not exceeding 195.00 |

*Supreme Court Rules*  
**SCHEDULES—continued**

*Letters*

|    |   |       |   |
|----|---|-------|---|
| 30 | Ordinary letter   | 16.20 | or 7.90 per folio                                 |
| 31 | Special letter  | 26.75 | or 7.90 per folio                                 |
| 32 | Formal letter of acknowledgment   | 10.90 |   |
| 33 | Circular letters after the first  | 4.90  |   |
| 34 | Facsimile copy or telex, including attendance to dispatch   | 25.60 | or such fee as is reasonable in the circumstances |
| 35 | Receiving and filing any incoming letter (postage and transmission fees properly incurred may be claimed as a disbursement) | 6.80  |   |

*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 <i>Judiciary Act 1903</i> of the Commonwealth |  |
|----|--------------|---|--|

*Disbursements*

|    |  |                 |
|----|--|-----------------|
| 37 | All court fees, counsel's fees and other fees and payments that, in the opinion of the taxing officer, have been properly incurred | Allowed in full |
|----|--|-----------------|

*Supreme Court Rules*  
**SCHEDULES**—continued  
**EIGHTH SCHEDULE**

FORM 1  
AUSTRALIAN CAPITAL TERRITORY  
*Adoption Act 1993*  
APPLICATION FOR ADOPTION ORDER

O. 76 r. 3

In the Supreme Court  
of the Australian Capital Territory  
[*year*]

No.      of

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:

*Supreme Court Rules*

**SCHEDULES**—continued

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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*Supreme Court Rules*  
**SCHEDULES**—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  
[year]

No. of

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).

*Supreme Court Rules*  
**SCHEDULES**—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.



*Supreme Court Rules*

**SCHEDULES**—continued

**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*]

JUDGE:

DATE OF ORDER:

ORIGINATING PROCESS:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

The Court is satisfied that it could lawfully make an order for the adoption of the child by the proposed adoptive parents.

THE COURT ORDERS THAT:

1. The determination of the application be postponed until [*date*].
2. [*full name of each proposed adoptive parent*] have the custody of the child until that date.
3. [*Any further orders*].

DATE ENTERED

REGISTRAR

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—continued

**FORM 5**  
**AUSTRALIAN CAPITAL TERRITORY**  
*Adoption Act 1993*  
**ADOPTION ORDER**

O. 76 r. 9

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*]

JUDGE:

DATE OF ORDER:

ORIGINATING PROCESS:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. The child become, by this order, the adopted child of [*full name of each adoptive parent*].
2. The child bear, by this order, the following name: [*full name to be given to adopted child*].
3. [*Any further orders*].

DATE ENTERED

REGISTRAR

*Supreme Court Rules*  
**SCHEDULES**—continued

FORM 6  
AUSTRALIAN CAPITAL TERRITORY  
*Adoption Act 1993*

O. 76 r. 10

**APPLICATION FOR DISPENSING WITH CONSENT TO ADOPTION**

In the Supreme Court  
of the Australian Capital Territory  
[year]

No. of

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).

*Supreme Court Rules*  
**SCHEDULES**—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  
[year]

No. of

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).

*Supreme Court Rules*  
**SCHEDULES**—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  
[year]

No. of

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.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—continued

**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*]

JUDGE:

DATE OF ORDER:

ORIGINATING PROCESS:

ATTENDANCE:

AFFIDAVITS READ:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. 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.
2. [*Any further orders*].

DATE ENTERED

REGISTRAR

*Supreme Court Rules*  
**SCHEDULES**—continued  
**FORM 10**  
**AUSTRALIAN CAPITAL TERRITORY**  
*Adoption Act 1993*

O. 76 r. 14

**APPLICATION FOR THE VARIATION OF AN ADOPTION ORDER**

In the Supreme Court  
of the Australian Capital Territory  
[year]

No.    of

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.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—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  
[*year*]

No. of

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.

\_\_\_\_\_



*Supreme Court Rules*  
**SCHEDULES**—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  
[*year*]

No. of

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.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—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.

*Supreme Court Rules*  
**SCHEDULES**—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.

*Supreme Court Rules*

**SCHEDULES—continued**

† 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.
-

*Supreme Court Rules*  
**SCHEDULES**—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.

*Supreme Court Rules*  
**SCHEDULES**—continued  
**FORM 16**  
**AUSTRALIAN CAPITAL TERRITORY**  
*Adoption Act 1993*

O. 76 r. 20

**APPLICATION FOR ACCESS TO IDENTIFYING INFORMATION**

In the Supreme Court  
of the Australian Capital Territory  
[year]

No.      of

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.
- \_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—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  
[year]

No. of

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.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—continued

**FORM 18**  
**AUSTRALIAN CAPITAL TERRITORY**  
*Adoption Act 1993*

O. 76 r. 22

**NOTICE OF APPEARANCE OPPOSING APPLICATION FOR ACCESS TO  
IDENTIFYING INFORMATION**

In the Supreme Court  
of the Australian Capital Territory  
[year]

No. of

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**  
**AUSTRALIAN CAPITAL TERRITORY**  
*Adoption Act 1993*

O. 76 r. 23

**ORDER FOR ACCESS TO IDENTIFYING INFORMATION**

In the Supreme Court  
of the Australian Capital Territory  
[year]

No. of

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].



*Supreme Court Rules*

**SCHEDULES**—continued

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

*Supreme Court Rules*  
**SCHEDULES**—continued  
**FORM 20**  
**AUSTRALIAN CAPITAL TERRITORY**  
*Adoption Act 1993*  
**AFFIDAVIT OF PERSONAL SERVICE OF**  
**NOTICES OF APPLICATION**

O. 76 r. 25

In the Supreme Court  
of the Australian Capital Territory  
[*year*]

No.      of

In the matter of the adoption of

On (*date*) I, (*name*) of (*address*), (*occupation*), say on oath:

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 by the deponent—

Signature:

Witness:  
[*affidavit is sworn or affirmed*]

[*Signature, name and title of person before whom*

\* Strike out where inapplicable.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—continued**  
**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.

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.

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

Issued at the request of *(name)*, the applicant's solicitor *(or as the case may be)*.

Form 2

Order 80  
Subrule 10 (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:

*Supreme Court Rules*

**SCHEDULES—continued**

- (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.

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

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*);
  - (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:
    - (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

**SCHEDULES**—continued

- ## SCHEDULE

By the Court

Note that:

- Issued at the request of (name), the applicant's solicitor (or as the case may be).

## Form 4

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

To *(name)*  
*(address)*

- (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:
  - (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.

(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.

Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.

Issued at the request of *(name)*, the applicant's solicitor *(or as the case may be)*.

*Supreme Court Rules*  
**SCHEDULES—continued**

**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).

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—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.)



*Supreme Court Rules*  
**SCHEDULES**—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).

\_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES—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;

*Supreme Court Rules*  
**SCHEDULES—continued**

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)

3. The person appearing is a contributory holding (number and class of shares held) shares in the company.

*Supreme Court Rules*  
**SCHEDULES—continued**

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<br>of solicitor | Name and address<br>of creditor | Amount of<br>creditor's debt | Number of shares<br>of contributory | Opposing or<br>supporting<br>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).

*Supreme Court Rules*  
**SCHEDULES**—continued

FORM 81

AFFIDAVIT VERIFYING LIST OF CREDITORS

(Order 75B, subrule 14 (4))

(Heading in Form 75)

On *(date)*, I *(name)* of *(address)*, *(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<br>creditors or claimants | Nature of debts<br>or claims | Amount of estimated value<br>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)*.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—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).

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—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) ("the 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 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).

*Supreme Court Rules*

**SCHEDULES—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;
- (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.



*Supreme Court Rules*  
**SCHEDULES**—continued

FIRST PART

DEBTS AND CLAIMS WHOLLY OR PARTLY ADMITTED BY THE COMPANY

| Names, addresses<br>and descriptions of<br>creditors | Particular of debts<br>or claims | Amounts<br>claimed | Amounts admitted<br>by the company to<br>be owing | Amounts admitted<br>by the company to<br>be owing, which it is<br>contended are not<br>within the inquiry |
|--|----------------------------------|--------------------|---|---|
|--|----------------------------------|--------------------|---|---|

SECOND PART

DEBTS AND CLAIMS WHOLLY DISPUTED BY THE COMPANY

| Names, addresses<br>and descriptions<br>of claimants | Particulars of claims | Amounts claimed | Amounts which it<br>contended would not be<br>within the inquiry, even<br>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.)

*Supreme Court Rules*  
**SCHEDULES—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).

*Supreme Court Rules*  
**SCHEDULES—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 or her 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.)

*Supreme Court Rules*  
**SCHEDULES**—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

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—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.

*Supreme Court Rules*  
**SCHEDULES**—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.

\_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES**—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.]

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*Supreme Court Rules*  
**SCHEDULES—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.
-



**SCHEDULES**—continued

NOTICE OF APPLICATION UNDER SECTION 459P (OR 462) OF THE CORPORATIONS LAW  
(Order 75B, subrules 36 (8) and 37 (9))  
(No heading or title)

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.

(Order 75B, subrules 36 (10) and (11) and 37 (11) and (12))  
(Heading in Form 75)

## A Justice of the Peace

*Supreme Court Rules*  
**SCHEDULES—continued**  
FORM 93B  
AFFIDAVIT UNDER SUBSECTION 459E (3)  
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. The facts entitling me to make this affidavit are as follows: *(set out facts)*
2. I believe that the amount of \$ \_\_\_\_\_, being the \*[debt/the total of the amounts of the debts specified in the accompanying demand], is due and payable by the debtor to the creditor.
3. The source of my knowledge of the matters stated in this affidavit concerning the \*[debt/ debts] is as follows: *(set out source)*
4. I believe that there is no genuine dispute about the existence or amount of the \*[debt/debts] referred to in paragraph 2.

SWORN at: \_\_\_\_\_ )  
before me: \_\_\_\_\_ )

NOTE:

- (1) This affidavit accompanies a statutory demand under subsection 459E (3) of the Corporations Law.
- (2) \*[No proceedings/No winding up proceedings] have been commenced in respect of the \*[debt/debts] to which this affidavit relates.
- (3) Any questions relating to this affidavit or the \*[debt/debts] to which it relates should be directed either to the person named as creditor or the creditor's solicitors.]

*\*(Delete whichever is inapplicable)*

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)*.

*Supreme Court Rules*  
**SCHEDULES—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:

---

*Supreme Court Rules*  
**SCHEDULES—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 facts entitling me to make this affidavit are as follows: (*set out facts*)
2. I believe that the amount of \$ \_\_\_\_\_, being the \*[debt/ the total of the amounts of the debts] specified in the statutory demand served on the respondent, is due and payable by the respondent to the applicant.
3. The source of my knowledge of the matters stated in this affidavit concerning the \*[debt/ debts] is as follows: (*set out source*)
4. I believe that there is no genuine dispute about the existence or amount of the \*[debt/ debts] referred to in paragraph 2.
5. 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: \_\_\_\_\_ )

\*(Delete whichever is inapplicable)

*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 95  
AFFIDAVIT THAT DEBT REMAINS UNPAID  
(Order 75B, subrule 38 (1))  
(Heading in Form 75)

On (date), I (name) of (address), (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 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.)

*Supreme Court Rules*  
**SCHEDULES**—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:

*Supreme Court Rules*  
**SCHEDULES**—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.]

*Supreme Court Rules*

**SCHEDULES**—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:



*Supreme Court Rules*  
**SCHEDULES—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 you 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:

*Supreme Court Rules*

**SCHEDULES—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

*Supreme Court Rules*  
**SCHEDULES—continued**

“B”

SCHEDULE

| Number on<br>list of<br>contrib-<br>utories | Name | Address | Character<br>in which<br>included in<br>list | Amount of<br>call | Proportion<br>of cost | Total<br>amount<br>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<br>list of<br>contributories | Name | Address | Character<br>in<br>which<br>included<br>in list | Amount<br>of call | Proportion<br>of costs of<br>application | Total<br>amount<br>payable |
|--|------|---------|---|-------------------|--|----------------------------|
|--|------|---------|---|-------------------|--|----------------------------|

*Supreme Court Rules*  
**SCHEDULES—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:

\_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES—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 solemnly 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 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: \_\_\_\_\_

*Supreme Court Rules*  
**SCHEDULES—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:

*Supreme Court Rules*

**SCHEDULES**—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 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

*Supreme Court Rules*  
**SCHEDULES—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 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



*Supreme Court Rules*

**SCHEDULES—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.]

\_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES—continued**

**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<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)  |
|----------------------|--|--|--|
| 1                    |  | 9  | Power to direct the notice be given  |
| 2                    |  | 10   | Leave to creditor, contributory or<br>officer to be heard  |
| 3                    |  | 11   | Inquiry as to creditors  |
| 4                    | subsection 140 (4)                               |  | Power to approve alteration in<br>constituent documents of registered<br>foreign company                         |
| 5                    | section 167                                      | 12   | Order for cancellation of change of<br>status of company   |
| 6                    | section 168                                      | 12   | Order for cancellation of change<br>from public to proprietary company   |
| 7                    | subsection 170 (1)                               |  | Power to determine that company<br>has ceased to be a proprietary<br>company                                     |
| 8                    | subsection 170 (4)                               |  | Power to determine that company<br>has not ceased to be a proprietary<br>company where default was<br>accidental |
| 9                    | subsection 170 (5)                               |  | Leave to convert to proprietary<br>company   |
| 10                   | section 172                                      | 12   | Order for cancellation of alteration<br>of memorandum  |
| 11                   | section 190                                      | 13   | Order confirming issue of shares at a<br>discount  |
| 12                   | section 194                                      | 12   | Order validating issue or allotment<br>of shares   |
| 13                   | section 195                                      | 14 and 15                                  | Powers of the Court as to reduction<br>of capital  |
| 14                   | sections 197, 198 and<br>199                     | 12   | Order setting aside variation or<br>abrogation of rights   |
| 15                   | section 198                                      |  | Order as to rights of holders of<br>shares   |
| 16                   | section 199                                      |  | Order as to rights of classes of<br>members  |
| 17                   | section 202                                      | 12   | Order approving payment of interest<br>out of capital of company   |
| 18                   | subsection 205 (12)                              | 16   | Application opposing giving of<br>financial assistance   |

*Supreme Court Rules*  
**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)   |
|----------------------|--|--|---|
| 19                   | subsection 250 (4)                               |  | Leave to member of proprietary company to appoint proxy   |
| 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   |

*Supreme Court Rules*

**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)  |
|----------------------|--|--|--|
| 36                   | section 454                                      | 33   | Creditor's appeal against decision to appoint official manager   |
| 37                   | section 456                                      | 34   | Release of official manager  |
| 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  |

*Supreme Court Rules*  
**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(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   |

*Supreme Court Rules*

**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law  | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)  |
|----------------------|---|--|--|
| 38                   | sections 459P, 459R, 461, 462, 464 and 465B, subsections 467 (1) and (3) and section 467A | 35 to 42 (inclusive)                       | Winding up applications  |
| 39                   | section 468   | 45   | Validation of disposition of property  |
| 40                   | paragraph 470 (2) (b)   |  | Service of copy of order on another person   |
| 41                   | section 471B  | 46   | Leave to begin or proceed with a proceeding or enforcement process and imposition of terms   |
| 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 1 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  |

*Supreme Court Rules*

**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)  |
|----------------------|--|--|--|
| 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  |
| 61                   | subsection 496 (3)                               | 71   | 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                                      |  | Appointment of liquidator in voluntary winding up  |
| 66                   | section 503                                      |  | 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)                               | 72   | 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)                            |  | 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                         |

*Supreme Court Rules*

**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)  |
|----------------------|--|--|--|
| 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                             |
| 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   |



*Supreme Court Rules*

**SCHEDULES—continued**

| Column 1<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of<br>rule in Order 75B | Column 4<br>Description<br>(For information only)                               |
|----------------------|--|--|---|
| 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   |
| 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<br>Item No. | Column 2<br>Provision of the<br>Corporations Law | Column 3<br>Number of rule in<br>Order 75B | Column 4<br>Description<br>(For information only) |
|----------------------|--|--|---|
| 107                  |  | Schedule 13A,<br>rules 36, 37 and 41       | Winding up applications                           |

*Supreme Court Rules*  
**SCHEDULES—continued**

**PART 3**

| Column 1<br>Item No. | Column 2<br>Provision of the ASC<br>Law | Column 3<br>Number of rule in<br>Order 75B | Column 4<br>Description<br>(For information only)  |
|----------------------|---|--|--|
| 1                    | subsection 79 (4)                       |  | Power to extend period to give<br>notice of intention to have statements<br>made at examination admitted |

**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

*Supreme Court Rules*

**SCHEDULES—continued**

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.

**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

*Supreme Court Rules*

**SCHEDULES—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.

*Supreme Court Rules*

**SCHEDULES—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.

*Supreme Court Rules*  
**SCHEDULES—continued**  
**SCHEDULE 13B**

**MATTERS ARISING UNDER THE EVIDENCE AND PROCEDURE  
(NEW ZEALAND) ACT 1994 OF THE COMMONWEALTH**

FORM 1

O. 80E r. 1

CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA

IN THE SUPREME COURT OF  
THE AUSTRALIAN CAPITAL  
TERRITORY

No. \_\_\_\_\_ of 19 \_\_\_\_.

Between

Plaintiff/Appellant

and

Defendant/Respondent

To: THE HIGH COURT OF NEW ZEALAND

IT IS HEREBY CERTIFIED that—

- (a) leave to serve in New Zealand a subpoena issued by the Supreme Court of the Australian Capital Territory was given under section 9 of the *Evidence and Procedure (New Zealand) Act 1994* of Australia by a Judge of the Court on (*date of leave*); and
- (b) the person named failed to comply with the subpoena.

Accordingly the Court respectfully requests you to exercise your powers under section 16 of the Evidence Amendment Act 1994 of New Zealand.

A copy of the subpoena and a copy of the order giving leave to serve it in New Zealand are annexed to this certificate.

\*No application for the subpoena to be set aside in whole or in part has been made.

\*An application for the subpoena to be set aside in whole or in part was dismissed by order made on (*date*). A copy of the order is annexed to this certificate.

\*(*Delete whichever is inapplicable*)

Date:

By the Court

(signature of Registrar and seal of Court)

\_\_\_\_\_

*Supreme Court Rules*

**SCHEDULES**—continued

FORM 2

O. 80F r. 4

OBJECTION TO DETERMINATION OF APPLICATION FOR SUBPOENA TO BE SET ASIDE  
WITHOUT HEARING  
(Heading as in Form 1)

The (*identify person as the applicant or the party who obtained leave to serve the subpoena in New Zealand*) objects to the application for the subpoena (*identify subpoena*) to be set aside being determined without a hearing.

Date:

(signature of applicant or applicant's solicitor)

\_\_\_\_\_

FORM 3

O. 80F r. 5

REQUEST FOR HEARING BY VIDEO LINK OR TELEPHONE  
(Heading as in Form 1)

The applicant requests that the hearing of the application for the subpoena (*identify subpoena*) to be set aside be held by video link or telephone.

Date:

(signature of applicant or applicant's solicitor)

\_\_\_\_\_







*Supreme Court Rules*  
**SCHEDULES—continued**

FORM 3

O. 81A, r. 6

ORDER NISI TO REVIEW  
A DECISION OF THE MAGISTRATES COURT

In the Supreme Court  
of the Australian Capital Territory

No.    of 19    .

On appeal from the Magistrates Court

|          |        |            |
|----------|--------|------------|
| Between: | [name] | Appellant  |
|          | and    |            |
|          | [name] | Respondent |

**Before:**

1. On [date] at [place], the Magistrates Court made the following decision:
2. [name] has been heard for the appellant, and the affidavit of [name] sworn on [date] and filed in this matter has been read.
3. The respondent is ordered to show cause before the Supreme Court on the [date] why that decision of the Magistrates Court should not be reviewed.  
\* The following orders are also made:
4. The grounds upon which [\*this order/\*these orders] are made are as follows:

Date:

.....  
Registrar

|                                 |
|---------------------------------|
| * Strike out where inapplicable |
|---------------------------------|

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**SCHEDULE 15<sup>3</sup>**

Order 11A, subrule 4 (1)

FORMS—SERVICE OF FOREIGN PROCESS AND SERVICE OF  
PROCESS OUT OF AUSTRALIA

\*                      \*                      \*                      \*                      \*

## Supreme Court Rules

### 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.

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.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

### Table of Rules

| Rule No.     | Date of making | Date of notification in <i>Gazette</i> | 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<br>(see r. 1 and <i>Gazette</i> 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<br>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<br>Remainder: 23 June 1993 | R. 5   |

*Supreme Court Rules*

**NOTE**—continued

| Rule No.                                 | Date of making | Date of notification in <i>Gazette</i> | Date of commencement   | Application, saving or transitional provisions |
|--|----------------|--|--|--|
| 46, 1993                                 | 25 Nov 1993    | 2 Dec 1993                             | 2 Dec 1993   | —  |
| 2, 1994                                  | 21 Feb 1994    | 28 Feb 1994                            | 28 Feb 1994  | —  |
| 17, 1994                                 | 23 May 1994    | 30 May 1994                            | 1 June 1994  | —  |
| 20, 1994                                 | 20 June 1994   | 24 June 1994                           | 24 June 1994   | —  |
| 21, 1994                                 | 22 June 1994   | 27 June 1994                           | 27 June 1994   | —  |
| 34, 1994                                 | 10 Oct 1994    | 14 Oct 1994                            | 14 Oct 1994  | —  |
| 42, 1994 (b)                             | 29 Nov 1994    | 5 Dec 1994                             | 19 Feb 1995  | —  |
| 11, 1995                                 | 21 Mar 1995    | 29 Mar 1995                            | 29 Mar 1995  | —  |
| 12, 1995                                 | 21 Mar 1995    | 29 Mar 1995                            | 1 Apr 1995   | —  |
| 13, 1995                                 | 28 Mar 1995    | 5 Apr 1995                             | 5 Apr 1995   | —  |
| 15, 1995                                 | 26 Apr 1995    | 5 May 1995                             | R. 1: 5 May 1995   | —  |
|  |                |  | Remainder (rr. 2-14): (see Note 3)                               |  |
| as amended by                            |                |  |  |  |
| 8, 1997                                  | 14 Apr 1997    | 23 Apr 1997                            | 1 July 1997  | R. 3   |
| 19, 1995                                 | 7 June 1995    | 15 June 1995                           | 15 June 1995   | —  |
| 27, 1995                                 | 18 July 1995   | 3 Aug 1995                             | 3 Aug 1995   | —  |
| 44, 1995                                 | 6 Dec 1995     | 15 Dec 1995                            | 15 Dec 1995  | —  |
| <b>(Reprinted as at 31 January 1996)</b> |                |  |  |  |
| 4, 1996                                  | 25 Mar 1996    | 29 Mar 1996                            | 29 Mar 1996  | —  |
| 10, 1996                                 | 21 June 1996   | 28 June 1996                           | 28 June 1996   | —  |
| 11, 1996                                 | 18 June 1996   | 28 June 1996                           | 28 June 1996   | —  |
| 22, 1996                                 | 24 Sept 1996   | 2 Oct 1996                             | 2 Oct 1996   | —  |
| 27, 1996                                 | 31 Oct 1996    | 13 Nov 1996                            | 13 Nov 1996  | —  |
| 31, 1996                                 | 17 Dec 1996    | 20 Dec 1996                            | 20 Dec 1996  | —  |
| <b>(Reprinted as at 31 January 1997)</b> |                |  |  |  |
| 8, 1997                                  | 14 Apr 1997    | 23 Apr 1997                            | 1 July 1997  | R. 3   |
| 9, 1997                                  | 15 Apr 1997    | 23 Apr 1997                            | 23 Apr 1997  | —  |
| 20, 1997                                 | 10 July 1997   | 14 July 1997                           | 14 July 1997   | —  |
| 30, 1997                                 | 9 Oct 1997     | 30 Oct 1997                            | 30 Oct 1997  | —  |
| 31, 1997                                 | 9 Oct 1997     | 30 Oct 1997                            | 30 Oct 1997  | Rr. 3 and 11 (2)                               |
| 33, 1997                                 | 5 Nov 1997     | 11 Nov 1997                            | 11 Nov 1997  | —  |
| 38, 1997                                 | 3 Dec 1997     | 10 Dec 1997                            | 10 Dec 1997  | —  |
| 43, 1997                                 | 15 Dec 1997    | 13 Jan 1998                            | R. 8: 2 Feb 1998 (see r. 1 (2) and <i>Gazette</i> 1998, No. S42) | —  |
|  |                |  | Remainder: 1 Jan 1998  |  |
| <b>(Reprinted as at 2 February 1998)</b> |                |  |  |  |
| 23, 1998                                 | 17 June 1998   | 24 June 1998                           | 24 June 1998   | —  |

*Supreme Court Rules*

**NOTE—continued**

| Rule No. | Date of making | Date of notification in <i>Gazette</i> | Date of commencement                                  | Application, saving or transitional provisions |
|----------|----------------|--|---|--|
| 35, 1998 | 30 Nov 1998    | 9 Dec 1998                             | Rr. 1-4 and 6-8: 15 Dec 1998<br>Remainder: 1 Feb 1999 | —  |

(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.

(b) Subordinate Law No. 42, 1994 was made under the *Electoral Act 1992* and the *Supreme Court Act 1933*.

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                                    | How affected  |
|--|---|
| <b><u>O. 1</u></b> r. 1.....                 | am. No. 16, 1992  |
| r. 4 .....                                   | am. Nos. 16, 21 and 34, 1992; No. 21, 1994; No. 8, 1997 |
| r. 5 .....                                   | rep. No. 11, 1995                                       |
|  | ad. No. 8, 1997   |
| <b><u>O. 1A</u></b> (r. 1).....              | ad. No. 11, 1995  |
| r. 1 .....                                   | ad. No. 11, 1995  |
| O. 2 (rr. 1, 2) .....                        | rep. No. 8, 1997  |
| <b><u>O. 2</u></b> (rr. 1-32) .....          | ad. No. 8, 1997   |
| rr. 1, 2 .....                               | rs. No. 8, 1997   |
| rr. 3-32 .....                               | ad. No. 8, 1997   |
| O. 2A (rr. 1-14).....                        | rep. No. 8, 1997  |
| rr. 1-11 .....                               | rep. No. 8, 1997  |
| r. 12 .....                                  | am. No. 35, 1993  |
|  | rep. No. 8, 1997  |
| rr. 13, 14 .....                             | rep. No. 8, 1997  |
| O. 3 (rr. 1-6) .....                         | rep. No. 8, 1997  |
| <b><u>O. 3</u></b> (rr. 1-3) .....           | ad. No. 8, 1997   |
| r. 1 .....                                   | rs. No. 8, 1997   |
| rr. 2, 3 .....                               | rs. No. 8, 1997   |
|  | am. No. 43, 1997  |
| rr. 4, 5 .....                               | rep. No. 8, 1997  |
| r. 6 .....                                   | am. No. 27, 1995  |
|  | rep. No. 8, 1997  |
| <b><u>O. 4</u></b> (rr. 1-6, 6A, 7, 8) ..... | rep. No. 8, 1997  |

*Supreme Court Rules*

**NOTE**—continued

rr. 1-5..... rep. No. 8, 1997  
r. 6..... am. No. 11, 1993; No. 17, 1994; No. 11, 1995  
rep. No. 8, 1997

*Supreme Court Rules*

**NOTE—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision   | How affected   |
|---|--|
| r. 6A .....   | ad. No. 17, 1994<br>am. No. 12, 1995<br>rep. No. 8, 1997 |
| rr. 7, 8 .....  | rep. No. 8, 1997   |
| <b>O. 5</b> (rr. 1-4) .....   | rep. No. 8, 1997   |
| rr. 1-4 .....   | rep. No. 8, 1997   |
| <b>O. 6</b> (rr. 1-6) .....   | rep. No. 8, 1997   |
| rr. 1-6 .....   | rep. No. 8, 1997   |
| <b>O. 7</b> (rr. 1-4) .....   | rep. No. 8, 1997   |
| rr. 1-4 .....   | rep. No. 8, 1997   |
| Heading to O. 8 .....   | rs. No. 8, 1997  |
| Div. 1 of O. 8 (r. 1) .....   | rep. No. 8, 1997   |
| <b>O. 8</b> r. 1 .....  | rs. No. 8, 1997  |
| Heading to Div. 2 of O. 8 ...   | rep. No. 8, 1997   |
| r. 6 .....  | am. No. 8, 1997  |
| r. 7 .....  | rs. No. 8, 1997  |
| <b>O. 9</b> (rr. 1-3) .....   | rep. No. 8, 1997   |
| rr. 1-3 .....   | rep. No. 8, 1997   |
| <b>O. 10</b> rr. 1, 2 .....   | rs. No. 8, 1997  |
| r. 2A .....   | rs. No. 8, 1997  |
| rr. 4, 5 .....  | rs. No. 8, 1997  |
| r. 6 .....  | am. No. 35, 1993   |
| r. 7 .....  | am. No. 8, 1997  |
| r. 8 .....  | rs. No. 8, 1997  |
| r. 9 .....  | ad. No. 33, 1997   |
| <b>O. 12</b> rr. 2-4 .....  | am. No. 8, 1997  |
| r. 5 .....  | rep. No. 8, 1997   |
| r. 6 .....  | am. No. 8, 1997  |
| rr. 7, 8 .....  | rep. No. 8, 1997   |
| r. 9 .....  | rs. No. 8, 1997  |
| rr. 10-12 .....   | am. No. 8, 1997  |
| <b>O. 13</b> r. 1 .....   | rs. No. 8, 1997  |
| r. 2 .....  | am. No. 23, 1992; No. 8, 1997                            |
| r. 3 .....  | rs. No. 8, 1997  |
| r. 4 .....  | rs. No. 8, 1997<br>am. No. 33, 1997                      |
| r. 5 .....  | rs. No. 23, 1993<br>rep. No. 8, 1997                     |
| r. 6 .....  | am. No. 8, 1997  |
| r. 7 .....  | rep. No. 8, 1997   |
| r. 9 .....  | am. No. 8, 1997  |
| rr. 11-15 .....   | rs. No. 8, 1997  |
| r. 16 .....   | rep. No. 8, 1997   |
| r. 17 .....   | rs. No. 23, 1992<br>am. No. 8, 1997                      |
| <b>O. 14</b> r. 1 .....   | rs. No. 8, 1997  |
| ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted |  |
| Provision   | How affected   |

*Supreme Court Rules*

**NOTE**—continued

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|   |                          |
|---|--------------------------|
| rr. 2-4.....  | am. No. 11, 1995         |
|   | rs. No. 8, 1997          |
| r. 5 .....  | rs. No. 8, 1997          |
| r. 6 .....  | rep. No. 8, 1997         |
| r. 7 .....  | am. No. 11, 1995         |
|   | rep. No. 8, 1997         |
| r. 7A.....  | am. No. 8, 1997          |
| r. 8 .....  | am. No. 8, 1997          |
| r. 9 .....  | rs. No. 8, 1997          |
| r. 11 .....   | rs. No. 8, 1997          |
| rr. 12-14 .....   | rep. No. 8, 1997         |
| Heading to O. 15.....   | rs. No. 8, 1997          |
| <b>O. 15</b> r. 1A .....  | ad. No. 8, 1997          |
| r. 1 .....  | am. No. 8, 1997          |
| r. 2 .....  | rs. No. 23, 1993         |
| rr. 3-7 .....   | am. No. 8, 1997          |
| r. 9 .....  | am. No. 8, 1997          |
| r. 10 .....   | rep. No. 8, 1997         |
| <b>O. 16</b> r. 1A .....  | ad. No. 8, 1997          |
| r. 1 .....  | rs. No. 8, 1997          |
| r. 2 .....  | rs. No. 23, 1993         |
| rr. 3-6 .....   | am. No. 8, 1997          |
| r. 7 .....  | rep. No. 8, 1997         |
| <b>O. 17</b> r. 1.....  | rs. No. 8, 1997          |
| rr. 2, 3 .....  | am. No. 8, 1997          |
| <b>O. 18</b> r. 1.....  | rs. No. 8, 1997          |
|   | am. No. 35, 1998         |
| r. 2 .....  | rep. No. 8, 1997         |
| <b>O. 19</b> r. 12.....   | am. No. 8, 1997          |
| r. 14 .....   | am. No. 8, 1997          |
| r. 49 .....   | am. No. 8, 1997          |
| <b>O. 20</b> r. 1.....  | am. No. 8, 1997          |
| r. 3 .....  | am. No. 8, 1997          |
| r. 5 .....  | am. No. 8, 1997          |
| <b>O. 21</b> r. 5.....  | am. No. 8, 1997          |
| <b>O. 22</b> r. 2.....  | rep. No. 30, 1997        |
| <b>O. 24</b> r. 1.....  | rep. No. 8, 1997         |
| r. 3 .....  | am. No. 8, 1997          |
| <b>O. 25</b> r. 1.....  | rs. No. 8, 1997          |
| r. 1A.....  | ad. No. 8, 1997          |
| r. 3 .....  | rep. No. 8, 1997         |
| r. 6 .....  | rs. No. 8, 1997          |
| r. 12 .....   | am. No. 8, 1997          |
| <b>O. 26</b> r. 1.....  | am. Nos. 16 and 34, 1992 |
| r. 3 .....  | am. No. 9, 1997          |
| <b>O. 30</b> r. 1.....  | am. No. 35, 1993         |
| <b>O. 31</b> r. 2.....  | am. No. 11, 1995         |
|   | rs. No. 8, 1997          |
| r. 3 .....  | rep. No. 8, 1997         |
| ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted |                          |



*Supreme Court Rules*

**NOTE—continued**

| Provision   | How affected                  |
|---|-------------------------------|
| r. 6 .....  | am. No. 11, 1995              |
| rr. 7, 8 .....  | am. No. 8, 1997               |
| r. 11 .....   | am. No. 8, 1997               |
| O. 32 (rr. 1-11, 11A, 12, 13)   | rep. No. 4, 1993              |
| <b>O. 32</b> (rr. 1-14) .....   | ad. No. 4, 1993               |
| r. 1 .....  | rs. No. 4, 1993; No. 23, 1998 |
| r. 2 .....  | rs. No. 4, 1993               |
|   | am. No. 8, 1997               |
| rr. 3-11 .....  | rs. No. 4, 1993               |
| r. 11A .....  | rep. No. 4, 1993              |
| rr. 12, 13 .....  | rs. No. 4, 1993               |
| r. 14 .....   | ad. No. 4, 1993               |
| <b>O. 33</b> r. 1 .....   | am. No. 8, 1997               |
| r. 1A .....   | rep. No. 35, 1993             |
| <b>O. 33A</b> (r. 1) .....  | ad. No. 16, 1992              |
| r. 1 .....  | ad. No. 16, 1992              |
| <b>O. 33B</b> (rr. 1-4) .....   | ad. No. 16, 1992              |
| rr. 1-4 .....   | ad. No. 16, 1992              |
| <b>O. 34</b> r. 1A .....  | ad. No. 22, 1996              |
| r. 1 .....  | am. No. 8, 1997               |
| rr. 17, 18 .....  | am. No. 8, 1997               |
| r. 19 .....   | rs. No. 23, 1993              |
| r. 20 .....   | rs. No. 23, 1993              |
|   | am. No. 8, 1997               |
| r. 29 .....   | rep. No. 35, 1993             |
| <b>O. 34A</b> (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              |
| <b>O. 34B</b> (rr. 1-9) .....   | ad. No. 38, 1997              |
| rr. 1-9 .....   | ad. No. 38, 1997              |
| <b>O. 35</b> rr. 2, 3 .....   | rs. No. 23, 1993              |
| rr. 4, 5 .....  | rep. No. 23, 1993             |
| <b>O. 36</b> r. 8 .....   | rep. No. 35, 1998             |
| r. 9 .....  | am. No. 34, 1992              |
| <b>O. 36A</b> r. 3 .....  | am. No. 2, 1994               |
| Heading to O. 37 .....  | rs. No. 31, 1997              |
| Heading to Div. I of O. 37 ..   | rep. No. 31, 1997             |
| <b>O. 37</b> rr. 1A, 1B .....   | ad. No. 31, 1997              |
| r. 1 .....  | rs. No. 31, 1997              |
| r. 3 .....  | rs. No. 31, 1997              |
| r. 4 .....  | rep. No. 31, 1997             |
| r. 6 .....  | rs. No. 31, 1997              |
| r. 6A .....   | ad. No. 31, 1997              |
| r. 8 .....  | rep. No. 31, 1997             |
| ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted |                               |
| Provision   | How affected                  |

*Supreme Court Rules*

**NOTE**—continued

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|                                       |   |  |  |
|---------------------------------------|---|--|--|
| Heading to Div. II of O. 37.          | rep. No. 31, 1997   |  |  |
| r. 9 .....                            | am. No. 8, 1997 (relocated and renumbered r. 1, O. 37A by No. 31, 1997) |  |  |
| rr. 10-12 .....                       | (relocated and renumbered rr. 2-4, O. 37A by No. 31, 1997)              |  |  |
| Heading to O. 37A .....               | ad. No. 31, 1997  |  |  |
| rr. 1-4 .....                         | Renumbered by No. 31, 1997  |  |  |
| <b>O. 38</b> r. 20.....               | rep. No. 44, 1995   |  |  |
| Heading to Div. 1 of O. 39.           | rs. No. 20, 1993  |  |  |
| Heading to Div. 2 of O. 39.           | rs. No. 20, 1993  |  |  |
| <b>O. 39</b> r. 3.....                | rep. No. 44, 1995   |  |  |
| rr. 4-6.....                          | rep. No. 20, 1993   |  |  |
| Div. 2 of O. 39 (r. 6A) .....         | rep. No. 38, 1997   |  |  |
| r. 6A.....                            | rep. No. 38, 1997   |  |  |
| Div. 3 of O. 39 (rr. 7-22) ....       | ad. No. 20, 1993  |  |  |
| r. 7 .....                            | rs. No. 20, 1993  |  |  |
| r. 8 .....                            | rs. No. 20, 1993  |  |  |
|                                       | am. No. 19, 1995  |  |  |
| rr. 9-22.....                         | rs. No. 20, 1993  |  |  |
| Div. 4 of O. 39 (rr. 23, 24, 24A-24F) | ad. No. 20, 1993  |  |  |
| r. 23 .....                           | rs. No. 20, 1993  |  |  |
|                                       | am. No. 10, 1996  |  |  |
| r. 24 .....                           | rs. No. 20, 1993  |  |  |
| rr. 24A-24C .....                     | ad. No. 20, 1993  |  |  |
|                                       | am. No. 10, 1996  |  |  |
| r. 24D.....                           | ad. No. 20, 1993  |  |  |
| r. 24E.....                           | ad. No. 20, 1996  |  |  |
|                                       | am. No. 10, 1996  |  |  |
| r. 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  |  |  |
| r. 27 .....                           | rs. No. 27, 1995  |  |  |
| r. 29 .....                           | am. No. 27, 1995  |  |  |
| 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  |  |  |
| Div. 9 of O. 39 (rr. 50-53) ..        | ad. No. 27, 1996  |  |  |
| Rr. 50-53.....                        | ad. No. 27, 1996  |  |  |
| <b>O. 40</b> r. 5.....                | am. No. 27, 1995  |  |  |
| <b>O. 42</b> r. 1.....                | rs. No. 8, 1997   |  |  |
| r. 2 .....                            | am. No. 35, 1998  |  |  |
| r. 14 .....                           | am. No. 35, 1992  |  |  |

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision

How affected

*Supreme Court Rules*

**NOTE**—continued

|                                      |                               |  |  |  |
|--------------------------------------|-------------------------------|--|--|--|
| <b>O. 42A</b> r. 1 .....             | am. No. 34, 1992              |  |  |  |
|                                      | rs. No. 23, 1993              |  |  |  |
| r. 2 .....                           | rep. No. 23, 1993             |  |  |  |
| <b>O. 43</b> r. 14 .....             | am. No. 21, 1994              |  |  |  |
| <b>O. 44</b> r. 3A .....             | ad. No. 20, 1997              |  |  |  |
| <b>O. 50</b> rr. 2-4 .....           | am. No. 8, 1997               |  |  |  |
| r. 6 .....                           | am. No. 8, 1997               |  |  |  |
| r. 8 .....                           | am. No. 8, 1997               |  |  |  |
| <b>O. 51</b> r. 1 .....              | rs. No. 27, 1995              |  |  |  |
| <b>O. 52</b> r. 6 .....              | am. No. 34, 1992; No. 8, 1997 |  |  |  |
| r. 23 .....                          | am. No. 34, 1992              |  |  |  |
| <b>O. 53</b> r. 4 .....              | am. No. 34, 1992              |  |  |  |
| <b>O. 54</b> r. 8 .....              | am. No. 8, 1997               |  |  |  |
| r. 13 .....                          | am. No. 8, 1997               |  |  |  |
| <b>O. 55</b> rr. 18, 19 .....        | am. No. 8, 1997               |  |  |  |
| <b>O. 56</b> (rr. 1-15) .....        | rep. No. 8, 1997              |  |  |  |
| rr. 1-15 .....                       | rep. No. 8, 1997              |  |  |  |
| Heading to O. 57 .....               | rs. No. 8, 1997               |  |  |  |
| <b>O. 57</b> rr. 1, 2 .....          | am. No. 8, 1997               |  |  |  |
| r. 3 .....                           | rs. No. 8, 1997               |  |  |  |
| r. 4 .....                           | am. No. 8, 1997               |  |  |  |
| r. 5 .....                           | rep. No. 8, 1997              |  |  |  |
| <b>O. 58</b> r. 1 .....              | am. No. 8, 1997               |  |  |  |
| rr. 3-8 .....                        | am. No. 8, 1997               |  |  |  |
| r. 10 .....                          | am. No. 8, 1997               |  |  |  |
| r. 12 .....                          | am. No. 8, 1997               |  |  |  |
| <b>O. 59</b> r. 4 .....              | am. No. 8, 1997               |  |  |  |
| 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              |  |  |  |
| <b>O. 60</b> r. 1 .....              | am. No. 16, 1992              |  |  |  |
|                                      | rs. No. 21, 1992              |  |  |  |
|                                      | rep. No. 31, 1997             |  |  |  |
| rr. 2, 3 .....                       | rs. No. 21, 1992              |  |  |  |
|                                      | rep. No. 31, 1997             |  |  |  |
| r. 4 .....                           | ad. No. 21, 1992              |  |  |  |
|                                      | am. No. 34, 1994              |  |  |  |
|                                      | rep. No. 31, 1997             |  |  |  |
| r. 5 .....                           | rs. No. 21, 1992              |  |  |  |
|                                      | rep. No. 31, 1997             |  |  |  |
| r. 6 .....                           | rep. No. 21, 1992             |  |  |  |
|                                      | ad. No. 4, 1993               |  |  |  |
|                                      | rep. No. 31, 1997             |  |  |  |
| rr. 7, 8 .....                       | rep. No. 21, 1992             |  |  |  |
| rr. 9-12 .....                       | rep. No. 31, 1997             |  |  |  |
| r. 13 .....                          | am. No. 16, 1992              |  |  |  |
|                                      | rep. No. 31, 1997             |  |  |  |
| r. 14 .....                          | rep. No. 31, 1997             |  |  |  |

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision | How affected |
|-----------|--------------|
|-----------|--------------|

*Supreme Court Rules*

**NOTE—continued**

|                                     |   |
|-------------------------------------|---|
| r. 15 .....                         | am. No. 21, 1994; No. 30, 1997<br>rep. No. 31, 1997   |
| Heading to O. 61 .....              | rs. No. 31, 1997  |
| <b>O. 61</b> r. 3 .....             | am. Nos. 16 and 34, 1992; Nos. 28, 35 and 46, 1993; No. 8, 1997   |
| r. 5 .....                          | am. No. 34, 1992; No. 31, 1997  |
| <b>O. 61A</b> r. 1 .....            | am. Nos. 16, 23 and 34, 1992; Nos. 20, 28, 35 and 46, 1993; Nos. 11 and 27, 1995; No. 8, 1997; No. 35, 1998 |
| r. 2 .....                          | am. No. 23, 1992; No. 21, 1994<br>rep. No. 8, 1997  |
| r. 3 .....                          | am. No. 23, 1992  |
| r. 5 .....                          | am. No. 34, 1992; No. 31, 1997  |
| r. 6 .....                          | am. Nos. 23 and 34, 1992<br>rep. No. 31, 1997   |
| r. 7 .....                          | am. No. 23, 1992<br>rep. No. 31, 1997   |
| r. 8 .....                          | am. Nos. 23 and 34, 1992<br>rep. No. 31, 1997   |
| r. 9 .....                          | am. No. 23, 1992; No. 31, 1997  |
| r. 10 .....                         | am. No. 34, 1992; No. 31, 1997  |
| r. 11 .....                         | am. No. 31, 1997  |
| <b>O. 63</b> r. 1 .....             | am. No. 4, 1993   |
| r. 2 .....                          | am. No. 4, 1993; No. 22, 1993   |
| <b>O. 65</b> rr. 4-6 .....          | rep. No. 16, 1992   |
| r. 7 .....                          | am. No. 11, 1993; Nos. 17 and 21, 1994; No. 12, 1995<br>rs. No. 43, 1997                                    |
| r. 7A .....                         | am. No. 8, 1997   |
| r. 41 .....                         | am. No. 11, 1993; No. 17, 1994; No. 12, 1995<br>am. No. 43, 1997  |
| r. 42 .....                         | am. No. 43, 1997  |
| r. 43 .....                         | am. No. 8, 1997   |
| r. 58 .....                         | am. No. 23, 1992; No. 4, 1996   |
| r. 75 .....                         | rs. No. 22, 1996  |
| <b>O. 66</b> r. 4 .....             | am. No. 21, 1994  |
| r. 11 .....                         | am. No. 20, 1993  |
| <b>O. 67</b> r. 2 .....             | am. No. 23, 1992  |
| <b>O. 69</b> r. 3 .....             | am. No. 4, 1993   |
| rr. 4, 5 .....                      | rep. No. 4, 1993  |
| <b>O. 69A</b> r. 2 .....            | am. No. 19, 1995  |
| Part 3 (O. 70) .....                | rep. No. 43, 1997   |
| <b>O. 70</b> (rr. 1, 4, 6-11) ..... | rep. No. 43, 1997   |
| r. 1 .....                          | rep. No. 43, 1997   |
| rr. 2, 3 .....                      | rep. No. 44, 1995   |
| r. 4 .....                          | rep. No. 43, 1997   |
| r. 5 .....                          | rep. No. 44, 1995   |
| rr. 6-10 .....                      | rep. No. 43, 1997   |
| r. 11 .....                         | am. No. 44, 1995<br>rep. No. 43, 1997   |

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision

How affected

**O. 72** r. 1 .....

am. No. 11, 1996

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**NOTE—continued**

|   |                                |  |  |
|---|--------------------------------|--|--|
| r. 3 .....  | am. No. 11, 1996               |  |  |
| rr. 4-6 .....   | rs. No. 11, 1996               |  |  |
| r. 12 .....   | rs. No. 11, 1996               |  |  |
| r. 14 .....   | rs. No. 11, 1996               |  |  |
| r. 14A .....  | ad. No. 22, 1996               |  |  |
| r. 16 .....   | am. No. 11, 1995               |  |  |
| Heading to Div. XII of  | am. No. 11, 1995               |  |  |
| O. 72   |                                |  |  |
| rr. 30, 31 .....  | am. No. 11, 1996               |  |  |
| r. 39 .....   | am. No. 11, 1996               |  |  |
| rr. 51A, 51B.....   | ad. No. 35, 1998               |  |  |
| r. 52 .....   | am. No. 11, 1996               |  |  |
| rr. 60-63 .....   | am. No. 11, 1995; No. 11, 1996 |  |  |
| rr. 64-66 .....   | am. No. 11, 1995               |  |  |
| r. 69 .....   | am. No. 11, 1996               |  |  |
| r. 70 .....   | ad. No. 11, 1996               |  |  |
| <b>O. 73</b> r. 2.....  | am. No. 34, 1992               |  |  |
| r. 6 .....  | am. No. 34, 1992               |  |  |
| r. 8 .....  | am. No. 8, 1997                |  |  |
| r. 10 .....   | am. No. 34, 1992               |  |  |
| <b>O. 74</b> rr. 1, 2.....  | am. No. 8, 1997                |  |  |
| Part 5A (O. 74A) .....  | ad. No. 35, 1992               |  |  |
| <b>O. 74A</b> (rr. 1-11).....   | ad. No. 35, 1992               |  |  |
| rr. 1-11 .....  | ad. No. 35, 1992               |  |  |
| <b>O. 75</b> (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              |  |  |
| <b>O. 75A</b> (rr. 1-69).....   | rep. No. 35, 1993              |  |  |
| rr. 1-69 .....  | rep. No. 35, 1993              |  |  |
| <b>O. 75B</b> r. 2 .....  | am. No. 34, 1992; No. 35, 1993 |  |  |
| r. 3A .....   | ad. No. 8, 1997                |  |  |
| r. 4 .....  | am. No. 35, 1993               |  |  |
| rr. 6, 7 .....  | am. No. 35, 1993               |  |  |
| rr. 12, 13 .....  | am. No. 35, 1993; No. 8, 1997  |  |  |
| r. 14 .....   | am. No. 35, 1993               |  |  |
| rr. 16, 17 .....  | am. No. 35, 1993               |  |  |
| Heading to Div. 4 of  | am. No. 35, 1993               |  |  |
| O. 75B  |                                |  |  |
| rr. 18, 19 .....  | am. No. 35, 1993               |  |  |
| r. 19A .....  | ad. No. 35, 1993               |  |  |
| r. 20 .....   | am. No. 35, 1993; No. 8, 1997  |  |  |
| Heading to Div. 6 of  | rs. No. 35, 1993               |  |  |
| O. 75B  |                                |  |  |
| r. 27A .....  | ad. No. 35, 1993               |  |  |
| ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted |                                |  |  |
| Provision   | How affected                   |  |  |
| <hr/>   |                                |  |  |
| rr. 28A-28C .....   | ad. No. 35, 1993               |  |  |
| rr. 29, 30 .....  | am. No. 35, 1993               |  |  |

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**NOTE—continued**

|   |                                |  |  |
|---|--------------------------------|--|--|
| rr. 30A-30C .....   | ad. No. 35, 1993               |  |  |
| r. 31 .....   | am. No. 23, 1992; No. 35, 1993 |  |  |
| rr. 32-34 .....   | am. No. 35, 1993               |  |  |
| Div. 7A of O. 75B   | ad. No. 35, 1993               |  |  |
| (rr. 34A-34G)   |                                |  |  |
| rr. 34A-34G .....   | ad. No. 35, 1993               |  |  |
| r. 35 .....   | am. No. 35, 1993               |  |  |
|   | rep. No. 34, 1994              |  |  |
| r. 36 .....   | am. No. 23, 1992               |  |  |
|   | rs. No. 35, 1993               |  |  |
|   | am. No. 8, 1997                |  |  |
| r. 36A .....  | ad. No. 35, 1993               |  |  |
|   | rs. No. 31, 1996               |  |  |
| rr. 36B, 36C .....  | ad. No. 35, 1993               |  |  |
| r. 37 .....   | rs. No. 35, 1993               |  |  |
|   | am. No. 31, 1996               |  |  |
| r. 38 .....   | rs. No. 35, 1993               |  |  |
|   | am. No. 34, 1994               |  |  |
| 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. 78 .....   | am. No. 8, 1997                |  |  |
| r. 81 .....   | rs. No. 35, 1993               |  |  |
| r. 81A .....  | ad. No. 35, 1993               |  |  |
| r. 82 .....   | am. No. 35, 1993; No. 21, 1994 |  |  |
| rr. 83-88 .....   | am. No. 35, 1993               |  |  |
| r. 93 .....   | am. No. 35, 1993               |  |  |
| r. 95 .....   | am. No. 35, 1993               |  |  |
| r. 98 .....   | rep. No. 34, 1994              |  |  |
| rr. 98A, 98B .....  | ad. No. 35, 1993               |  |  |
| ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted |                                |  |  |

| Provision            | How affected     |
|----------------------|------------------|
| r. 100 .....         | am. No. 35, 1993 |
| r. 103 .....         | am. No. 35, 1993 |
| Part 7 (O. 76) ..... | rs. No. 30, 1993 |

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**NOTE**—continued

|                                |                                |
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| <b>O. 76</b> r. 1 .....        | rs. No. 30, 1993               |
|                                | am. No. 8, 1997                |
| r. 2 .....                     | rs. No. 30, 1993               |
| r. 3 .....                     | rs. No. 30, 1993               |
|                                | am. No. 8, 1997                |
| rr. 4-17 .....                 | rs. No. 30, 1993               |
| rr. 18-28 .....                | ad. No. 30, 1993               |
| Part 8 (O. 77) .....           | rep. No. 19, 1995              |
| <b>O. 77</b> ( rr. 1-14) ..... | rep. No. 19, 1995              |
| <b>O. 78</b> r. 6 .....        | am. No. 23, 1992               |
| Part 10 (O. 79) .....          | rs. No. 42, 1994               |
| O. 79 (rr. 1-12) .....         | rep. No. 42, 1994              |
| <b>O. 79</b> (rr. 1-14) .....  | ad. No. 42, 1994               |
| r. 1 .....                     | rs. No. 42, 1994               |
| r. 2 .....                     | rs. No. 42, 1994; No. 8, 1997  |
| rr. 3-12 .....                 | rs. No. 42, 1994               |
| rr. 13, 14 .....               | ad. No. 42, 1994               |
| <b>O. 80</b> r. 3 .....        | am. No. 23, 1992               |
| r. 5 .....                     | rs. No. 27, 1995               |
| r. 7 .....                     | am. No. 23, 1992; No. 27, 1995 |
| r. 9 .....                     | am. No. 23, 1992               |
| Part 11A (O. 80A) .....        | ad. No. 27, 1995               |
| <b>O. 80A</b> (rr. 1-4) .....  | ad. No. 27, 1995               |
| rr. 1-4 .....                  | ad. No. 27, 1995               |
| Part 11B (O. 80B) .....        | ad. No. 27, 1995               |
| <b>O. 80B</b> (rr. 1-5) .....  | ad. No. 27, 1995               |
| rr. 1-5 .....                  | ad. No. 27, 1995               |
| Part 11C (O. 80C-O.80H) ..     | ad. No. 44, 1995               |
| <b>O. 80C</b> (r. 1) .....     | ad. No. 44, 1995               |
| r. 1 .....                     | ad. No. 44, 1995               |
| <b>O. 80D</b> (rr. 1-5) .....  | ad. No. 44, 1995               |
| rr. 1-5 .....                  | ad. No. 44, 1995               |
| <b>O. 80E</b> (rr. 1-3) .....  | ad. No. 44, 1995               |
| rr. 1-3 .....                  | ad. No. 44, 1995               |
| <b>O. 80F</b> (rr. 1-5) .....  | ad. No. 44, 1995               |
| rr. 1-5 .....                  | ad. No. 44, 1995               |
| <b>O. 80G</b> (rr. 1-4) .....  | ad. No. 44, 1995               |
| rr. 1-4 .....                  | ad. No. 44, 1995               |
| <b>O. 80H</b> (rr. 1, 2) ..... | ad. No. 44, 1995               |
| rr. 1, 2 .....                 | ad. No. 44, 1995               |
| Part 12 (O. 81) .....          | rep. No. 31, 1997              |
| Part 12 (O. 81, 81A) .....     | ad. No. 31, 1997               |
| <b>O. 81</b> r. 1 .....        | am. No. 21, 1994               |
|                                | rs. No. 31, 1997               |

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision      | How affected     |
|----------------|------------------|
| r. 2 .....     | rs. No. 31, 1997 |
|                | am. No. 35, 1998 |
| rr. 3-7 .....  | rs. No. 31, 1997 |
| rr. 8-16 ..... | am. No. 23, 1992 |

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**NOTE**—continued

|                                |                                |  |
|--------------------------------|--------------------------------|--|
|                                | rs. No. 31, 1997               |  |
| r. 17 .....                    | rs. No. 21, 1992; No. 31, 1997 |  |
| rr. 18, 19 .....               | rep. No. 21, 1992              |  |
|                                | ad. No. 31, 1997               |  |
| r. 20 .....                    | ad. No. 31, 1997               |  |
| <b>O. 81A</b> (rr. 1-9) .....  | ad. No. 31, 1997               |  |
| rr. 1, 2 .....                 | rs. No. 31, 1997               |  |
| rr. 3-9 .....                  | ad. No. 31, 1997               |  |
| Part 12A (O. 81A) .....        | ad. No. 20, 1994               |  |
|                                | rep. No. 31, 1997              |  |
| <b>O. 81A</b> (rr. 1, 2) ..... | ad. No. 20, 1994               |  |
|                                | rep. No. 31, 1997              |  |
| rr. 1, 2 .....                 | ad. No. 20, 1994               |  |
|                                | rep. No. 31, 1997              |  |
| <b>O. 82</b> r. 4 .....        | am. No. 23, 1992               |  |
| r. 7 .....                     | am. No. 23, 1992               |  |
| Part 13A (O. 82A) .....        | ad. No. 21, 1992               |  |
|                                | rep. No. 31, 1997              |  |
| <b>O. 82A</b> (rr. 1-15) ..... | ad. No. 21, 1992               |  |
|                                | rep. No. 31, 1997              |  |
| rr. 1-4 .....                  | ad. No. 21, 1992               |  |
|                                | rep. No. 31, 1997              |  |
| r. 5 .....                     | ad. No. 21, 1992               |  |
|                                | am. No. 19, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| rr. 6-15 .....                 | ad. No. 21, 1992               |  |
|                                | rep. No. 31, 1997              |  |
| Part 13B (O. 82B) .....        | ad. No. 13, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| <b>O. 82B</b> (rr. 1-15) ..... | ad. No. 13, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| rr. 1-15 .....                 | ad. No. 13, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| Part 13C (O. 82C) .....        | ad. No. 19, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| <b>O. 82C</b> (rr. 1-15) ..... | ad. No. 19, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| rr. 1-15 .....                 | ad. No. 19, 1995               |  |
|                                | rep. No. 31, 1997              |  |
| <b>O. 83</b> r. 4 .....        | am. No. 8, 1997                |  |
| r. 11 .....                    | am. No. 23, 1992               |  |
| rr. 14, 15 .....               | am. No. 23, 1992               |  |
| rr. 17-19 .....                | am. No. 23, 1992               |  |

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision            | How affected  |
|----------------------|---|
| First Schedule ..... | am. Nos. 21, 23 and 35, 1992; Nos. 20 and 23, 1993; Nos. 21, and 34 1994; Nos. 13, 19 and 27, 1995; Nos. 10, 22 and 27, 1996; Nos. 8, 31 and 38, 1997; No. 35, 1998 |
| Third Schedule ..... | am. No. 11, 1995; Nos. 11 and 22, 1996; No. 35, 1998  |
| Schedule 4 .....     | am. No. 28, 1993; No. 43, 1997  |



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**NOTE—continued**

|                         |  |
|-------------------------|--|
| Seventh Schedule .....  | am. No. 34, 1992; No. 23, 1993<br>rep. No. 35, 1993        |
| Eighth Schedule .....   | rs. No. 30, 1993<br>am. No. 35, 1998                       |
| Ninth Schedule .....    | am. No. 34, 1992<br>rep. No. 35, 1993                      |
| Tenth Schedule .....    | rep. No. 19, 1995  |
| Eleventh Schedule ..... | am. No. 23, 1992; No. 27, 1995                             |
| Schedule 12 .....       | am. No. 16, 1992; No. 35, 1993; No. 31, 1996; No. 35, 1998 |
| Schedule 13 .....       | am. No. 16, 1992; No. 35, 1993; No. 21, 1994               |
| Schedule 13A .....      | ad. No. 35, 1993   |
| Schedule 13B .....      | ad. No. 44, 1995   |
| Schedule 14 .....       | ad. No. 21, 1992<br>rs. No. 31, 1997                       |

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3. Orders 1, 11 and 11A, the heading to Order 12, Order 12, the heading to Order 14, Orders 14 and 14A, Part 15 (Orders 84 and 85) and Schedule 15 of the *Supreme Court Rules* are amended by rules 3-14 of the *Supreme Court Rules (Amendment)* (Subordinate Law No. 15, 1995), subrule 1 (2) of which provides as follows:

“(2) The remaining provisions commence on a day fixed by the Registrar by notice in the *Gazette*.”

As at 1 February 1999 no date had been fixed in pursuance of subrule 1 (2) and the amendments are not incorporated in this reprint. They are set out below under the heading “EXTRACT FROM SUPREME COURT RULES (AMENDMENT) (Subordinate Law No. 15, 1995).”

**EXTRACT FROM SUPREME COURT RULES (AMENDMENT) (Subordinate Law No. 15, 1995)**

**Interpretation**

3. Rule 4 of Order 1 of the Principal Rules is amended by inserting in subrule (1) the following definitions:

“ ‘Convention country’ means a party to the Hague Convention other than Australia;

‘designated authority’, in relation to a Convention country, means a person or body designated by that country from time to time, for the purposes of article 6 of the Hague Convention, to be an authority competent to complete a certificate of service;

‘foreign additional authority’, in relation to a Convention country, means a person or body designated by that country from time to time, for the purposes of article 18 of the Hague Convention, to be an authority in addition to a foreign Central Authority of that country;

‘foreign Central Authority’, in relation to a Convention country, means a person or body designated by that country from time to time, to be a Central Authority for the purposes of article 2 of the Hague Convention;

‘Hague Convention’ means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters done at the Hague on 15 November 1965;”.

**Substituted service**

4. Rule 1 of Order 11 of the Principal Rules is amended by inserting in paragraph (a) “, other than by Part 15” after “Rules”.

**Insertion**

5. After Order 11 of the Principal Rules the following Order is inserted:

**“ORDER 11A**

**“SERVICE UNDER THE HAGUE CONVENTION**

**Interpretation**

“1. In this Order—

‘requesting party’ means a person who requires a document connected with civil proceedings to be served in a Convention country.

**Application of Order**

“2. (1) Subject to subrule (2), this Order applies to the service in a Convention country of a judicial document connected with civil proceedings pending before the Court or before another court of the Territory.

“(2) This Order does not apply where service of a document is to be effected by an Australian diplomatic or consular representative.

**Register of Convention particulars**

“3. (1) The Registrar shall obtain from the Commonwealth and maintain in a register (in this section referred to as the ‘Hague Convention Register’)—

- (a) a copy of the Hague Convention;
- (b) a current list of Convention countries;
- (c) details of any objection or declaration made by any Convention country; and
- (d) the names and addresses of all foreign Central Authorities and foreign additional authorities.

“(2) In any proceedings it shall be presumed, unless the contrary is proved, that the Hague Convention Register is a full and accurate record.

“(3) In any proceedings a document that purports to be—

- (a) an extract from the Hague Convention Register; and
- (b) issued by or on behalf of the Registrar;

is evidence of the matters stated on it.

**Documents to be filed**

“4. (1) A requesting party may file—

- (a) an application in accordance with subrule (2) for service of a specified document in a specified Convention country;
- (b) a request for service in accordance with subrule (3) for signature by the Registrar;
- (c) the document to be served;
- (d) a summary, in accordance with Form 4 in Schedule 15, of the document to be served;
- (e) a statement, in accordance with Form 6 in Schedule 15, attached to or incorporated in, the summary referred to in paragraph (d), that indicates—
  - (i) the importance and legal nature of the document to be served;
  - (ii) that the document to be served may affect rights and obligations of the person on whom it is served; and
  - (iii) the possibility of obtaining legal aid or advice;
- (f) 2 copies of each document referred to in each of paragraphs (b), (c), (d) and (e); and
- (g) where the foreign Central Authority of the country to which the request is addressed requires that the document to be served be written in, or translated into, an official

*Supreme Court Rules*

**NOTE**—continued

language of that country other than English—a translation into such a language of each document referred to in paragraphs (b), (c), (d) and (e).

“(2) An application referred to in paragraph (1) (a) shall contain a written undertaking signed by—

- (a) where there is a solicitor on the record for the requesting party—that solicitor; or
- (b) in any other case—the requesting party;

to the effect that the signatory—

- (c) shall be personally liable for all costs incurred, in relation to the service of the document requested to be served, by—
  - (i) the employment of a judicial officer or other person competent, under the laws of the country in which the document is to be served, to effect service; or
  - (ii) the use of a specified method of service; and
- (d) shall pay the amount of those costs to the Registrar within 14 days of being notified of it.

“(3) A request for service referred to in paragraph (1) (b) shall—

- (a) be in accordance with Form 3 in Schedule 15;
- (b) be completed, except for signature, by the requesting party;
- (c) state whether the requesting party wants service to be attempted if the time for entering an appearance has expired;
- (d) indicate where, if the person to be served cannot be located from the address supplied, any additional information concerning the person’s whereabouts may be obtained; and
- (e) be addressed to a foreign Central Authority or foreign additional authority in the country in which service is to be effected;

and may state whether, in the case where a certificate of service is completed by a person other than a foreign Central Authority or a judicial authority, the certificate is to be countersigned by a foreign Central Authority or a judicial authority.

“(4) A translation referred to in paragraph (1) (g) shall bear a certificate in the language into which the translation has been made stating—

- (a) that the translation is an accurate translation of the document; and
- (b) the translator’s full name, address and qualifications for making the translation.

**Forwarding of documents abroad**

“5. On being satisfied that Rule 4 has been complied with, the Registrar shall sign the request for service and transmit—

- (a) the signed request for service;
- (b) the document to be served;
- (c) the summary of the document to be served referred to in paragraph 4 (1) (d);
- (d) the warning statement referred to in paragraph 4 (1) (e); and
- (e) any translations required by paragraph 4 (1) (g);

to—

- (f) where the request for service is addressed to a foreign additional authority—that authority; or
- (g) in any other case—the foreign Central Authority in the country in which service is requested.

**Receipt of certificate of service**

“6. On receipt of a certificate of service in accordance with Form 5 in Schedule 15 the Registrar shall—

- (a) file the certificate in the record of the relevant proceedings; and
- (b) give a copy to the solicitor for the requesting party or, if there is no solicitor on the record, to the requesting party.

**Costs**

“7. (1) On receipt of a statement of costs of service of a document in a Convention country, being costs referred to in subrule 4 (2), the Registrar shall notify in writing the person who gave the undertaking under that subrule of the amount of those costs.

“(2) The person who gave the undertaking is liable to pay to the Registrar the amount notified under subrule (1) within 14 days of receiving the notification.

“(3) If the amount of the costs of service is not paid in accordance with subrule (2)—

- (a) the requesting party may not take any further action in the proceedings until it is paid; and
- (b) the Registrar may take appropriate action to enforce the undertaking.

**Evidence of service**

“8. A certificate of service in accordance with Form 5 in Schedule 15 is conclusive evidence that—

- (a) service of the document referred to in the certificate occurred on the day and in the manner specified in the certificate; and
- (b) the manner of service is compatible with the laws in force in the country where it occurred.

**Application of Rules generally**

“9. The other Orders of these Rules do not apply to the service of a document that may be served under this Order in so far as they are inconsistent with it.”.

**Heading to Order 12**

6. The heading to Order 12 of the Principal Rules is omitted and the following heading substituted:

**“SERVICE IN A COUNTRY THAT IS NOT A PARTY TO THE HAGUE CONVENTION”.**

**Insertion**

7. Before rule 2 of Order 12 of the Principal Rules the following rule is inserted in that Order:

**Application of Order**

“1. This Order applies to the service out of the Commonwealth of a document referred to in this Order, other than a document that may be served under Order 11A.”.

**Procedure to effect service in certain cases**

8. Rule 10 of Order 12 of the Principal Rules is amended by adding at the end the following subrule:

“(5) In this rule—

‘Convention’ does not include the Hague Convention.”.

**Repeal**

9. Rule 11 of Order 12 of the Principal Rules is repealed.

**Consequential orders**

10. Rule 12 of Order 12 is amended by omitting “Crown” and substituting “Government”.

**Heading to Order 14**

11. The heading to Order 14 of the Principal Rules is amended by adding at the end “—**GENERAL**”.

**Insertion**

12. After Order 14 of the Principal Rules the following Order is inserted:

**“ORDER 14A**

**“JUDGMENT IN DEFAULT OF APPEARANCE WHERE ORIGINATING PROCESS IS  
SERVED UNDER THE HAGUE CONVENTION**

**Interpretation**

“1. In this Order—

‘originating process’ means a document by which proceedings are commenced;

‘proceedings’ includes a claim against a third party.

**Application**

“2. This Order applies where an originating process has been transmitted under paragraph 5 (b) of Order 11A to a foreign additional authority or a foreign Central Authority.

**Entry of judgment in default of appearance where a certificate of service has been filed**

“3. (1) Where this Order applies and the Registrar has received a certificate of service in accordance with rule 6 of Order 11A, the Court may enter judgment in default of appearance by the defendant if, and only if, the originating process has been served in sufficient time to enable the defendant to defend the proceedings—

- (a) by a method of service prescribed by the law of the Convention country in which service has been effected for the service of documents in domestic actions upon persons who are within its territory;
- (b) by a method requested in the request for service, being a method—
  - (i) that is not prohibited by the law of the Convention country in which service has been effected; and
  - (ii) under which the document has been delivered to the defendant personally or to his or her place of residence; or
- (c) by delivery to the defendant, who has accepted it voluntarily.

“(2) In subrule (1) the reference to sufficient time shall be read as a reference to the period of 42 days or such shorter period as the Court considers, in the circumstances, to be sufficient to enable the defendant to defend the proceedings.

**Filing of certificate of service to be deemed to be compliance with requirements of certain other Orders**

“4. For the purposes of any other Order that enables a plaintiff to proceed on default of appearance by the defendant, the filing of a certificate of service under rule 6 of Order 11A shall be deemed to be sufficient compliance with any requirement to file an affidavit of service or a notice in lieu of service.

**Entry of judgment in default of appearance where no certificate of service has been filed**

“5. Where this Order applies and a certificate of service in accordance with rule 6 of Order 11A has not been received by the Registrar, the Court may enter judgment in default of appearance by the defendant if—

- (a) a period of time that the Court considers adequate in the circumstances of the particular case, being a period of not less than 6 months, has elapsed since the date

*Supreme Court Rules*

**NOTE—continued**

on which the originating process was transmitted under paragraph 5 (b) of Order 11A; and

- (b) the Court is satisfied that every reasonable effort has been made to obtain a certificate from the foreign additional authority or foreign Central Authority to which the process had been transmitted, or another competent authority in the Convention country in which service had been requested to be effected.

**Interlocutory, provisional or protective orders**

“6. Rule 5 does not limit any power that the Court may have to make an interlocutory or a provisional or protective order.

**Setting aside judgment in default of appearance**

“7. (1) Where a judgment has been entered under rule 5, the Court may, on the application of the defendant, set it aside if satisfied that the defendant—

- (a) without any fault on his or her part, did not have knowledge of the originating process in sufficient time to defend the proceedings; and
- (b) has a *prima facie* defence to the action on the merits.

“(2) An application to have a judgment set aside under this rule may be brought only within such period of time after the defendant acquires knowledge of the judgment as the Court considers reasonable in the circumstances.

“(3) Nothing in this rule affects any other power that the Court has to set aside or vary a judgment.

**Application of Rules generally**

“8. (1) Subject to subrule (2), where—

- (a) this Order applies; and
- (b) a provision of any other Order is inconsistent with a provision of this Order;

the first-mentioned provision does not apply to the entry of judgments in default of appearance to the extent of the inconsistency.

“(2) The power of the Court to enter judgment in default of appearance under this Order against a person who is under a disability is subject to the provisions of any other Order that restricts such power.”.

**Insertion**

**13.** The Principal Rules are amended by inserting after Part 14 the following Part:

**“PART 15—SERVICE OF FOREIGN DOCUMENTS**

**“ORDER 84**

**“DOCUMENTS FROM A CONVENTION COUNTRY**

**Interpretation**

“1. In this Order—

‘additional authority’ means an officer of the Court designated by the Commonwealth from time to time to be an authority in addition to the Central Authority for the purposes of the Hague Convention;

‘applicant’, in relation to a request for service, means the competent authority that forwards the request to a Central Authority or additional authority;

*Supreme Court Rules*

**NOTE—continued**

‘Central Authority’ means a person or body designated by the Commonwealth from time to time to be the Central Authority for the purposes of the Hague Convention;

‘competent authority’, in relation to a document to be served, means an authority or judicial officer competent, under the law of the Convention country in which the document originates, to forward a request for service;

‘request for service’, in relation to a document originating in a Convention country, means a request, in accordance with Form 1 or Form 2 in Schedule 15, made by a competent authority requesting that a document be served on a person in the Territory.

**Application of Order**

“2. (1) Subject to this rule and rule 3, this Order applies to the service in the Territory of a document originating in a Convention country and connected with civil proceedings pending before a court or tribunal of that country, where a request for service, together with accompanying documents in accordance with rule 3, is forwarded by a competent authority—

- (a) to the Central Authority and forwarded by the Central Authority to an additional authority; or
- (b) to an additional authority.

“(2) Where the request for service is forwarded to an additional authority in accordance with paragraph (1) (b) and, in the opinion of the additional authority—

- (a) compliance with the request for service may infringe Australia’s sovereignty or security; or
- (b) the document to which the request for service relates is not a judicial document;

the additional authority shall transmit the request for service and the accompanying documents to the Central Authority.

“(3) Where the Central Authority returns the request for service and the accompanying documents to the additional authority, this Order then applies to the service of the document to which the request relates.

**Request for service and accompanying documents**

“3. (1) This Order does not apply to a request for service unless it is accompanied by the following documents:

- (a) a copy of the request for service;
- (b) the document to be served;
- (c) a copy of the document to be served;
- (d) a summary in accordance with Form 4 in Schedule 15 of the document to be served;
- (e) an English translation of a document referred to in paragraph (a), (b) or (c) where—
  - (i) the document is not in the English language; and
  - (ii) the request for service does not contain a request that the service be by delivery to the person to be served if that person accepts such service voluntarily.

“(2) A translation required by paragraph (1) (e) shall, unless the additional authority otherwise directs, bear a certificate in the English language by the translator stating that the translation is an accurate translation of the document.

**Service**

“4. (1) An additional authority that receives a request for service to which this Order applies shall request the Sheriff to serve the relevant document together with—

- (a) such of those documents referred to in paragraphs 3 (1) (a), (d) and (e) as accompanied the request for service; and
- (b) any warning statement attached to the summary of the document to be served that the request seeks to have served.

“(2) Subject to subrule (3), the Sheriff, in giving effect to the request of the additional authority, shall cause the service requested to be effected by one of the following methods:

- (a) a method permitted by a law in force in the Territory for the service of a document of a kind corresponding to the document to be served;
- (b) where there is no corresponding kind of document—a method permitted by Order 10 for the service of an originating application.

“(3) Where it is made to appear to the Court that prompt service cannot be effected under this rule, 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, on the basis of an affidavit filed by the Sheriff and made by the person who attempted to serve the document, specifying—

- (a) details of the attempts made to serve the document; and
- (b) the reasons that have prevented service;

without an application being made to the Court in that behalf.

**Affidavit of service**

“5. Where service of the document to be served has been effected or attempts to serve the document have failed, the Sheriff shall file with the additional authority an affidavit, made by the person who effected or attempted the service, specifying—

- (a) where the document has been served—
  - (i) the time, day of the week and date on which it was served;
  - (ii) the place where it was served;
  - (iii) the method of service;
  - (iv) the person to whom the document was delivered; and
  - (v) the way in which that person was identified; or
- (b) where the document has not been served—
  - (i) details of the attempts made to serve it; and
  - (ii) the reasons whereby service was not effected.

**Certificate of service**

“6. Upon the filing of an affidavit under rule 5 the additional authority shall—

- (a) complete a certificate, sealed with the Seal of the Court, in accordance with Form 5 in Schedule 15 on the reverse side of, or attached to, the request for service; and
- (b) send it directly to the applicant.



**“DOCUMENTS FROM A COUNTRY THAT IS NOT A PARTY TO THE HAGUE CONVENTION**

**Interpretation**

“1. In this Order—

‘convention’ means a convention relating to the service of documents in civil proceedings, other than the Hague Convention;

‘document’ includes a citation;

‘official channel’, in relation to a foreign country, includes a diplomatic, consular or other authority of that country.

**Application**

“2. This Order applies to the service of a foreign legal document other than service to which Order 84 applies.

**Service of foreign documents—general**

“3. (1) This rule applies to the service of any document where—

- (a) the document relates to civil proceedings pending before a court or tribunal of a foreign country; and
- (b) the Registrar receives, through an official channel, a letter from the court or tribunal requesting service of the document on a person in the Territory.

“(2) Service requested under this rule shall not be effected unless the letter of request is accompanied by—

- (a) if the letter is not in the English language—a translation of the letter into the English language;
- (b) the document;
- (c) 2 copies of the document; and
- (d) if the document is not in the English language—2 copies of a translation of the document into the English language.

“(3) Subject to any Act or Commonwealth Act that provides for the manner in which a document may be served on a body corporate, service requested under this rule shall be effected by leaving with the person to be served a copy of the document and of any translation of it.

“(4) The Registrar shall transmit to the court or tribunal that had requested service under this rule, through the official channel through which the request had been received, a certificate under the Seal of the Court that states—

- (a) that service has been effected and the date of service; or
- (b) that service has not been effected and the reasons for which it has not been possible to effect it;

as the case requires, and the amount payable for effecting or attempting to effect service.

“(5) In this rule—

‘foreign country’ means a country that is not a party to the Hague Convention or any other convention.

**NOTE**—continued

**Service of documents from a country that is party to a convention**

“4. (1) This rule applies to the service of any document where—

- (a) the document relates to civil proceedings pending before a court or tribunal of a foreign country that, together with Australia, is a party to a convention; and
- (b) the Registrar receives, from an official channel, a letter requesting service of that document on a person in the Territory.

“(2) This rule has effect subject to—

- (a) any Act or Commonwealth Act that provides for the manner in which a document may be served on a body corporate; and
- (b) the provisions of the relevant convention.

“(3) Service requested under this rule shall not be effected unless the letter of request is accompanied by—

- (a) if the letter is not in the English language—a translation of the letter into the English language;
- (b) the document;
- (c) 2 copies of the document; and
- (d) if the document is not in the English language—2 copies of a translation of the document into the English language.

“(4) Service requested under this rule shall be effected by leaving with the person to be served—

- (a) the document to be served or, if the letter of request so indicates, a copy of the document; and
- (b) a copy of any translation of the document.

“(5) Where—

- (a) service requested under this rule has been effected; or
- (b) all reasonable attempts to effect it have failed;

the person who served or attempted to serve the document shall file—

- (c) an affidavit stating when, where and how he or she effected service or attempted to do so; and
- (d) a statement of the costs incurred in effecting or attempting to effect the service.

“(6) The Registrar shall transmit to the official channel that had requested service under this rule a certificate under the Seal of the Court that states—

- (a) that the document or a copy thereof, as the case requires, has been served and the date, time and manner of service; or
- (b) that service has not been effected and the reason for which it has not been possible to effect it;

as the case requires, and the amount payable for effecting or attempting to effect service.

**Orders for substituted service**

“5. On application made by the Government Solicitor with the consent of the Attorney-General, the Court may make such orders for substituted service as are just in the circumstances.”.

*Supreme Court Rules*

**NOTE**—continued

**Schedule**

**14.** The Principal Rules are amended by adding at the end the following Schedule:

**SCHEDULE 15**

Order 11A, subrule 4 (1)

**FORMS—SERVICE OF FOREIGN PROCESS AND SERVICE OF PROCESS OUT OF AUSTRALIA**

**FORM 1**

Order 84, rule 1

**REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENT**

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague on 15 November 1965.

|                                       |                                |
|---------------------------------------|--------------------------------|
| Identity and address of the applicant | Address of receiving authority |
|---------------------------------------|--------------------------------|

1. The undersigned applicant has the honour to transmit—in duplicate—the documents listed below and, in conformity with article 5 of the abovementioned Convention, request prompt service of 1 copy thereof on the addressee, i.e.  
(identity and address).....
  - (a) in accordance with the provisions of subparagraph (a) of the first paragraph of article 5 of the Convention\*.
  - (b) in accordance with the following particular method (subparagraph (b) of the first paragraph of article 5)\*:
    - (c) by delivery to the addressee, if he or she accepts it voluntarily (second paragraph of article 5)\*.
2. The authority is requested to return or to have returned to the applicant a copy of the documents—and of the annexes\*—with a certificate as provided on the reverse side.

*List of documents*

Supreme Court Rules

**NOTE**—continued

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Done at ..... ,  
the .....

Signature and/or stamp.

\* Delete if inappropriate.

FORM 2

Order 84, rule 1

DEMANDE AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ÉTRANGER D'UN  
ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou  
extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 Novembre 1965.

Identité et adresse du requérant

Adresse de l'autorité destinataire

Le requérant soussigné a l'honneur de faire parvenir—en double exemplaire—à l'autorité  
destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la  
Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:  
(identité et adresse) .....

- (a) selon les formes légales (article 5, alinéa premier, lettre a)\*.  
(b) selon la forme particulière suivante (article 5, alinéa premier, lettre b)\*: .....

- (c) le cas échéant, par remise simple (article 5, alinéa 2)\*.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte—  
et de ses annexes\*—avec l'attestation figurant au verso.

*Énumération des pièces*

**NOTE**—continued

Signature et/ou cachet.

FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

1. The undersigned applicant has the honour to transmit—in duplicate—the documents listed below and, in conformity with article 5 of the abovementioned Convention, request prompt service of 1 copy thereof on the addressee, i.e.,  
(identity and address).....
  - (a) in accordance with the provisions of subparagraph (a) of the first paragraph of article 5 of the Convention\*.
  - (b) in accordance with the following particular method (subparagraph (b) of the first paragraph of article 5)\*:.....
  - (c) by delivery to the addressee, if he or she accepts it voluntarily (second paragraph of article 5)\*.
2. The authority is requested to return or to have returned to the applicant a copy of the documents—and of the annexes\*—with a certificate as provided on the reverse side.

*Supreme Court Rules*

**NOTE**—continued

3. The authority is requested to attempt\*/not to attempt\* service where the period for entering an appearance has expired.
4. Where the addressee cannot be traced from the address set out in paragraph 1 above, additional information regarding the correct address may be obtained from .....
5. Where the certificate referred to in paragraph 2 is completed by a person or body other than a Central Authority or judicial authority, the certificate is required/not required to be counter-signed by the Central Authority or a judicial authority.

*List of documents*

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.....

Done at .....,  
the .....

Signature and/or stamp.

\* Delete if inappropriate.

FORM 4

Order 11A, subrule 4 (1)

Order 84, subrule 3 (1)

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague on 15 November 1965.

Name and address of the requesting authority: .....

Particulars of the parties\*: .....

JUDICIAL DOCUMENT\*\*

Nature and purpose of the document: .....

*Supreme Court Rules*

**NOTE**—continued

Nature and purpose of the proceedings and, where appropriate, the amount in dispute: ....

Date and place for entering appearance<sup>\*\*</sup>: .....

Court that has given judgment<sup>\*\*</sup>: .....

Date of judgment<sup>\*\*</sup>: .....

Time limits stated in the document<sup>\*\*</sup>: .....

**EXTRAJUDICIAL DOCUMENT<sup>\*\*</sup>**

Nature and purpose of the document: .....

Time limits stated in the document<sup>\*\*</sup>: .....

\* If appropriate, identity and address of the person interested in the transmission of the document.

<sup>\*\*</sup> Delete if inappropriate.

---

FORM 5

Order 11A, rule 6

Order 84, rule 6

CERTIFICATE

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The undersigned authority has the honour to certify, in conformity with article 6 of the Convention—

(1) that the document has been served\*

— the (date).....

**NOTE**—continued

— in 1 of the following methods authorised by article 5—

(b) in accordance with the following particular method\* .....

The documents referred to in the request have been delivered to:

— Relationship to the addressee (family, business or other): .....

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

.....

.....

Signature and/or stamp.

Order 11A, subrule 4 (1)

identité et adresse du destinataire  
*identity and address of the addressee*

|  |
|--|
|  |
|--|



*Supreme Court Rules*

**NOTE**—continued

**TRÈS IMPORTANT**

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES ÉLÉMENTS ESSENTIELS DE L'ACTE VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJECT. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE SOIT DANS VOTRE PAYS SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES: .....

**IMPORTANT**

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE SUMMARY OF THE DOCUMENT TO BE SERVED WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

.....  
.....  
.....

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis soit dans la langue de l'État où le document doit être adressé, soit en langue française soit en langue anglaise.

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in 1 of the official languages, of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

*Supreme Court Rules*

**NOTE**—continued

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<br>Order | Column 2<br>Previous provision numbers   | Column 3<br>New provision numbers   |
|-------------------|--|---|
| 61A               | 1.01, 2.01, 3.01, 4.01, 5.01, 6.01, 7.01, 1, 2, 3, 4, 5, 6,<br>7.02, 8.01, 8.02, 8.03, 9.01, 9.02, 9.03, 7 (1), (2), 8 (1), (2), (3), 9 (1),<br>9.04, 10.01, 11.01   | (2), (3), (4), 10, 11   |
| 65                | 58.01, 58.02, 58.03, 58.04, 58.05,<br>58.06, 58.07, 58.08, 58.09, 58.10  | 58 (1), (2), (3), (4), (5),<br>(6), (7), (8), (9), (10)   |
| 66                | 1.01, 2.01, 2.02, 3.01, 4.01, 4.02, 4.03, 1, 2 (1), (2), 3, 4 (1), (2),<br>4.04, 5.01, 6.01, 6.02, 7.01, 8.01, 9.01, (3), (4), 5, 6 (1), (2), 7,<br>10.01, 10.02, 11.01, 11.02, 11.03  | 8, 9, 10 (1), (2), 11 (1),<br>(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, 3 (1), (2), 4 (1), (2), 5, 6 (1), (2),<br>6.03, 6.04, 6.05, 7.01, 7.02, 7.03, 8.01, (3), (4), (5), 7 (1), (2),<br>8.02, 8.03   | (3), 8 (1), (2), (3)  |
| 80                | 1.01, 2.01, 2.02, 3.01, 3.02, 4.01, 5.01, 1, 2 (1), (2), 3 (1), (2), 4,<br>5.02, 5.03, 5.04, 5.05, 6.01, 6.02, 6.03, 5 (1), (2), (3), (4), (5), 6 (1),<br>7.01, 7.02, 7.03, 7.04, 8.01, 8.02, 9.01, (2), (3), 7 (1), (2), (3), (4),<br>9.02, 9.03, 9.04, 9.05, 9.06, 9.07,<br>10.01, 10.02, 10.03, 10.04, 11.01,<br>11.02, 11.03, 11.04, 12.01, 12.02,<br>13.01, 13.02, 14.01, 15.01 | 8 (1), (2), 9 (1), (2), (3), (4),<br>(5), (6), (7), 10 (1), (2),<br>(3), (4), 11 (1), (2), (3),<br>(4), 12 (1), (2), 13 (1), (2),<br>14, 15 |
| 81                | 1.01, 2.01, 3.01, 3.02, 3.03, 4.01, 5.01, 1, 2, 3 (1), (2), (3), 4,<br>5.02, 6.01, 6.02, 7.01, 7.02, 7.03, 8.01, 5 (1), (2), 6 (1), (2), 7 (1), (2),<br>8.02, 9.01, 9.02, 10.01, 10.02, 10.03, (3), 8 (1), (2), 9 (1), (2), 10 (1),<br>11.01, 11.02, 11.03, 11.04, 12.01,<br>12.02, 13.01, 13.02, 13.03, 14.01,<br>14.02, 14.03, 15.01, 15.02, 15.03,<br>16.01, 16.02, 16.03, 16.04  | (2), (3), 11 (1), (2), (3),<br>(4), 12 (1), (2), 13 (1), (2),<br>(3), 14 (1), (2), (3), 15 (1),<br>(2), (3), 16 (1), (2), (3),<br>(4)       |
| 82                | 1.01, 2.01, 3.01, 3.02, 3.03, 4.01, 4.02, 1, 2, 3 (1), (2), (3), 4 (1),<br>5.01, 6.01, 7.01, 7.02  | (2), 5, 6, 7 (1), (2)   |

*Supreme Court Rules*

**NOTE**—continued

| <b>Column 1<br/>Order</b> | <b>Column 2<br/>Previous provision numbers</b>   | <b>Column 3<br/>New provision numbers</b>   |
|---------------------------|--|---|
| 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 |

*Supreme Court Rules*

**NOTE**—continued

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**

| 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<br>No. 189<br>rep. 1978 No. 173   |
| O. 1 r. 2.....             | rep. 1956 No. 135  |
| r. 3.....                  | am. 1956 No. 135; 1966 No. 132<br>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<br>rs. 1977 No. 152  |
| r. 6.....                  | am. 1956 No. 135<br>rs. 1977 No. 152   |
| O. 4 r. 5.....             | rs. 1989 No. 273   |
| r. 6.....                  | am. 1956 No. 135; 1962 No. 76; 1969 No. 57<br>rs. 1973 No. 149<br>am. 1975 No. 81; 1976 No. 190; 1978 No. 86<br>rs. 1980 No. 214<br>am. 1981 No. 196; 1982 No. 365; 1984 No. 285; 1986 Nos. 8, 26 and 349;<br>1987 Nos. 67, 93 and 219; 1988 Nos. 24 and 221; 1989 Nos. 18 and 191;<br>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<br>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  |
| O. 13 r. 4.....            | am. 1980 No. 214; 1991 No. 108   |
| r. 5.....                  | am. 1980 No. 214   |

*Supreme Court Rules*

**NOTE—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                     | How affected                               |
|-------------------------------|--|
| 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             |

*Supreme Court Rules*

**NOTE**—continued

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                | How affected                  |
|--------------------------|-------------------------------|
| O. 32 r. 11A .....       | ad. 1991 No. 251              |
| O. 33 (rr. 1-9) .....    | rep. 1983 No. 228             |
| 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                |

*Supreme Court Rules*

**NOTE—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                       | How affected   |
|---------------------------------|--|
| Heading preceding r. 1 of O. 40 | rs. 1969 No. 221   |
| O. 40 r. 1                      | rs. 1969 No. 221   |
| r. 2                            | rs. 1969 No. 221<br>am. 1992 No. 79                                    |
| r. 3                            | rs. 1969 No. 221   |
| r. 3A                           | ad. 1969 No. 66<br>rs. 1969 No. 221                                    |
| r. 4                            | rs. 1969 No. 221   |
| r. 5                            | am. 1968 No. 13<br>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<br>rs. 1986 No. 86; 1990 No. 129                      |
| r. 1                            | ad. 1977 No. 152<br>rs. 1986 No. 86; 1990 No. 129<br>am. 1991 No. 472  |
| r. 2                            | ad. 1977 No. 152<br>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<br>rs. 1991 No. 294                                   |
| r. 19                           | rs. 1991 No. 294   |
| r. 20                           | am. 1980 No. 214; 1990 No. 458<br>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  |

*Supreme Court Rules*

**NOTE**—continued

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                 | How affected   |
|---------------------------|--|
| r. 10 .....               | am. 1986 No. 8   |
| 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   |



*Supreme Court Rules*

**NOTE—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                     | How affected  |
|-------------------------------|---|
| r. 5 .....                    | ad. 1981 No. 296<br>am. 1990 No. 129  |
| O. 61A (rr. 1.01-11.01) ..... | ad. 1988 No. 257  |
| r. 1.01 .....                 | ad. 1988 No. 257<br>am. 1990 No. 129; 1991 No. 251  |
| rr. 2.01-4.01 .....           | ad. 1988 No. 257  |
| r. 5.01 .....                 | ad. 1988 No. 257<br>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<br>rep. 1972 No. 189  |
| r. 2 .....                    | rs. 1972 No. 189<br>am. 1991 No. 294  |
| r. 3 .....                    | rs. 1969 No. 66<br>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;<br>1977 No. 152; 1978 No. 86; 1981 No. 196; 1982 Nos. 202 and 316<br>rs. 1984 No. 285 (as am. by 1984, No. 313)<br>am. 1986 Nos. 26 and 349; 1987 Nos. 93 and 219<br>rs. 1988 No. 24<br>am. 1988 Nos. 221 and 331; 1989 No. 18; 1990 No. 372; 1992 No. 82 |
| r. 7A .....                   | ad. 1969 No. 57<br>am. 1982 No. 202; 1986 No. 8<br>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   |
| r. 76 .....                   | rep. 1969 No. 221   |

*Supreme Court Rules*

**NOTE**—continued

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                                  | How affected   |
|--|--|
| 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<br>rep. 1991 No. 251                                  |
| rr. 2-10.....                              | rep. 1991 No. 251  |
| rr. 11.01-12.03.....                       | ad. 1991 No. 108<br>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<br>-11.03)..... | ad. 1992 No. 79  |
| rr. 11.01-11.03.....                       | ad. 1992 No. 79  |
| rr. 11, 12.....                            | ad. 1991 No. 108<br>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<br>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<br>rep. 1974 No. 60                                   |
| rr. 2, 3.....                              | rep. 1974 No. 60   |
| r. 4.....                                  | ad. 1956 No. 135<br>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<br>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<br>rep. 1978 No. 173                                   |
| rr. 11-130.....                            | rep. 1978 No. 173  |
| 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 |

*Supreme Court Rules*

**NOTE—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision                    | How affected                                 |
|------------------------------|--|
| 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                             |
| 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                             |

*Supreme Court Rules*

**NOTE**—continued

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision   | How affected                  |
|---|-------------------------------|
| 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              |
| 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              |
| ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted |                               |

*Supreme Court Rules*

**NOTE—continued**

| Provision                      | How affected   |
|--------------------------------|--|
| r. 18 .....                    | ad. 1966 No. 132<br>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<br>Nos. 25 and 197; 1977 No. 152; 1980 No. 214; 1981 Nos. 104 and 296;<br>1983 No. 27; 1986 No. 8; 1987 No. 67; 1988 No. 257; 1989 No. 30; 1991<br>Nos. 108 and 252 |
| Second Schedule .....          | am. 1958 No. 64<br>rep. 1978 No. 173   |
| Third Schedule .....           | am. 1956 No. 135; 1980 No. 214; 1981 No. 296   |
| Fourth Schedule .....          | am. 1950 No. 22<br>rs. 1956 No. 135; 1962 No. 76; 1969 No. 57; 1973 No. 95; 1982 No. 316; 1984<br>No. 285; 1988 No. 24<br>rep. 1992 No. 82   |
| Schedule 4 .....               | ad. 1992 No. 82  |
| Fifth Schedule .....           | rs. 1956 No. 135<br>rep. 1974 No. 60   |
| Sixth Schedule .....           | rep. 1980 No. 214  |
| Seventh Schedule .....         | ad. 1956 No. 135<br>am. 1962 No. 47<br>rs. 1969 No. 222<br>am. 1980 No. 210  |
| Eighth Schedule .....          | ad. 1966 No. 132<br>am. 1969 No. 66; 1991 No. 108  |

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**NOTE—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

| Provision              | How affected                  |
|------------------------|-------------------------------|
| 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              |

**Amendment history by the Commonwealth as at 1 July 1992**

**Table of Statutory Rules**

| Year and number | Date of notification in <i>Gazette</i> | 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)                                       |

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**NOTE—continued**

| Year and number | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|-----------------|--|----------------------|--|
| 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   |
| 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           | —  |

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**NOTE**—continued

| Year and number | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|-----------------|--|----------------------|--|
| 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.