Australian Capital Territory

Supreme Court Rules 1937

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Australian Capital Territory

Supreme Court Rules

in force under the

Supreme Court Act 1933

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As in force on
1 May 2001

Australian Capital Territory

Supreme Court Rules

in force under the

Supreme Court Act 1933

Part 1 Preliminary

Order 1 Preliminary

1 Citation

These rules may be cited as the *Supreme Court Rules*.

4 Definitions for rules

In these rules:

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*.

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address for service means—

(a) for a person represented by a solicitor—

(i) if the solicitor has a place of business in the Territory—the address of the place of business and any other address provided in accordance with these rules; or

(ii) in any other case—the address of a place in the Territory; or

(b) for a plaintiff, defendant or anyone else acting in person—

(i) if the person has a residence or place of business in the Territory—the address of the residence or place of business; or

(ii) in any other case—the address of a place in the Territory.

criminal proceeding includes an application in relation to bail.

defend, for division 19.2—see order 19 rule 16.

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) proconsul;

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(l) trade commissioner; and

(m) consular agent.

file, in relation to a document, means to place the document on the court file.

garnishee—see order 46 rule 1 (1).

issue execution against a person means issue a writ of execution in relation to the person.

motor accident means an accident or other incident in which the death of, or bodily injury to, a person is caused by, or arises out of the use of, a motor vehicle.

motor vehicle—see the *Road Transport (General) Act 1999*, dictionary.

negligence, in relation to an employer, means—

(a) the negligence of the employer; or

(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.

office, of the registrar, means the offices of the court.

originating application means an application under order 2 for the commencement of an action.

personal service, of a document on a person, means—

(a) giving to the person—

(i) if the original of the document is sealed with the seal of the court—a sealed copy of the document; or

(ii) in any other case—a copy of the document; or

(b) if the person refuses to accept it—putting the copy of the document down in the person's presence and telling the person the nature of the document.

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person with a legal disability means—

(a) a child; or

(b) a person with a mental disability.

person with a mental disability, in relation to a proceeding, means a person who is not legally competent to be a party to the proceeding, and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

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.

registry means the offices of the court.

sue, for division 19.2—see order 19 rule 16.

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

writ of execution includes a writ of fieri-facias, capias, sequestration or attachment and a writ issued to give effect to a writ of execution.

5 General heading style—schedule 1 forms

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

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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.

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Order 2 Commencement of actions

Division 2.1 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 2.3).

(2) Where an action is commenced by oral application under rule 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 schedule 1, form 2.

(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.

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(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;

(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 is represented 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 firstmentioned solicitor in relation to the action;

(e) an address for service of documents for the proceeding;

(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.

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(4A) If a person is represented by a solicitor, the address for service stated in the originating application may also include any of the following for the solicitor:

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

(b) the number of a postbox at a post office in the Territory;

(c) a fax number.

(5) An originating application shall be signed by the plaintiff, or by the plaintiff's solicitor.

5 Corporate information

(1) For the purposes of rule 4 (4) (b) and (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;

(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 an authorised deposit-taking institution—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.

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:

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(a) if the *Service and Execution of Process Act 1992* (Cwlth) 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 order 12 rule 6;

(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.

(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.

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(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 a motor accident, a statement under rule 12 must 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 a motor accident; 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 a motor accident;

(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.

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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 schedule 1, form 3—

(a) of the amount of that debt or demand; and

(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; and

(c) whether taxed costs are claimed; and

(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 subrule (1) (b) (ii), means—

(a) an order under the Act, section 69; 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 a motor accident must have attached a statement in accordance with schedule 1, form 4 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);

(b) precise particulars of negligence;

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(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 schedule 1, form 5 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;

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(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.

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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; 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; and

(c) the time after service within which the defendant is required to enter an appearance.

18 Authorisation for service

If sealed under rule 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.

18A Personal service of originating applications generally required

An originating application must be served personally, unless otherwise expressly provided by these rules or any other law of the Territory.

18B Service of application to recover unoccupied land

Service of an originating application in an action to recover unoccupied land may be made by attaching a copy of the application to a door of a house, or to something else at another conspicuous place, on the land.

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18C Defendant taken to be served by entering appearance

(1) This rule applies to a defendant in a proceeding if the defendant has not been served with the originating application, but enters an appearance to the action.

(2) The defendant is taken to have been served with the originating application on the day the defendant enters the appearance.

18D Service on partners sued in firm name

(1) If persons are sued as partners in the name of their firm, the originating application must be served—

(a) on at least 1 of the partners; or

(b) at the partnership's principal place of the business in the Territory on someone having the control or management of the partnership's business.

(2) Service under subrule (1) is taken to be service on the firm, even if some of its members are outside the Territory.

(3) However, if the plaintiff knows that the partnership has been dissolved before the commencement of the action, the originating application must be served on everyone in the Territory sought to be made liable.

(4) A person served with an originating application under this rule must be told by written notice, given at the time of service, of the capacity in which the person is served.

(5) If the notice is not given to the person served, the person is taken to be served as a partner.

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.

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(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 is represented 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.

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Division 2.2 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.

(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.

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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 order 2 [rule 24 *or* rule 25] by order made on [*date*] by [*Judge/Registrar*]’; and

(b) sealed by the registrar.

Division 2.3 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 2.2, or such an application has been refused; and

(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 subrule (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; and

(b) the application is refused after that period has elapsed; and

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(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 2.2, or such an application has been refused; and

(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 subrule (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 2.2; and

(b) an application for further renewal is made within 4 months after the date of that renewal; and

(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.

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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—

(a) the originating application is renewed under rule 25; or

(b) an appearance is filed by the defendant; or

(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 2.4 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.

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Order 3 Uncontested actions—debts and liquidated demands

1 Payment of amounts claimed in originating applications

Where—

(a) an originating application consists solely of a claim for debt or a liquidated demand; and

(b) the application includes a statement under order 2, rule 11; 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; or

(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; and

(b) the application includes a statement under order 2, rule 11; and

(c) judgment is entered against the defendant in default of appearance.

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(2) Where this rule applies—

(a) subject to order 65, rule 7A, 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 as in effect immediately before the commencement of this rule continues to apply in respect of an originating application issued before 1 January 1998.

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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 with a legal disability may only 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 represented by a solicitor may 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) A notice under this rule must include the name of the new solicitor and the new address for service of the party.

3 Notice of appointment of solicitor

If a party, having acted 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.

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4 Notice of intention to act in person

If a party, having been represented 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 the 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 firstnamed 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 firstnamed 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.

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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 subrule (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)—

(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.

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.

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Order 10 Service of documents in Australia

1 Application

This order applies to the service in Australia of a document.

2 Documents not generally required to be served personally

Personal service of a document is necessary only if it is expressly required by these rules or any other law of the Territory.

3 Acceptance of service by solicitor

(1) A solicitor may accept service of any document for a person (including a document required to be served personally on the person).

(2) The solicitor must—

(a) make a note on a copy of the document to the effect that the solicitor accepts service on behalf of the person; and

(b) give the copy to the person serving the document.

(3) The person is taken to have been served with the document on the day that the solicitor accepts service of the document.

4 Non-personal service of documents

(1) If personal service of a document on a person in a proceeding is not necessary, the document may be served on the person—

(a) by leaving a copy at the person's address for service; or

(b) by sending a copy by prepaid post addressed to the person at the person's address for service; or

(c) if the person's address for service includes a reference to a postbox at a post office in the Territory—by sending a copy by prepaid post addressed to the person at the postbox; or

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(d) if the person's address for service includes a reference to an Australian Document Exchange Pty Ltd exchange box—by leaving a copy of the document addressed to the person in the exchange box or at a collection point of that company for transmission to the exchange box; or

(e) if the person's address for service includes a reference to a fax number—by sending it by fax to the number; or

(f) if the document to be served is from the registrar's office, the person has a solicitor, and the solicitor has a collection box in the office—by leaving a copy of the document in the solicitor's collection box.

(2) Service is taken to have been made—

(a) if the document is sent by prepaid post in accordance with subrule (1) (b) or (c)—2 days after the copy is posted, unless the contrary is proved; or

(b) if the document is left or sent in accordance with subrule (1) (a), (e) or (f)—

(i) if the document is left or sent before 4 pm on a day—on that day; or

(ii) if the document is left or sent at or after 4 pm on a day—on the next day; or

(c) if the document is left in accordance with subrule (1) (d)—the next day.

5 Service on defendant by filing if no appearance or address

(1) If an appearance has not been entered by a defendant, or an address for service has not been given by a defendant, a document for which personal service is not necessary may be served on the defendant by—

(a) filing it; and

(b) sending a copy by prepaid post addressed to the defendant at his or her last-known address.

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(2) A document filed under this rule must have endorsed on its first page a statement that it is filed under this rule.

6 Service if no-one found at plaintiff's address for service

(1) This rule applies to a plaintiff in a proceeding if the plaintiff acts in person, and no-one can be found at the plaintiff's address for service.

(2) Any document in the proceeding (including a document for which personal service is otherwise necessary) may be served on the plaintiff by leaving a copy at the plaintiff's address for service.

7 Service on defendants who are children

(1) This rule applies to a defendant in a proceeding who is a child.

(2) Unless the court otherwise orders, any document in the proceeding (including a document for which personal service is necessary) may be served on the defendant by serving it on—

(a) a parent or guardian of the defendant; or

(b) if the defendant does not have a parent or guardian—

(i) a person who is responsible for the defendant's care; or

(ii) a person with whom the defendant lives.

(3) A document may be served on a child only if the court so orders, whether before or after the service of the document on the child.

8 Service on defendants with a mental disability

(1) This rule applies to a defendant in a proceeding who is a person with a mental disability and an adult.

(2) Unless the court otherwise orders, a document in the proceeding (including a document for which personal service is necessary) may be served on the defendant by serving it on—

(a) a person responsible for the defendant's care; or

(b) a person with whom the defendant lives.

(3) A document may be served on the defendant only if the court so orders, whether before or after the document is served on the person.

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9 Service of documents on both spouses

If both spouses in a relationship are defendants in a proceeding, both spouses must be served with any document to be served on them in the proceeding, unless the court otherwise orders.

10 Service on a corporation—Companies Ordinance 1962 or Companies Act 1981

(1) This rule applies to the service of a document for proceedings about a corporation—

(a) incorporated under the *Companies Ordinance 1962;* or

(b) within the meaning of the *Companies Act 1981* (Cwlth).

(2) Service of a document may be made on the corporation, or the official manager or liquidator of the corporation, in any way in which service of a document is permitted to be made on the corporation, official manager or liquidator under the applicable law mentioned in subrule (1).

(3) A document may also be served as follows:

(a) if, in relation to the corporation, a notice has been lodged for the ordinance, section 202B (1) or the Act, section 340 (1)—by serving the document personally on the official manager named in the last notice so lodged;

(b) if, in relation to the corporation, a notice has been lodged for the ordinance, section 280 (1) or the Act, section 421 (1)—by serving the document personally on the liquidator named in the last notice so lodged;

(c) if, in relation to the corporation, no notice has been lodged for the ordinance, section 202B (1) or 280 (1), or the Act, section 340 (1) or 421 (1), in relation to the corporation—by serving the document personally on a director, manager or secretary of the corporation.

(4) In this rule, a reference to a ***corporation*** includes, so far as applicable, a reference to a body to which *Companies Act 1981* (Cwlth) part XII, division 6 applies.

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11 Service on a corporation—Corporations Law

(1) Service of a document may be made on a company, or the liquidator or administrator of a company, in any way in which service of a document is permitted to be made on the company, liquidator or administrator under the Corporations Law, section 109X.

(2) A document may also be served on a company by—

(a) leaving a copy of the document with someone apparently an officer or employee of the company and apparently at least 16 years old—

(i) at the company's registered office; or

(ii) if there is no registered office—at the company's principal place of business or principal office; or

(b) serving the document personally on—

(i) a member of the company charged with the management of the corporation's affairs; or

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

(iii) if a company is constituted by 1 person—that person.

12 Substituted service

(1) If, for any reason, it is impracticable to serve a document in a way required or permitted by these rules, the court may make an order substituting another way of serving the document.

(2) The court must, if practicable, state in the order a way of serving the document the court considers reasonably likely to bring the document to the attention of the person to be served.

(3) The court may, in the order, state that the document is to be taken to have been served on the happening of a stated event or at the end of a stated time.

(4) The court may make an order under this rule even though the person to be served is not in the Territory or was not in the Territory when the proceeding started.

(5) An application for an order under this rule must be supported by an affidavit setting out the grounds of the application.

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13 Affidavit of service

An affidavit of service must state when, where, how and by whom service was made.

14 Inconvenient address for service

The registrar may refuse to file a document if the address for service stated in the document is manifestly inconvenient for a party or the court.

15 Change of address for service

If a person has given the court an address for service in a proceeding and the person's address for service changes in any respect before the proceeding is finally disposed of, the person—

(a) must file a notice stating the new address; and

(b) must, on the day the notice is filed, serve on the plaintiff and every other party who has entered an appearance a copy of the notice endorsed with a statement that the notice has been filed.

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Order 12 Service of documents outside Australia

2 Jurisdictional criteria

On application under rule 4, the court may allow service of an originating application outside Australia 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; or

(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; or

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

(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; or

(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; or

(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 Australia is a necessary or proper party to an action properly brought against some person duly served within Australia.

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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 Australia, 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 subrule (1) (b) is to be taken to be good and effective service wherever the relevant parties are resident.

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

4 Application for leave

An application for leave to serve an originating application out of Australia 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; and

(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 Australia 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.

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9 Application of o 12 to other originating process

This order applies, with necessary changes, to the service outside Australia of any originating process of the court other than an originating application.

10[8] 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 schedule 1, form 8.

(2A) 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.

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11[8] 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[8] Consequential orders

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.

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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 schedule 1, form 9, dated on the day on which it is given, and stating—

(a) whether the defendant is represented by a solicitor; and

(b) if the defendant is represented by a solicitor—the name of the solicitor; and

(c) an address for service of documents for the proceeding; and

(d) if any particulars of the defendant stated in the originating application are incorrect—the correct particulars.

(1AA) If a person is represented by a solicitor, the address for service stated in the memorandum may also include any of the following for the solicitor:

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

(b) the number of a postbox at a post office in the Territory;

(c) a fax number.

(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

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(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.

6 Defective address

If the memorandum does not contain an address for service 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.

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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—

(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.

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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; or

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

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

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

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

(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; or

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

(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.

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Order 14[8] Default of appearance

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 with a legal disability

(1) This rule applies if no appearance is entered to an originating application for a defendant with a legal disability.

(2) The plaintiff may proceed with the application only if the court assigns a litigation guardian by whom the defendant may appear and defend the action.

(3) On application by the plaintiff (the ***guardianship application***), the court may appoint a litigation guardian for a defendant if—

(a) the originating application was served under order 10 rule 7 or 8; and

(b) notice of the guardianship application has been served under order 10 rule 7 or 8—

(i) after the time for the entry of an appearance to the originating application has ended; and

(ii) at least 6 days before the hearing date for the guardianship application.

(4) The court may dispense with the requirement under subrule (3) (b) at the hearing of the guardianship application.

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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.

(1A) A plaintiff applying to enter final judgment must file with the registrar—

(a) an affidavit in accordance with schedule 1, form 10 that is sworn, not earlier than 14 days before it is filed by—

(i) the plaintiff or, if there are 2 or more plaintiffs, any plaintiff; or

(ii) a qualified person; and

(b) a draft judgment in accordance with schedule 1, form 10A.

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

(a) any sum not exceeding the amount specified in the application; and

(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 subrule (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) The plaintiff's solicitor may make an affidavit under this rule only if the source of the knowledge of the facts deposed is—

(a) the plaintiff; or

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(b) if there are 2 or more plaintiffs—any plaintiff; or

(c) another qualified person.

(6) In this rule:

qualified person means any of the following:

(a) the plaintiff's solicitor;

(b) if the plaintiff is a person with a legal disability—the person's litigation guardian;

(c) if the plaintiff is a corporation—a member or officer of the corporation with knowledge of the facts so far as they are known to the corporation;

(d) if the plaintiff is a corporation for which a receiver or a receiver and manager has been appointed—the receiver or the receiver and manager;

(e) if the plaintiff is a corporation for which a liquidator, provisional liquidator or administrator has been appointed—the liquidator, provisional liquidator or administrator;

(f) if the plaintiff is a body of persons that can sue and be sued in its own name or in the name of an officer or someone else—a member or officer of the body with knowledge of the facts so far as they are known to the body;

(g) if the plaintiff is the Commonwealth, a State or a Territory—an officer or employee of the Commonwealth, State or Territory with knowledge of the facts so far as they are known to the Commonwealth, State or Territory;

(h) in any other case—an officer or employee of the plaintiff having knowledge of the facts so far as they are known to the plaintiff.

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

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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.

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 final 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 final judgment against any defendant not appearing to the application for the possession of the land and interlocutory judgment for the claim.

9A Trial of action after entry of interlocutory judgment

Unless the court otherwise orders, after entry of an interlocutory judgment against a defendant in an action, the plaintiff may proceed to trial on 1 or more of any claims for damages only, another form of pecuniary relief only or the value of goods only, or on 2 or more of these issues, as the case may be.

9B Form of interlocutory or final judgment

An interlocutory or final judgment must be in accordance with schedule 1, form 10A.

10 Judgment may be set aside or varied

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

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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.

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Order 15 Summary judgment upon statement of claim

1A Application of o 15

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 subrule (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; or

(b) sufficient facts are disclosed to entitle the defendant to defend the action generally; or

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(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 order 2 rule 10 (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.

(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; or

(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.

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(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.

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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 counterclaim, this rule applies to the counterclaim 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 nonpayment of rent, as if the judgment had been given after trial.

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Order 16 Summary judgment for specific performance

1A Application of o 16

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 subrule (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.

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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; 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.

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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.

(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; or

(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; or

(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 oral 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.

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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.

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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.

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Order 19 Parties

Division 19.1 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.

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4 Counterclaim or set-off in case of misjoinder

Where in an action any person has been improperly or unnecessarily joined as a coplaintiff, and a defendant has set up a counterclaim or set-off, he or she may obtain the benefit thereof by establishing his or her set-off or counterclaim 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.

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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

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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 nondisclosure of material facts.

12 Amendment on misjoinder or nonjoinder of parties

(1) A cause or matter is not defeated because of the misjoinder or nonjoinder of parties, and the court may in every cause or matter deal with the matter in controversy in relation to the rights and interests of the parties before it.

(2) The court may order—

(a) that a person who is a party be struck out if the person has been improperly joined; or

(b) that a person be added as a party if—

(i) the person ought to have been joined; or

(ii) the addition of the person as a party is necessary to allow the court effectively and completely to decide all the questions involved in the cause or matter.

(3) An order may be made under subrule (2)—

(a) at any stage of the proceeding; and

(b) on the application of a party or on its own initiative; and

(c) on the terms the court considers just; and

(d) whether the person to be struck out or added is, or should be, a plaintiff or defendant.

(4) However, a person may not be added as a plaintiff suing without a litigation guardian, or as a litigation guardian of a plaintiff who is a person with a legal disability, without his or her written consent.

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.

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14 Change of parties—amendment of application and service etc

(1) Unless the court otherwise orders, if a person is added or substituted as defendant, the plaintiff must—

(a) file an amended copy of the originating application; and

(b) serve the person with a sealed copy of the amended originating application in the same way as an original defendant is served.

(2) Unless the court otherwise orders, if the person is added as defendant, the proceeding against the person is taken to have begun only when the order adding the person is made.

15 Probate actions

In a probate action—

(a) a person who is named as defendant by the originating process, or on whom notice of the action is served by the court's direction, may enter an appearance in the action; and

(b) a person not named as a defendant may apply to the court for leave to intervene in the action; and

(c) application for leave to intervene in the action must be made by motion supported by an affidavit showing the interest of the applicant in the deceased person's estate; and

(d) a person with leave to intervene is not entitled to be heard in the action until the person enters an appearance; and

(e) a person with leave to intervene becomes a defendant on filing an appearance and the proceeding continues as if—

(i) the person had been named as a defendant by the originating process; and

(ii) the person had been served with the originating process when the process was issued; and

(f) if the court gives leave to intervene, it may give the directions it considers appropriate for filing and service of pleadings, the filing of an affidavit of testamentary scripts or other matters.

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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.

Division 19.2 People with legal disability

16 Meaning of *sue* and *defend*

In this division, to ***sue*** and to ***defend*** include to be a party to a cause or matter.

17 Children

A child may sue as plaintiff in any action, and defend any action, by his or her litigation guardian.

18 People with a mental disability

A person with a mental disability may sue as plaintiff in any action, and defend any action, by his or her litigation guardian.

19 Appearance of people with a legal disability

A person with a legal disability may only enter an appearance by his or her litigation guardian.

20 Appointment of litigation guardian

(1) A litigation guardian may be appointed without an order of the court for the appointment.

(2) However, a solicitor applying to enter an appearance as a litigation guardian must make and file an affidavit in accordance with schedule 1, form 11.

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21 Written authority of litigation guardian or relator

(1) A person's name may be used in an action as litigation guardian of a person with a legal disability, or as relator, only if the person has signed a written authority to the solicitor for the person's name to be used that way.

(2) An authority must be filed by the solicitor.

22 Consent on behalf of person with a legal disability

(1) This rule applies to a consent about the taking of evidence or any other procedure that is given in a cause or matter by the litigation guardian of a party who is a person with a legal disability.

(2) If the consent is given with the court's approval, the consent has effect as if—

(a) it had been given by the party; and

(b) the party were not a person with a legal disability.

Division 19.3 Administration and execution of trusts

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

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.

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37A Power to appoint persons to represent absent parties

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 coheir.

41 Beneficiaries

Any one of several beneficiaries 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 beneficiary.

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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 beneficiary 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; or

(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.

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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 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 schedule 1, form 12.

49 Service of notice on person with a legal disability

Notice of a judgment or order must be served on a person with a legal disability in the same way as an originating application may be served on a defendant under order 10 rules 7 and 8.

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.

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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

(1) 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.

(2) 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.

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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 (the ***third party***)—

(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 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 14 with such variations as the case may require.

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

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

(4) At the time of the service of the third-party claim, the defendant shall serve upon the third party a copy of the 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.

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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 2 rules 18A to 18D and order 10 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 order 2 rule 7 as if the claim were an originating application.

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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.

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

(3) The court may at any time set aside or vary a judgment entered under subrule (1) (b) or (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; and

(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.

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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 (a ***fourth party***) and, in relation to such a claim, this order applies with necessary changes 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 Counterclaims

Where, in an action, a counterclaim is made by a defendant, this order shall apply in relation to the counterclaim as if the subject matter of the counterclaim were the original subject matter of the action and as if the person making the counterclaim were a plaintiff and the person against whom it is made a defendant.

15 Codefendants

(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.

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(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.

(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.

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Order 21 Change of parties by devolution or transfer

1 Effect of death or bankruptcy

If a party to a proceeding dies or becomes bankrupt but the cause of action survives, the proceeding is not suspended or ended by the death or bankruptcy.

2 Change of party—new party

(1) This rule applies if, at any stage during a proceeding, the interest or liability of a party (the ***initial party***) is transferred to, or devolves on, someone else (the ***new party***).

(2) The court may order that the new party be substituted for the initial party if the substitution of the new party is necessary to allow the court effectively and completely to decide all the questions involved in the proceeding.

(3) An application for an order under this rule may be made in the absence of any other party.

(4) Unless the court otherwise orders, a sealed copy of an order made under this rule must be served on each party, including the new party and the initial party.

(5) However, if the order is made on application, a sealed copy of the order need not be served on the applicant.

(6) The court may give directions to give effect to subrule (4), including directions about who is to serve the documents required to be served on a party under the subrule.

(7) Unless the court otherwise orders, if the new party is a defendant, the plaintiff must—

(a) file an amended copy of the originating application; and

(b) serve the new party with a sealed copy of the amended originating application in the same way as an original defendant is served.

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(8) Unless the court otherwise orders, if the new party is a defendant, the proceeding against the new party is taken to have begun only when the order adding the new party is made.

3 Change of party—new side or capacity

(1) The court may make an order under rule 2 for someone (the ***new party***) to be made a party even if the person is already a party.

(2) If the new party is already a party on the other side of the proceeding, the court must, in the order, direct that the new party cease to be a party on the other side.

(3) If the new party is already a party on the same side of the proceeding but in a different capacity, the court may, in the order, direct that the person cease to be a party in the different capacity.

4 Variation or discharge of order for new party etc

(1) A person made a party under rule 2 may apply to have the order varied or discharged within 14 days after—

(a) if the person is a person with a legal disability who does not have a litigation guardian—the appointment of a litigation guardian; or

(b) in any other case—service of a sealed copy of the order on the person.

(2) If a copy of an order under rule 2 is served on a person with a legal disability who does not have a litigation guardian, the order does not have effect in relation to the person while the person may apply to the court under subrule (1) for variation or discharge of the order.

5 Notation of order in cause book

If an order is made under rule 2, the registrar must ensure that the order is noted in the cause book.

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6 Death and no continuation

(1) This rule applies if a party to a proceeding dies but the cause of action survives.

(2) If the party is the plaintiff and the person entitled to proceed delays prosecution of the proceeding without due cause, the defendant may apply for an order that the plaintiff's proceeding be dismissed, and the defendant have judgment on any counterclaim, unless the person proceeds within a stated time.

(3) If the party is the defendant and the person entitled to proceed delays prosecution of the proceeding without due cause, the plaintiff may apply for an order that the plaintiff have judgment on the plaintiff's claim, and any counterclaim be dismissed, unless the person proceeds within a stated time.

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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 lastmentioned 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 r 1, r 8 and r 9

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

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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.

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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 counterclaim

(1) A defendant in an action may, subject to order 25 rule 15, setoff, or set up by way of counterclaim, against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sounds in damages or not, and such set-off or counterclaim 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 counterclaim 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

(1) 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.

(2) Dates, sums, and numbers shall be expressed in figures and not in words.

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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

(name)

of counsel'.

5 Forms of pleading

(1) The general form of a statement of claim shall be in accordance with schedule 1, form 15.

(2) The general form of a statement of defence shall be in accordance with schedule 1, form 16.

(3) The general form of a reply shall be in accordance with schedule 1, form 17.

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

(1) Before applying for particulars by summons or notice a party may apply for them by letter.

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(2) The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation.

(3) 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

(1) 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.

(2) 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

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who appears by a solicitor or to the party if he or she does not appear by a solicitor.

13 Allegations not denied are admitted except against person with a legal disability

An allegation of fact in a pleading, other than a petition or summons, is taken to be admitted unless—

(a) it is denied specifically or by necessary implication in the pleading of the opposite party; or

(b) it is stated to be not admitted in the pleading of the opposite party; or

(c) the opposite party is a person with a legal disability.

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 counterclaim 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.

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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 counterclaim, 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

(1) 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.

(2) 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.

(3) 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.

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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

(1) 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.

(2) 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.

Example

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.

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(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.

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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

(1) 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.

(2) The same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his or her defence.

5 Several claims and defences

(1) 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.

(2) The same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim founded upon separate and distinct facts.

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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.

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Order 25 Defence and counterclaim

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 order 2 rule 12 or 13.

(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; and

(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.

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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.

Examples

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 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.

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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 Counterclaim to be so stated

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

11 Defence including person not party

Where a defendant by his or her defence sets up any counterclaim 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 counterclaim 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.

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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 schedule 1, form 18.

13 Must appear

Any person not already a party to the action, who is served with a defence and counterclaim 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 counterclaim 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 Counterclaim may be excluded from action

Where a defendant sets up a counterclaim, if the plaintiff or any other person named as a party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he or she may apply, before reply, to the court for an order that such counterclaim be excluded, and the court may, on the hearing of such application, make such order as is just.

16 Counterclaim may proceed though action stayed

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

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17 Judgment may be given for defendant for balance

Where in any action a set-off or counterclaim 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).

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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 Existence of 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.

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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 schedule 1, form 19, 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 schedule 1, form 19A given by—

(i) an authorised insurer under the *Road Transport (General) Act 1999* or the nominal defendant appointed under that Act; or

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

(iii) a corporation approved by the registrar;

under the seal of that insurer or corporation, or under the seal of the manager or other officer thereof whose general or special authority in writing so to act given under the seal of that insurer or corporation has been filed in the registry of the court.

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(4AA) The authority may be in accordance with schedule 1, form 19B, and it shall have force and effect and bind the insurer or corporation until notice of revocation has been filed in the registry.

(4AB) 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.

1AA Interest up to date of payment into court

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.

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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 schedule 1, form 20, 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.

(1B) 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.

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(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 subrule (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 schedule 1, form 20 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.

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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 counterclaim

The plaintiff or other person made defendant to a counterclaim 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 Nondisclosure of payment into court

(1) Except in an action to which a defence of tender before action is pleaded, or in which a plea under the *Defamation Act 1901*, section 8 has been filed, no statement of the fact that money has been paid into court under rules 1 to 5 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.

(2) 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

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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 rules 1 to 6 relating to money paid into court, and shall be subject in all respects thereto.

8 Approval of settlement of action by person with a legal disability

(1) In an action in which there is a claim for an amount (including an amount of damages) by or on behalf of a person with a legal disability, a settlement or compromise may not be entered into, and an amount paid into court may not be accepted, without the court's approval.

(2) This rule applies whether the person is suing alone or with another party.

9 Amount recovered by person with legal disability to be paid into court

An amount (including an amount of damages) recovered, awarded or agreed to be paid in an action in relation to the claim of a person with a legal disability must be paid into court.

10 Court orders about recovered etc amounts

(1) The court may make an order directing how an amount recovered, awarded or agreed to be paid in an action in relation to the claim of a person with a legal disability (the ***claimant***) must be dealt with.

(2) Without limiting subrule (1), the court may, by order, direct—

(a) the payment of all or a part of the amount to—

(i) the claimant or his or her litigation guardian for—

(A) expenses incurred by or paid for, or on behalf of, the claimant; or

(B) the maintenance or benefit of the claimant; or

(ii) the claimant's solicitor in relation to costs; or

(b) the investment of all or a part of the amount on behalf of the claimant in the way stated in the order; or

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(c) the investment of all or a part of the interest received from an investment under this rule on behalf of the claimant in the way stated in the order; or

(d) the changing of an investment made on behalf of the claimant under this rule; or

(e) the sale of securities in which an amount is invested on behalf of the claimant under this rule at the time, and on the conditions, stated in the order; or

(f) the payment of all or a part of the amount, or the transfer of a security or investment under this rule (including an account with an authorised deposit-taking institution), on behalf of the claimant.

(3) In this rule:

amount includes an amount of damages.

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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 counterclaim

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

(2) Where a defence to a counterclaim 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 counterclaim as if—

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

(b) the counterclaim were a statement of claim; and

(c) the defence to the counterclaim 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 7 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.

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

(3) A plaintiff is not entitled to deliver a defence to a counterclaim except—

(a) within 14 days after the delivery of the counterclaim; or

(b) with the leave of the court.

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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.

(1A) If, after a statement of defence has been delivered, any ground of defence arises to any set-off or counterclaim 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 counterclaim 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.

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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 rule 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 schedule 1, form 22, and he or she may thereupon sign judgment for his or her costs up to the time of the pleading of such defence, or the giving of such notice, unless the court, either before or after the delivery of such confession, otherwise orders.

(2) This rule applies with necessary changes to a reply to a counterclaim.

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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, counterclaim, 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.

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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.

(1A) 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.

1A Striking out defence

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 counterclaim 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.

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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.

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Order 31 Default of pleading

1 Nondelivery 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; and

(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 subrule (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.

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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 final judgment that the person whose title is asserted in the originating application recover possession of the land, with his or her costs.

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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 final judgment against any defendant not appearing to the application for the possession of the land and interlocutory judgment for the claim, and proceed with the action against the others.

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 counterclaim, execution on any such judgment in respect of the plaintiff's claim shall not issue without leave of the court.

9A Application for final judgment—debt or liquidated amount

(1) A plaintiff applying to enter final judgment for a debt or liquidated demand under rule 2, 6 or 9 must file with the registrar—

(a) an affidavit in accordance with schedule 1, form 10 that is sworn, not earlier than 14 days before it is filed by—

(i) the plaintiff or, if there are 2 or more plaintiffs, any plaintiff; or

(ii) a qualified person; and

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(b) a draft judgment in accordance with schedule 1, form 10A.

(2) The plaintiff's solicitor may make an affidavit under this rule only if the source of the knowledge of the facts deposed is—

(a) the plaintiff; or

(b) if there are 2 or more plaintiffs—any plaintiff; or

(c) another qualified person.

(3) In this rule:

qualified person means any of the following:

(a) the plaintiff's solicitor;

(b) if the plaintiff is a person with a legal disability—the plaintiff's litigation guardian;

(c) if the plaintiff is a corporation—a member or officer of the corporation with knowledge of the facts so far as they are known to the corporation;

(d) if the plaintiff is a corporation for which a receiver or a receiver and manager has been appointed—the receiver or the receiver and manager;

(e) if the plaintiff is a corporation for which a liquidator, provisional liquidator or administrator has been appointed—the liquidator, provisional liquidator or administrator;

(f) if the plaintiff is a body of persons that can sue and be sued in its own name or in the name of an officer or someone else—a member or officer of the body with knowledge of the facts so far as they are known to the body;

(g) if the plaintiff is the Commonwealth, a State or a Territory—an officer or employee of the Commonwealth, State or Territory with knowledge of the facts so far as they are known to the Commonwealth, State or Territory;

(g) in any other case—an officer or employee of the plaintiff having knowledge of the facts so far as they are known to the plaintiff.

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9B Trial of action after entry of interlocutory judgment

Unless the court otherwise orders, after entry of an interlocutory judgment against a defendant in an action, the plaintiff may proceed to trial on 1 or more of any claims for damages only, another form of pecuniary relief only or the value of goods only, or on 2 or more of these issues, as the case may be.

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, 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.

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.

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13A Form of interlocutory or final judgment

An interlocutory or final judgment must be in accordance with schedule 1, form 10A.

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.

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Order 32 Amendment

1 By order or with leave

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

(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;

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.

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(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

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(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) Subrule (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.

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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 rule 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 rule 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.

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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 rule 10 (1)—the notice referred to in that subrule; or

(b) if the amendment was made under rule 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.

14 Judgments and orders—accidental slips or omissions

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

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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; and

(b) particulars; and

(c) admissions; and

(d) discovery; and

(e) interrogatories; and

(f) inspection of documents; and

(g) inspection of real or personal property; and

(h) commissions; and

(j) examination of witnesses; and

(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.

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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.

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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.

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Order 33B Security for costs

1 Meaning of defendant and plaintiff for o 33B

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; or

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

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

(d) the plaintiff—

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

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(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; and

(b) in such manner; and

(c) at such time; and

(d) in such terms (if any);

as the court directs.

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Order 34 Discovery and inspection

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; or

(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.

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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.

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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 schedule 1, fom 24; 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 oral 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 documents which are or have been in his or her possession or power relating to any matter in question therein.

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(1A) 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 schedule 1, form 25.

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.

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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; and

(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; or

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(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 schedule 1, form 26.

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 subrule (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 subrule (2) (a) shall be—

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

(b) if the producing party is to appear in person—a place not more than 10km 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 schedule 1, form 27.

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(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.

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(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; and

(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.

21A Privileged documents

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.

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21B Power to order discovery of particular document or class of documents

(1) 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.

(2) 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 Failure to comply with order

(1) If a party (the ***failing party***) fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, the party interrogating may apply to the court for an order under this rule.

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(2) The court may, by order, do the following under this rule in relation to the failing party:

(a) find the party (or, for a party with a legal disability, the party's litigation guardian) to be in contempt of court and deal with the party accordingly;

(b) if the party is a plaintiff—dismiss the party's action;

(c) if the party is a defendant—strike out the party's defence (if any), and place the party in the same position as if the party had not defended.

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 lastmentioned answers ought not to be used without them, he or she may direct them to be put in.

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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.

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Order 34A Preliminary discovery

1 Definitions for o 34A

In this order:

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 rule 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 (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.

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(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; or

(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; or

(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

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

5 Discovery to identify right to obtain relief

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; and

(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; and

(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

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(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.

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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.

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Order 34B Non-party production

1 Definitions for o 34B

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 schedule 1, form 27A.

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 rule 7 (1) (a), any party to an action on whom a copy of a notice for non-party production is served pursuant to rule 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.

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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.

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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.

(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.

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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 schedule 1, form 28.

(2) If, after being given a notice to admit documents, a party does not admit a specified document in accordance with the notice, the costs of proving that document shall be paid by that party irrespective of the outcome of the relevant proceedings.

(3) Subrule (2) does not apply if the court certifies that the failure to admit the document was reasonable.

(4) No costs of proving a document shall be allowed against a party unless—

(a) a notice to admit documents in relation to the document is given to the party; or

(b) if no such notice is given—the taxing officer considers that the omission to give such a notice is a saving of expense.

(5) In this rule:

notice to admit documents means a notice under subrule (1).

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 schedule 1, form 29; and

(b) given to the other party no later than 14 days after the date fixed for determining the trial date.

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(2) A party given a notice to admit facts may admit any facts specified in that notice by an admission—

(a) in accordance with schedule 1, form 30; 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.

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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 schedule 1, form 31.

(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.

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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 orally examined, 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.

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5 Accounts to be verified by affidavit

(1) 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.

(2) 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 schedule 1, form 32.

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.

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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.

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Order 36A Statement of particulars before trial

1 Application of o 36A

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

2 Definitions for o 36A

In this order:

defendant includes a plaintiff against whom a counterclaim is made.

earnings means gross earnings per week or another appropriate period and net earnings after taxation per week or another appropriate period.

plaintiff includes a defendant counterclaiming for personal injury.

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; and

(b) particulars of disabilities suffered since the accident and allegedly arising therefrom and continuing disabilities so arising; and

(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; and

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(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; and

(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.

(1A) For the purposes of subrule (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; and

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(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.

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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

(b) if the case is to be stated on referral by a tribunal on its own initiative—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; and

(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.

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(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; and

(b) contain an address for service of each party; and

(c) be settled by the tribunal from which the case is stated; and

(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 Person with a legal disability

(1) If a person with a legal disability is a party to a special case in a cause or matter, the special case must not be set down for argument without the court's leave.

(2) The application for leave must be supported by sufficient evidence that the statements contained in the special case are true, as far as they affect the interests of the person with a legal disability.

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6 Directions hearings

After a special case is filed under rule 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 rule 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; or

(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

(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 1 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.

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Order 37A Issues of fact without pleadings

1 Trial of questions of fact by consent

(1) 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 schedule 1, form 34.

(2) 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.

(3) 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 1 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.

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3 Judgment and execution

Upon the finding of any such issue as is mentioned in rule 1, judgment may be entered for the sum fixed or ascertained in accordance with the provisions of rule 2, 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 1 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.

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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 counterclaim, shall be entitled to judgment dismissing the action, but if he or she has a counterclaim, then he or she may prove such counterclaim, 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

(1) 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 counterclaim, or on the defence of infancy, 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.

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(2) 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 Order of evidence and addresses

(1) The court may give directions about the order of evidence and addresses and the conduct of the trial generally.

(2) Subject to any contrary direction—

(a) if the plaintiff has the burden of proof on any question—the plaintiff presents his or her case first; and

(b) if the defendant has the burden of proof on every question—the defendant presents his or her case first.

(3) Subject to any contrary direction—

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(a) if the only parties in a trial are a single plaintiff and a single defendant and there is no counterclaim—the order of evidence and address is to be in accordance with subrules (4) to (8); and

(b) in any other case—the order of evidence and addresses is to be in accordance with those subrules as far as is practicable.

(4) The party who presents his or her case first (the ***first party***) may make an address opening the party's case and may then bring evidence in support of the case.

(5) If, during the presentation of the first party's case, no document or thing is admitted in evidence or by tender by the other party, then, after the first party has brought evidence in support of his or her case, the other party must decide whether or not to present evidence.

(6) If the other party elects not to present evidence, the first party may make a closing address and the other party may then make a closing address.

(7) If the other party elects to present evidence—

(a) the other party may first make an opening address and, after presenting any evidence in support of it, may make a closing address; and

(b) after the party has made a closing address, the first party may make a closing address.

(8) If, during the presentation of the first party's case, a document or thing is admitted in evidence or by tender by the other party and, after that case is brought—

(a) the other party presents evidence—

(i) the other party may first make an opening address and, after presenting any evidence in support of it, may make a closing address; and

(ii) after the party has made a closing address, the first party may make a closing address; or

(b) the other party does not present evidence—the other party may make a closing address and the first party may then make a closing address.

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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

(1) 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.

(2) The certificate may be in accordance with schedule 1, form 37.

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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.

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Order 39 Evidence

Division 39.1 General

1A Definitions for o 39

In this order:

expert means a person who—

(a) has specialised knowledge based on the person's training, study or experience; and

(b) gives, or it is proposed should give, evidence of an opinion that is entirely or substantially based on that knowledge.

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.

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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 orally examined 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 39.2 Taking evidence at trial from outside Territory by audiovisual link or audio link

3 Application for direction

An application for a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 may be made orally or by motion on notice in the proceeding.

4 Supporting affidavit

An application must be supported by an affidavit stating—

(a) why it is desirable that the evidence be taken or submissions made by audiovisual link or audio link; and

(b) the nature of any evidence to be taken; and

(c) the number of witnesses to be examined; and

(d) whether issues of character are likely to be raised; and

(e) the expected duration of the evidence or submissions; and

(f) a description of the facilities that are available, or that can reasonably be made available, for the evidence to be taken or submissions to be made; and

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(g) that the requirements of the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (2) can be met.

5 Relevant considerations

In deciding whether to grant an application, the court may have regard to, in addition to the matters included in the applicant's affidavit, any other matters that the court considers to be relevant, including cost and convenience to the witnesses and parties.

6 Directions

(1) If the court gives a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18, the court may direct the registrar to arrange for and coordinate the use of the appropriate facilities in the Territory and the other jurisdiction.

(2) Without limiting 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 Supreme Court of the other jurisdiction or at another place approved by that court for the purpose; and

(b) an officer of the Supreme Court of the other jurisdiction, or anyone else approved by that court for the purpose, be asked to be present to assist in the transmission of the evidence or submissions and, in particular, to—

(i) introduce witnesses and legal representatives; and

(ii) assist with the administration of oaths, if necessary; and

(iii) assist with the implementation of any direction given or request made by the judge hearing the evidence or submissions.

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Division 39.3 Taking evidence otherwise than at trial—examination of witnesses within Australia

7 Application of div 39.3

(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 the Act, section 57 (a); or

(b) if the examination is to be conducted outside the Territory, but within Australia—where it is ordered under the Act, section 57 (a) or under the *Evidence Act 1971*, part 12A.

(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 the *Evidence Act 1971*, part 12A.

8 Application to Magistrates Court proceedings

An order under the *Evidence Act 1971*, part 12A 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 the *Magistrates Court (Civil Jurisdiction) Act 1982*, section 202.

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

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(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 the Act, section 57 (a), in determining whether to make the order, the court shall have regard to the matters referred to in the *Evidence Act 1971*, section 85C (2) as if the application were for an order under that Act, section 85C (1).

(6) In determining whether to make an order for examination, in addition to the matters referred to in the *Evidence Act 1971*, section 85C (2), 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 schedule 1, form 38.

(2) An order for the examination of a person outside the Territory but within Australia shall be made in accordance with schedule 1, form 39.

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.

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(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.

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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); and

(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; or

(b) stenotype machine; or

(c) sound-recording apparatus; or

(d) in accordance with the directions of the court or the examiner, any audiovisual method, including videotaping.

(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.

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(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.

(2) Where a deposition is recorded by shorthand or by any means other than writing—

(a) a transcript shall be prepared of the deposition; and

(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; and

(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; and

(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; or

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(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; or

(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 39.4 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—

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(a) for the purposes of civil or criminal proceedings—under the *Evidence Act 1971*, section 85C (1) or 85D (1) or the *Foreign Evidence Act 1994* (Cwlth), section 7 (1) or 10 (1); or

(b) for the purposes of civil proceedings—under the *Supreme Court Act 1933*, section 57.

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.

(5) Where an order is applied for under the Act, section 57, in determining whether to make the order, the court shall have regard to the matters referred to in the *Evidence Act 1971*, section 85C (2) as if the application were for an order under that Act, section 85C (1).

(6) In determining whether to make an order, in addition to the matters referred to in the *Evidence Act 1971*, section 85C (2), 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

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(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 schedule 1, form 39.

(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 schedule 1, form 40.

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; and

(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 schedule 1, form 41 to pay any reasonable expenses incurred by the Territory, the Commonwealth, or both, upon due notification from the registrar.

(2) A translation lodged under subrule (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.

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

This rule applies where a party—

(a) has given an undertaking under rule 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; and

(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 div 39.3 rules

(1) Rules 13 to 20, 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 the *Foreign Evidence Act 1994* (Cwlth), section 8 (1).

24F Procedure for taking evidence under a letter of request—application of div 39.3 rules

(1) Rules 13 to 20, and rule 22, apply as far as practicable, with necessary changes, to the taking of evidence pursuant to a letter of request as if the foreign court or tribunal where the evidence is to be taken were an examiner appointed for the purposes of those rules.

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(2) Subrule (1) applies subject to the terms of the letter of request and of any applicable convention.

Division 39.5 Taking evidence for interstate and foreign courts and tribunals

24G Application of div 39.5—orders under the *Evidence Act 1971*, pt 12B

(1) This division applies to an order for the taking of evidence for an interstate or foreign court or tribunal under the *Evidence Act 1971*, part 12B, 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—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 schedule 1, form 42.

24K Appointment of examiner

(1) For the purposes of this division, evidence may be taken before any of the following examiners:

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(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 div 39.3 rules

Subject to this division, rules 13 to 20 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 rule 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 schedule 1, form 43; and

(b) give the certificate, and the documents specified in the certificate, to the Attorney-General.

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24Q Privilege of witnesses

(1) This rule applies to evidence which is the subject of a claim for privilege referred to in the *Evidence Act 1971*, section 85L, being a claim which is not supported or conceded in accordance with that Act, section 85L (2) (a) or (b).

(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.

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Division 39.6 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

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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

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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 order 65 rule 7 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).

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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 accordance with, or substantially in accordance with schedule 1, forms 45 to 48.

32A Service of subpoenas

(1) A subpoena in a proceeding must be served personally.

(2) However, if the person to whom the subpoena is directed is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's consent, be served on the person by leaving it at his or her address for service.

(3) A subpoena is taken to be served personally on a medical expert if, at the place where the expert's practice is carried on—

(a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or

(b) if a person mentioned in paragraph (a) refuses to accept the subpoena—the subpoena is put down in the person's presence and the person is told of the nature of the subpoena.

(4) If a subpoena requires a medical expert to attend to give evidence, it may be served later than 6 weeks before the date fixed for the hearing of the proceeding only if—

(a) the subpoena is a subpoena served in accordance with leave given under subrule (5); or

(b) the court otherwise orders.

(5) If a medical expert to whom a notice has been delivered in accordance with rule 32B fails to attend the court on the date and at the time stated

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in the notice, the court may give leave for the service of a subpoena on the medical expert requiring the attendance of the medical expert.

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 rule 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 rule 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;

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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.

(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 (1) to (6), of the Supreme Court Rules are as follows—’ and followed by the text of subrules (1) to (6).

(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.

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Division 39.7 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 39.8 Disclosure of experts' reports and hospital reports

45 Application

The rules contained in this division apply—

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(a) to proceedings in the court in which a claim is made for damages for personal injuries or in respect of the death of a person; and

(b) to any other proceedings in which the court may at any time on the application of a party or on its own initiative direct that they shall apply.

46 Service of experts' reports and hospital reports

(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 Evidence of expert to be covered by expert's report

(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 Expert's reports admissible as evidence of facts

Where an expert's report or hospital report is served in accordance with rule 46 or an order made under that rule or the parties give their consent, 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.

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49 Attendance of experts and tender of experts' reports

(1) Unless the court otherwise orders—

(a) a party may in any case, where the court fixes a hearing date, not later than 49 days before the date fixed for trial require the attendance for cross-examination of the expert;

(b) a party who is served with an expert's report may tender that report.

(2) Where the attendance of an expert is required under subrule (1), his 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 39.9 Evidence of expert witnesses

49A Application of div 39.9

(1) This division applies if 2 or more parties to an action call, or intend to call, expert witnesses to give opinion evidence about the same, or a similar, question.

(2) This division does not apply to expert evidence to be given before a jury.

49B Court may direct manner that experts give evidence

The court may, on its own initiative or at the request of a party, direct—

(a) that the expert witnesses confer; or

(b) that the expert witnesses produce for the court's use a document identifying—

(i) the matters and issues about which their opinions agree; and

(ii) the matters and issues about which their opinions differ; or

(c) that—

(i) the expert witnesses give evidence at the trial after all or certain factual evidence relevant to a question has been given; and

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(ii) each party intending to call 1 or more expert witnesses close the party's case in relation to a question, subject only to presenting the evidence of the expert witnesses later in the trial; or

(d) that, after all or certain factual evidence has been given, a party who called an expert witness file and serve on each other party an affidavit or statement by the expert witness stating—

(i) whether the expert witness adheres to any opinion given earlier; or

(ii) whether, in light of factual evidence given at the trial, the expert witness wishes to modify any opinion given earlier; or

(e) that—

(i) each expert witness be sworn one immediately after another; and

(ii) when giving evidence, an expert witness occupy a position in the courtroom (not necessarily in the witness box) that is appropriate to the giving of evidence; or

(f) that each expert witness give an oral explanation of his or her opinion, or opinions, on a question; or

(g) that each expert witness give his or her opinion about the opinion, or opinions, given by another expert witness; or

(h) that the expert witnesses be cross-examined, or re-examined, in a certain way or sequence, including, for example, by putting to each expert witness, in turn, each question relevant to one subject or issue at a time, until the cross-examination, or re-examination, of all the witnesses is finished.

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Division 39.10 Matters arising under the Evidence Act 1995 (Cwlth)

50 Evidence of previous representation

(1) In this rule:

notice of intention to adduce evidence of previous representation means a notice under the *Evidence Act 1995* (Cwlth), section 67 (1).

(2) A notice of intention to adduce evidence of previous representation shall be in accordance with schedule 1, form 49.

(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 the *Evidence Act 1995* (Cwlth), section 68 (2).

(2) A notice of objection to tender of hearsay evidence shall be in accordance with schedule 1, form 49A.

(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 the *Evidence Act 1995* (Cwlth), section 97 (1).

(2) A notice of intention to adduce tendency evidence shall be in accordance with schedule 1, form 49B.

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

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53 Coincidence evidence

(1) In this rule:

notice of intention to adduce coincidence evidence means a notice under the *Evidence Act 1995* (Cwlth), section 98 (1).

(2) A notice of intention to adduce coincidence evidence shall be in accordance with schedule 1, form 50.

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

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Order 39A Exhibits, documents and objects

1 Meaning of person named and subpoena document or object

In this order:

person named, in relation to a subpoena, means the person to whom the subpoena is addressed.

subpoena document or object means a document or object, produced in a proceeding because of a subpoena, by a person who is not a party to the proceeding.

2 The clerk at the proceeding

The clerk at a proceeding is the person appointed by the court to be the clerk.

3 Record

(1) The clerk at a proceeding must keep a record of the proceeding in the way required by the registrar.

(2) The clerk must—

(a) take charge of a document or object that is an exhibit in the proceeding; and

(b) mark or otherwise label each exhibit so the exhibit has a unique identifier in a sequence of consecutive identifiers allocated to the exhibits of the party that put it into evidence; and

(c) prepare a list of the exhibits for the proceeding that shows—

(i) the party that put the exhibit into evidence; and

(ii) if the exhibit was produced because of a subpoena—the name of the person named in the subpoena.

(3) The list of exhibits forms part of the record of the proceeding.

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(4) Unless the court orders otherwise, the clerk may treat 2 or more documents as a single exhibit.

4 Custody of exhibits after proceedings

(1) Unless the court orders otherwise, the clerk at the proceeding must keep exhibits in a proceeding for 21 days after judgment is given in the proceeding.

(2) However, the clerk may give the exhibits to the registrar to be kept and dealt with under these rules and the *Federal Court Rules*.

5 Duty of parties to claim exhibits

(1) The party that put an exhibit into evidence in a proceeding must apply to the registrar for the return of the exhibit as soon as practicable after—

(a) if an appeal is begun in relation to the proceeding within the appeal period—the appeal is disposed of; or

(b) if an appeal is not begun in relation to the proceeding within the appeal period—the end of the appeal period.

(2) If the registrar has the exhibit, the registrar must give it to the applicant or, if the exhibit belongs to a person who is not a party and the application asks for it to be given to the person, to that person.

(3) Subject to these rules and the *Federal Court Rules*, if the registrar does not have the exhibit, the registrar must get the exhibit and give it to the applicant or, if the exhibit is a subpoena document or object produced by a person who is not a party and the application asks for it to be given to the person, to that person.

(4) Unless the court orders otherwise, if a party does not apply for the return of an exhibit (other than a subpoena document or object) put into evidence by the party, the registrar must give the exhibit to the party.

(5) If a party applies for and is given a subpoena document or object, the party must return the document or object to the person named in the subpoena.

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(6) This rule does not require a party to apply for the return of a subpoena document or object.

(7) In this rule:

appeal period, in relation to a proceeding, means 21 days after judgment is given in the proceeding.

6 Return of document or object produced on subpoena

(1) At the end of the hearing of a proceeding, the party that issued the subpoena for a subpoena document or object that was not put into evidence in the proceeding as an exhibit must return the document or object to the person named in the subpoena as soon as possible.

(2) Subrule (1) applies to a document or object whether or not it was marked for identification.

(3) The registrar must give a subpoena document or object for a proceeding (other than a document or object mentioned in subrule (1)) to the person named in the subpoena as soon as practicable after—

(a) if an appeal is begun in relation to the proceeding—the appeal is disposed of; or

(b) if there is no appeal—the end of 21 days after judgment is given in the proceeding.

7 Requirement to give or send exhibit

If the registrar is required under this order to give an exhibit (including a subpoena document or object) to a person, the registrar must give or send the exhibit to the person in a way that seems reasonable to the registrar.

8 Power to lend documents and objects

The registrar may lend a person a document or object that the registrar has in relation to a proceeding, whether or not the document or object is an exhibit (produced on subpoena or otherwise), if—

(a) the person undertakes in writing to return the document or object to the registrar quickly if asked to do so by the registrar; and

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(b) the registrar is satisfied that the person can and will comply with the undertaking.

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Order 40 Affidavits

Division 40.1 Affidavits generally

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.

(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.

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(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.

(5) 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.

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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; and

(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—

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(a) that he or she had in the presence of the person taking the affidavit interpreted to the deponent the contents of the affidavit; and

(b) that the deponent seemed to understand it; and

(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.

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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.

Division 40.2 Trial on affidavit

24 Evidence on affidavit by consent

(1) 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.

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(2) Despite the agreement, at the trial the court may order that all or part of the evidence be taken orally.

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 lastmentioned 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

(1) 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.

(2) 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.

(3) The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

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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.

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Order 41 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

(1) 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.

(2) 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

(1) 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.

(2) 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,

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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.

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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 Commonwealth or Territory law, 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, 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* (Cwlth), the registrar may enter a judgment or order—

(a) notwithstanding that no party has lodged a draft; and

(b) without appointing any time or place for attendance of the parties on settlement.

(5) The registrar may file a minute of a judgment or order without a direction of the court or a request of a party.

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(6) A draft of a judgment or order referred to in this rule and the minute referred to in subrule (5) shall—

(a) for a draft or minute for—

(i) an interlocutory or final judgment mentioned in order 14 (Default of appearance) or order 31 (Default of pleading)—be in accordance with schedule 1, form 10A; or

(ii) any other judgment—be in accordance with schedule 1, form 50AA.

(b) for a draft or minute relating to an order—be in accordance with schedule 1, form 50AB.

(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 antedated or postdated.

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

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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, or to the effect of, the following words:

'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.

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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 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.

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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 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 order 56 rule 1, 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 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 schedule 1, form 50A setting out the particulars of the judgment.

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Order 42A Interest on judgments

1 Rates of interest

The interest rate fixed for the purpose the Act, section 70 on a judgment debt is to be ascertained in accordance with the following table:

Item	Period	Interest rate
1	on and before 30 April 1986	(a) if judgment was entered before 1 October 1977—5% a year for the whole period; or (b) if judgment was entered on or after 1 October 1977—10% a year
2	1 May 1986 to 30 June 1990 (inclusive)	15% a year
3	1 July 1990 to 31 December 1991 (inclusive)	20% a year
4	1 January 1992 to 30 June 1993 (inclusive)	15% a year
5	1 July 1993 to 30 April 2001	12% a year
6	on and after 1 May 2001	11% a year

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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 nonperformance 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.

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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; or

(b) by writ of attachment; or

(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.

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10 Praecipe

(1) No writ of execution shall be issued without the party issuing it, or his or her solicitor, filing a praecipe for that purpose.

(2) The praecipe shall be in accordance with schedule 1, form 51, 52 or 53, 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 schedule 1, form 54, 55 or 56, 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.

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14 Additional fees and expenses

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 fieri-facias against the freehold land or chattel real, or against the land, lease, mortgage, or charge sought to be affected by the execution, together with the sum of $2.10 for the costs thereof.

14A Direction to sheriff to levy

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 fieri-facias

Every writ of fieri-facias shall be indorsed as follows—

"Levy $, and $ for costs of execution and also interest on $ at [*insert applicable rate fixed by order 42A*] % per annum [*or other agreed rate*] from the day of till payment, besides sheriff's poundage, officer's fees, costs of

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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 fieri-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.

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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

(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.

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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,

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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 (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 schedule 1, form 56A.

(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.

(4A) 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.

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(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.

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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 New South Wales has, and shall be executed in the same manner in which the like writ issued out of the Supreme Court 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 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; and

(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

(1) 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.

(2) Such writ of sequestration shall have the same effect as a writ of sequestration issued out of the Supreme Court 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.

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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 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.

3 Service of judgment or order to be enforced by attachment

A judgment or order may be enforced against a person by writ of attachment only if the judgment or order has been served personally on the person.

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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 (the ***garnishee***) to the debtor should not be attached to answer the judgment or order, together with the costs of the garnishee proceedings.

(1A) 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 and, unless otherwise ordered, on the judgment debtor at least 7 days before the day of hearing.

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

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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, 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.

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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.

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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*.

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 the *Partnership Act 1963*, section 28, 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

(1) 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.

(2) 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:

company includes every public company, whether incorporated or not.

stock includes shares, securities, and dividends thereon.

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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 schedule 1, form 57, and on filing the same, together with a notice in accordance with schedule 1, form 58, 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 Changing of address for notices

A person mentioned in rule 6 may change the address for notices by serving a notice of the change of address on the company.

8 Service by post

A notice is taken to have been served on a person who gives a notice under rule 5, whether the person is living or not, if it is sent by prepaid post addressed to the person at the address stated—

(a) in accordance with rule 6; or

(b) if the address has been changed in accordance with rule 7—the changed address.

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.

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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 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,

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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.

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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 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.

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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 schedule 1, form 59, 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.

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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 copartners 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 copartners 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, copartners 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.

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.

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6 No appearance except by partners

Where an originating application is served under order 2 rule 18D on 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 order 2 rule 18D 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; or

(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.

(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—

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(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 copartners

Rules 1 to 9 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.

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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; or

(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, on its own initiative 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; or

(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.

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Order 52 Interlocutory orders, receivers and accounts

Division 52.1 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.

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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

(1) An application for an order under the Act, section 34 or under rules 2 or 3, may be made to the court by any party.

(2) If the application is by the plaintiff for an order under the Act, section 34, 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 counterclaim 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 lastmentioned claim appears from the pleadings, or, if there are no pleadings, by affidavit or otherwise to the satisfaction of the court,

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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

(1) A writ of injunction shall not be issued.

(2) 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

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an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract, and the court may grant the injunction, either upon or without terms, as is just.

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.

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Division 52.2 Receivers

16 Meaning of *court* in div 52.2

In this division:

Court includes a judge.

17 Application for order

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 schedule 1, form 60 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.

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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) applies whether or not a party is a person with a legal disability.

(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—

(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.

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(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; or

(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 the Act, section 70 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

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(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 52.3 Accounts

25 Accounts of liquidators, guardians etc

This order applies to the accounts of a liquidator, or of a guardian, manager or litigation guardian of a person with a legal disability, in the same way (but subject to any necessary modifications) as it applies to the accounts of a receiver.

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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.

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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.

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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.

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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; or

(b) for attachment; or

(c) to answer the matters in an affidavit; or

(d) against a sheriff to pay money levied under an execution.

3 Previous notice of motion required

Except where according to the practice existing in the Supreme Court 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.

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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

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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; or

(b) for the amendment of any document or pleadings; or

(c) for the filing of any document; or

(d) for any act to be done by any officer of the court;

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.

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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 the *Trustee Act 1925*, section 63, shall be intituled in the matter of that Act, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

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.

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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', 'judicial advice', or 'judicial direction', as the case may be.

21 Account by solicitor

(1) 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.

(2) 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

(1) 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.

(2) Upon the filing of such certificate, the court may order the moneys so certified to be forthwith paid to the client or brought into court.

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Order 55 Certiorari, mandamus, prohibition, quo warranto and habeas corpus

Division 55.1 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.

(1A) 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 Queen 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.

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(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.

(3) 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.

Division 52.2 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 nonproduction 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.

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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 registrar 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

(1) 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.

(2) 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 schedule 1, form 63.

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Division 55.3 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

(1) 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.

(2) Every writ of mandamus shall be in accordance with schedule 1, form 64, 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

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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 corporations etc

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.

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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.

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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.

Division 55.4 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 Direction to proceed

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 the judicial tribunal to which the writ of prohibition was issued to hear or determine the matter in question or proceed as if the writ had not been issued.

33 Prohibition by order

(1) 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.

(2) A writ of prohibition shall be in accordance with schedule 1, form 65.

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Division 55.5 Quo warranto

34 Relator to be named

(1) 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.

(2) 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

(1) 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.

(2) 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.

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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

(1) The defendant may, if he or she thinks fit, disclaim the office in question.

(2) 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.

(3) 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.

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Division 55.6 Habeas corpus

43 How applied for

(1) 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.

(2) 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

(1) 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.

(2) The order and all subsequent proceedings shall be entitled 'The Queen 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

(1) 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.

(2) Other writs of habeas corpus shall be served personally unless an order for substituted service is made.

(3) 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.

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(4) 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

(1) 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.

(2) 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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Order 56A 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 firstmentioned party to the making of the order sought; or

(b) a document entitled in the cause, signed by the solicitor for the firstmentioned 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 firstmentioned party to the adjournment of the hearing; or

(b) a document entitled in the cause, signed by the solicitor for the firstmentioned party and expressing the consent of that solicitor to the adjournment of the hearing;

the court may adjourn the hearing.

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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.

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Order 57 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.

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Order 58 Equity proceedings

Division 58.1 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 beneficiary 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 and a notice of motion 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 beneficiary;

(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.

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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; or

(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—

(i) for the determination of any question under rule 1 (a), (e), (f), or (g)—the persons, or 1 of the persons, whose rights or interest are sought to be affected;

(ii) for the determination of any question under rule 1 (b)—any member or alleged member of the class;

(iii) for the determination of any question under rule 1 (c)—any person interested in taking such accounts;

(iv) for the determination of any question under rule 1 (d)—any person interested in such money;

(v) for relief under rule 2 (a)—the residuary legatees, or next of kin, or some of them;

(vi) for relief under rule 2 (b)—the residuary devisees or heirs, or some of them;

(vii) for relief under rule 2 (c)—the beneficiaries, or some of them;

(viii) 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.

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(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 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.

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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.

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Division 58.2 Assistance of experts

13 Accountants, merchants etc

A judge in a proceeding to which this order applies 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.

Division 58.3 Proceedings relating to people with a legal disability

14 Evidence on application to appoint guardian etc

On application for the appointment of a guardian of a child and allowance for maintenance, the evidence must show—

(a) the age of the child; and

(b) the nature and amount of the child's assets and income; and

(c) what relatives the child has.

15 Appointment of litigation guardian may be required

At any time during a proceeding, a judge may require a litigation guardian to be appointed for a person with a legal disability.

Division 58.4 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.

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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.

Division 58.5 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.

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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 Dispensing with service of notice of judgment or order

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.

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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 nondisclosure 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

(1) The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in court upon motions.

(2) 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.

(3) Copies shall not be made of deeds or documents where the originals can be brought in, unless the judge otherwise directs.

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Division 58.6 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.

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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.

Division 58.7 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

(1) 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.

(2) 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

(1) 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.

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(2) 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.

(3) 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.

(4) 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

(1) 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.

(2) 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.

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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 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.

Division 58.8 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—

(a) of claims which have been sent in pursuant to the advertisement; and

(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.

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(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,

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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.

Division 58.9 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

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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.

Division 58.10 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 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

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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.

Division 58.11 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

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certificate or report, he or she shall sign the same in testimony of his or her adopting the same.

53 Where accounts are directed

(1) 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.

(2) 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.

(3) 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.

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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.

Division 58.12 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.

(1A) Such summons shall be in the form following:

'That this matter, the further consideration whereof was adjourned by order dated the day of 20 , 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.

Division 58.13 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.

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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.

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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; and

(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.

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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.

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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

(1) 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.

(2) 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.

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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

(1) 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 schedule 1, form 69, and the execution creditor shall, within 4 days after receiving the notice, give notice in accordance with schedule 1, form 70 to the sheriff or his or her officer that he or she admits or disputes the claim.

(2) 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.

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(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, 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.

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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 the Act, section 8 (1) 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 (other than rule 12), 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 rules 2 (4), 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

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- order 69; and

(b) in the hearing and determination of applications under any of the following provisions of the *Service and Execution of Process Act 1992* (Cwlth):

- section 11 (8)
- section 17 (1) (b)
- section 30 (1) (b)
- section 35 (3)
- section 45 (3)
- section 105 (4).

Note The *Corporations Law Rules 2000*, pt 16 deals with the powers of the master in relation to the Corporations Law and the ASC Law.

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.

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5 Appeals from registrar's orders

(1) The procedure for appeal under the Act, section 10 (2) shall be as follows:

(a) the appeal shall be instituted within 5 days after the date of the decision or order complained of;

(b) except where the application was made ex parte, an appeal shall be instituted by the service of notice of appeal on the respondent and the filing of a copy of notice of appeal;

(ba) the notice of appeal shall be in accordance with schedule 1, form 76;

(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 rehearing 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 the Act, section 10 (2) does not operate as a stay of proceedings unless the court, a judge or the registrar so orders.

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Order 61A Master

1 Authority of master

The jurisdiction of the court that is exercisable in accordance with the Act, section 8 (1) may be exercised by the master—

(a) in trials (except with a jury) of suits in which damages are claimed in relation to the death of, or bodily injury to, anyone; and

(aa) in trials (except with a jury) of suits in which damages are claimed in relation to damage to property caused by, involving or arising out of, the use of a motor vehicle; and

(b) in trials (except with a jury) of suits where the only matters in question are the amount of damages and costs; and

(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; and

(d) in trials of suits where the only matters in question are interest under the Act, section 69 and costs; and

(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; and

(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; and

(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*; and

(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; and

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(h) in any suit in which an order, judgment or direction is sought with the consent of all parties to the suit; and

(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 the following provisions:

- order 19 rules 11 and 37
- order 29 rule 5
- orders 36 and 37
- order 39 rules 10, 11, 12, 24A, 24B, 24G (2) (b) (in relation to the application of rules 24J and 24K), 24J and 24K
- orders 45, 47 and 52
- order 53, except in the circumstances described in paragraph (g)
- orders 55, 57, 58 and 59
- order 61
- order 61A rule 1 (e) and (ea)
- order 65 rules 66, 82 and 83
- order 72; and

(j) in the hearing and determination of applications under any of the following provisions of the *Service and Execution of Process Act 1992* (Cwlth):

- section 11 (8)
- section 17 (1) (b)
- section 18 (3)
- section 19 (1)
- section 30 (1) (b)
- section 35 (3)
- section 45 (3)
- section 105 (4)
- section 106 (1); and

(k) in the hearing and determination of applications pursuant to the *Criminal Injuries Compensation Act 1983*, section 11 (1); and

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(l) in dealing with applications under the *Foreign Judgments Act 1991* (Cwlth), sections 6 (Application for, and effect of, registration of foreign judgments), 7 (Setting aside a registered judgment), 8 (Stay of enforcement of a registered judgment) and 9 (Re-registration of certain registered judgments which have been set aside); and

(o) in the hearing and determination of applications for a final order under the *City Area Leases Act 1936*, section 11A (9F) as in force immediately before 2 April 1992; and

(p) in the hearing and determination of applications for an order under the *Family Provision Act 1969*, section 8 or 9A and in the exercise of associated powers and functions of the court; and

(q) in the hearing and determination of interlocutory applications for further time for institution of an appeal under the *Magistrates Court Act 1930*, section 209 (1); and

(r) in the hearing and determination of interlocutory applications for an order regarding service of notice under the *Magistrates Court Act 1930*, section 210; and

(s) in the hearing and determination of applications under the *Magistrates Court (Civil Jurisdiction) Act 1982*, part 20 regarding the transfer of proceedings; and

(t) in the hearing and determination of interlocutory applications under the *Magistrates Court (Civil Jurisdiction) Act 1982*, part 21 in connection with appeals; and

(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; and

(u) in the hearing and determination of applications for an order under the *Partnership Act 1963*, section 28; and

(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;

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(ii) an order under section 25 (2), (3), (4), 25 (5) (a) or a direction under section 25 (5) (b);

(iii) a direction under section 26 (2);

(iv) an order under section 31 (2);

(v) an extension of time under section 33 (3) to institute proceedings;

(vi) an order under section 34 (1);

(vii) an order under section 45 (2); and

(w) in the hearing and determination of applications for an order under the *Land Titles Act 1925*, section 103 (1) or 106; and

(x) in the hearing and determination of applications under the *Trustee Act 1925* in respect of the following matters:

(i) an opinion, advice or direction under section 63 (1) or 63 (10);

(ii) an order under section 70 (1);

(iii) a vesting order under section 71;

(iv) an order under section 75 (1) (a) or (b);

(v) an order or direction under section 81;

(vi) an order under section 95 (2) or (3);

(vii) an order under section 98 (4); and

(y) in dealing with applications under the *Limitation Act 1985*, sections 21B (Defamation), 36 (Personal injuries), 38 (Action by estate of deceased person), 39 (Action for compensation to relatives), 40 (Latent damage to property and economic loss) and 57 (Exercise of discretion under limitation law).

Note The *Corporations Law Rules 2000*, pt 16 deals with the powers of the master in relation to the Corporations Law and the ASC Law.

3 Exception for damages suits involving liability as employer

Rule 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,

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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 Exercise of court's inherent jurisdiction by master

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 the Act, section 9 (2) (a) 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 schedule 1, form 77;

(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 the Act, section 9 (2) (a) may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal shall be abandoned.

(2) A notice of discontinuance filed by an appellant under subrule (1) shall not affect any other appellant in the appeal.

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(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 the Act, section 9 (2) (a) 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 the Act, section 9 (2) (a) from judgments of the master.

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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.

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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.

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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

(1) 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.

(2) 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.

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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 am and 4.15 pm 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.

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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 a 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.

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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.

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.

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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.

(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.

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Order 65 Costs

Division 65.1 Costs generally

1 Costs, with certain exceptions, to be in the discretion of the court

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.

1A Trustees etc

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.

1B Costs where trial with jury to follow event

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.

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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 the *Legal Practitioners Act 1970*, section 190 or 191.

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 the table below, column 2, the plaintiff shall be entitled only to the costs and disbursements specified in column 3 in respect of that amount.

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TABLE

column 1 item	column 2	column 3
1	$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
2	$50,000	2/3rds of the charges and disbursements provided for in schedule 4 or the amount specified in order 3 rule 3 (2), whichever is applicable

(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 the table to subrule (1), column 2, the charges provided for in rule 7 (1) or such proportion of those charges as is deemed fit.

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8 Costs improperly incurred etc

(1) 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.

(2) 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.

(3) Such notice (if any) of the proceedings or order shall be given to the client in such manner as the court directs.

9 Solicitor appointed litigation guardian

(1) If the court appoints a solicitor as litigation guardian of a person with a legal disability, the court may direct that the costs incurred exercising the functions of litigation guardian must be paid either—

(a) by the parties, or 1 or more of the parties, to the cause or matter in which the appointment is made; or

(b) out of a fund in court (if any) in which the person is interested.

(2) The court may give directions for the repayment or allowance of costs mentioned in subrule (1).

10 Set-off notwithstanding lien for costs

(1) 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.

(2) This rule shall apply to cases where the set-off arises in independent actions.

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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.

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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

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.

18A Bill of costs

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.

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Division 65.2 Special allowances and general regulations

21 Application of div 65.2

The special allowances and general regulations in this division 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

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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

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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.

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35 On nonattendance or neglect by party at chambers, judge may order costs

As to attendances at the judge's chambers, where by reason of the nonattendance 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 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.

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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.

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42 Tender of costs for perusing petition where notice that appearance not required

(1) 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.

(2) 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.

(3) 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 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

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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

(1) 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.

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(2) 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.

(3) 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.

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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.

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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.

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(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 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; and

(b) state shortly but specifically the nature and ground of each objection; and

(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).

(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

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(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

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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.

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63 Disallowances where bill reduced by a 6th

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

(1) 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.

(2) 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

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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

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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,

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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

(1) 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.

(2) This appeal may be had in addition to any other application to review the taxation.

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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.

(3) This appeal may be had in addition to any other application to review the taxation.

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Order 66 Documents

Division 66.1 Style

1 Meaning of *document* in o 66

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 3mm.

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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—25mm; and

(b) at the foot of the writing—20mm.

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 4mm space; and

(b) below that line the following information is to be set out:

(i) the name of the party by whom, or on whose behalf, the document is filed;

(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);

(iii) if the party is represented by a solicitor—

(A) the solicitor's name, address for service and telephone number; and

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(B) if the solicitor is the agent of another solicitor for 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:

(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 66.2 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;

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(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* (Cwlth);

(j) any document filed with the court in the court's probate jurisdiction other than:

(i) a grant of probate or of letters of administration; or

(ii) an order to administer an estate; or

(iii) proceedings in relation to a contested matter;

(k) a deposition taken before an examiner;

(l) any document filed with the court in support of an ex parte application;

(m) any document that the registrar has determined should remain confidential to the parties to the matter in the interests of justice.

(2) Except with leave of the court, a party to a matter is not entitled to inspect, or search the registry for, a subpoena issued at the request of another party.

(3) Except with leave of the court, a party to a matter is not entitled to inspect, or search the registry for, a document filed to support an application for:

(a) any document, evidence or thing to be kept confidential; or

(b) any document or thing to be granted privilege from production.

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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.

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(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 the *Bankruptcy Act 1966* (Cwlth), sections 119 (Duties of sheriff after receiving notice of presentation of petition etc) and 119A (Duties of sheriff after receiving notice of bankruptcy etc), 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

(1) 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.

(2) 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.

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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 fieri-facias or a writ of *venditioni exponas* on the money obtained by the seizure at the rate of 5 % up to $200, and at the rate of 2.5 % for the excess when the money so obtained exceeds $200, and under a writ of possession at the rate of 5 % on the annual value of the property delivered up to $200 and at the rate of 2.5 % 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.

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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.

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Order 69 Effect of noncompliance

1 Noncompliance with rules not to render proceeding void

Noncompliance 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.

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Order 69A Applications to transfer proceedings under the Magistrates Court (Civil Jurisdiction) Act 1982, part 20

1 Meaning of *the Act* in o 69A

In this order:

the Act means the *Magistrates Court (Civil Jurisdiction) Act 1982*.

2 Mode of commencement of applications

(1) An application under the Act, section 381 shall be made by motion.

(2) An application under the Act, section 383 or 384 shall be made by motion supported by affidavit.

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Part 4 Administration and probate jurisdiction

Order 72 Administration and Probate

Division 72.1 Preliminary

1 Definitions for pt 4

In this part:

office, of the registrar, means the office of the registrar of probates.

the Act means the *Administration and Probate Act 1929*.

1A Expressions have same meaning as in Administration and Probate Act

An expression used in this part has the same meaning as in the Act.

1B References to forms

A reference in this part to a form by number is a reference to the form in schedule 3 with that number.

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'.

Division 72.2 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.

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(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.

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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 noncompliance 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 noncompliance, 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; or

(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.

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(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; and

(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 nonproduction shall be accounted for.

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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 nonproduction 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.

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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.

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(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—

(a) 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

(i) a caveat against such application is subsequently lodged with the registrar before the representation applied for has been granted; or

(ii) it appears doubtful to the registrar whether the application should be granted; or

(iii) the application is made under the Act, part 4, 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

(b) an application has been made to the registrar under the Act, section 16 to dispense with 1 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

(i) it appears doubtful to the registrar whether he or she ought to do so; or

(ii) 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

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on notice of motion filed in the office of the registrar at least 7 clear days before the application comes on for hearing.

Division 72.3 Administration during minority

20 Grants of administration during minority

(1) A grant of administration during minority may be made to the guardian of a child.

(2) A grant is subject to the limitations or conditions the court orders.

21 Election and assignment of guardians

(1) A child 7 years or older may elect a guardian.

(2) The court may assign a guardian for a child when a guardian has not been, or may not be, elected.

(3) In a family with a child 7 years or older and a child under 7 years old, an elected guardian may act for all the children without special assignment.

(4) If the guardian of a child makes an application for administration, the guardian must produce evidence of his or her election or assignment.

Division 72.4 Small estates

23 Applications in the case of small estates

(1) Any person desiring to obtain a grant of representation in pursuance of the Act, part 4, 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

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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 nonproduction 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 the Act, part 4, printed forms of probate or letters of administration may be used.

Division 72.5 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.

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(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.

Division 72.6 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.

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Division 72.7 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.

Division 72.8 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 the Act, section 51, 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 if a party is a person with a legal disability and does not have a litigation guardian, 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.

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Division 72.9 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

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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.

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45 Appeal from finding of registrar

If the accounting party, or any person who has filed a notice of objection under rule 40, 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, 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, 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.

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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 the Act, section 58 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 the Act, section 58 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.

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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.

Division 72.10 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 the Act, section 34, 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

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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; or

(b) not executed by testator; or

(c) not executed in conformity with the *Administration and Probate Act 1929*; or

(d) want of testamentary capacity—

(i) confined to the period shortly before and at the time of execution; or

(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; or

(b) the person applying does not fill the capacity or stand in the relationship in which he or she seeks administration; or

(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.

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56 Witnesses

Where an order is made fixing a time for shewing cause against an order nisi under the Act, section 34, 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 the Act, section 34, 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.

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Division 72.11 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.

Division 72.12 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; and

(b) the time and place thereof; and

(c) whether testate or intestate; and

(d) whether leaving real or personal estate within the Territory; and

(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.

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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 the Act, section 95 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.

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Division 72.13 Miscellaneous

69 Form of acknowledgment under Act, s 56

The acknowledgment which may be signed by an executor or administrator in pursuance of the Act, section 56 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.

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Part 5A Foreign judgments

Order 74A Reciprocal enforcement of judgments under Foreign Judgments Act 1991 (Cwlth)

1 Meaning of *the Act* in o 74A

In this order:

the Act means the *Foreign Judgments Act 1991* (Cwlth).

1A Expressions have the same meaning as in the Foreign Judgments Act

An expression used in this order has the same meaning as in the Act.

2 Application of o 74A

This order applies in relation to an order for the registration of a money judgment or a non-money judgment to which the Act, section 6 (2) (a) or (c) applies.

3 Application for an order for registration

(1) An application under the Act, section 6 (1) to have a judgment registered shall—

(a) be in accordance with form 78A; and

(b) have attached a copy of the judgment certified by the original court; and

(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.

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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 the Act, part 2 applies in relation to the judgment;

(c) if the Act, section 6 (1) (b) 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 the Act, part 2 extends or an inferior court of such a country, being an inferior court in relation to which that part extends; and

(ii) if the Act, section 13 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 the Act, section 5 (6);

(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 the Act, section 7;

(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

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(b) if the judgment is a money judgment—

(i) that on that day the judgment has not been wholly satisfied; and

(ii) if the judgment has been partly satisfied—the balance remaining payable on that day; and

(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; and

(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.

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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

Order 64 rule 5 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.

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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;

(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; and

(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.

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Part 7 Adoption Jurisdiction

Order 76 Adoption

Division 76.1 Preliminary

1 Definitions for o 76

For this order:

Act means the *Adoption Act 1993*.

chief executive means the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility).

discharging order means—

(a) an order of the court under the Act, section 26 discharging an adoption order; or

(b) an order of the court under the Act, section 52 (1) discharging an interim order.

dispensing order means an order of the court under the Act, section 35 (1) 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 the Act, section 75 or 76.

variation order means an order of the court under the Act, section 41 varying or revoking a condition of an adoption order.

1A Expressions same meaning as in Act

An expression used in this order has the same meaning as in the Act.

1B References to forms

A reference in this order to a form by number is a reference to the form in schedule 8 with that number.

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Division 76.2 Adoption orders

2 References to applicants in div 76.2

For this division, if an application for an adoption order is made on behalf of the proposed adoptive parent or parents by the chief executive or by the principal officer of a private adoption agency, the application is taken to have been made by the proposed adoptive parent or parents jointly.

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 chief executive; or

(ii) the principal officer of a private adoption agency.

(2) An application for an adoption order shall be—

(a) in accordance with form 1; and

(b) accompanied by an affidavit under rule 5, together with any documents to be filed under rule 6.

(3) An application for an adoption order and all proceedings in the application shall be entitled in the full name proposed to be given to the child sought to be adopted.

(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) If an application for an adoption order is made by someone other than the chief executive or the principal officer of a private adoption agency, the applicant or applicants must give notice of the application to the chief executive not later than 28 days before the day fixed for hearing the application.

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(2) The notice under subrule (1) must—

(a) be accordance with form 2; and

(b) be accompanied by a copy of the affidavit under rule 5, and a copy of any document under rule 6, filed with the application.

(3) A notice of an application for an adoption order under the Act, section 22 must 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; and

(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; and

(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;

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(iii) if any child has died—the date of death; and

(d) the likelihood of any children being born to the applicant in the future; and

(e) the relationship (if any) to the applicant of the child sought to be adopted; and

(f) the period (if any) that the child to be adopted has been living with the applicant; and

(g) the full name to be given to the child to be adopted; and

(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; and

(j) whether the applicant has ever been refused an adoption order; and

(k) whether an adoption order or an interim order in the applicant's favour has been discharged; and

(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 the Act, section 20 (2) (a), (b) and (c); and

(n) if the child to be adopted is an Aboriginal child—that fact, together with a statement about the matters referred to in the Act, section 21 (2) (a) and (b); and

(o) any conditions under the Act, section 40 which are sought by any person in relation to the adoption.

(3) Where an affidavit under subrule (2) is made by 2 persons jointly, a reference in that subrule to the applicant is to be taken to be a reference to each of those persons.

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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 written statement by the chief executive that the chief executive has made reasonable inquiries and believes that the child is 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) If it is impracticable to obtain a birth certificate of the child sought to be adopted, the applicant or applicants must state why it is impracticable to obtain a birth certificate in the affidavit under rule 5 or, if the applicant is the chief executive or the principal officer of a private adoption agency, in the report under the Act, section 19 (1) (a).

(4) If a document filed under this rule is not written in English, there shall be filed with the document—

(a) a translation into English of the document; and

(b) an affidavit by the translator—

(i) stating his or her qualifications; and

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(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; or

(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 being given notice of the application.

(2) A person entering an appearance to oppose an application for an adoption order must, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

(a) if the application is made by a solicitor on behalf of the prospective adoptive parent or parents—the solicitor; or

(b) to the applicant or applicants.

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(3) If notice of an application is given to the chief executive under rule 4, the chief executive 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 being given notice of the application.

(4) If the chief executive enters an appearance to oppose an application for an adoption order, the chief executive must, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to each person required to be given notice of the application under the Act, section 22.

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 76.3 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 the Act, section 35 (1) (a), (b), (c) or (d).

(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 the Act, section 35 (3) applies, an application for a dispensing order shall be made at the same time as the relevant application for an adoption order.

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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—

(a) each person interested in the relevant application, or proposed application, for adoption; and

(b) if the application for the dispensing order is made by someone other than the chief executive—the chief executive; 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 being given notice of the application.

(2) A person entering an appearance to oppose an application for a dispensing order must, as soon as practicable after filing the notice of appearance, give a copy of the notice of appearance to—

(a) if the application is made by a solicitor on behalf of the prospective adoptive parents—the solicitor; or

(b) the applicant or applicants.

(3) The chief executive 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 being given notice of the application.

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(4) If the chief executive enters an appearance to oppose an application for a dispensing order, the chief executive must give a copy of the notice of appearance to each person to whom notice of the application is required to be given under rule 11 (1) (a) and (c).

13 Form of dispensing order

A dispensing order shall be in accordance with form 9.

Division 76.4 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 chief executive (as required by the Act, section 41 (2)); 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.

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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 76.5 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 the Act, section 26 (5), 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.

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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 76.6 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 must be given to—

(a) the chief executive; and

(b) anyone—

(i) whose approval would be sufficient under the Act, part 5, division 3 to entitle the applicant to the identifying information; and

(ii) who has refused approval.

(2) A notice under subrule (1) must be in accordance with form 17.

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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 76.7 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 must be served personally.

(2) However, a notice may be served on—

(a) the chief executive by giving the notice to a member of the staff of the chief executive's office; and

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(b) the principal officer of a private adoption agency by giving the notice to a member of the staff of the agency.

(3) An affidavit of service must 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.

(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); and

(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.

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(4) An application under this rule may be made orally to the court upon the hearing of the proceedings by the court.

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Part 9 Proceedings under Jurisdiction of Courts (Cross-vesting) Act 1993

Order 78

1 Application of o 78

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 Definitions for o 78

In this order:

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—see the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1).

the Act means the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

3 Applications under the Act

(1) An application under the Act shall be made by notice of motion.

(2) A document in a proceeding for relief under the Act must have, above the title, the statement '*Jurisdiction of Courts (Cross-vesting) Act 1993*'.

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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 the Act, section 8, 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 (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 the Act, section 11 (1) (b) 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 the Act, section 11 (1) (c) 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.

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(3) If a party proposes to claim that the law of a State or another Territory should be applied under the Act, section 11 (1) (b) or that rules of evidence and procedure other than those of the court should be applied under the Act, section 11 (1) (c)—

(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 on its own initiative and may revoke or vary any direction given by it in relation to any such matter.

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Part 10 Disputed elections and questions referred by the legislative assembly— Electoral Act 1992

Order 79 Electoral matters

Division 79.1 Preliminary

1 Definitions for o 79

In this order:

application—see the Act, section 250 (Interpretation).

court—see the Act, section 250.

election—see the Act, section 250.

file—see the Act, section 250.

MLA means a member of the Legislative Assembly.

proceeding—see the Act, section 250.

respondent means the person taken to be the respondent under the Act, section 262 (2) (Parties to an application).

the Act means the *Electoral Act 1992*.

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 the Act, part 16, division 4 as if a statement under the Act, section 276 setting out a question referred by the Assembly were an originating application, except as otherwise provided by the Act and this order.

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Division 79.2 Disputed elections

3 Deposit as security for costs

For the purposes of the Act, section 260 (1), 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 the Act, part 16, division 3 are—

(a) the applicant; and

(b) each other person who—

(i) is entitled under the Act, section 262 or 263 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

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(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 Countercharges

(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 the Act, section 175 (c) 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)—

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(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 the Act, section 263 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 the Act, section 263 (9) (a), the respondent's notice of intention not to oppose an election application within the meaning of that section shall be filed.

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(2) For the purpose of the Act, section 263 (9) (e), 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 the Act, section 263 (9) (d) (i).

12 Inspection of list of applications

For the purposes of the Act, section 264, 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 79.3 Questions referred by Legislative Assembly

13 Parties to proceeding

Each person who—

(a) is entitled under the Act, section 277 to appear in a proceeding under the Act, part 16, division 4; and

(b) enters an appearance in accordance with order 13;

is a party to the proceeding.

Division 79.4 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.

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Part 11 Criminal jurisdiction

Order 80 Criminal proceedings

Division 80.1 Preliminary

1 Meaning of *criminal proceeding* in pt 11

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 the *Magistrates Court Act 1930*, section 90A.

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 schedule 11.

(2) Where, under this part, the use of a form in schedule 11 is required, a form which does not differ materially from the form in schedule 11 shall, unless the court otherwise orders, be taken to comply with that requirement.

Division 80.2 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 80.3 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

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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 is taken to apply with necessary changes in relation to any determination for the purpose of subrule (3).

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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 rule 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 rule 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.

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(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 is taken to apply with necessary changes 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.

(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

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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 rule 9 (1) to (5) 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.

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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 of subpoenas

(1) A subpoena must be served personally.

(2) A subpoena is taken to be served personally on a medical expert if, at the place where the expert's practice is carried on—

(a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or

(b) if a person mentioned in paragraph (a) refuses to accept the subpoena—the subpoena is put down in the person's presence and the person is told of the nature of the subpoena.

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.

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Division 80.4 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.

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Part 11A Registration of orders under mutual assistance in Criminal Matters Act 1987 (Cwlth)

Order 80A

1 Definitions for o 80A

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* (Cwlth).

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 the Act, section 34 (9) 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.

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(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 the *Proceeds of Crime Act 1987* (Cwlth), section 23A (2).

(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.

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Part 11B Registration of orders under proceeds of Crime Act 1991

Order 80B

1 Definitions for o 80B

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 the Act, section 78 or 84 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.

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(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 the Act, sections 81 (1) and 87 (1), 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.

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Part 11C Matters arising under Evidence and Procedure (New Zealand) Act 1994 (Cwlth)

Order 80C Preliminary

1 Meaning of *the Act* in pt 11C

In this part:

the Act means the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth).

1A Expressions have the same meaning as in Evidence and Procedure (New Zealand) Act

An expression used in this part has the same meaning as in the Act.

1B References to forms

A reference in this part to a form by number is a reference to the form in schedule 13B with that number.

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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 Supreme 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; and

(b) the nature and significance of the evidence required from, or of the document or thing required to be produced by, the person named; and

(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; and

(d) the date by which it is intended to serve the subpoena; and

(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;

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(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 the Act, section 14 (2) or (3).

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.

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Order 80E Failure to comply with subpoena

1 Issue of certificate

(1) A certificate under the Act, section 16 in accordance with form 1 may be issued on the court's own initiative 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 the Act, section 16 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 the Act, section 10 (3); and

(b) an affidavit stating—

(i) particulars of the order giving leave to serve the subpoena; and

(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.

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Order 80F Setting aside subpoena

1 Application to set aside

(1) An application under the Act, section 13 shall be made by affidavit stating the facts and grounds on which the application is based.

(2) The affidavit shall—

(a) be headed with the heading appearing on the copy of the order giving leave to serve the subpoena; and

(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 the Act, section 13 shall be determined at a time and place and in a manner directed by the court.

4 Objection to no hearing

An objection under the Act, section 14 (4) 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.

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5 Hearing by videolink or telephone

A request under the Act, section 14 (6) 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.

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Order 80G Evidence by videolink or telephone

1 Application for direction

An application for a direction under the Act, section 25 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 videolink or telephone from New Zealand; and

(b) the nature of any evidence to be taken; and

(c) the number of any witnesses to be examined; and

(d) whether issues of character are likely to be raised; and

(e) the expected duration of any such evidence or submissions; and

(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 the Act, section 26 or 27, as the case requires, 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.

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4 Directions

(1) If the court gives a direction under the Act, section 25, 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; and

(ii) assist with the administration of oaths, if necessary; and

(iii) assist with the implementation of any directions given or requests made by the judge hearing the proceedings.

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Order 80H Fax copies

1 Application of the Act, pt 6

For the purpose of proceedings in the court, the Act, part 6 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 297mm long by 210mm wide on which the writing is permanent, unless the fax meets those specifications.

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Part 12 Appeals

Order 81 Appeal rules

1 Definitions for o 81

In this order:

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

(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.

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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 following table, column 2 brought under the respective corresponding statutory provisions referred to in column 3:

TABLE

column 1 item	column 2 tribunal	column 3 statutory provision
1	administrative appeals tribunal	*Administrative Appeals Tribunal Act 1989*, section 46
2	credit tribunal	*Consumer Credit (Administration) Act 1996*, section 94
2A	discrimination tribunal	*Discrimination Act 1991*, section 108D
3	guardianship tribunal	*Guardianship and Management of Property Act 1991*, section 56
4	Magistrates Court	*Community and Health Services Complaints Act 1993*, section 39G (1) *Consumer Credit (Administration) Act 1996*, section 95 *Health Records (Privacy and Access) Act 1997*, section 32 (1) *Magistrates Court Act 1930*, part 11, divisions 1 and 2 *Magistrates Court (Civil Jurisdiction) Act 1982*, part 21
5	mental health tribunal	*Mental Health (Treatment and Care) Act 1994*, section 141
6	registrar of the Supreme Court	*Criminal Injuries (Compensation) Act 1983*, section 28

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column 1 item	column 2 tribunal	column 3 statutory provision
6A	residential tenancies tribunal	*Residential Tenancies Act 1997*, section 126
7	Small Claims Court	*Magistrates Court (Civil Jurisdiction) Act 1982*, part 21
8	Supreme Court (constituted by the master)	*Supreme Court Act 1933*, section 9 (2) (b)
9	tenancy tribunal	*Tenancy Tribunal Act 1994*, 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 schedule 14, form 1.

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; and

(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 tribunal on a question other than a question of law shall include a request for leave to appeal to the court.

(4) A notice of appeal shall be signed by the appellant or the appellant's solicitor.

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(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) subrule (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.

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(3) The court may order—

(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; or

(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 schedule 14, form 2.

(3) An application for the extension of time shall be accompanied by an affidavit showing—

(a) the nature of the case in summary form; and

(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.

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(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; and

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(b) if the tribunal has given written reasons for its decision—a copy of the reasons; and

(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.

(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 subrule (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 subrule (1) (d) shall—

(a) specify any documents which were the subject of an order under the *Administrative Appeals Tribunal Act 1989*, section 34 (2); and

(b) specify any documents in respect of which a certificate of the Minister is in force under section 26 (7) of that Act; and

(c) specify any documents in respect of which a certificate of the Minister is in force under section 35 (4) of that Act; and

(d) where a document is specified under subrule (c)—disclose whether an order was made by the tribunal under section 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.

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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.

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(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; and

(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;

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(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 rule 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;

(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.

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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 registrar's own initiative; or

(b) on application by any party.

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Order 81A Order nisi to review

1 Definitions for o 81A

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; and

(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.

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6 Form of order nisi

An order nisi shall be in accordance with schedule 14, form 3.

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; and

(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.

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Part 13 Applications under Administrative Decisions (Judicial Review) Act 1989

Order 82

1 Meaning of Review Act in o 82

In this order:

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 schedule 1, form 81.

(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 personally 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):

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(a) a statement by the person who made the decision, of the terms of the decision;

(b) a statement under the Review Act, section 13 or the *Administrative Appeals Tribunal Act 1989*, section 26, 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.

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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).

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Part 14 Commercial arbitration jurisdiction

Order 83 Commercial arbitration

Division 83.1 Awards

1 Definitions for o 83

In this order:

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 application.

4 Appeal under Arbitration Act, s 38 by leave

An application for an appeal with the leave of the court under the Arbitration Act, section 38 (4) (b) (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.

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5 Application under Arbitration Act, s 39

(1) Proceedings under the Arbitration Act, section 39 (1) (Determination of preliminary point of law by Supreme Court) must be commenced by the party making the application:

(a) not later than 21 days after the consent, or consents, referred to in that subsection is or are given; or

(b) within such extended time as the court may allow.

(2) A decision by the court to entertain or not to entertain an application under the Arbitration Act, section 39 (1) (a) must be given by order.

6 Time for appeal or application

(1) An appeal brought under the Arbitration Act, section 38 (4) (a) (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 the Arbitration Act, section 38 (4) (b) (Judicial review of awards) granting leave to appeal; or

(b) under the Arbitration Act, section 42 (1) (Power to set aside award) to set an award aside; or

(c) under the Arbitration Act, section 43 (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

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(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 the Arbitration Act, section 38 (4) (b) 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.

6A Payment into and out of court

(1) A party to an arbitration agreement (the ***respondent***) may at any time pay into court an amount in satisfaction of a claim to which the agreement applies.

(2) However, if a defence setting up tender before the commencement of the arbitration is claimed in the arbitration, the amount claimed to have been tendered must be paid into the court.

(3) The respondent may, without leave, make additional payments increasing any amount paid in.

(4) The respondent must give notice of the payment to the other parties to the arbitration agreement in accordance with schedule 1, form 83 and must state in the notice—

(a) the claim the amount is intended to satisfy; and

(b) whether liability is admitted or denied.

(5) Each party receiving notice of payment must, within 3 days after receiving it, give a written acknowledgment of its receipt to the party who gave the notice.

6B Acceptance of amount paid into court

(1) This rule applies if an amount is paid into court under rule 6A by a party to an arbitration agreement (the ***respondent***) in satisfaction of a claim of another party to the agreement (the ***claimant***).

(2) However, this rule does not apply if a defence setting up tender before the commencement of the arbitration is claimed in the arbitration.

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(3) Within 14 days after receiving notice of payment or, if more than 1 payment has been made, within 14 days after receiving notice of the last payment, the claimant may accept the amount in satisfaction of the claim by giving the respondent and the registrar notice in accordance with schedule 1, form 84.

(4) If the parties consent, or the registrar is satisfied by affidavit that the amount paid into court has been accepted under subrule (2), the amount must be paid to the claimant or, on the claimant's written authority, to his or her solicitor, and all further proceedings on the claimant's claim are stayed.

(5) If the claimant accepts the amount paid into court, the claimant may file a bill of costs for taxation unless the arbitrator or umpire otherwise directs.

(6) The bill of costs may be filed not earlier than 4 days after payment of the amount out of court.

(7) The bill of costs may cover—

(a) the claimant's costs up to the date of payment of the amount into court; and

(b) the claimant's reasonable costs in accepting the amount.

(8) The claimant may sign judgment for the taxed costs.

(9) Judgment may be signed not earlier than 48 hours after taxation.

(10) If the respondent had made a counterclaim and the notice of payment into court stated that in making the payment the respondent had taken into account and intended to dispose of the counterclaim, all further proceedings on the counterclaim against the claimant are stayed if the claimant accepts the payment.

6C Amount remaining in court

If an amount paid into court in relation to an arbitration agreement is not accepted under rule 6B, the amount may only be paid out—

(a) with the agreement of the parties to the agreement; or

(b) in accordance with a certificate of the arbitrator or umpire or an order of the court.

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6D Nondisclosure of amount paid into court

No statement of the fact that an amount has been paid into court under rule 6A may be included in a pleading in the arbitration, and no communication of that fact may be made to the arbitrator or umpire on the hearing of the arbitration, until all questions of liability and amount of debt or damages have been decided.

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 the Arbitration Act, section 47 (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 the Arbitration Act, section 33 (1) (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.

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10 Evidence of award for purposes of enforcement

The *International Arbitration Act 1974* (Cwlth), section 9 (Evidence of awards and arbitration agreements) applies in proceedings in which leave of the court is sought for enforcement of an award under the Arbitration Act, section 33 (1) (Enforcement of award) as that section of the *International Arbitration Act 1974* (Cwlth) applies in proceedings in which enforcement of a foreign award is sought under the *International Arbitration Act 1974* (Cwlth).

11 Indorsement and service of order for enforcement

(1) An order under the Arbitration Act, section 33 (1) giving leave to enforce an award must—

(a) be indorsed with a statement that the person on whom the order is served may, before the expiration of 5 days after service (or such longer period as the court orders) apply to have the order set aside; and

(b) be served on the person against whom it is sought to enforce the award.

(2) An order does not operate to enable an award to be enforced until:

(a) the expiration of the period referred to in subrule (1); and

(b) if the person against whom it is sought to enforce the award applies, within the period referred to in subrule (1), to have the order set aside—the determination of that application.

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Division 83.2 Subpoenas issued under the Arbitration Act

Note The court has wide powers to issue subpoenas under the Arbitration Act, s 17. This division applies to those subpoenas (see rule 11A, definition of ***subpoena***).

11A Definitions for div 83.2

In this division:

arbitrator, in relation to a subpoena, means the arbitrator for the arbitration in relation to which the subpoena was issued.

proceeding, except in division 83.2, means an arbitration proceeding.

subpoena means a subpoena issued under the Arbitration Act.

umpire, in relation to a subpoena, means the umpire for the arbitration in relation to which the subpoena was issued.

11B Issue—forms 85 to 88

(1) Unless the court otherwise orders, the registrar may issue a subpoena at the request of a party to a proceeding.

(2) A subpoena is to be issued under seal.

(3) A party requesting the issue of a subpoena must file a copy of the subpoena, but need not file a praecipe for subpoena.

(4) Subpoenas are to be in accordance with schedule 1, forms 85 to 88.

11C Return date for subpoena for production

Unless the court otherwise orders, a subpoena for production must not require a person to produce a document earlier than 14 days after the service of the subpoena.

11D Conduct money

(1) If a party serves a subpoena requiring the person named to attend or to produce a document or thing, or both, the party must, at the time of service, tender to the person—

(a) an amount sufficient to allow the person to comply with the subpoena; and

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(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 mentioned in subrule (1) may be tendered to anyone on whom the subpoena may be served.

(3) If a person named in a subpoena has not received an amount that the person 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 served the subpoena at least 7 days notice of his or her intention to do so, apply in writing to the arbitrator or umpire to decide the amount that is sufficient to compensate for the expense or loss.

(4) A decision under subrule (3) is taken to be a judgment of the court for the amount decided against the party who served the subpoena and may be enforced accordingly.

11E Production by non-party

(1) This rule applies to a subpoena for production of a document or thing in relation to a proceeding that requires attendance before the arbitrator or umpire.

(2) Unless the court otherwise orders, if the person named in the subpoena is not a party, the subpoena must allow the person to produce the document or thing to the arbitrator or umpire, at the address nominated by the arbitrator or umpire and included in the subpoena, not later than the day before the first day the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.

(3) If a document or thing is produced to the arbitrator or umpire under subrule (2), the arbitrator or umpire must give a receipt to the person producing the document or thing.

(4) This rule does not apply to a part of the subpoena that requires the person named to attend to give evidence in the proceeding.

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11F Costs of complying with subpoena

(1) This rule applies if a person named in a subpoena for production of a document or thing—

(a) is not a party; and

(b) incurs substantial expense or loss in complying with the subpoena that is in excess of the amount provided under rule 11D (Conduct money).

(2) The arbitrator or umpire may order the party who served the subpoena to pay the person an amount, decided by the arbitrator or umpire, sufficient to compensate the person for the expense or loss reasonably incurred in complying with the subpoena.

(3) An amount under subrule (2) is in addition to any amount the person served with the subpoena is entitled to be paid under rule 11D, or because of order 65 rule 7 (Scales of costs) and schedule 4 (Costs).

(4) An order under subrule (2) is taken to be an award of the umpire or arbitrator against the party who served the subpoena and may be enforced accordingly.

11G Banker's books

(1) This rule applies if—

(a) the person named in the subpoena is an officer of a bank; and

(b) the bank is not a party; and

(c) the subpoena requires the person to produce a banker's book; and

(d) the contents of the banker's book can be proved under a law in force in the Territory in a way other than the production of the book.

(2) Unless the court otherwise orders, the subpoena must expressly allow the person to produce proof of the relevant entries in accordance with that law, instead of producing the banker's book.

(3) The registrar is not required to work out whether this rule applies to a subpoena when issuing it, but the court may set aside as irregular a subpoena which does not comply with subrule (2).

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11H Subpoenas to produce document

(1) A subpoena to produce a document must have written on it or annexed to it a written statement commencing with the words 'Order 83 rules 11M and 11N of the rules of court are as follows:' and followed by the text of rules 11M and 11N.

(2) Subrule (1) does not apply to a subpoena if it is intended that the procedure provided for in rules 11M and 11N is not to be followed.

11I Service of subpoenas

(1) A subpoena in a proceeding must be served personally.

(2) However, if the person named in the subpoena is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's consent, be served on the person by leaving it at the solicitor's address for service.

(3) A subpoena is taken to be served personally on a medical expert if, at the place where the expert's practice is carried on—

(a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or

(b) if a person mentioned in paragraph (a) refuses to accept the subpoena—the subpoena is put down in the person's presence and the person is told of the nature of the subpoena.

(4) If a subpoena requires a medical expert to attend to give evidence, it may be served later than 6 weeks before the day fixed for the hearing of the proceeding only if—

(a) the subpoena is a subpoena served in accordance with leave given under subrule (5); or

(b) the court otherwise orders.

(5) If a medical expert to whom a notice has been delivered in accordance with rule 11J fails to attend the court on the day and at the time stated in the notice, the court may give leave for the service of a subpoena on the medical expert requiring the attendance of the medical expert.

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11J Notice instead of subpoena to medical expert

(1) In a proceeding, instead of a subpoena, a notice may be delivered to a medical expert stating the date and time fixed for the hearing of the proceeding and requesting the expert's attendance.

(2) A notice under subrule (1)—

(a) may be delivered in the same way as a subpoena may be served on a medical expert under rule 11I (1) or (3); and

(b) must not be delivered later than 6 weeks before the date fixed for the hearing of the proceeding.

11K No shortening of time for service

The parties may not, by consent, shorten the time prescribed under this division for service of a subpoena on, or delivery of a notice under rule 11J (1) to, a medical expert.

11L Setting aside

(1) The court may, on motion by the person named in a subpoena, set aside the subpoena entirely or in part.

(2) Notice of a motion under subrule (1) must be filed and served on the party who served the subpoena.

11M Delivery of documents to the arbitrator or umpire—no objection

(1) This rule applies if a party serves a subpoena on a person (the ***served person***) to produce a document and the served person does not object to producing the document to the arbitrator or umpire or to its being made available by the arbitrator or umpire for inspection by a party.

(2) The party serving the subpoena may arrange with the served person that the document be sent or delivered to the arbitrator or umpire.

(3) If an arrangement is made under subrule (2), the served person must—

(a) post the document and related material to the arbitrator or umpire so as to reach the arbitrator or umpire before the day stated in the subpoena; or

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(b) deliver the document and related material to the arbitrator or umpire before that day.

(4) On receiving a document produced in accordance with this rule, the arbitrator or umpire must notify the party that served the subpoena or the party's solicitor that the arbitrator or umpire has received the document from the served person.

(5) The arbitrator or umpire may allow a party or, if requested by a party, someone else to inspect a document produced under this rule.

(6) If the served person produces documents to the arbitrator or umpire in accordance with this rule and with an arrangement with the party who served the subpoena, the served person has answered the subpoena and is taken to have complied with it.

(7) In this rule:

related material, for a document required to be produced under subpoena, means—

(a) the subpoena or a copy of the subpoena; or

(b) 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.

11N Delivery of documents to the arbitrator or umpire—objection

(1) This rule applies if a party serves a subpoena on a person (the ***served person***) to produce a document and the served person objects to producing the document to the arbitrator or umpire or to its being made available by the arbitrator or umpire for inspection by a party.

(2) The served person is not required to produce the document to the arbitrator or umpire, but must answer the subpoena by attending before the arbitrator or umpire at the time and place mentioned in the subpoena and make his or her objection to the arbitrator or umpire.

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Division 83.3 Court-appointed referees

12 Meaning of *question* in div 83.3

In this division:

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) on its own initiative;

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.

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14 Order referring may be varied or set aside

(1) The court may set aside or vary an order made under rule 13 (1) on application by the referee or a party to the proceedings under the reference, or on its own initiative.

(2) Nothing in this rule affects any other power of the court to vary or set aside an order made under rule 13 (1).

15 Conduct of proceedings under a reference

(1) Except as provided by this rule, proceedings under a reference referred to in rule 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 rule 13 (1) may include directions regarding the conduct of proceedings under the reference.

(3) Subject to rule 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.

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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 rule 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 rule 13 (1) (c), the court may—

(a) on application by a party; or

(b) on its own initiative 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.

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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 83.4 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; and

(b) under section 18 (1) (Refusal or failure to attend before arbitrator or umpire, etc), order a person in default of a requirement referred to in section 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; and

(c) under section 26 (1) (Consolidation of arbitration proceedings), order 2 or more proceedings to be:

(i) consolidated; or

(ii) heard at the same time; or

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(iii) heard one immediately after another;

or order any of them to be stayed until after the determination of any other of them; and

(d) under section 30 (Power to correct award), make an order correcting an award that contains a defect of a kind referred to in section 30 (a), (b), (c) or (d) of that Act; and

(e) under section 33 (1) (Enforcement of award), give leave that an award be enforced; and

(f) under section 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; and

(g) under section 36 (1) (Costs of abortive arbitration), make orders that the master thinks just in relation to the costs of an aborted arbitration; and

(h) under section 38 (4) (Judicial review of awards), give leave to appeal on a question of law arising out of an award; and

(j) under section 46 (2) (Delay in prosecuting claims), to make an order terminating proceedings; and

(k) under section 47 (General power of court to make interlocutory orders), to make interlocutory orders; and

(l) under section 48 (1) (Extension of time), to extend the time appointed for doing an act or taking a proceeding; and

(m) under section 53 (1) (Power to stay court proceedings), to make an order staying proceedings in respect of a matter agreed to be referred to arbitration; and

(n) under section 53 (2) (Power to stay court proceedings), to grant leave to apply for a stay of proceedings; and

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(o) under section 57 (Service of Notices), direct the manner of service of a notice.

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Schedule 1 Civil Proceedings Forms

Form 1 General heading style

(see o 1 r 5)

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.

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Form 2 Originating application

(see o 2 r 4)

[*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[1]

If the plaintiff is a natural person—
Full name:
Occupation:
Residential*/Business* address:

If the plaintiff is a body corporate—[2]
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—[3]

If represented by a solicitor the following information may be provided:
Address for service:
Australian Document Exchange Box No:*
Postal address (*if different from above*):*
Fax*

Defendant (insofar as known)*

If the defendant is a natural person—
Full name:
If the defendant's name is unknown to plaintiff—

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Defendant's sex:
Occupation:
Residential*/Business* address:
If the defendant is a body corporate—[4]
Name:
Australian Company Number*/Australian Registered Body Number*:
Type of body:
Address:
Representative capacity in which defendant is sued:*

Action

Nature of action:[5]
Relief claimed:[6]
Interlocutory relief claimed:*
Summary judgment [is* / is not*] to be applied for.
Statement of claim: [Attached* / Not attached*].[7]
Other attachments—*
Debt or liquidated demand:*
A form 3 statement is attached.[8]
Motor vehicle personal injury claim:*
A form 4 statement is attached.[9]
Employment personal injury claim:*
A form 5 statement is attached.[10]
No defendant to action:*
An affidavit of evidence is attached.

Appearance*

Time within which defendant is required to appear:[11]

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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

1	In the case of a relator action, include particulars of relator here.
2	See order 2 rule 5.
3	See order 1 rule 4 (1), definition of ***address for service*** and order 2 rule 4 (4) (e) and rule 4 (4A).
4	See order 2 rule 5.
5	See order 2 rule 8.
6	See order 2 rule 9.
7	See order 2 rule 10.
8	See order 2 rule 11 and form 3.
9	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.
10	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.
11	See order 2 rule 7.

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Form 3 Claim for debt or liquidated demand statement to accompany originating application

(see o 2 r 11)

[*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:[1]
- Taxed costs [are* / are not*] claimed.
- *If taxed costs are not claimed*—
  the amount claimed for costs and disbursements is $.*

Notice to defendant

Proceedings on this claim will be stayed (under order 3 of the Rules) if you pay— • the amount claimed; and • any amount allowed for interest and costs.

Date:

Signature of plaintiff*/plaintiff's solicitor*:

*	Strike out where inapplicable.

Notes

1 See order 2 rule 11 (1) (b).

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Form 4 Motor vehicle personal injury claim statement to accompany originating application

(see o 2 r 12)

[*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:[1]
•	Plaintiff's health professionals:[2]
•	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

1	See order 2 rule 12 (c).
2	See order 2 rule 12 (d).

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Form 5 Employment personal injury claim statement to accompany originating application

(see o 2 r 13)

[*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:[1]
- Plaintiff's health professionals:[2]
- 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:

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Signature of plaintiff*/plaintiff's solicitor*:

*	Strike out where inapplicable.

Notes

1 See order 2 rule 13 (d).

2 See order 2 rule 13 (e).

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Form 8 Request for service of originating application outside Australia

(see o 12 r 3)

[*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.

Date:

Signature of solicitor:

(a)	Name of country.
(b)	Or substituted service.
(c) diplomatic or consular diplomatic or consular authority' or the like, as the	Add 'directly through the Australian representative', 'directly through the British representative' or 'by the foreign judicial case may require.

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Form 9 Memorandum of appearance

(see o 13 r 3)

[*Heading as in form 1*]

1 The defendant[1] 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.[2] *

4 The defendant does* / does not* submit to the orders of the Court, except as to costs.[3]

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[4] —

If represented by a solicitor, the following information may be provided:

Address for service:

Australian Document Exchange Box No:*

Postal address (*if different from above*):*

Fax*

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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:[5] *

Date:

Signature of defendant*/defendant's solicitor*:

*	Strike out where inapplicable.

Notes

1	A single memorandum of appearance may be filed for a number of defendants appearing by the same solicitor—see order 13 rule 9.
2	In an action for the recovery of land, ***defendant*** includes a person given leave to appear under order 13 rule 12.
3	See order 13 rule 2 (2)-(5).
4	See order 1 rule 4 (1), definition of ***address for service*** and order 13 rule 2 (1) (e) and (1AA).
5	See order 13 rule 15.

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Form 10 Affidavit in support of application for default judgment for debt

(see o 14 r 4, o 15 r 1 and o 31 r 10A)

[*Heading as in form 1*]

On (*date*) I, (*name*) of (*address*), (*occupation*), say on oath:

1 [*Set out the facts entitling you to make this affidavit.*]

= [*Set out the source of your knowledge of the facts deposed.*]

= I believe that the defendant is indebted to me/the plaintiff* for the cause of action set out in the originating application (*dated*) for $, plus costs and interest accruing from the date of this affidavit to the date of judgment*, made up as follows:

Amount claimed in originating application: $
Less payments made or credit accrued: $*

[*If applicable: insert date and amount of any payments or credits made since the beginning of the proceeding that reduces the amount for which judgment is sought.*]

Total of claim: $

[*If applicable: explain any discrepancy between this amount and the amount claimed in the statement accompanying the originating application claiming for a debt or liquidated demand (form 3)*]

Plus interest of: $*

[*If applicable: insert the amount on which interest is calculated, the rate of interest and the period for which the rate is applicable. Repeat for each change in the amount or rate of interest.*]

TOTAL AMOUNT CLAIMED: $

(excluding costs and interest accruing from the date of this affidavit to the date of judgment.)

= No payment has been made, and no credit has accrued, since the beginning of the proceeding that reduces the amount for which judgment is sought.*

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= I am/the plaintiff* is entitled to claim interest on the total amount claimed mentioned above at the rate of $ per day until the date of judgment.*

[*If applicable: the interest is to be calculated in accordance with o 14 r 4 (3) or o 31 r 2(3).*]

= I am/the plaintiff* is entitled to judgment for costs of $ made up as follows:

[*Insert particulars of how costs are made up.*]

Sworn by the deponent—

Signature:

Witness:
[*Signature, name and title of person before whom affidavit is sworn or affirmed*]

*	Strike out where inapplicable.
	= Number as appropriate.

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Form 10A Default judgment

(see o 14 r 9B and o 31 r 13A)

[*Heading as in form 1*]

DATE OF JUDGMENT:

ORIGINATING APPLICATION: [*Insert date.*]

HOW OBTAINED:
In default of appearance/defence.*

AFFIDAVITS READ:

Affidavit of service/nondelivery of defence* sworn by (*name*) of (*address*) on (*date*).

OTHER MATTERS: Appearance entered on (*date*).*

THE JUDGMENT OF THE COURT IS THAT:

= The plaintiff recover against the defendant $.*

= The plaintiff recover possession of the property described in the originating application/statement of claim* and known as block (*number*), section (*number*) of (*suburb*) contained in certificate of title volume (*number*), folio (*number*) (and known as (*street address*)).*

= The plaintiff recover against the defendant damages to be assessed.*

= The plaintiff recover against the defendant costs of $ /costs as taxed.*

DATE ENTERED: (*Date to be inserted by Court.*)

REGISTRAR

*	Strike out where inapplicable.
	= Number as appropriate.

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Form 11 Affidavit for entry of appearance as guardian

(see o 19 r 21)

[*Heading as in form 1*]

On (*date*) I, (*name*) of (*address*), (*occupation*), say on oath:

1 *AB*, of is an appropriate person to act as litigation guardian of the defendant, and has no interest in the matters in question in this action [matter] adverse to that of the defendant.

2 The consent of *AB* to act as litigation guardian of the defendant is annexed.

Sworn etc

[*The consent of the person to act as litigation guardian must be annexed.*]

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Form 12 Memorandum on notice of judgment

(see o 19 r 48)

[*Heading as in form 1*]

To *XY*, of

Take notice:

1 From the service of this notice you [*or, as the case may be*, the person with a legal disability] will be bound by proceedings in this cause in the same way as if you [*or* the person with a legal disability] had been originally made a party.

2 You [*or* the person with a legal disability] may, on entering an appearance at the Registrar's office, attend proceedings under this judgment [*or* order].

3 You [*or* the person with a legal disability] may within 1 month after the service of this notice apply to the Court to discharge, vary or add to the judgment [*or* order].

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Form 13 Third party claiming indemnity or contribution or other relief or remedy

In the Supreme Court of the Australian Capital Territory

No of [*year*]

Between AB	Plaintiff
and	
CD	Defendant
and	
EF	Third Party

THIRD-PARTY CLAIM

To EF 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

Date:

Signature of defendant's solicitor:

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Form 14 Third-party claim when question or issue to be determined

In the Supreme Court of the Australian Capital Territory

No of [*year*]

Between AB	Plaintiff
and	
CD	Defendant
and	
EF	Third Party

THIRD-PARTY CLAIM

To EF of in the of
.

TAKE NOTICE that the plaintiff has brought an action against the defendant particulars whereof are set out in the documents served upon you herewith.

And take notice that the defendant claims that the question or issue set out in this third-party claim should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself.

And take notice that, if you wish to be heard on the 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.

PARTICULARS OF QUESTION OR ISSUE

Date:

Signature of defendant's solicitor:

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Form 15 Statement of claim (general form) in the Supreme Court of the Australian Capital Territory

(see o 23 r 5)

No of 20 .

Between AB Plaintiff
and
CD Defendant

STATEMENT OF CLAIM

(Originating application filed 20)

The plaintiff etc

[*or*]

The plaintiff's claim is etc

[*or*]

The plaintiff claims etc

(Signed)

Delivered 20 , by of
.

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Form 16 Defence (general form)

(see o 23 r 5)

[*Heading as in form 15*]

DEFENCE

1 The defendant etc

COUNTERCLAIM

1 The defendant etc

The defendant counterclaims etc

Signature:

Delivered 20 , by of
.

Form 17 Reply (general form)

(see o 23 r 5)

REPLY

The plaintiff as to the defence, says that—

1 The defendant etc

The plaintiff, as to the counterclaim, says that—

1 The defendant etc

Signature:

Delivered 20 , by of
.

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Form 18 Notice of counterclaim

(see o 25 r 12)

[*Heading as in form 1*]

To the within-named XY

TAKE NOTICE that if you do not appear to the within counterclaim of the within-named CD within 8 days from the service of this defence and counterclaim 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

(see o 26 r 1)

[*Heading as in form 1*]

TAKE NOTICE that the defendant CD 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.

Signature:

Date delivered:

To XY the plaintiff's solicitor.

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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 for $ ([Insert amount in figures]) to be paid to the Registrar for the due payment binds itself.

DATED this day of 20 .

The common seal of
as hereunto affixed this day of 20 } in the presence of—

CONDITIONS

This obligation remains in effect unless:

(a) the defendant fails to pay into court the amount accepted by the plaintiff within 14 days after the acceptance; or

(b) the Supreme Court orders otherwise; or

(c) all parties to the action consent to the discharge of the bond by a notice signed by or on behalf of the parties that is filed in the Office of the Registrar.

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Form 19B Authority to execute bond

[*Heading as in form 1*]

BY THIS DEED of being an authorised insurer under the *Road Transport (General) Act 1999* 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 *Supreme Court Rules*, schedule 1, form 19A for and on behalf of in any action in the Court (*OR* in suit No S.C. / 20 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
as hereunto affixed this day of } 20
in the presence
of—

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Form 20 Acceptance of sum paid into Court

(see o 26 rr 2 and 4)

[*Heading as in form 1*]

TAKE NOTICE that the plaintiff accepts the sum of $ paid by the defendant CD 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).

Date:

Signature of plaintiff's solicitor:

To PQ solicitor for the
defendant CD and to RS
solicitor for the defendant EF

Form 22 Confession of defence

(see o 28 r 3)

[*Heading as in form 1*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [*or*, of the defendant's further defence].

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Form 24 Answer to interrogatories

(see o 34 r 11)

[*Heading as in form 1*]

The answer of the above-named defendant *EF* 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).
(see o 34 r 11)

Form 25 Affidavit as to documents

(see o 34 r 14)

[*Heading as in form 1*]

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 schedule 1.

2 I object to produce the documents set forth in the 2nd part of schedule 1 [*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 schedule 2.

4 The lastmentioned documents were last in my possession or power on [*state when, and what has become of them, and in whose possession they now are*].

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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

(see o 34 r 18)

[*Heading as in form 1*]

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 20].

Date:

Signature of plaintiff's/defendant's solicitor:

To Z Solicitor for .

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Form 27 Notice to inspect documents

(see o 34 r 19)

[*Heading as in form 1*]

Take notice that you can inspect the documents mentioned in your notice of the day of 20 [*except the deed numbered in that notice*] at my office on Thursday next the instant between the hours of 12 and 4 pm.

Date:

Signature of plaintiff's/defendant's solicitor:

Form 27A Notice for non-party production

(see o 34B r 3)

[*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.

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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.

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 rule 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 rule 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.]

Date:

By the Court:

Registrar:

*(*Delete if, or whichever is, inapplicable*)

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Form 28 Notice to admit documents

(see o 35 r 2)

[*Heading as in form 1*]

TO THE DEFENDANT [*or* THE PLAINTIFF *or insert name of party requested to admit documents*]—

Take notice as follows:

1 The plaintiff [*or* defendant *or insert name of party requesting admissions*] proposes to adduce in evidence the documents specified below.

2 You, your solicitor or your agent may inspect those documents at

[*place*]

on [*date*]

between the hours of and [*hours*].

3 You are requested, within 48 hours after the lastmentioned 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; and

(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.

Date:

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*])

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Documents to be admitted

[*Here describe the documents requested to be admitted, for example as follows*:]

Example

ORIGINALS

description of documents	dates
agreement in writing between AB and CD 1st part and EF 2nd part	January 1, 20
indenture of lease from AB to CD	February 1, 20
indenture of release between AB and CD 1st part etc	February 2, 20
letter—defendant to plaintiff	March 1, 20
policy of insurance on goods by ship *Isabella* on voyage from Oporto to London	December 3, 20
memorandum of agreement between CD, captain of ship, and EF	January 1, 20
bill of exchange for $200 at 3 months, drawn by AB on and accepted by CD, indorsed by EF and GH	May 1, 20

COPIES

description of documents	dates	original or duplicate served, sent or delivered, when, how, and by whom
register of baptism of AB in the parish of X	January 1, 20	
letter—plaintiff to defendant	February 1, 20	sent by post, February 2, 20

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description of documents	dates	original or duplicate served, sent or delivered, when, how, and by whom
notice to produce papers	March 1, 20	served March 2, 20 , on defendant's attorney by EF of

Form 29 Notice to admit facts

(see o 35 r 3 (1) (a))

[*Heading as in form 1*]

TO THE DEFENDANT [*or* THE PLAINTIFF *or insert name of party requested to admit facts*]—

Take notice as follows:

1 The plaintiff [*or* defendant *or insert name of party requesting admissions*] proposes to adduce in evidence the facts specified below.

2 You are requested, within 7 days after the service of this notice, to admit those facts.

3 Your admission of those facts is requested for the purposes of these proceedings only, and will only be able to be relied upon by the plaintiff [*or* defendant *or insert name of party requesting admissions*].

Date:

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*])

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Facts to be admitted

[*Here set out the facts requested to be admitted, for example as follows*:]

Example

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.

Form 30 Admission of facts, pursuant to notice

(see o 35 r 3 (2) (a))

[*Heading as in form 1*]

TO THE PLAINTIFF [*or* THE DEFENDANT *or insert name of party requesting admissions*)]—

1 The defendant [*or* plaintiff *or insert name of party admitting facts*] admits the facts specified below, subject to any specified qualifications.

2 These admissions are subject to the admissibility of those facts in evidence.

3 These admissions are made for the purposes of these proceedings only, and shall not be used by any party to these proceedings other than the party to whom these admissions are given.

Date:

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*])

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Facts admitted

Qualifications

[*Here set out the facts admitted and any qualifications to those admissions, for example as follows*:]

Example

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

(see o 35 r 8)

[*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—

Date:

Signature of solicitor:

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To the abovenamed

his or her solicitor *or* agent }

Form 32 Form of order, accounts and inquiries

(see o 36 r 9)

[*Heading as in form 1*]

THE COURT ORDERS THAT:

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*).

*(*Delete whichever is inapplicable*)

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Form 33 Entry of special case

(see o 37 r 6)

[*Heading as in form 1*]

Set down the special case dated 20 , for argument.

Date:

Form 34 Issue

(see o 37 r 9)

[*Heading as in form 1*]

Whereas *AB* affirms, and *CD* denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon Justice that the question shall be tried [*here state* mode of trial, *whether with or without a jury*], therefore let the same be tried accordingly.

Form 37 Certificate of associated or officer after trial

(see o 38 r 24)

[*Heading as in form 1*]

I certify that this was tried before the Honourable Justice on 12 and 13 November, 20 , and occupied the time of the Court as follows:
The Judge directed that judgment should be entered for the plaintiff for $, with costs [*as the case may be*].

Date:

Signature and title of officer:

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Form 38 Order for examination within the territory

(see o 39 r 12 (1))

[*Heading as in form 1*]

THE COURT ORDERS THAT:
[*name*] of [*address*] be examined on oath or affirmation before [*name and address of examiner, or description*].

Form 39 Order for examination outside the Territory

(see o 39 rr 12 (2) and 24B (1))

[*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 *Supreme Court Rules*.

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.

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Form 40 Order for issue of letter of request

(see o 39 r 24B (2))

[*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 Undertaking—letter of request

(see o 39 r 24C (1) (b) (ii))

[*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*].

Date:

Signature of solicitor for/party obtaining order for issue of letter of request:

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Form 42 Order for examination under interstate or foreign letter of request

(see o 39 r. 24J)

[*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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Form 43 Certificate of order and depositions—examination for interstate or foreign court or tribunal

(see o 39 r 24P)

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 the *Evidence Act 1971*, part 12B 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*]].

Date:

Signature of Registrar:

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Form 45 Subpoena to give evidence

(see o 39 rule 31 (4))

[*Heading as in form 1*]

To (*name*)
(*address*)

THE COURT ORDERS that you shall attend for the purposes of giving evidence—

(a) before the Court (*or as the case may be*);

(b) at (*address of Court or place*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending.

Date:
By the Court

(*Signature and description of officer of the Court*)

Note that failure to comply with this subponea may constitute contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

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 the *Supreme Court Rules*, order 39 rule 27 (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.

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*).

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Form 46 Subpoena to produce (subpoena to a natural person)

(see o 39 rule 31 (4))

[*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—

(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 the *Evidence Act 1995* (Cwlth), section 48 applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

SCHEDULE

(*Description of documents and things*)

Date:

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.

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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 the *Supreme Court Rules*, order 39 rule 27 (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.

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*).

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Form 47 Subpoena to produce and to answer questions

(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession etc of documents)

(see o 39 rule 31 (4))

[*Heading as in form 1*]

To (*name of corporation*)

(*address*)

THE COURT ORDERS that—

1 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—

(a) before the Court (*or as the case may be*);

(b) at (*address of Court or other place*);

(c) 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—

(i) 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

(ii) if you are a bank and are required by this subpoena to produce a banker's book and you are not a party to these proceedings and the *Evidence Act 1995* (Cwlth), section 48 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

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2 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*)

Date:

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.

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 the *Supreme Court Rules*, order 39 rule 27 (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.

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

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(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*).

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Form 48 Subpoena to produce and to give evidence

(see o 39 rule 31 (4))

[*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 the *Evidence Act 1995* (Cwlth), section 48 applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

SCHEDULE

(*Description of documents and things*)

Dated this day of 20 .

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.

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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 the *Supreme Court Rules*, order 39 rule 27 (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.

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*).

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Form 49 Notice of intention to adduce evidence of previous representation

(see o 39 r 50)

[*Heading as in form 1*]

To (*name*) of (*address*)

Pursuant to the *Evidence Act 1995* (Cwlth), section 67 (1), I, (*name*) give notice that I intend to adduce evidence of a previous representation.

I intend to rely on section *[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 the Evidence Act 1995 (Cwlth), section 63 (2) (a) or (b))* *[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*)]

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(*If it is intended to rely on the Evidence Act 1995 (Cwlth), section 64 (2) (a) or (b)*) *[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)*

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Form 49A Notice of objection to tender of hearsay evidence

(see o 39 r 51)

[*Heading as in form 1*]

To (*name*) of (*address*)

Pursuant to the *Evidence Act 1995* (Cwlth), section 68 (1), 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 Notice of intention to adduce tendency evidence

(see o 39 r 52)

[*Heading as in form 1*]

To (*name*) of (*address*)

Pursuant to the *Evidence Act 1995* (Cwlth), section 97 (1), 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*)

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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)*

Form 50 Notice of intention to adduce coincidence evidence

(see o 39 r 53)

[*Heading as in form 1*]

To (*name*) of (*address*)

Pursuant to the *Evidence Act 1995* (Cwlth), section 98 (1), 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*)

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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)*

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Form 50AA General form of judgment

(see o 42 r 2 (6))

[Heading as in form 1]

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

Signature of Registrar:

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Form 50AB General form of order

(see o 42 r 2 (6))

[*Heading as in form 1*]

JUDGE:
DATE OF ORDER:
ORIGINATING PROCESS:
HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

THE COURT ORDERS THAT:

1

2

DATE ENTERED

Signature of Registrar:

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Form 50A Certificate of judgment

(see o 42 r 14)

[*Heading as in form 1*]

Causes of action to which the judgment relates	The rate of interest (if any) payable on any amount payable under the judgment	Amount payable under the judgment on date of issue of certificate	Amount of costs ordered to be paid under the judgment	Particulars (if any) required by a foreign tribunal in which it is proposed to register or enforce the judgment	Date of trial	Date of judgment

I certify that this certificate correctly and fully sets forth the particulars of a judgment given in this Court, on (*insert date of judgment*) in a suit wherein (*insert name of plaintiff*) was plaintiff and (*insert name of defendant*) was defendant.

Date:

Signature of Registrar:

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Form 51 Praecipe for writ of fieri-facias

(see o 43 r 10)

[*Heading as in form 1*]

Seal a writ of fieri-facias directed to the sheriff of the Territory against *CD* of , upon a judgment (*or* order) dated day of
for the sum of $ debt and $ costs and interest etc

Indorsed to levy $ and interest thereon at 15 % per annum from the (*date*) and costs of execution.

XY solicitor for [*party on whose behalf writ is to be issued*].

Form 52 Praecipe for writ of venditioni exponas

(see o 43 r 10)

[*Heading as in form 1*]

Seal a writ of *venditioni exponas* directed to the sheriff of the Territory to sell the goods and of *CD* taken under a writ of fieri-facias in this action tested day of .
XY solicitor for

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Form 53 Praecipe for writ of possession

(see o 43 r 10)

[*Heading as in form 1*]

Seal a writ of possession directed to the sheriff of the Territory to deliver possession to *AB* of .

Judgment (*or* order) dated .

Form 54 Writ of fieri-facias

(see o 43 r 12)

[*Heading as in form 1*]

Elizabeth the Second, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth.

To the Sheriff of the Territory, greeting:

We command you that of the real and personal estate of *CD*, in your bailiwick you cause to be made the sum of $ and also interest thereon at the rate of $ % 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 *AB*, is plaintiff and *CD* 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 *CD* to *AB*, 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 *CD* 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

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AB 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*) 20

Indorsement

Levy $ and $ for costs of execution etc and also interest on $ at 15% per annum (*or other agreed rate*) from , 20 , 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.

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Form 55 Writ of venditioni exponas

(see o 43 r 12)

[*Heading as in form 1*]

Elizabeth the Second etc [*as in form 54*].

To the Sheriff of the Territory greeting:

Whereas by our writ we lately commanded you that of the real and personal estate of CD [*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 CD 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 AB 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 *CD*, 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 *AB*. And have you there then this writ.

Witness etc

[*Indorsement as in form 54*]

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Form 56 Writ of possession

(see o 42 r 12)

[*Heading as in form 1*]

Elizabeth the Second etc [*as in form 54*]. To the Sheriff of the Territory greeting: Whereas lately in the Supreme Court of the Australian Capital Territory by a judgment of the same court, dated 20 [*AB* recovered] or [*EF* was ordered to deliver to *AB*] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you enter the same, and without delay you cause *AB* 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

(see o 43 r 31 (2))

[*Heading as in form 1*]

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*].

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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

(see 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, AB 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*].

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Form 58 Notice as to stock under order 47

(see o 47 r 5)

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].

Signature of person giving notice:

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Form 59 Writ of delivery

(see o 49 r 2)

[*Heading as in form 1*]

Elizabeth the Second, by the Grace of God etc [as in form 54]. To the Sheriff of the Territory, 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 *AB*, which *AB* lately [*recovered* against *CD*, *or* which *CD* was ordered to deliver to *AB*] in this action by a [judgment, *or* order] dated the 20 . And we further command you, that if the chattels cannot be found in your bailiwick you distrain *CD* by all his or her lands and chattels in your bailiwick, so that neither *CD* nor anyone for him or her do lay hands on the same until *CD* render to *AB* 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.

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Form 60 Receiver's security by undertaking

(see o 52 r 18)

[*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.

Date:

[*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*.]

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Form 61 Receiver's account

(see o 52 r 21)

[*Heading as in form 1*]

To accord with the order } The [ ] account of AB, the receiver appointed in this cause [*or*, pursuant to an order made in this cause, dated the day of], *to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate* of CD, the testator [*or*, intestate] in this cause named, from to .

REAL ESTATE—RECEIPTS

item number	date when received	tenant's name	description of premises	annual rent	arrears due at	amount due at	amount received	amount remaining due	observations
				$	$	$	$	$	
1		John Jones	Home Farm, Tharwa						
2		Thomas Jones	House at Tharwa, aforesaid						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE

item no	date of payment or allowance	names of persons to whom paid or allowed	for what purpose paid or allowed	amount
				$
1		Sun Fire Office	One year's insurance of, due	
2		Thomas Carpenter	Bill for repairs at house let to Thomas Jones	
3			Income	
			Total payments	

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RECEIPTS ON ACCOUNT OF PERSONAL ESTATE					PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE				
item number	date when received	names of persons from whom received	on what account received	amount received	item number	date when paid or allowed	names of persons to whom paid or allowed	for what purpose paid or allowed	amount paid or allowed
				$					$

SUMMARY

Amount of balance due from receiver on account of real estate on last account		$	$
Amount of receipts on the above account of real estate			
Balance of last account paid into Court	$		
Amount of payments and allowances in the above account of real estate			
Amount of receiver's costs of passing this account as to real estate			
Balance due from the receiver on account of real estate	$		
		$	$
Amount of balance due from receiver on last account of personal estate			
Amount of receipts on the above account of personal estate			
Balance of last account paid into Court			
Amount of payment and allowances on the above account of personal estate			
Amount of receiver's costs of passing this account as to personal estate			
Balance due from the receiver on account of personal estate		$	

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Form 62 Affidavit verifying receiver's account

(see o 52 r 22)

[*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 to , , 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 WX and YZ , the sureties named in the recognisance dated 20 , are both alive, and neither of them has become bankrupt.

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Form 63 Writ of certiorari

(see o 55 r 14)

[*Heading as in form 1*]

Elizabeth the Second, by the Grace of God etc [as in form 54], 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

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Form 64 Writ of mandamus

(see o 55 r 17)

[*Heading as in form 1*]

Elizabeth the Second, by the Grace of God etc [as in form 54], 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

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Form 65 Writ of prohibition

(see o 55 r 33)

[*Heading as in form 1*]

Elizabeth the Second, by the Grace of God etc [as in form 54], to the , and to [*name of plaintiff*], of , greeting:

Whereas we have been given to understand that you have [entered a plaint against] *CD* 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

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Form 69 Notice of claim to goods taken in execution

(see o 59 r 16)

Take notice that *AB* 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, under the writ of execution issued in this action. You are required to admit or dispute the title of *AB* 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 *AB* 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.

Date:

Signature of Sheriff:

To the plaintiff

Form 70 Notice by plaintiff of admission or dispute of title of claimant

(see o 59 r 16)

Take notice that I admit [*or*, dispute] the title of *AB* 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.

Date:

Signature of plaintiff/plaintiff's solicitor:

To the Sheriff of the Territory and his or her officers.

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Form 76 Notice of appeal from interlocutory order of the registrar

(see o 61 r 5 (1) (ba))

In the Supreme Court
of the Australian Capital Territory

No of 20 .

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

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Form 77 (Appeal from master—interlocutory judgment)

(see o 61A r 5 (c))

In the Supreme Court of the Australian Capital Territory

No

Between: AB, Plaintiff
and CD, 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).

Date:

Signature of solicitor for plaintiff/defendant/other party:

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Form 78A Application for registration of judgment under the Foreign Judgments Act 1991 (Cwlth)

(see o 74A r 3)

IN THE SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

No of 20 .

Between

Applicant

and

Respondent

I, (*insert name of applicant*) apply under the *Foreign Judgments Act 1991* (Cwlth), part 2 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:

Notes

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.

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 the *Foreign Judgments Act 1991* (Cwlth), section 6 (11).

and/or

(*if the judgment is an order or injunction*)

TERMS OF JUDGMENT:

Dated:

Signature of applicant/ applicant's solicitor:

The applicant's address for service is:

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Form 78B Order for registration of money judgment

(see o 74A r 5)

[*Heading as in form 78A*]

THE COURT ORDERS THAT:

1 The judgment dated (*insert date of judgment*) of the (*insert name of court*) by which it was ordered that (*insert name of respondent*) (the ***judgment debtor***) pay the sum of (*insert amount in foreign currency or in equivalent Australian currency*) and interest (if any) to (*insert name of applicant*) (the ***judgment creditor***) be registered under the *Foreign Judgments Act 1991* (Cwlth), part 2.

2 The amount that the judgment debtor is required to pay to the judgment creditor is . The amount includes an amount of interest of .
(*Insert amounts in foreign currency or in equivalent Australian currency*)

3 (*Insert any other orders made under the judgment*)

4 The reasonable costs of, and incidental to, the application for this order and registration of the judgment (fixed at $, or to be taxed) are to be paid by the judgment debtor to the judgment creditor.

5 The judgment debtor may, within days after service of the notice of registration, apply to have the registration set aside.

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Form 78C Order for registration of non-money judgment

(see o 74A r 5)

[*Heading as in form 78A*]

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 the *Foreign Judgments Act 1991* (Cwlth), part 2.

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.

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Form 78D Notice of registration of money judgment

(see o 74A r 6)

[*Heading as in form 78A*]

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 the *Foreign Judgments Act 1991* (Cwlth), part 2.

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*).

Date:

Signature of Registrar:

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Form 78E Notice of registration of non-money judgment

(see o 74A r 6)

[*Heading as in form 78A*]

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 the *Foreign Judgments Act 1991* (Cwlth), part 2 .

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*).

Date:

Signature of Registrar:

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Form 81 Application for an order of review

(see o 82 r 3)

IN THE SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

No of 20

BETWEEN: (*name*) Appellant

and

(*name*) Respondent

Application to review the decision of (*the respondent or the first respondent*) that

(*specify decision*)

OR

Application to review the conduct of (*the respondent or the first respondent*), being

(*identify conduct*)

OR

Application to review conduct in which (*the respondent or the first respondent*) proposes to engage, being

(*identify conduct*)

OR

Application to review the failure of (*the respondent or the first respondent*) to decide that

(*specify the decision which it is alleged ought to have been made*)

The applicant is aggrieved by the (*decision or conduct or proposed conduct or failure*) because:

1

2

etc (*reasons*)

The grounds of the application are:

1

2

etc (*particulars of fraud or bad faith, if alleged*)

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The applicant claims:

1 An order (*or declaration*) that (*specify relief sought*).

2

etc

Date:

Signature of appellant/appellant's solicitor:

To the Respondent: (*name and address*)

TAKE NOTICE that a directions hearing in this application will be heard by the Court at the time and place specified below. If there is no attendance before the Court by you or your counsel or solicitor, directions may be given or the application may be dealt with and you will be liable to suffer judgment or order against you in your absence.

Before taking any step in the proceeding or attending at the directions hearing you must file an appearance in the Registry.

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*).

Date:

By the Court

(*signature and description of officer of the Court*)

The applicant's address for service is (*specify address for service*).

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Form 82 Notice of objection to competency

(see o 82 r 4)

IN THE SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

No of 20

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*)

Date:

Signature of respondent/respondent's solicitor

The respondent's address for service is (*specify address for service*).

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Form 83 Notice of payment into court in arbitration

(see o 83 r 6A)

In the Supreme Court of the Australian Capital Territory

SC No of 20

In the matter of an arbitration agreement dated

And in the matter of the arbitration under that agreement

BETWEEN AB
Claimant

AND CD
Respondent

CD has paid into court $, and says that [*that amount* **or** *$, part of that amount,*] [*is enough to satisfy the claimant's claim* **or** *is enough to satisfy the claimant's claim for and $ (the other part of that amount) is enough to satisfy the claimant's claim for*] [*and admits liability* **or** *but denies liability*].

Date:

Signature of respondent's solicitor:

To *XY*, the claimant's solicitor.

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Form 84 Acceptance of amount paid into court in arbitration

(see o 83 rr 6B and 6D)

In the Supreme Court of the Australian Capital Territory

In the matter of an arbitration agreement dated

And in the matter of the arbitration under that agreement

BETWEEN AB
Claimant

AND CD
Respondent

XY accepts the amount of $ paid by *CD* into court in satisfaction of the claim in relation to which it was paid in (and abandons his or her other claims in the arbitration).

Date:

Signature of claimant's solicitor:

To PQ, solicitor for
CD, and to RS,
solicitor for EF

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Form 85 Subpoena to give evidence

(see o 83 r 11B)

[*Heading as in form 1*]

To (*name*)
(*address*)

THE COURT ORDERS that you must attend to give evidence—

(a) before (*arbitrator or umpire*);

(b) at (*address nominated by the arbitrator or umpire*);

(c) on (*insert date*) at (*insert time*) and

until you are excused from further attending.

Date:

By (*arbitrator or umpire*):

(*Signature and description of officer of the Court*)

Notes

1 Failure to comply with this subpoena may be 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 completely or in part.

2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under the *Supreme Court Rules*, order 83 rule 11D (3) for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

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 or (*arbitrator or umpire*).

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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Form 86 Subpoena to produce

(Subpoena to an individial)

(see o 83 r 11B)

[*Heading as in form 1*]

To (name)
(address)

THE COURT ORDERS that you must attend and produce this subpoena and the documents and things described in the schedule for the purposes of evidence—

(a) before (*arbitrator or umpire*);

(b) at (*address nominated by the arbitrator or umpire*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but—

(i) instead of so attending you may produce this subpoena and the documents and things described in the schedule to (*arbitrator or umpire*) at the address above not later than the day before the 1st day on which you are required to attend; and

(ii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book, the bank is not a party and the *Evidence Act 1995* (Cwlth), section 48 applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

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SCHEDULE
(*Description of documents and things*)
Date:
By the Court
(*Signature and description of officer of the Court*)
Notes

1 Failure to comply with this subpoena may be 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 completely or in part.

2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under the *Supreme Court Rules*, order 83 rule 11D (3) for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

3 Original documents (where available) are to be produced to (*arbitrator or umpire*) 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)

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If photocopies of documents are indicated as being acceptable (see above) and are produced to (*arbitrator or umpire*) in compliance with this subpoena, you may elect to have the photocopies returned to you or destroyed by (*arbitrator or umpire*) on completion of the proceeding:

☐ the photocopies should be returned

☐ the photocopies should be destroyed.

(please tick appropriate box if applicable)

4 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. However, you may in writing on or attached to this subpoena ask that they be posted to you at another address given by you or that you be told when they are available for collection.

5 Any questions about 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 or (*arbitrator or umpire*).

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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Form 87 Subpoena to produce and to answer questions

(Subpoena to a corporation for production and for its proper officer to answer questions etc about possession etc of documents)

(see o 83 r 11B)

[*Heading as in form 1*]

To (name of corporation)
(address)

THE COURT ORDERS that—

(a) you must 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 (arbitrator or umpire);

(ii) at (address nominated by the arbitrator or umpire);

(iii) on (insert date) or, if notice of a later date is given to you, that later date (*or state the beginning and concluding dates of sittings of the arbitrator or umpire and that notice would be given of a date during those sittings when the subpoena and documents and things are to be produced*) at (insert time) and until the officer is excused from further attending, but—

(A) instead of so attending you may produce this subpoena and the documents and things described in the schedule to (*arbitrator or umpire*) at the above place by hand or 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

(B) if you are a bank, you are required by this subpoena to produce a banker's book, you are not a party to these proceedings and the *Evidence Act 1995* (Cwlth), section 48 applies, you need not cause your officer to produce it if you cause the officer to produce proof of the relevant entries in it in accordance with that Act; and

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(b) the officer who is to attend must make inquiries for the purpose of answering, and, on attending, must answer, the questions (*arbitrator or umpire*) requires the officer to answer about possession or custody of those documents and things.

SCHEDULE
(*Description of documents and things*)

Date:

By the Court
(*Signature and description of officer of the Court*):

Notes

1 Failure to comply with this subpoena may be contempt of court and may result in the sequestration of your property or arrest of 1 or more of your officers, or both. If you think the subpoena is oppressive, you may apply to the Court to have it set aside completely or in part.

2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under the *Supreme Court Rules*, order 83 rule 11D (3) for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

3 Original documents (where available) are to be produced to (*arbitrator or umpire*) 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)

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If photocopies of documents are indicated as being acceptable (see above) and are produced to (*arbitrator or umpire*) in compliance with this subpoena, you may elect to have the photocopies returned to you or destroyed by (*arbitrator or umpire*) on completion of the proceeding:

☐ the photocopies should be returned

☐ the photocopies should be destroyed.

(please tick appropriate box if applicable)

4 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. However, you may in writing on or attached to this subpoena ask that they be posted to you at another address given by you or that you be told when they are available for collection.

5 Any questions about 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 or (*arbitrator or umpire*).

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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Form 88 Subpoena to produce and to give evidence

(see o 83 r 11B)

[*Heading as in form 1*]

To (*name*)
(*address*)

THE COURT ORDERS that you must attend and produce this subpoena and the documents and things described in the schedule for the purposes of evidence and that you must attend for the purposes of giving evidence—

(a) before (*arbitrator or umpire*);

(b) at (*address nominated by the arbitrator or umpire*);

(c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but—

(i) 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 (*arbitrator or umpire*) at the place mentioned above not later than the day before the 1st day on which you are required to attend; and

(ii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book, the bank is not a party and the *Evidence Act 1995* (Cwlth), section 48 applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

SCHEDULE
(*Description of documents and things*)

Date:

By the Court
(*Signature and description of officer of the Court*):

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Notes

1 Failure to comply with this subpoena may be 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 completely or in part.

2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under the *Supreme Court Rules*, order 83 rule 11D (3) for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

3 Original documents (where available) are to be produced to (*arbitrator or umpire*) 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 (*arbitrator or umpire*) in compliance with this subpoena, you may elect to have the photocopies returned to you or destroyed by (*arbitrator or umpire*) on completion of the proceeding:

☐ the photocopies should be returned

☐ the photocopies should be destroyed.

(please tick appropriate box if applicable)

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4 If you produce the documents and things to (*arbitrator or umpire*), you are still required to attend to give evidence.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

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Schedule 3 Administration and Probate Forms

Form 1 Notice of intended application for probate

(see o 72 r 1 (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*)

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Form 2 Notice of intended application for letters of administration with will annexed

(see o 72 r 3)

[*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*)

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Form 2A Notice of intended application for letters of administration

(see o 72 r 3)

[*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 Notice of intended application for reseal of foreign grant

(see o 72 r 4)

[*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*)

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Form 3A Application for probate

(see o 72 r 5)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

(*name of applicant or applicant's solicitor*)

*(*Delete if inapplicable*)

Form 3B Application for letters of administration with will annexed

(see o 72 r 5)

[*Heading as in form 1*]

No P of [*year*].

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*).

Date:

(*name of applicant or applicant's solicitor*)

*(*Delete if inapplicable*)

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Form 3C Application for letters of administration

(see o 72 r 5)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

(*name of applicant or applicant's solicitor*)
*(*Delete if inapplicable*)

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Form 3D Application for reseal of foreign grant

(see o 72 r 5)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

(*name of applicant or applicant's solicitor*)

*(*Delete whichever is inapplicable*)

Form 3E Affidavit of applicant for probate

(see o 72 r 6)

[*Heading as in form 1*]

No P of [*year*]

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*).

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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 the *Wills Act 1968*, section 8.]

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.

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)

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*(*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

Description	Estimated or known value
(*description sufficient to identify property*)	$
(*amount*)	
(*total*)	

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Form 3F Affidavit of applicant for administration with will annexed

(see o 72 r 12)

[*Heading as in form 1*]

No P of [*year*]

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*)].

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 the *Wills Act 1968*, section 8.]

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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*)

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ANNEXURE ‘C’

INVENTORY OF PROPERTY

of the estate of (*name*) of (*last address, occupation*), deceased

Description	Estimated or known value
(*description sufficient to identify property*)	$
(*amount*)	
(*total*)	

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Form 3G Affidavit of applicant for administration

(see o 72 r 14)

[*Heading as in form 1*]

No P of [*year*]

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*)

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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.

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

Description	Estimated or known value
(*description sufficient to identify property*)	$
(*amount*)	
(*total*)	

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Form 3GA Affidavit of applicant for reseal of foreign grant

(see o 72 r 14A)

[*Heading as in form 1*]

No P of [*year*]

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.

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'.

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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

Description	Estimated or known value
(*description sufficient to identify property*)	$
(*amount*)	
(*total*)	

•

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Form 3H Affidavit of search

(see o 72 rr 6, 12, 14 and 14A)

[*Heading as in form 1*]

No P of [*year*]

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*)

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Form 4 Administration bond

(see o 72 r 30)

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.

Date:

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

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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

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Form 5 Creditor's administration bond

(see o 72 r 30)

Know all persons [*etc as in form 4*]—

The condition of this obligation is such that if *CD*, a creditor and administrator of all and singular the property of *AB*, late of , who died at , on , 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.*]

Form 6 Affidavit of justification

(see o 72 r 31)

[*Heading as in form 1*]

In the estate of , late of , in the Territory, 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:

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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) Livestock, 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)

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(Title of person taking affidavit.)

* The gross value at which property of deceased was sworn.

Form 7 Notice of filing accounts

(see o 72 r 39)

[*Heading as in form 1*]

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 at am/pm 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).*

Date:

Signature of registrar:

*Words in italics to be added if Commission applied for.

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Form 8 Caveat

(see 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.

Date:

Signature of caveator or caveator's solicitor and witness:

Form 9 Affidavit in support of application by public trustee

(see o 72 r 60)

[*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 , 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.

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Form 10 Affidavit in support of application by public trustee

(see o 72 r 60)

[*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 , as appears by the of death attached, marked A.

2 I verily believe the paper writing annexed, bearing date , 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, , and filed in support of this application.

SWORN at)

Before me)

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Form 12 Renunciation of probate in favour of public trustee

(See o 72 r 61)

[*Heading as in form 1*]

In the matter of the will of , late of , deceased.

Whereas , late of , deceased, died on at , and whereas he or she duly made and executed his or her last will and testament, bearing date , and appointed executor:

Now 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 20 .

Signed, sealed and delivered by in the presence of—

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Form 13 Renunciation of letters of administration in favour of public trustee

(see o 72 r 62)

[*Heading as in form 1*]

In the matter of the estate of , late of , deceased (intestate).

Whereas , late of , deceased, died on , 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.

Date:

Signature of person renouncing and witness:

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Form 14 Notice of application for representation to be given by public trustee

(see o 72 r 63)

[*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 , 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 AB, late of deceased, who died on or about , at (intestate).

Date:

Signature of CD/proctor for CD

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

Form 15 Acknowledgment under section 56 of Act

(see o 72 r 69)

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*].

Date:

Signatures of executor(s)/administrator(s) and witness(es)

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Form 16 Grant of probate

(see o 72 r 70)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

By the Court: , Registrar

*(*Delete if, or whichever is, inapplicable*)

Form 17 Grant of letters of administration with will annexed

(see o 72 r 70)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

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By the Court: , Registrar

*(*Delete if, or whichever is, inapplicable*)

Form 18 Grant of letters of administration

(see o 72 r 70)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

By the Court: , Registrar

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Form 19 Reseal of foreign grant

(see o 72 r 70)

[*Heading as in form 1*]

No P of [*year*]

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*).

Date:

By the Court: , Registrar

*(*Delete whichever is inapplicable*)

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Form 20 Form of order, accounts and inquiries

(see 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;

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(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*)

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Schedule 4 Costs

(see o 65 r 7)

item	matter in respect of which charge is made	charge ($)	
	Instructions		
1	to sue or defend	91.10	
2	for statement of claim, petition, special case or counterclaim	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— (a) reply; or (b) amending a pleading; or (c) a document to be brought into the registrar's office, such as an account, deed, etc; or (d) adding parties by order; or (e) a bond or any other deed; or (f) retaining counsel, including preparation of retainer	32.50	or such additional amount as the taxing officer thinks fit

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item	matter in respect of which charge is made	charge ($)	
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) affidavit in answer to interrogatories or other special affidavit; or (d) discovery, or affidavit of discovery; or (e) an application for an order that a matter be heard before the Full Court; or (f) brief on application in chambers	65.00	or such additional amount as the taxing officer thinks fit
6	for— (a) an application whether in court, before the registrar or in chambers; or (b) opposition to an application; or (c) the taxing of a bill of costs	65.00	or such additional amount as the taxing officer thinks fit
7	for brief to advise on evidence	58.50	or such additional amount as the taxing officer thinks fit
8	for— (a) a statement of facts in an action; or (b) request for particulars; or (c) particulars	65.00	or such additional amount as the taxing officer thinks fit
9	for brief in preparation for trial	such amount as the taxing officer thinks fit	

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item	matter in respect of which charge is made	charge ($)	
	Drawing		
10	for originating process or counterclaim	48.60	or if in excess of 7 folios, 6.80 per folio
11	for any other pleading, or an amendment of a pleading	32.50	or if in excess of 4 folios, 6.80 per folio
12	for— (a) a notice of interlocutory motion; or (b) a summons to attend at judge's chambers; or (c) a notice to produce documents; or (d) a notice to admit facts; or (e) a special case; or (f) interrogatories; or (g) a special affidavit; or (h) a brief (including observations)	29.70	or (in each case), if in excess of 4 folios, 6.80 per folio
13	a formal affidavit, including an affidavit of service	22.90	
14	any other document	12.90	or if in excess of 1 folio, 7.60 per folio
	Engrossing		
15	of a document	2.00	per folio
	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—		

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item	matter in respect of which charge is made	charge ($)	
	(a) for each of the first 10 copies; or	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— (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	22.90	or (in each case), if in excess of 8 folios, 2.60 per folio
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

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item	matter in respect of which charge is made	charge ($)
20	for service—	19.60
	(a) at the office of a solicitor on the record or the address for service of a party; or	
	(b) by post; or	
	(c) effected through a document exchange	
21	for attendance—	
	(a) to instruct counsel; or	
	(b) on taxation of a bill of costs or other matter; or	
	(c) at conference with counsel; or	
	(d) on a view; or	
	(e) on witness or other person; or	
	(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; or	130.00 per hour
	(ii) by any other solicitor; or	91.10 per hour
	(iii) by a clerk	45.50 per hour

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item	matter in respect of which charge is made	charge ($)	
22	for any other attendance in court or any hearing without counsel—		
	(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or	195.00	per hour
	(b) by any other solicitor	136.50	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
24	in court or chambers or before the registrar—	52.00	or 130.00 per hour
	(a) for the purpose of taking a reserved judgment; or		
	(b) to mention a matter; or		
	(c) for the purpose of adjournment; or		
	(d) for any other reason		
25	at the registry or other office or place for—	16.20	or such additional amount as the taxing officer thinks fit
	(a) the purpose of filing, delivering, or bespeaking a document; or		
	(b) a purpose not involving the exercise of legal skill or knowledge		
26	formal telephone attendance	16.20	

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item	matter in respect of which charge is made	charge ($)	
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—		
	(a) a solicitor has been necessarily absent from the place where he or she carries on practice; or		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
	(b) a clerk has attended in place of the solicitor		a similar daily allowance, not exceeding 195.00
	Letters		
30	ordinary letter	16.20	or 7.90 per folio
31	special letter	26.75	or 7.90 per folio

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item	matter in respect of which charge is made	charge ($)	
32	formal letter of acknowledgment	10.90	
33	circular letters after the first	4.90	
34	fax 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 the *Judiciary Act 1903* (Cwlth), section 86	
	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	

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Schedule 8 Adoption Forms

(see o 76 r 1B)

Form 1 Application for adoption order

(see o 76 r 3)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Application is hereby made to the Court [*by/*on behalf of] the proposed adoptive parents mentioned below for the adoption of the child mentioned below.

Particulars of proposed adoptive parent(s)

	Adoptive father	Adoptive mother
Full name:		
Occupation:		
Address:		
Date of birth:		
Relationship (if any) to the child:		

Particulars of the child proposed to be adopted

Full name in which the birth of the child is registered:

Sex:

Date of birth:

Place of birth:

Father's full name:

Mother's full maiden name:

Mother's full name at the date of birth of the child:

This application is made—

- personally by the proposed adoptive parent(s).
- on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).

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- by the chief executive responsible for adoption.
- by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service:

*	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 chief executive responsible for adoption or by the principal officer of the relevant adoption agency (as appropriate).

Form 2 Notice of application for adoption order

(see o 76 r. 4)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court
of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: [*full name*], of [*address*]—

An application for the adoption of [*full name in which the birth of the child to be adopted is registered*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

- personally by the proposed adoptive parent(s).

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- on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
- by the chief executive responsible for adoption.
- by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service:

*	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 chief executive responsible for adoption or by the principal officer of the relevant adoption agency (as appropriate).

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Form 3 Notice of appearance opposing application for adoption order

(see o 76 r 7)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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:

*Strike out where inapplicable

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Form 4 Interim order

(see o 76 r 8)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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

Signature of Registrar:

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Form 5 Adoption order

(see o 76 r 9)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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

Signature of Registrar:

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Form 6 Application for dispensing with consent to adoption

(see o 76 r 10)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

Application is hereby made to the Court [*by/*on behalf of] [*full name, address and occupation of each proposed adoptive parent*] for the Court to dispense with the requirement for the consent of [*full name*] for the purposes of an application for the adoption of [*full name in which the birth of the child to be adopted is registered*].

This application for a dispensing order is made—

- personally by the proposed adoptive parent(s).
- on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
- by the chief executive responsible for adoption.
- by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service:

*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 chief executive responsible for adoption or by the principal officer of the relevant adoption agency (as appropriate).

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Form 7 Notice of application for dispensing order

(see o 76 r 11)

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: [*full name*], of [*address*]—

An application for the Court to dispense with the requirement for the consent of [*full name*] for the purposes of an application for the adoption of [*full name in which the birth of the child to be adopted is registered*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application for the Court to dispense with the requirement for consent, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

- personally by the proposed adoptive parent(s).
- on behalf of the proposed adoptive parents by [*name(s)*], solicitor(s).
- by the chief executive responsible for adoption.
- by [*full name*], principal officer of [*name*], a private adoption agency.

Date:

Signature:

Address for service:

*	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 chief executive responsible for adoption or by the principal officer of the relevant adoption agency (as appropriate).

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Form 8 Notice of appearance opposing application for dispensing order

(see o 76 r 12)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of [*full name to be given to the child*]

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application for the Court to dispense with the requirement for the consent of [*full name*] for the purposes of an application for the adoption of [*full name in which the birth of the child to be adopted is registered*].

- [*Full name*] appears in person.
- [*Full name*] appears by [*full name(s) and address*], solicitor(s).

Date:

Signature:

Address for service:

*	Strike out where inapplicable.

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Form 9 Order for dispensing with consent to adoption

(see o 76 r 13)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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

Signature of Registrar:

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

Form 10 Application for the variation of an adoption order

(see o 76 r 14)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

Application is hereby made to the Court [*by/*on behalf of] [*full name, address and occupation of person in whose favour the variation order is sought*] for the Court to [*vary/*revoke] a condition of the order for the adoption of [*full name of adopted child*] dated [*date*].

This application is made—

- personally by [*full name*] in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].
- by [*full name*], on behalf of [*full name of adopted child*].
- by [*name(s)*], solicitor(s), on behalf of [*full name*] in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].

Date:

Signature:

Address for service:

*	Strike out where inapplicable.

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Form 11 Notice of application for variation order

(see o 76 r 15)

AUSTRALIAN CAPITAL TERRITORY

Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

To: [*full name*], of [*address*]—

An application for the Court to [*vary/*revoke] a condition of the order for the adoption of [*full name of adopted child*] dated [*date*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*].

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This notice is given—

- personally by [*full name*], who is seeking the variation of the adoption order in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].
- by [*full name*], on behalf of [*full name of adopted child*].
- by [*name(s)*], solicitor(s), on behalf of [*full name*], who is seeking the variation of the adoption order in [*his/*her] capacity as [*adopted child/*adoptive parent/*birth parent].

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Date:

Signature:

Address for service:

*	Strike out where inapplicable.

Form 12 Notice of appearance opposing application for variation order

(see o 76 r 16)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application for the Court to [*vary/*revoke] a condition of the order for the adoption of [*full name of adopted child*] dated [*date*].

- [*Full name*] appears in person.
- [*Full name*] appears by [*full name(s) and address*], solicitor(s).

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Date:

Signature:

Address for service:

*	Strike out where inapplicable.

Form 13 Application for discharge of [*interim order/*adoption order]

(see o 76 r 17)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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:

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*	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 chief executive responsible for adoption, the Community Advocate, the adopted child, an adopted parent or a birth parent.

Form 14 Notice of application for discharge of [*interim order/*adoption order]

(see o 76 r 18)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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*].

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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:

*	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 chief executive responsible for adoption, the Community Advocate, the adopted child, an adopted parent or a birth parent.

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Form 15 Notice of appearance opposing application for discharge of [*interim order/*adoption order]

(see o 76 r 19)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

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:

*	Strike out where inapplicable.
†	Insert where applicable.

Form 16 Application for access to identifying information

(see o 76 r 20)

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AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

Application is hereby made to the Court for an order of entitlement to access to, and to apply for, identifying information of the following type in relation to the adoption of [*full name*]:

Particulars of identifying information

[*Here insert particulars*]

This application is made—

- personally by [*full name*] in [*his/*her] capacity as [*state capacity by virtue of which entitlement is claimed*].
- by [*name(s)*], solicitor(s), on behalf of [*full name*] in his or her capacity as [*state capacity by virtue of which entitlement is claimed*].

Date:

Signature:

Address for service:

*	Strike out where inapplicable.

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Form 17 Notice of application for access to identifying information

(see o 76 r 21)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

To: [*full name*], of [*address*]—

An application for an order of entitlement to access to, and to apply for, identifying information of the following type in relation to the adoption of [*full name*] has been set down for [*hearing by the Court/*the sittings of the Court commencing] on [*date*]:

Particulars of identifying information

[*Here insert particulars*]

If you intend to oppose the application, you should enter an appearance and give notice of your appearance to the person(s) signing below within 10 days after service of this notice.

This application is made—

- personally by [*full name*], who is seeking the order in [*his/*her] capacity as [*state capacity by virtue of which entitlement is claimed*].
- by [*name(s)*], solicitor(s), on behalf of [*full name*], who is seeking the order in [*his/*her] capacity as [*state capacity by virtue of which entitlement is claimed*].

Date:

Signature:

Address for service:

*	Strike out where inapplicable.

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Form 18 Notice of appearance opposing application for access to identifying information

(see o 76 r 22)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

To: the Registrar—

Enter an appearance in the Court for [*full name, address and occupation of person appearing*] opposing the application dated [*date*] for an order for entitlement to access to, and to apply for, identifying information in relation to the adoption of [*full name*].

- [*Full name*] appears in person.
- [*Full name*] appears by [*full name(s) and address*], solicitor(s).

Date:

Signature:

Address for service:

*	Strike out where inapplicable.

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Form 19 Order for access to identifying information

(see o 76 r 23)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

In the matter of the adoption of

Before:

Date:

An application has been made to the Court for an order of entitlement to access to, and to apply for, particular identifying information in relation to the adoption of [*full name*].

The Court orders that [*full name of person in whose favour the order is sought*] is hereby entitled to access to, and to apply for, identifying information of the following type in relation to the adoption of [*full name of adopted person*]:

Particulars of identifying information

[*Here insert particulars*]

By the Court: , Registrar

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Form 20 Affidavit of personal service of notices of application

(see o 76 r 25)

AUSTRALIAN CAPITAL TERRITORY
Adoption Act 1993

In the Supreme Court of the Australian Capital Territory

No of [*year*]

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 chief executive responsible for adoption/*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 chief executive/*the adoption agency].

4 The member of staff was identified as such in the following way:

[*Here set out the way in which the deponent identified that the person was such a member of staff.*]

Sworn by the deponent—

Signature:

Witness:
[*Signature, name and title of person before whom affidavit is sworn or affirmed*]

*	Strike out where inapplicable.

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Schedule 11 Criminal proceedings forms

Form 1 Subpoena to give evidence

(see o 80 r 10 (4))

In the Supreme Court of the Australian Capital Territory

No of [*year*]

(*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.

Date:

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 rule 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)*.

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Form 2 Subpoena for production

(see o 80 r 10 (4))

[*Heading as in Form 1]*

(Subpoena to a natural person)

To *(name)*
(addess)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the Schedule for the purposes of evidence:

(a) before the Court *(or as the case may be)*;

(b) at *(address of Court or other place)*;

(c) on *(insert date)* at *(insert time)* and until you are excused from further attending, but:

(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)

Date:

By the Court:
(Signature and description of officer of the Court)

Notes

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1 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.

2 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 rule 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 Subpoena for production and to answer questions

(*Subpoena to a corporation for production and for its proper officer to answer questions concerning possession etc of documents*)

(see o 80 r 10 (4))

[*Heading as in form 1*]

To *(name of corporation)*
(address)

THE COURT ORDERS that:

(a) you shall produce this subpoena and the documents and things described in the schedule for the purposes of evidence by causing your proper officer to attend and produce them:

(i) before the Court (*or as the case may be*);

(ii) at *(address of Court or other place)*;

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(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

(C) if you are a bank and are required by this subpoena to produce a banker's book and the following legislation, namely *(insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books)* applies, you need not cause your officer to produce it if you cause him or her to produce proof of the relevant entries in it in accordance with that legislation; and

(b) the officer who is to attend shall make enquiries for the purpose of answer, and, on attending, shall answer, such questions as the Court requires him or her to answer concerning possession or custody of those documents and things.

SCHEDULE

(Description of documents and things)

Date:

By the Court:
(Signature and description of officer of the Court)

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Note 1

(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 both;

(2) Documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena, but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;

(3) Any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;

(4) If you think the subpoena is oppressive, you may apply to the Court to have it set aside wholly or in part.

Note 2

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 rule 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*).

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Form 4 Subpoena for production and to give evidence

(see o 80 r 10 (4))

[*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 first day on which you are required to attend; and

(iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and (*insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker's books*) applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that legislation.

SCHEDULE

(*Description of documents and things*)

Date:

By the Court:
(Signature and description of officer of the Court)

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Note 1

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 2

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 rule 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*).

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Schedule 13B Evidence and Procedure (New Zealand) Act 1994 (Cwlth) forms

(see o 80C r 1 (3))

Form 1 Certificate of noncompliance with subpoena

(see o 80E r 1)

In the Supreme Court of the Australian Capital Territory

No of [*year*]

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 the *Evidence and Procedure (New Zealand) Act 1994* of Australia, section 9 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 the *Evidence Amendment Act 1994* of New Zealand, section 16.

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.

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*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)

Form 2 Objection to determination of application for subpoena to be set aside without hearing

(see o 80F r 4)

[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:

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Form 3 Request for hearing by videolink or telephone

(see o 80F r 5)

[*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 videolink or telephone.

Date:

Signature of applicant or applicant's solicitor:

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Schedule 14 Appeal forms

Form 1 Notice of appeal

(see o 81 r 3)

In the Supreme Court of the Australian Capital Territory

No of [*year*]

On appeal from [*name of the relevant court, tribunal, body or person*][1]

Between:
[*name*] Appellant

and

[*name*] Respondent

1 On [*date*] at [*place*], the Tribunal, constituted by [*name(s) of member(s) constituting the Tribunal*], made the following decision:[1]

2 The appellant—
* appeals from that decision.
* applies to the Court for leave to appeal from that decision.

3 The orders sought are:

4 The grounds of the appeal are: [*set out briefly the grounds of the appeal with all necessary or appropriate particulars*]

Date:

Signature of *appellant/*appellant's solicitor:

Address for service:

Notice to respondent

[*respondent's name and address*]

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Entry of Appearance

Before taking any further step in these proceedings, you must enter an appearance in the Registry.

Settling appeal papers

1 A directions hearing for settling the appeal papers will be held as follows:
Time: [*Date and time to be entered by the Registrar, unless fixed by the Court*]
Place: [*Address of the Court*]

2 If you do not attend to settle the appeal papers, either in person or by your legal representative, directions may be given, and orders made, in your absence.

* **Abridgment of time for service**

The time by which this notice of appeal is to be served has been abridged by the Court as follows:
[*specify time for service*].

Date:

By the Court: ,[*Designation of officer*]

*	Strike out where inapplicable

Note

1 The court, tribunal, body or person from the decision of which (or of whom) the appeal is to be brought is referred to in this notice as the ***Tribunal***.

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Form 2 Appeal extension of time

(see o 81 r 8 (2))

In the Supreme Court of the Australian Capital Territory

No of [*year*]

On appeal from [*name of the relevant court, tribunal, body or person*][1]

Between:

[*name*] Appellant

and

[*name*] Respondent

1 On [*date*] at [*place*], the Tribunal, constituted by [*name(s) of member(s) constituting the Tribunal*], made the following decision:[1]

2 A notice of appeal [*will not be/*has not been] filed in the Court within the time specified in the Act under which that decision is made.

3 The appellant applies to the Court for an extension of time in which to bring a notice of appeal from that decision.

4. The grounds of the application appear in the annexed affidavit.

Date:

Signature of *appellant/*appellant's solicitor:

Address for service:

Hearing date

This application will be heard in the Court on [*date*] at [*place*].

Date:

By the Court: , [*Designation of officer*]

*	Strike out where inapplicable

Note

1 The court, tribunal, body or person from the decision of which (or of whom) the appeal is to be brought is referred to in this notice as the ***Tribunal***.

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Form 3 Order nisi to review a decision of the Magistrates Court

(see o 81A r 6)

In the Supreme Court of the Australian Capital Territory

No of [*year*]

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:

Signature of Registrar:

*	Strike out where inapplicable

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Endnotes

1 About this republication

This is a republication of the *Supreme Court Rules* as in force under the *Supreme Court Act 1933* on 1 May 2001. It includes all amendments made to the regulations up to Subordinate Law 2001 No 10.

Amending laws are annotated in the table of legislation and table of amendments.

This subordinate law has been renumbered. See the table of renumbered provisions for details.

The Parliamentary Counsel's Office currently prepares 2 kinds of republications of ACT laws: authorised printed republications to which the *Legislation (Republication) Act 1996* applies and unauthorised electronic republications. The status of a republication appears on its cover and from its republication number.

A republication number without a letter (eg 1, 2, 3 etc) indicates that the republication is an authorised printed republication. A number with a letter (eg 1A, 1B, 1C etc) indicates that the republication is an unauthorised electronic republication.

Section 13 of the *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make textual amendments of a formal nature which the Parliamentary Counsel considers desirable in accordance with current legislative drafting practice. The amendments do not effect a substantive change in the law.

In preparing this republication, amendments have not been made under section 13.

Not all amendments made under section 13 are annotated in the table of amendments. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

2 About the republished subordinate law

The *Supreme Court Rules* was originally the *Rules of the Supreme Court of the Australian Capital Territory* (Cwlth). It was renamed by the *A.C.T Supreme Court (Transfer) Act 1992* (Cwlth) (see s 13 sch 1). It became a Territory enactment on I July 1992 (see the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 34 sch 2) but its previous history is included in this republication.

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3 Abbreviation key

Key to abbreviations in tables

am = amended
amdt = amendment
ch = chapter
cl = clause
def = definition
dict = dictionary
div = division
exp = expires/expired
Gaz = Gazette
hdg = heading
ins = inserted/added
LR = Legislation (Republication) Act 1996
mod = modified
No = number
notfd = notified
o = order
om = omitted/repealed
orig = original
p = page
par = paragraph
pres = present
prev = previous
(prev...) = previously
prov = provision
pt = part
r = rule/subrule
reg = regulation/subregulation
renum = renumbered
reloc = relocated
R[X] = Republication No
s = section/subsection
sch = schedule
sdiv = subdivision
sub = substituted
SL = Subordinate Law
sp = spent
* = SL unless otherwise stated
† = Act or Ordinance unless otherwise stated

4 Table of legislation

Part 1—Commonwealth legislation

Subordinate Law	Year and number	Gazette notification	Commencement	Transitional provisions
Rules of the Supreme Court of the Australian Capital Territory	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	—
	1939 No 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
	1962 No 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	23 Apr 1969	23 Apr 1969	rr 1 (2), (3) and 5
	1969 No 66	8 May 1969	1 June 1969	—
	1969 No 221	30 Dec 1969	1 Feb 1970	—
	1969 No 222	31 Dec 1969	19 Jan 1970	rr 3-5
	1972 No 189	16 Nov 1972	27 Nov 1972	—

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Part 1—Commonwealth legislation

Subordinate Law	Year and number	Gazette notification	Commencement	Transitional provisions
	1973 No 95	31 May 1973	31 May 1973	r 3
	1973 No 149	9 Aug 1973	9 Aug 1973	—
	1974 No 25	8 Mar 1974	8 Mar 1974	—
	1974 No 60	18 Apr 1974	18 Apr 1974	—
	1974 No 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)
	1978 No 173	26 Sept 1978	16 Oct 1978	—
	1980 No 210	24 July 1980	24 July 1980	—
	1980 No 214	31 July 1980	31 July 1980	r 2 (2)
	1981 No 104	13 May 1981	13 May 1981	—
	1981 No 196	14 July 1981	14 July 1981	r 2 (2)
	1981 No 296	16 Oct 1981	1 Nov 1981	—
	1981 No 328	17 Nov 1981	1 Dec 1981	—
	1982 No 202	27 Aug 1982	1 Sept 1982	—
	1982 No 316	23 Nov 1982	23 Nov 1982	r 3
	1982 No 365	21 Dec 1982	21 Dec 1982	r 2
	1983 No 26	18 Mar 1983	18 Mar 1983	—
	1983 No 27	18 Mar 1983	18 Mar 1983	—
	1983 No 228	26 Oct 1983	26 Oct 1983	—
	1984 No 110	21 June 1984	21 June 1984	—
	1984 No 281	12 Oct 1984	1 Nov 1984	—
	1984 No 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	—
	1985 No 69	17 May 1985	17 May 1985	r 3
	1986 No 8	31 Jan 1986	1 Feb 1986	—
	1986 No 26	28 Feb 1986	1 Mar 1986	r 3 (2)
	1986 No 86	30 Apr 1986	1 May 1986	—
	1986 No 349	28 Nov 1986	1 Dec 1986	r 3 (2)
	1987 No 67	1 May 1987	1 May 1987	r 2 (2)
	1987 No 93	29 May 1987	1 June 1987	r 3 (2)
	1987 No 219	30 Sept 1987	1 Oct 1987	r 3 (2)
	1988 No 24	29 Feb 1988	1 Mar 1988	rr 3 (2) and 7
	1988 No 145	30 June 1988	1 July 1988	—
	1988 No 221	31 Aug 1988	31 Aug 1988	r 2 (2)
	1988 No 257	31 Oct 1988	1 Nov 1988	—
	1988 No 331	8 Dec 1988	8 Dec 1988	r 4
	1989 No 18	27 Feb 1989	1 Mar 1989	r 3 (2)
	1989 No 30	6 Mar 1989	7 Mar 1989	—
	1989 No 191	4 July 1989	4 July 1989	—
	1989 No 273	19 Oct 1989	23 Oct 1989	—
	1990 No 2	25 Jan 1990	1 Feb 1990	—
	1990 No 129	25 June 1990	1 July 1990	—
	1990 No 372	30 Nov 1990	1 Dec 1990	r 2

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Part 1—Commonwealth legislation

Subordinate Law	Year and number	Gazette notification	Commencement	Transitional provisions
	1990 No 458	21 Dec 1990	1 Jan 1991	—
	1991 No 108	31 May 1991	1 June 1991	—
	1991 No 251	26 Aug 1991	1 Sept 1991	—
	1991 No 252	26 Aug 1991	1 Sept 1991	—
	1991 No 294	30 Sept 1991	1 Oct 1991	—
	1991 No 416	19 Dec 1991	1 Jan 1992	—
	1991 No 472	19 Dec 1991	1 Jan 1992	—
	1992 No 79	31 Mar 1992	1 Apr 1992	—
	1992 No 82	31 Mar 1992	1 Apr 1992	—

Part 2—Legislation after becoming Territory enactment

Subordinate Law	Year and number	Gazette notification	Commencement	Transitional provisions
Supreme Court Rules	1992 No 16	1 Sept 1992	1 Sept 1992	—
	1992 No 21	28 Oct 1992	28 Oct 1992	—
	1992 No 23	3 Nov 1992	3 Nov 1992	—
	1992 No 34	18 Dec 1992	18 Dec 1992	—
	1992 No 35	18 Dec 1992	18 Dec 1992	—
	1993 No 4	19 Feb 1993	19 Feb 1993	—
	1993 No 11	29 Mar 1993	1 Apr 1993	r 6
	1993 No 20	7 May 1993	7 May 1993	—
	1993 No 22	21 May 1993	1 July 1993 (see r 1 and Gaz 1993 No S130)	—
	1993 No 23	10 June 1993	10 June 1993	—
	1993 No 28	29 July 1993	29 July 1993	—
	1993 No 30	30 July 1993	r 1: 30 July 1993 remainder: 31 July 1993	r 3
	1993 No 35	7 Sept 1993	r 1 and pt 2 (rr 3-5): 7 Sept 1993 remainder: 23 June 1993	r 5
	1993 No 46	2 Dec 1993	2 Dec 1993	—
	1994 No 2	28 Feb 1994	28 Feb 1994	—
	1994 No 17	30 May 1994	1 June 1994	—
	1994 No 20	24 June 1994	24 June 1994	—
	1994 No 21	27 June 1994	27 June 1994	—
	1994 No 34	14 Oct 1994	14 Oct 1994	—
	1994 No 42	5 Dec 1994	19 Feb 1995	—
	1995 No 11	29 Mar 1995	29 Mar 1995	—
	1995 No 12	29 Mar 1995	1 Apr 1995	—

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Part 2—Legislation after becoming Territory enactment

Subordinate Law	Year and number	Gazette notification	Commencement	Transitional provisions
	1995 No 13	5 Apr 1995	5 Apr 1995	—
	1995 No 15	5 May 1995	r 1: 5 May 1995 remainder: (rr 2-14): (see Note 8)	—
	as amended by			r 3
	1997 No 8	23 Apr 1997	1 July 1997	—
	1999 No 26	27 Oct 1999	(see below)	—
	2000 No 46	16 Nov 2000	14 Dec 2000	
	1995 No 19	15 June 1995	15 June 1995	—
	1995 No 27	3 Aug 1995	3 Aug 1995	—
	1995 No 44	15 Dec 1995	15 Dec 1995	—
	1996 No 4	29 Mar 1996	29 Mar 1996	—
	1996 No 10	28 June 1996	28 June 1996	—
	1996 No 11	28 June 1996	28 June 1996	—
	1996 No 22	2 Oct 1996	2 Oct 1996	—
	1996 No 27	13 Nov 1996	13 Nov 1996	—
	1996 No 31	20 Dec 1996	20 Dec 1996	—
	1997 No 8	23 Apr 1997	1 July 1997	r 3
	1997 No 9	23 Apr 1997	23 Apr 1997	—
	1997 No 20	14 July 1997	14 July 1997	—
	1997 No 30	30 Oct 1997	30 Oct 1997	—
	1997 No 31	30 Oct 1997	30 Oct 1997	rr 3 and 11 (2)
	1997 No 33	11 Nov 1997	11 Nov 1997	—
	1997 No 38	10 Dec 1997	10 Dec 1997	—
	1997 No 43	13 Jan 1998	r 8: 2 Feb 1998 (see 1 (2) and Gaz 1998 No S42) remainder: 1 Jan 1998	—
	1998 No 23	24 June 1998	24 June 1998	—
	1998 No 35	9 Dec 1998	rr 1-4 and 6-8: 15 Dec 1998 remainder: 1 Feb 1999	—
	as amended by			—
	1999 No 26	27 Oct 1999	(see below)	
	1999 No 26	27 Oct 1999	pts 1 and 3: 27 Oct 1999 pt 2: 1 Nov 1999 pt 4: 1 Feb 1999	—
	2000 No 17	23 Mar 2000	3 Apr 2000	—

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Part 2—Legislation after becoming Territory enactment

Subordinate Law	Year and number	Gazette notification	Commencement	Transitional provisions
	2000 No 23	25 May 2000	25 May 2000	—
	2000 No 24	15 June 2000	15 June 2000	—
	2000 No 44	2 Nov 2000	30 Nov 2000	—
	2000 No 46	16 Nov 2000	14 Dec 2000	—
	2000 No 50	14 Dec 2000	18 Dec 2000	—
	2001 No 10	19 Apr 2001	1 May 2001	—

5 Table of amendments

Note ..... SL 1992 No 34 provided for global amendments to these Rules. The amendments have been incorporated in the reprint but do not appear in this table

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r 2 ..... om 1956 No 135

r 3..... am 1956 No 135; 1966 No 132
om 1978 No 173

r 4 hdg ..... sub 2000 No 46 r 2 sch 1

r 4 ..... am 1968 No 13; 1977 No 152; 1978 No 173; 1986 No 8; 1990 No 458; 1992 Nos 16, 21 and 34; 1997 No 21; 1997 No 8; 1999 No 26 r 3; 2000 No 17 r 3; 2000 No 46 r 2 sch 1, r 3; 2001 No 10 amdt 1.1

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am 1999 No 26 r 24 sch

o 1A (r 1) ..... ins 1995 No 11

r 1 ins 1995 No 11

o 2 ..... prev o 2 (rr 1, 2) om 1997 No 8
pres o 2 (rr 1-22) ins 1997 No 8

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r 2 ..... ins 1990 No 458
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r 3 ..... ins 1997 No 8
r 4 ..... ins 1997 No 8
am 1999 No 26 r 4
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rr 23-26 ..... ins 1997 No 8
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r 27 ..... ins 1997 No 8
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r 32 ins 1997 No 8
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om 1997 No 8
rr 1-11 ..... ins 1990 No 458
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pres o 3 (rr 1-3) ins 1997 No 8
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r 6 ..... am 1956 No 135
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om 1997 No 8
r 6A..... ins 1994 No 17
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rr 7, 8 .....om 1997 No 8
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r 8 ..... sub 1997 No 8; 1999 No 26 r 9; 2000 No 46 r 5
r 9 ..... ins 1997 No 33
sub 1999 No 26 r 9
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r 9 ..... sub 1997 No 8
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div 39.2 hdg ..... sub 1993 No 20
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r 4 ..... om 1993 No 20
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am 1999 No 26 r 24 sch
r 24Q ..... ins 1993 No 20
hdg to div 6 of o 39 ..... sub 1993 No 20
div 39.6 (rr 25-33) ..... orig div 6 ins 1990 No 2 renum div 8 1993 No 20
(prev div 6 of o 39) renum 2000 No 46 r 2 sch 1
rr 25, 26 ..... sub 1983 No 27
r 26A ..... ins 1990 No 2
r 27 ..... sub 1983 No 27; 1995 No 27
r 28 ..... sub 1983 No 27
r 29 ..... am 1983 No 27
sub 1995 No 27
r 30 ..... sub 1983 No 27
r 31 ..... sub 1983 No 27
am 1999 No 26 r 24 sch
r 32 ..... sub 1983 No 27
r 32A ..... ins 1983 No 27
am 1985 No 69; 1991 No 251
sub 1999 No 26 r 13
rr 32B, 32C ..... ins 1985 No 69
r 33 ..... sub 1983 No 27
r 33A ..... ins 1969 No 221
hdg to div 7 of o 39 ..... sub 1993 No 20
div 39.7 (rr 34-37) ..... (prev div 7 of o 39) renum 2000 No 46 r 2 sch 1
rr 38-40 ..... om 1993 No 20
r 41 ..... am 1968 No 13
om 1993 No 20
r 42 ..... om 1993 No 20

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r 43 ..... am 1938 No 99
om 1993 No 20
r 44 ..... am 1938 No 99
sub 1983 No 27
om 1993 No 20
hdg to div 8 of o 39..... ins 1993 No 20
div 39.8 (rr 45-49)..... (prev div 8 of o 39) renum 2000 No 46 r 2 sch 1
r 45 ..... ins 1990 No 2
am 2000 No 46 r 2 sch 1
hdg to r 46..... ins 2000 No 46 r 2 sch 1
r 46 ..... ins 1990 No 2
hdg to r 47..... ins 2000 No 46 r 2 sch 1
r 47 ..... ins 1990 No 2
r 48 ..... ins 1990 No 2
am 1999 No 26 r 14
hdg to r 49..... ins 2000 No 46 r 2 sch 1
r 49 ..... ins 1990 No 2
hdg to div 8A of o 39 ..... ins 1999 No 26 r 15
div 39.9 (rr 49A, 49B) ..... (prev div 8A of o 39) renum 2000 No 46 r 2 sch 1
rr 49A, 49B..... ins 1999 No 26 r 15
div 39.10 (rr 50-53)..... (prev div 9 of o 39) ins 1996 No 27
renum 2000 No 46 r 2 sch 1
rr 50-53 ..... ins 1996 No 27
am 1999 No 26 r 24 sch
o 39A rr 1-8..... ins 2000 No 44 r 3
rr 1-8 .....ins 2000 No 44 r 3
o 40 hdg..... sub 2000 No 46 r 2 sch 1
div 40.1 hdg ..... (prev div 1 of o 40) sub 2000 No 46 r 2 sch 1
hdg preceding r 1 of o 40 sub 1969 No 221
r 1 ..... sub 1969 No 221
r 2 ..... sub 1969 No 221
am 1992 No 79
r 3 ..... sub 1969 No 221
r 3A..... ins 1969 No 66
sub 1969 No 221
r 4 ..... sub 1969 No 221
am 2000 No 46 r 2 sch 1
r 5 ..... am 1968 No 13
sub 1969 No 221
am 1995 No 27
rr 6-15 ..... sub 1969 No 221
rr 16-19 ..... om 1969 No 221
hdg preceding r 20 ..... om 1969 No 221
rr 20-23 ..... om 1969 No 221
div 40.2 (rr 24-29)..... (prev div 3 of o 40) renum 2000 No 46 r 2 sch 1
r 24 ..... am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
r 28 .....am 2000 No 46 r 2 sch 1
o 41 rr 2, 3 .....am 2000 No 46 r 2 sch 1
o 42 r 1 ..... sub 1997 No 8

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r 2 ..... sub 1984 No 281
am 1998 No 35; 1999 No 26 r 24 sch; 2001 No 10 amdt 1.4
rr 11, 12 ..... ins 1978 No 173
r 13 ..... ins 1983 No 228
r 14 ..... ins 1990 No 458
am 1992 No 35; 1999 No 26 r 24 sch
o 42A (rr 1, 2) ..... ins 1977 No 152
sub 1986 No 86; 1990 No 129
r 1 ..... ins 1977 No 152
sub 1986 No 86; 1990 No 129
am 1991 No 472; 1992 No 34
sub 1993 No 23
am 2001 No 10 r 3
r 2 ..... ins 1977 No 152
sub 1986 No 86; 1990 No 129; 1991 No 472
om 1993 No 23
o 43 r 10 ..... am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
r 12 ..... am 1999 No 26 r 24 sch
r 14 ..... am 1981 No 104; 1994 No 21; 2000 No 46 r 2 sch 1
r 14A ..... (prev r 14 (2)) renum 2000 No 46 r 2 sch 1
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
r 31 ..... am 1969 No 221
am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
rr 32-33 ..... sub 1969 No 221
o 44 r 3A ..... ins 1997 No 20
r 4 ..... am 2000 No 46 r 2 sch 1
o 45 r 3 ..... ins 1999 No 26 r 16
o 46 r 1 ..... am 1968 No 13; 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1; 2001 No 10 amdt 1.5
o 47 r 2 ..... am 1968 No 13
r 3 ..... am 2000 No 46 r 2 sch 1
r 5 ..... am 1999 No 26 r 24 sch
rr 7, 8 sub 1999 No 26 r 17
o 49 r 2 am 1999 No 26 r 24 sch
o 50 r 2 ..... am 1997 No 8
rr 3, 4 ..... am 1997 No 8
om 1999 No 26 r 24 sch
r 6 ..... am 1997 No 8; 1999 No 26 r 24 sch
r 7 ..... am 1999 No 26 r 24 sch
r 8 ..... am 1997 No 8
r 9 ..... am 1968 No 13
o 51 r 1 ..... sub 1995 No 27
am 2000 No 46 r 2 sch 1
o 52 hdg ..... sub 2000 No 46 r 2 sch 1
div 52.1 hdg ..... (prev div 1 hdg) sub 1991 No 294
renum 2000 No 46 r 2 sch 1
div 52.1 (rr 1-15) ..... (prev div 1 of o 52) renum 2000 No 46 r 2 sch 1
r 6 ..... am 1992 No 34; 1997 No 8; 2000 No 46 r 2 sch 1
r 11 ..... am 2000 No 46 r 2 sch 1

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div 52.2 (rr 16-24)..... (prev div 2 of o 52) sub 1991 No 294
renum 2000 No 46 r 2 sch 1
rr 16, 17 ..... sub 1991 No 294
r 18 ..... am 1980 No 214
sub 1991 No 294
r 19 ..... sub 1991 No 294
am 1999 No 26 r 24 sch
r 20 ..... am 1980 No 214; 1990 No 458
sub 1991 No 294;
am 2001 No 10 amdt 1.6
rr 21, 22 ..... sub 1991 No 294
r 23 ..... sub 1991 No 294
am 1992 No 34
r 24 ..... sub 1991 No 294
div 52.3 hdg ..... sub 1991 No 294
div 52.3 (r 25)..... (prev div 3 of o 52) sub and renum 2000 No 46 r 21
r 25 .....sub 2000 No 46 r 21
o 53 r 4 .....am 1992 No 34
o 54 r 8 ..... sub 1983 No 228
am 1997 No 8
r 9 ..... om 1983 No 228
r 13 ..... am 1997 No 8
r 17 ..... am 1968 No 13
rr 21, 22 .....am 2000 No 46 r 2 sch 1
o 55 div 55.1 (rr 1-6) ..... (prev div 1 of o 55) renum 2000 No 46 r 2 sch 1
r 1 ..... am 2000 No 46 r 2 sch 1
r 4 ..... am 2000 No 46 r 2 sch 1
r 7 ..... om 1969 No 221
div 55.2 (rr 8-14) ..... (prev div 2 of o 55) renum 2000 No 46 r 2 sch 1
r 10 ..... am 1986 No 8; 1999 No 26 r 24 sch
r 11 ..... am 1980 No 214
r 13 ..... am 2000 No 46 r 2 sch 1
r 14 ..... am 1999 No 26 r 24 sch
div 55.3 (rr 15-29)..... (prev div 3 of o 55) renum 2000 No 46 r 2 sch 1
r 17 ..... am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
rr 18, 19 ..... am 1997 No 8
hdg to r 20..... sub 2001 No 10 amdt 1.7
div 55.4 (rr 30-33)..... (prev div 4 of o 55) renum 2000 No 46 r 2 sch 1
r 32 ..... am 1999 No 26 r 24 sch
r 33 ..... am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
div 55.5 (rr 34-42)..... (prev div 5 of o 55) renum 2000 No 46 r 2 sch 1
r 34 ..... am 2000 No 46 r 2 sch 1
r 36 ..... am 1980 No 214
r 38 ..... am 2000 No 46 r 2 sch 1
r 41 ..... am 1980 No 214; 2000 No 46 r 2 sch 1
div 55.6 (rr 43-49)..... (prev div 7 of o 55) renum 2000 No 46 r 2 sch 1
rr 43, 44 ..... am 2000 No 46 r 2 sch 1
r 45 ..... am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
r 46 ..... am 2000 No 46 r 2 sch 1
o 56 (rr 1-15)..... om 1997 No 8

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rr 1-7 ..... om 1997 No 8
r 8 ..... am 1984 No 281
om 1997 No 8
rr 9-12 ..... om 1997 No 8
r 13 ..... am 1977 No 152
om 1997 No 8
r 14 ..... om 1997 No 8
r 15 ..... am 1977 No 152
om 1997 No 8
o 56A (rr 1-3) ..... ins 1981 No 296
rr 1-3 .....ins 1981 No 296
o 57 hdg..... sub 1997 No 8
rr 1, 2 ..... am 1997 No 8
r 3 ..... sub 1997 No 8
r 4 ..... am 1997 No 8
r 5 ..... om 1997 No 8
o 58 hdg..... sub 2000 No 46 r 2 sch 1
div 58.1 (rr 1-12) ..... (prev div 1 of o 58) renum 2000 No 46 r 2 sch 1
r 1 ..... am 1997 No 8;1999 No 26 r 24 sch; 2000 No 46 r 22
r 3 ..... am 1997 No 8; 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
r 4 ..... am 1968 No 13; 1997 No 8
rr 5-8 ..... am 1997 No 8
r 10 ..... am 1997 No 8
r 12 ..... am 1997 No 8
div 58.2 (r 13)..... (prev div 2 of o 58) renum 2000 No 46 r 2 sch 1
r 13 ..... am 2000 No 46 r 23
div 58.3 (rr 14, 15)..... (prev div 3 of o 58) sub and renum 2000 No 46 r 24
r 14 ..... am 1968 No 13
sub 2000 No 46 r 24
r 15 ..... sub 2000 No 46 r 24
div 58.4 (rr 16-19)..... (prev div 4 of o 58) renum 2000 No 46 r 2 sch 1
div 58.5 (rr 20-26)..... (prev div 5 of o 58) renum 2000 No 46 r 2 sch 1
r 23 ..... am 1999 No 26 r 18
r 26 ..... am 2000 No 46 r 2 sch 1
div 58.6 (rr 27-30)..... (prev div 6 of o 58) renum 2000 No 46 r 2 sch 1
div 58.7 (rr 31-37)..... (prev div 7 of o 58) renum 2000 No 46 r 2 sch 1
rr 32-34 ..... am 2000 No 46 r 2 sch 1
div 58.8 (rr 38-43)..... (prev div 8 of o 58) renum 2000 No 46 r 2 sch 1
div 58.9 (rr 44-46)..... (prev div 9 of o 58) renum 2000 No 46 r 2 sch 1
div 58.10 (rr 47-49)..... (prev div 10 of o 58) renum 2000 No 46 r 2 sch 1
rr 47-49 ..... am 1980 No 214; 1987 No 67
div 58.11 (rr 50-56)..... (prev div 11 of o 58) renum 2000 No 46 r 2 sch 1
r 53 ..... am 2000 No 46 r 2 sch 1
div 58.12 (r 57)..... (prev div 12 of o 58) renum 2000 No 46 r 2 sch 1
r 57 ..... am 2000 No 46 r 2 sch 1
div 58.13 (rr 58, 59).....(prev div 13 of o 58) renum 2000 No 46 r 2 sch 1
o 59 r 4 ..... am 1997 No 8
r 7 ..... am 1980 No 214
r 9 ..... am 1980 No 214
r 11 ..... am 2000 No 46 r 2 sch 1

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r 16 .....am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
o 60 hdg..... am 1986 No 8
o 60..... prev o 60 (rr 1-12)) om 1974 No 197
pres o 60 (rr 1-15) ins 1974 No 197
div 60.1 ..... (prev div 1) om 1992 No 21
pres div 1 ins 1992 No 21
r 1 ..... sub 1974 No 197
am 1986 No 8; 1992 No 16
sub 1992 No 21
om 1997 No 31
r 2 ..... sub 1974 No 197
am 1986 No 8
sub 1992 No 21
om 1997 No 31
r 3 ..... sub 1974 No 197; 1981 No 296
am 1986 No 8
sub 1992 No 21
om 1997 No 31
r 4 ..... sub 1974 No 197
om 1981 No 296
ins 1992 No 21
am 1994 No 34
om 1997 No 31
r 5 ..... am 1938 No 99
sub 1974 No 197; 1992 No 21
om 1997 No 31
r 6 ..... am 1938 No 99
sub 1974 No 197
am 1986 No 8
om 1992 No 21
ins 1993 No 4
om 1997 No 31
rr 7, 8 ..... sub 1974 No 197
om 1992 No 21
r 9 ..... sub 1974 No 197
am 1981 No 296
om 1997 No 31
r 10 ..... am 1938 No 99
sub 1974 No 197
om 1997 No 31
r 11 ..... sub 1974 No 197
am 1986 No 8
om 1997 No 31
r 12 ..... am 1938 No 99
sub 1974 No 197
om 1997 No 31
r 13 ..... ins 1974 No 197
am 1986 No 8; 1992 No 16
om 1997 No 31
r 14 ..... ins 1974 No 197

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om 1997 No 31
r 15 ..... ins 1974 No 197
am 1986 No 8; 1994 No 21; 1997 No 30
om 1997 No 31
o 61 hdg..... sub 1997 No 31
r 3 ..... ins 1981 No 296
am 1983 No 26; 1984 Nos 110 and 281; 1988 No 257; 1991 No 251; 1992 Nos 16 and 34; 1993 Nos 28, 35 and 46; 1997 No 8;1999 No 26 r 24 sch; 2000 No 17 r 10
r 3A..... ins 1990 No 458
r 4 ..... ins 1981 No 296
r 5 ..... ins 1981 No 296
am 1990 No 129; No 34, 1992; No 31, 1997; 1999 No 26 r 24 sch
o 61A (rr 1-11) ..... (prev rr 1.01-11.01) ins 1988 No 257
renum 1992 No 23
r 1 ..... (prev r 1.01) ins 1988 No 257
am 1990 No 129; 1991 No 251; 1992 Nos 16, 23
renum 1992 No 23
am 1992 No 34; 1993 Nos 20, 28, 35 and 46; 1995 Nos 11 and 27; 1997 No 8; No 35, 1998; 2000 No 17 r 11; 2000 No 46 r 2 sch 1; 2000 No 50 s 3; 2001 No 10 amdt 1.8
r 2 ..... (prev r 2.01) ins 1988 No 257
renum 1992 No 23
am 1994 No 21
om 1997 No 8
r 3 hdg ..... ins 2000 No 46 r 2 sch 1
r 3 ..... (prev r 3.01) ins 1988 No 257
renum 1992 No 23
r 4 hdg ..... ins 2000 No 46 r 2 sch 1
r 4 ..... (prev r 4.01) ins 1988 No 257
renum 1992 No 23
r 5 ..... (prev r 5.01) ins 1988 No 257
am 1990 No 129;
renum 1992 No 23
am 1992 No 34, 1997 No 31; 1999 No 26 r 24 sch
r 6 ..... (prev r 6.01) ins 1988 No 257
renum 1992 No 23
am 1992 No 34
om 1997 No 31
r 7 ..... (prev r 7.01) ins 1988 No 257
renum 1992 No 23
om 1997 No 31
r 8 ..... (prev r 8.01) ins 1988 No 257
renum 1992 No 23
am 1992 No 34
om 1997 No 31
r 9 ..... (prev r 9.01) ins 1988 No 257
renum 1992 No 23
am 1997 No 31
r 10 ..... (prev r 10.01) ins 1988 No 257
renum 1992 No 23

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am 1992 No 34
am 1997 No 31
r 11 ..... (prev r 11.01) ins 1988 No 257
renum 1992 No 23
am 1997 No 31
o 62 r 1 ..... sub 1977 No 152
r 2 ..... am 1977 No 152
r 13 am 2000 No 46 r 2 sch 1
o 63 ..... (prev o 63 (rr 1-3)) om 1972 No 189
pres o 63 (rr 1, 2) ins 1972 No 189
r 1 ..... sub 1972 No 189
am 1993 No 4
r 1A ..... ins 1939 No 48
om 1972 No 189
r 2 ..... sub 1972 No 189
am 1991 No 294; 1993 No 4; 1993 No 22
r 3 ..... sub 1969 No 66
om 1972 No 189
o 64 r 3 ..... sub 1969 No 66
r 7 ..... om 1999 No 26 r 19
r 8 ..... sub 1969 No 66
r 12 .....ins 1969 No 66
o 65 hdg ..... sub 2000 No 46 r 2 sch 1
div 65.1 (rr 1-20) ..... (prev div 1 of o 65) sub and renum 2000 No 46 r 2 sch 1
r 1 ..... am 2000 No 46 r 2 sch 1
r 1A ..... (prev r 1 (2)) renum 2000 No 46 r 2 sch 1
r 1B ..... (prev r 1 (3)) renum 2000 No 46 r 2 sch 1
rr 4-6 ..... om 1992 No 16
r 7 ..... 1950 No 22; 1956 No 135; 1969 No 57; 1974 No 197; 1976 No 190; 1977 No 152; 1978 No 86; 1981 No 196; 1982 Nos 202 and 316
sub 1984 No 285 (as am by 1984, No 313)
am 1986 Nos 26 and 349; 1987 Nos 93 and 219
sub 1988 No 24
am 1988 Nos 221 and 331; 1989 No 18; 1990 No 372; 1992 No 82; 1993 No 11; 1994 Nos 17 and 21; 1995 No 12
sub 1997 No 43
r 7A ..... ins 1969 No 57
am 1982 No 202; 1986 No 8
sub 1988 No 331
am 1997 No 8
r 8 ..... am 1968 No 13; 2000 No 46 r 2 sch 1
r 9 ..... sub 2000 No 46 r 25
r 10 ..... am 2000 No 46 r 2 sch 1
r 16 ..... om 1991 No 108
r 18 ..... am 2000 No 46 r 2 sch 1
r 18A ..... (prev r 18 (2)) renum 2000 No 46 r 2 sch 1
div 65.2 (rr 21-83)..... (prev div 2 of o 65) renum 2000 No 46 r 2 sch 1
hdg to r 21..... sub 2001 No 10 amdt 1.9
r 21 ..... am 2001 No 10 amdt 1.10
r 22 ..... am 1968 No 13

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r 34 ..... sub 1956 No 135
r 35A ..... ins 1973 No 95
r 38 ..... om 1981 No 296
r 41 ..... am 1956 No 135; 1980 No 214; 1988 No 24; 1992 No 82; 1993 No 11; 1994 No 17; 1995 No 12; 1997 No 43
r 42..... am 1956 No 135; 1980 No 214; 1997 No 43; 2000 No 46 r 2 sch 1
r 43 ..... am 1997 No 8
r 47 ..... am 1968 No 13; 2000 No 46 r 2 sch 1
r 53A ..... ins 1983 No 27
r 58 ..... (prev r 58.01) sub 1991 No 108
renum 1992 No 23
am 1992 No 23; 1996 No 4; 1999 No 26 r 24 sch
r 64 ..... am 2000 No 46 r 2 sch 1
r 71 ..... am 1956 No 135
r 74 ..... om 1956 No 135
r 75 ..... sub 1996 No 22
r 76 ..... om 1969 No 221
rr 82, 83 .....am 2000 No 46 r 2 sch 1
o 66 hdg..... sub 1992 No 79
o 66..... (prev o 66 (rr 1-12)) om 1991 No 251
pres o 66 (rr 1.01-9.01) ins 1991 No 251
renum 2000 No 46 r 2 sch 1
div 66.1 hdg ..... ins 1992 No 79
renum 200 No 46 r 2 sch 1
div 66.1 (rr 1-10) ..... (prev div 1 of o 66) renum 2000 No 46 r 2 sch 1
r 1 ..... (prev r 1.01) am 1980 No 214
sub 1991 No 251
renum 1992 No 23
r 2, 3 ..... (prev rr 2.01, 3.01) rs 1991 No 251
renum 1992 No 23
r 4 ..... (prev r 4.01) rs 1991 No 251
renum 1992 No 23
am 1994 No 21
rr 5-8 ..... (prev rr 5.01-9.01) rs 1991 No 251
renum 1992 No 23
9 ..... (prev rr 5.01-9.01) rs 1991 No 251
renum 1992 No 23
am 2001 No 10 amdt 1.11
r 10 ..... (prev r 10.01, 10.02) om 1991 No 251
ins 1992 No 79
r 11 ..... (prev r 11.01, 11.02, 11.03) ins 1991 No 108
om 1991 No 251
ins 1992 No 79
am 1993 No 20
r 12.03 ..... ins 1991 No 108
om 1991 No 251
div 66.2 (r 11).....(prev div 2 of o 66) renum 2000 No 46 r 2 sch 1
o 67 (rr 1, 2, 4, 7-9) ..... om 1999 No 26 r 20
r 1 ..... om 1999 No 26 r 20
r 2 ..... (prev r 2.1, 2.2, 2.3) sub 1991 No 108
renum 1992 No 23

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om 1999 No 26 r 20
r 3 ..... om 1991 No 108
r 4 ..... am 1991 No 108
om 1999 No 26 r 20
rr 5, 6 ..... om 1978 No 173
rr 7-9 .....om 1999 No 26 r 20
o 68 r 3 ..... am 1980 No 214
r 6 ..... am 2000 No 46 r 2 sch 1
r 8 ..... am 2000 No 46 r 2 sch 1
r 11 .....sub 1980 No 214
o 69 r 3 ..... am 1993 No 4
rr 4, 5 .....om 1993 No 4
o 69A hdg ..... am 1986 No 8; 1999 No 26 r 24 sch
o 69A ..... (rr 1, 2) ins 1982 No 202
r 1 ..... ins 1982 No 202
am 1986 No 8
r 2 ..... ins 1982 No 202
am 1995 No 19
o 70 (rr 1-6)..... prev o 70 (rr 1-4) om 1974 No 60
ins 1978 No 173
om 1997 No 43
r 1 ..... am 1956 No 135
om 1974 No 60
ins 1978 No 173
om 1997 No 43
rr 2, 3 ..... om 1974 No 60
ins 1978 No 173
om 1995 No 44
r 4 ..... ins 1956 No 135
om 1974 No 60
ins 1978 No 173
sub 1981 No 328
om 1997 No 43
r 5 ..... ins 1978 No 173
om 1995 No 44
r 6 ..... ins 1978 No 173
sub 1981 No 328
om 1997 No 43
rr 7-10 ..... ins 1981 No 328
om 1997 No 43
r 11 ..... ins 1981 No 328
am 1995 No 44
om 1997 No 43
o 71 (rr 1-130)..... om 1978 No 173
rr 1-10 ..... om 1978 No 173
r 10A ..... ins 1958 No 64
om 1978 No 173
rr 11-130 .....om 1978 No 173
o 72 hdg..... sub 2000 No 46 r 2 sch 1
div 72.1 (rr 1, 2)..... (prev div 1 of o 72) renum 2000 No 46 r 2 sch 1

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5 Table of amendments

r 1 ..... am 1956 No 135; 1996 No 11; 1999 No 26 r 24 sch
sub 2000 No 46 r 2 sch 1
rr 1A, 1B..... ins 2000 No 46 r 2 sch 1
div 72.2 (rr 3-19) ..... (prev div 2 of o 72) renum 2000 No 46 r 2 sch 1
r 3 .....am 1996 No 11
rr 4, 5 .....sub 1996 No 11
r 6 ..... am 1956 No 135; 1969 No 66; 1980 No 214; 1984 No 405; 1992 No 79
sub 1996 No 11
rr 7-9 ..... sub 1984 No 405
r 12 .....sub 1996 No 11
r 14 ..... am 1956 No 135; 1980 No 214; 1981 No 296
sub 1996 No 11
r 14A .....ins 1996 No 22
r 15 .....am 2001 No 10 amdts 1.12-1.14
r 16 .....am 1995 No 11
r 19 .....am 2000 No 46 r 2 sch 1
div 72.3 (rr 20-22).....(prev div 3 of o 72) sub 2000 No 46 r 26
rr 20, 21 .....sub 2000 No 46 r 26
r 22 ..... am 1938 No 99
om 2000 No 46 r 26
div 72.4 (rr 23-29)..... (prev div 4 of o 72) renum 2000 No 46 r 2 sch 1
r 24 ..... om 1980 No 214
div 72.5 (rr 30-33)..... (prev div 5 of o 72) renum 2000 No 46 r 2 sch 1
rr 30, 31 ..... am 1996 No 11
div 72.6 (r 34)..... (prev div 6 of o 72) renum 2000 No 46 r 2 sch 1
div 72.7 (r 35)..... (prev div 7 of o 72) renum 2000 No 46 r 2 sch 1
r 35 ..... am 1999 No 26 r 21
div 72.8 (r 36)..... (prev div 8 of o 72) renum 2000 No 46 r 2 sch 1
r 36 ..... am 2000 No 46 r 27
div 72.9 (rr 37-51B) ..... (prev div 9 of o 72) renum 2000 No 46 r 2 sch 1
r 38 ..... sub 1992 No 79
r 39 ..... am 1996 No 11
r 51A ..... ins 1998 No 35
r 51B ..... ins 1998 No 35
am 1999 No 26 r 24 sch
div 72.10 (rr 52-58)..... (prev div 10 of o 72) renum 2000 No 46 r 2 sch 1
r 52 ..... am 1996 No 11
r 54 ..... am 2001 No 10 amdt 1.15
div 72.11 (r 59)..... (prev div 11 of o 72) renum 2000 No 46 r 2 sch 1
div 72.12 hdg .....am 1995 No 11
div 72.12 (rr 60-66)..... (prev div 12 of o 72) renum 2000 No 46 r 2 sch 1
r 60 ..... am 1956 No 135; 1995 No 11; 1996 No 11
rr 61-63 ..... am 1995 No 11; 1996 No 11
rr 64-66 ..... am 1995 No 11
r 67 hdg..... om 2000 No 46 r 2 sch 1
r 67 ..... om 2000 No 46 r 2 sch 1
r 68 ..... om 1999 No 26 r 22
hdg to div 72.13 ..... sub 2000 No 46 r 2 sch 1
r 69 ..... am 1996 No 11
r 70 ins 1996 No 11

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o 73 (rr 1-13)..... ins 1956 No 135
om 2000 No 46 r 2 sch 1
r 1 ..... ins 1956 No 135
om 2000 No 46 r 2 sch 1
r 2 ..... ins 1956 No 135
am 1992 No 34
om 2000 No 46 r 2 sch 1
rr 3-5 ..... ins 1956 No 135
om 2000 No 46 r 2 sch 1
r 6 ..... ins 1956 No 135
am 1992 No 34
om 2000 No 46 r 2 sch 1
r 7 ..... ins 1956 No 135
om 2000 No 46 r 2 sch 1
r 8 ..... ins 1956 No 135
am 1997 No 8
om 2000 No 46 r 2 sch 1
r 9 ..... ins 1956 No 135
om 2000 No 46 r 2 sch 1
r 10 ..... ins 1956 No 135
am 1992 No 34
om 2000 No 46 r 2 sch 1
rr 11-13 ..... ins 1956 No 135
om 2000 No 46 r 2 sch 1
o 74 (rr 1, 2)..... ins 1956 No 135
rr 1, 2 ..... ins 1956 No 135
am 1997 No 8
om 2000 No 46 r 2 sch 1
o 74A (rr 1-11) ..... ins 1992 No 35
r 1 ..... ins 1992 No 35
sub 2000 No 46 r 2 sch 1
r 1A..... ins 2000 No 46 r 2 sch 1
rr 2-11 ins 1992 No 35
o 75 ..... (orig o 75 (rr 1-8)) ins 1956 No 135
om 1969 No 222
(prev o 75 (rr 1-212)) ins 1969 No 222
om 1993 No 35
r 1 ..... ins 1956 No 135
am 1962 No 47
sub 1969 No 222
om 1993 No 35
r 1A..... ins 1984 No 281
om 1993 No 35
rr 2, 3 ..... ins 1956 No 135
am 1962 No 47
sub 1969 No 222
om 1993 No 35
hdg preceding r 4 ..... om 1962 No 47
rr 4-8 ..... ins 1956 No 135
om 1962 No 47

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ins 1969 No 222
om 1993 No 35
rr 9-21 ..... ins 1969 No 222
om 1993 No 35
r 22 ..... ins 1969 No 222
am 1980 No 214
sub 1993 No 23
om 1993 No 35
rr 23-45 ..... ins 1969 No 222
om 1993 No 35
r 46 ..... ins 1969 No 222
sub 1980 No 210
om 1993 No 35
rr 47-49 ..... ins 1969 No 222
om 1993 No 35
r 50 ..... ins 1969 No 222
am 1980 No 210
om 1993 No 35
rr 51-79 ..... ins 1969 No 222
om 1993 No 35
rr 80, 81 ..... ins 1969 No 222
am 1980 No 210
om 1993 No 35
rr 82-94 ..... ins 1969 No 222
om 1993 No 35
r 95 ..... ins 1969 No 222
sub 1980 No 210
om 1993 No 35
rr 96-98 ..... ins 1969 No 222
om 1993 No 35
r 99 ..... ins 1969 No 222
sub 1980 No 210
om 1993 No 35
rr 100-115 ..... ins 1969 No 222
om 1993 No 35
r 116 ..... ins 1969 No 222
am 1980 No 214
om 1993 No 35
rr 117-212 ..... ins 1969 No 222
om 1993 No 35
rr 213-218 ..... ins 1980 No 210
om 1993 No 35
o 75A (rr 1-69) ..... ins 1984 No 281
om 1993 No 35
r 1 ..... ins 1984 No 281
am 1989 No 30
om 1993 No 35
rr 2-13 ..... ins 1984 No 281
om 1993 No 35
rr 14-15 ..... ins 1984 No 281

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am 1989 No 30
om 1993 No 35
rr 16-29 ..... ins 1984 No 281
om 1993 No 35
r 30 ..... ins 1984 No 281
am 1989 No 30
om 1993 No 35
rr 31-44 ..... ins 1984 No 281
om 1993 No 35
r 45 ..... ins 1984 No 281
am 1989 No 30
om 1993 No 35
rr 46-59 ..... ins 1984 No 281
om 1993 No 35
r 59A ..... ins 1990 No 129
om 1993 No 35
rr 60-68 ..... ins 1984 No 281
om 1993 No 35
r 69 ..... ins 1984 No 281
am 1989 No 30; 1991 No 251
om 1993 No 35
o 75B (rr 1-110) ..... ins 1990 No 458
om 2000 No 17 r 12
r 1 ..... ins 1990 No 458
om 2000 No 17 r 12
r 2 ..... ins 1990 No 458
am 1992 No 34; 1993 No 35; 1999 No 26 r 24 sch
om 2000 No 17 r 12
r 3 .....ins 1990 No 458
om 2000 No 17 r 12
r 3A ..... ins 1997 No 8
om 2000 No 17 r 12
r 4 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 5 .....ins 1990 No 458
om 2000 No 17 r 12
r 6 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 7 ..... ins 1990 No 458
am 1991 Nos 251 and 294; 1993 No 35
om 2000 No 17 r 12
r 8 ..... ins 1990 No 458
om 1991 No 294
rr 9, 10 ..... ins 1990 No 458
om 2000 No 17 r 12
r 11 ..... ins 1990 No 458
am 1991 No 251
om 2000 No 17 r 12

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rr 12, 13 ..... ins 1990 No 458
am 1993 No 35; 1997 No 8
om 2000 No 17 r 12
r 14 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 15 ..... ins 1990 No 458
om 2000 No 17 r 12
rr 16, 17 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
div 4 hdg .....am 1993 No 35
om 2000 No 17 r 12
rr 18, 19 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 19A ..... ins 1993 No 35
om 2000 No 17 r 12
r 20 ..... ins 1990 No 458
am 1993 No 35; 1997 No 8
om 2000 No 17 r 12
rr 21-27 ..... ins 1990 No 458
om 2000 No 17 r 12
div 6 hdg .....sub 1993 No 35
om 2000 No 17 r 12
r 27A ..... ins 1993 No 35
om 2000 No 17 r 12
r 28 ..... ins 1990 No 458
om 2000 No 17 r 12
rr 28A-28C ..... ins 1993 No 35
om 2000 No 17 r 12
rr 29, 30 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 30A-30C ..... ins 1993 No 35
om 2000 No 17 r 12
r 31 ..... ins 1990 No 458
am 1992 No 23; 1993 No 35
om 2000 No 17 r 12
rr 32-34 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
div 7A of o 75B .....ins 1993 No 35
(rr 34A-34G) om 2000 No 17 r 12
rr 34A-34G ..... ins 1993 No 35
om 2000 No 17 r 12
r 35 ..... ins 1990 No 458
am 1993 No 35
om 1994 No 34
r 36 ..... ins 1990 No 458
am 1992 No 23

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sub 1993 No 35
am 1997 No 8
om 2000 No 17 r 12
r 36A ..... ins 1993 No 35
sub 1996 No 31
om 2000 No 17 r 12
rr 36B, 36C ..... ins 1993 No 35
om 2000 No 17 r 12
r 37 ..... ins 1990 No 458
am 1991 No 251
sub 1993 No 35
am 1996 No 31; 1999 No 26 r 24 sch
om 2000 No 17 r 12
r 38 ..... ins 1990 No 458
am 1991 No 251
sub 1993 No 35
am 1994 No 34
om 2000 No 17 r 12
r 39 ..... ins 1990 No 458
am 1992 No 79; 1992 No 21
om 2000 No 17 r 12
r 39A ..... ins 1993 No 35
om 2000 No 17 r 12
r 40 .....ins 1990 No 458
om 2000 No 17 r 12
r 41 ..... ins 1990 No 458
sub 1993 No 35
am 1999 No 26 r 24 sch
om 2000 No 17 r 12
r 42 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 43-45 .....ins 1990 No 458
om 2000 No 17 r 12
rr 46, 47 ..... ins 1990 No 458
sub 1993 No 35
om 2000 No 17 r 12
r 48 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 49-52 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 53, 54 .....ins 1990 No 458
om 2000 No 17 r 12
r 55 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 56 ..... ins 1990 No 458
om 1993 No 35
rr 57-59 ..... ins 1990 No 458

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om 2000 No 17 r 12
r 60 ..... ins 1990 No 458
sub 1993 No 35
om 2000 No 17 r 12
r 61 ..... ins 1990 No 458
om 1993 No 35
r 62 ..... ins 1990 No 458
om 1993 No 35
r 63 ..... ins 1990 No 458
om 2000 No 17 r 12
r 64 ..... ins 1990 No 458
am 1992 No 23; 1993 No 35
om 2000 No 17 r 12
r 64A ..... ins 1993 No 35
om 2000 No 17 r 12
r 65 ..... ins 1990 No 458
om 2000 No 17 r 12
r 66 ..... ins 1990 No 458
sub 1991 No 251
om 2000 No 17 r 12
rr 67, 68 .....ins 1990 No 458
om 2000 No 17 r 12
r 69 ..... ins 1990 No 458
am 1992 No 23
om 2000 No 17 r 12
rr 70-72 .....ins 1990 No 458
om 2000 No 17 r 12
r 73 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 74 ..... ins 1990 No 458
om 1993 No 35
rr 75, 76 ..... ins 1990 No 458
om 2000 No 17 r 12
rr 76A, 76B..... ins 1993 No 35
om 2000 No 17 r 12
r 77 ..... ins 1990 No 458
sub 1993 No 35
om 2000 No 17 r 12
rr 77A-77C ..... ins 1993 No 35
om 2000 No 17 r 12
r 78 ..... ins 1990 No 458
am 1997 No 8
om 2000 No 17 r 12
rr 79, 80 .....ins 1990 No 458
om 2000 No 17 r 12
r 81 ..... ins 1990 No 458
sub 1993 No 35
om 2000 No 17 r 12
r 81A ..... ins 1993 No 35
om 2000 No 17 r 12

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r 82 ..... ins 1990 No 458
am 1993 No 35; 1994 No 21
om 2000 No 17 r 12
rr 83-88 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 89-92 .....ins 1990 No 458
om 2000 No 17 r 12
r 93 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
r 94 .....ins 1990 No 458
om 2000 No 17 r 12
r 95 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 96, 97 .....ins 1990 No 458
om 2000 No 17 r 12
r 98 ..... ins 1990 No 458
om 1994 No 34
rr 98A, 98B..... ins 1993 No 35
om 2000 No 17 r 12
r 99 .....ins 1990 No 458
om 2000 No 17 r 12
r 100 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 101, 102 .....ins 1990 No 458
om 2000 No 17 r 12
r 103 ..... ins 1990 No 458
am 1993 No 35
om 2000 No 17 r 12
rr 104-110 .....ins 1990 No 458
om 2000 No 17 r 12
pt 7 hdg.....sub 2000 No 46 r 2 sch 1
o 76 hdg.....ins 1966 No 132
o 76.....(rr 1-18) ins 1966 No 132
div 76.1 (rr 1-1B) .....(prev div 1 of o 76) renum 2000 No 46 r 2 sch 1
r 1 ..... ins 1966 No 132
sub 1993 No 30
am 1997 No 8; 1999 No 26 r 24 sch
sub 2000 No 23 r 3
r 1A, 1B..... ins 2000 No 23 r 3
div 76.2 (rr 2-9) .....(prev div 2 of o 76) renum 2000 No 46 r 2 sch 1
r 2 ..... ins 1966 No 132
sub 1993 No 30; 2000 No 23 r 4
r 3 ..... ins 1966 No 132
am 1969 No 66
sub 1993 No 30
am 1997 No 8; 2000 No 23 r 5

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r 4 ..... ins 1966 No 132
sub 1993 No 30; 2000 No 23 r 6
r 5 ..... ins 1966 No 132
sub 1993 No 30
r 6 ..... ins 1966 No 132
am 1969 No 66
sub 1993 No 30
am 2000 No 23 r 7
r 7 ..... ins 1966 No 132
sub 1993 No 30; 2000 No 23 r 8
rr 8, 9 ..... ins 1966 No 132
sub 1993 No 30
div 76.3 (rr 10-13).....(prev div 3 of o 76) renum 2000 No 46 r 2 sch 1
r 10 ..... ins 1966 No 132
sub 1993 No 30
r 11 ..... ins 1966 No 132
sub 1993 No 30
am 2000 No 23 r 9
r 12 ..... ins 1966 No 132
sub 1993 No 30; 2000 No 23 r 10
r 13 ..... ins 1966 No 132
sub 1993 No 30
div 76.4 (rr 14-16).....(prev div 4 of o 76) renum 2000 No 46 r 2 sch 1
r 14 ..... ins 1966 No 132
sub 1993 No 30
am 2000 No 23 r 11
rr 15, 16 ..... ins 1966 No 132
sub 1993 No 30
div 76.5 (rr 17-19).....(prev div 5 of o 76) renum 2000 No 46 r 2 sch 1
r 17 ..... ins 1966 No 132
sub 1993 No 30
r 18 ..... ins 1966 No 132
om 1974 No 60
ins 1993 No 30
r 19 .....ins 1993 No 30
div 76.6 (rr 20-23).....(prev div 6 of o 76) renum 2000 No 46 r 2 sch 1
r 20 ..... ins 1993 No 30
r 21 ..... ins 1993 No 30
sub 2000 No 23 r 12
rr 22, 23 ..... ins 1993 No 30
div 76.7 (rr 24-28).....(prev div 7 of o 76) renum 2000 No 46 r 2 sch 1
r 24 ..... ins 1993 No 30
r 25 ..... ins 1993 No 30
sub 1999 No 26 r 24 sch
am 2000 No 23 r 13
rr 26-28 .....ins 1993 No 30
o 77 (rr 1-14)..... ins 1985 No 27
om 1995 No 19
hdg to pt 9.....sub 2001 No 10 amdt 1.16
o 78 (rr 1, 2, 3.01, 3.02, ins 1988 No 145

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4.01, 4.02, 5.01, 6.01-6.05, 7.01-7.03, 8.01-8.03)
r 1 ..... ins 1988 No 145
r 2 ..... ins 1988 No 145
am 2001 No 10 amdts 1.17-1.20
r 3 ..... (prev rr 3.01-5.01) ins 1988 No 145
renum 1992 No 23
am 2001 No 10 amdt 1.21
r 4, r 5 ..... (prev rr 3.01-5.01) ins 1988 No 145
renum 1992 No 23
r 6 ..... (prev r 6.01) ins 1988 No 145
am 1992 No 23
renum 1992 No 23
r 7 ..... (prev r 7.01) ins 1988 No 145
renum 1992 No 23
r 8 ..... (prev r 8.01) ins 1988 No 145
renum 1992 No 23
am 2000 No 46 r 2 sch 1
o 79 hdg ..... sub 2000 No 46 r 2 sch 1
o 79 (rr 1-14)..... (orig o 79 (rr 1-12) ins 1989 No 30
om 1994 No 42
ins 1994 No 42
div 79.1 (rr 1, 2)..... (prev div 1 of o 79) renum 2000 No 46 r 2 sch 1
r 1 ..... ins 1989 No 30
sub 1994 No 42; 2000 No 46 r 2 sch 1
r 2 ..... ins 1989 No 30
sub 1994 No 42; 1997 No 8
div 79.2 (rr 3-12) .....(prev div 2 of o 79) renum 2000 No 46 2 sch 1
rr 3-12 ..... ins 1989 No 30
sub 1994 No 42
div 79.3 (r 13).....(prev div 3 of o 79) renum 2000 No 46 2 sch 1
r 13 ..... ins 1994 No 42
div 79.4 (r 14).....(prev div 4 of o 79) renum 2000 No 46 2 sch 1
r 14 .....ins 1994 No 42
o 80 hdg..... sub 2000 No 46 r 2 sch 1
o 80 (rr 1-15)..... (prev rr 1.01-15.01) ins 1989 No 273
div 80.1 (rr 1, 2)..... (prev div 1 of o 80) renum 2000 No 46 r 2 sch 1
r 1 ..... (prev r 1.01) ins 1989 No 273
renum 1992 No 23
r 2 ..... (prev r 2.01) ins 1989 No 273
renum 1992 No 23
am 1999 No 26 r 24 sch
div 80.2 (r 3)..... (prev div 2 of o 80) renum 2000 No 46 r 2 sch 1
r 3 ..... (prev r 2.01) ins 1989 No 273
am 1992 No 23
renum 1992 No 23
div 80.3 (rr 4-13) ..... (prev div 3 of o 80) renum 2000 No 46 r 2 sch 1
r 4 ..... (prev r 4.01) ins 1989 No 273
renum 1992 No 23

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r 5 ..... (prev r 5.01) ins 1989 No 273
renum 1992 No 23
sub 1995 No 27
am 2000 No 46 r 2 sch 1
r 6 ..... (prev r 6.01) ins 1989 No 273
renum 1992 No 23
r 7 ..... (prev r 7.01) ins 1989 No 273
am 1992 No 23
renum 1992 No 23
am 1995 No 27; 2000 No 46 r 2 sch 1
r 8 ..... (prev r 8.01) ins 1989 No 273
renum 1992 No 23
r 9 ..... (prev r 9.01) ins 1989 No 273
am 1992 No 23
renum 1992 No 23
am 2001 No 10 amdt 1.22
r 10 ..... (prev r 10.01) ins 1989 No 273
renum 1992 No 23
r 11 ..... (prev r 11.01) ins 1989 No 273
renum 1992 No 23
r 12 ..... (prev r 12.01) ins 1989 No 273
renum 1992 No 23
sub 1999 No 26 r 23
r 13 ..... (prev r 13.01) ins 1989 No 273
renum 1992 No 23
r 14 ..... (prev r 14.01) ins 1989 No 273
renum 1992 No 23
om 1999 No 26 r 24 sch
div 80.4 (r 15)..... (prev div 4 of o 80) renum 2000 No 46 r 2 sch 1
r 15 ..... (prev r 15.01) ins 1989 No 273
renum 1992 No 23
o 80A (rr 1-4) ..... ins 1995 No 27
rr 1-4 ins 1995 No 27
o 80B (rr 1-5) ..... ins 1995 No 27
rr 1-5 ins 1995 No 27
o 80C (r 1) ..... ins 1995 No 44
r 1 ..... ins 1995 No 44
sub 2000 No 46 r 2 sch 1
rr 1A, 1B.....ins 2000 No 46 r 2 sch 1
o 80D (rr 1-5) ..... ins 1995 No 44
rr 1-5 .....ins 1995 No 44
o 80E (rr 1-3) ..... ins 1995 No 44
r 1 ..... ins 1995 No 44
am 2000 No 46 r 2 sch 1
rr 2, 3 .....ins 1995 No 44
o 80F (rr 1-5)..... ins 1995 No 44
rr 1-5 .....ins 1995 No 44
o 80G (rr 1-4) ..... ins 1995 No 44
rr 1-4 .....ins 1995 No 44
o 81 ..... (prev rr 1.01-19.03) ins 1991 No 252

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r 1 ..... (prev r 1.01) ins 1991 No 252
renum 1992 No 23
am 1994 No 21
sub 1997 No 31
r 2 ..... (prev r 2.01) ins 1991 No 252
renum 1992 No 23
sub 1997 No 31
am 1998 No 35; 1999 No 26 r 24 sch
rr 3-7 ..... (prev rr 3.01-7.01) ins 1991 No 252
renum 1992 No 23
sub 1997 No 31
r 8 ..... (prev r 8.01) ins 1991 No 252
renum 1992 No 23
am 1992 No 23; 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
r 9 ..... (prev r 9.01) ins 1991 No 252
renum 1992 No 23
am 1992 No 23
sub 1997 No 31
r 10 .....(prev r 10.01) ins 1991 No 252
am 1992 No 23
renum 1992 No 23
rr 11-16 ..... (prev rr 11.01-16.01) ins 1991 No 252
am 1992 No 23
sub 1997 No 31
r 17 ..... ins 1991 No 252
sub 1992 No 21; 1997 No 31
r 18 ..... ins 1991 No 252
om 1992 No 21
r 19 ..... ins 1991 No 252
om 1992 No 21
ins 1997 No 31
r 20 ..... ins 1997 No 31
am 2000 No 46 r 2 sch 1
o 81A..... (prev rr 1, 2) ins 1994 No 20
om 1997 No 31
pres rr 1-9 ins 1997 No 31
rr 1, 2 ..... ins 1994 No 20
sub 1997 No 31
rr 3-5 ..... ins 1997 No 31
r 6 ..... ins 1997 No 31
am 1999 No 26 r 24 sch; 2000 No 46 r 2 sch 1
rr 7-9 .....ins 1997 No 31
o 82 (rr 1-7)..... (prev rr 1.01-7.03) ins 1991 No 252
rr 1, 2 ..... (prev rr 1.01, 1.02) ins 1991 No 252
renum 1992 No 23
r 3 ..... (prev r 3.01) ins 1991 No 252
renum 1992 No 23
am 1999 No 26 r 24 sch
r 4 ..... (prev r 4.01) ins 1991 No 25
renum 1992 No 23

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rr 5, 6 ..... (prev rr 5.01, 6.01) ins 1991 No 252
renum 1992 No 23
r 7 ..... (prev r 7.01) ins 1991 No 252
renum 1992 No 23
o 82A (rr 1-15) ..... ins 1992 No 21
om 1997 No 31
rr 1-4 ..... ins 1992 No 21
om 1997 No 31
r 5 ..... ins 1992 No 21
am 1995 No 19
om 1997 No 31
rr 6-15 ..... ins 1992 No 21
om 1997 No 31
o 82B (rr 1-15) ..... ins 1995 No 13
om 1997 No 31
rr 1-15 ..... ins 1995 No 13
om 1997 No 31
o 82C (rr 1-15) ..... ins 1995 No 19
om 1997 No 31
rr 1-15 ..... ins 1995 No 19
om 1997 No 31
pt 14 hdg.....sub 2000 No 46 r 2 sch 1
o 83 hdg..... sub 2000 No 46 r 2 sch 1
o 83 (rr 1-21)..... (prev rr 1.01-21.01) ins 1991 No 416
div 83.1 (rr 1-11) ..... (prev div 1 of o 83) renum 2000 No 46 r 2 sch 1
rr 1, 2 ..... (prev rr 1.01-2.01) ins 1991 No 416
renum 1992 No 23
r 3 ..... (prev r 3.01) ins 1991 No 416
renum 1992 No 23
am 2000 No 46 r 28
r 4 ..... (prev r 4.01) ins 1991 No 416
renum 1992 No 23
am 1997 No 8
rr 5, 6 ..... (prev rr 5.01, 6.01) ins 1991 No 416
renum 1992 No 23
rr 6A-6D ..... ins 2000 No 46 r 29
rr 7-10 ..... (prev rr 7.01-10.01) ins 1991 No 416
renum 1992 No 23
r 11 ..... (prev r 11.01) ins 1991 No 416
renum 1992 No 23
div 83.2 (rr 11A-11N)..... ins 2000 No 46 r 30
rr 11A-11N ..... ins 2000 No 46 r 30
div 83.3 (rr 12-20)..... (prev div 2 of o 83) renum 2000 No 46 r 2 sch 1
r 12 ..... (prev r 12.01) ins 1991 No 416
renum 1992 No 23
r 13 ..... (prev r 13.01) ins 1991 No 416
renum 1992 No 23
am 2000 No 46 r 2 sch 1
r 14 ..... (prev r 14.01) ins 1991 No 416
am 1992 No 23

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renum 1992 No 23
2000 No 46 r 2 sch 1
r 15 ..... (prev r 15.01) ins 1991 No 416
am 1992 No 23
renum 1992 No 23
r 16 ..... (prev r 16.01) ins 1991 No 416
renum 1992 No 23
r 17 ..... (prev r 17.01) ins 1991 No 416
renum 1992 No 23
am 1992 No 23
r 18 ..... (prev r 18.01) ins 1991 No 416
renum 1992 No 23
am 2000 No 46 r 2 sch 1
r 19 ..... (prev r 19.01) ins 1991 No 416
renum 1992 No 23
am 1992 No 23
r 20 ..... (prev r 20.01) renum 1992 No 23
div 83.4 (r 21)..... (prev div 3 of o 83) renum 2000 No 46 r 2 sch 1
r 21 ..... (prev r 21.01) ins 1991 No 416
renum 1992 No 23
hdg to schs .....om 1999 No 26 r 24 sch
hdg to sch 1 ..... om 1999 No 26 r 24 sch
ins 1999 No 26 r 24 sch
sub 2000 No 46 r 2 sch 1
sch 1 .....am 1939 No 61; 1968 No 13; 1969 Nos 66 and 221; 1973 No 149; 1974 Nos 25 and 197; 1977 No 152; 1980 No 214; 1981 Nos 104 and 296; 1983 No 27; 1986 No 8; 1987 No 67; 1988 No 257; 1989 No 30; 1991 Nos 108 and 252; 1992 Nos 21, 23 and 35; 1993 Nos 20 and 23; 1994 Nos 21, and 34; 1995 Nos 13, 19 and 27; 1996 Nos 10, 22 and 27; 1997 Nos 8, 31 and 38; 1998 No 35 (as am by 1999 No 26 r 32); 1999 No 26 r 24 sch; 2000 No 17 r 13; 2000 No 46 r 2 sch 1, r 31, r 32
sch 2 ..... am 1958 No 64
om 1978 No 173
sch 3 hdg ..... om 1999 No 26 r 24 sch
ins 1999 No 26 r 24 sch
sub 2000 No 46 r 2 sch 1
sch 3 ..... am 1956 No 135; 1980 No 214; 1981 No 296; 1995 No 11; 1996 Nos 11 and 22; 1998 No 35; 2000 No 46 r 2 sch 1
om 2000 No 46 r 2 sch 1
sch 4 ..... am 1950 No 22
sub 1956 No 135; 1962 No 76; 1969 No 57; 1973 No 95; 1982 No 316; 1984 No 285; 1988 No 24
om 1992 No 82
ins 1992 No 82
am 1993 No 28; 1997 No 43; 1999 No 26 r 24 sch
sch 5 ..... sub 1956 No 135
om 1974 No 60
sch 6 .....om 1980 No 214
sch 7 ..... ins 1956 No 135

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	am 1962 No 47
	sub 1969 No 222
	am 1980 No 210; 1992 No 34; 1993 No 23
	om 1993 No 35
sch 8 hdg	om 1999 No 26 r 24 sch
	ins 1999 No 26 r 24 sch
	sub 2000 No 46 r 2 sch 1
sch 8	ins 1966 No 132
	am 1969 No 66; 1991 No 108
	sub 1993 No 30
	am 1998 No 35; 1999 No 26 r 24 sch; 2000 No 23 r 14
sch 9	ins 1984 No 281
	am 1989 No 30; 1991 No 108; 1992 No 34
	om 1993 No 35
sch 10	ins 1985 No 27
	om 1995 No 19
sch 11 hdg	om 1999 No 26 r 24 sch
	ins 1999 No 26 r 24 sch
	sub 2000 No 46 r 2 sch 1
sch 11	ins 1989 No 273
	am 1992 No 23; 1995 No 27
sch 12	ins 1990 No 458
	am 1992 No 16; 1993 No 35; 1996 No 31; 1998 No 35; 1999 No 26 r 24 sch
	om 2000 No 17 r 14
sch 13	ins 1990 No 458
	am 1992 No 16; 1993 No 35; 1994 No 21
	om 2000 No 17 r 14
sch 13A	ins 1993 No 35
	am 1999 No 26 r 24 sch
	om 2000 No 17 r 14
sch 13B hdg	sub 2000 No 46 r 2 sch 1
sch 13B	ins 1995 No 44
sch 14 hdg	sub 2000 No 46 r 2 sch 1
sch 14	ins 1992 No 21
	sub 1997 No 31

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6 Table of earlier republications

Amendments to	Cut-off date	Republication number
SL 1992 No 35	18 December 1992	(1)
SL 1993 No 46	31 December 1993	(2)
SL 1994 No 42	19 February 1995	(3)
SL 1995 No 44	31 January 1996	(4)
SL 1996 No 31	31 January 1997	(5)
SL 1997 No 43	2 February 1998	(6)
SL 1998 No 35	1 February 1999	(7)
SL 2000 No 50	16 February 2001	8
SL 2000 No 50	16 February 2001	8A

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7 Table of renumbered provisions

TABLE SHOWING NEW RULE NUMBERS OF THE SUPREME COURT RULES AFTER RENUMBERING BY SUBORDINATE LAW 1992 No 23

NOTE—This Table does not form part of the Supreme Court Rules and is printed for convenience of reference only.

Column 1 Order	Column 2 Previous provision numbers	Column 3 New provision numbers
61A	1.01, 2.01, 3.01, 4.01, 5.01, 6.01, 7.01, 7.02, 8.01, 8.02, 8.03, 9.01, 9.02, 9.03, 9.04, 10.01, 11.01	1, 2, 3, 4, 5, 6, 7 (1), (2), 8 (1), (2), (3), 9 (1), (2), (3), (4), 10, 11
65	58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 58.07, 58.08, 58.09, 58.10	58 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10)
66	1.01, 2.01, 2.02, 3.01, 4.01, 4.02, 4.03, 4.04, 5.01, 6.01, 6.02, 7.01, 8.01, 9.01	1, 2 (1), (2), 3, 4 (1), (2), (3), (4), 5, 6 (1), (2), 7, 8, 9, 10 (1), (2), 11 (1), (2), (3)
67	2.01, 2.02, 2.03	2 (1), (2), (3)
78	3.01, 3.02, 4.01, 4.02, 5.01, 6.01, 6.02, 6.03, 6.04, 6.05, 7.01, 7.02, 7.03, 8.01, 8.02, 8.03	3 (1), (2), 4 (1), (2), 5, 6 (1), (2), (3), (4), (5), 7 (1), (2), (3), 8 (1), (2), (3)
80	1.01, 2.01, 2.02, 3.01, 3.02, 4.01, 5.01, 5.02, 5.03, 5.04, 5.05, 6.01, 6.02, 6.03, 7.01, 7.02, 7.03, 7.04, 8.01, 8.02, 9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07, 10.01, 10.02, 10.03, 10.04, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 13.01, 13.02, 14.01, 15.01	1, 2 (1), (2), 3 (1), (2), 4, 5 (1), (2), (3), (4), (5), 6 (1), (2), (3), 7 (1), (2), (3), (4), 8 (1), (2), 9 (1), (2), (3), (4), (5), (6), (7), 10 (1), (2), (3), (4), 11 (1), (2), (3), (4), 12 (1), (2), 13 (1), (2), 14, 15
81	1.01, 2.01, 3.01, 3.02, 3.03, 4.01, 5.01, 5.02, 6.01, 6.02, 7.01, 7.02, 7.03, 8.01, 8.02, 9.01, 9.02, 10.01, 10.02, 10.03, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 13.01, 13.02, 13.03, 14.01, 14.02, 14.03, 15.01, 15.02, 15.03, 16.01, 16.02, 16.03, 16.04	1, 2, 3 (1), (2), (3), 4, 5 (1), (2), 6 (1), (2), 7 (1), (2), (3), 8 (1), (2), 9 (1), (2), 10 (1), (2), (3), 11 (1), (2), (3), (4), 12 (1), (2), 13 (1), (2), (3), 14 (1), (2), (3), 15 (1), (2), (3), 16 (1), (2), (3), (4)
82	1.01, 2.01, 3.01, 3.02, 3.03, 4.01, 4.02, 5.01, 6.01, 7.01, 7.02	1, 2, 3 (1), (2), (3), 4 (1), (2), 5, 6, 7 (1), (2)

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Column 1 Order	Column 2 Previous provision numbers	Column 3 New provision numbers
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

8 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date—

Supreme Court Rules (Amendment) 1995 No 15 r 1 (2), (rr 3-14) as amended by 1997 No 8, 1999 No 26, 2000 No 46

3 Interpretation

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;".

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4 Heading to Order 10

The heading to Order 10 is omitted and the following heading substituted:

"Order 10 Service of documents in Australia—other than foreign documents

4A Application of o 10

Rule 1 of order 10 is amended by adding ', other than a document to which part 15 (Service of foreign documents) applies' after 'document'.

5 Insertion

After Order 10 of the Principal Rules the following Order is inserted:

"Order 11 Service under the Hague convention

"1 Meaning of requesting party in o 11

In this order:

requesting party means a person who requires a document connected with civil proceedings to be served in a Convention country.

2 Application of Order

(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.

3 Register of Convention particulars

(1) The registrar shall obtain from the Commonwealth and maintain in a register (the ***Hague Convention Register***)—

(a) a copy of the Hague Convention; and

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(b) a current list of Convention countries; and

(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.

4 Documents to be filed

(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; and

(b) a request for service in accordance with subrule (3) for signature by the registrar; and

(c) the document to be served; and

(d) a summary, in accordance with schedule 15, form 6 of the document to be served; and

(e) a statement, in accordance with schedule 15, form 6, 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; and

(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

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(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 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 subrule (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 subrule (1) (b) shall—

(a) be in accordance with schedule 15, form 3; and

(b) be completed, except for signature, by the requesting party; and

(c) state whether the requesting party wants service to be attempted if the time for entering an appearance has expired; and

(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 subrule (1) (g) shall bear a certificate in the language into which the translation has been made stating—

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(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.

5 Forwarding of documents abroad

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; and

(b) the document to be served; and

(c) the summary of the document to be served referred to in rule 4 (1) (d);

(d) the warning statement referred to in rule 4 (1) (e); and

(e) any translations required by rule 4 (1) (g); and

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.

6 Receipt of certificate of service

On receipt of a certificate of service in accordance with schedule 15, form 5 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.

7 Costs

(1) On receipt of a statement of costs of service of a document in a Convention country, being costs referred to in rule 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.

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(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.

8 Evidence of service

A certificate of service in accordance with schedule 15, form 5 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.

9 Application of rules generally

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.”.

6 Heading to Order 12

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**”.

7 Insertion

Before rule 2 of Order 12 of the Principal Rules the following rule is inserted in that Order:

1 Application of order

This order applies to the service out of Australia of a document referred to in this order, other than a document that may be served under order 11.”.

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8 Procedure to effect service in certain cases

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.”.

9 Repeal

Rule 11 of Order 12 of the Principal Rules is repealed.

11 Heading to Order 14

The heading to Order 14 of the Principal Rules is amended by adding at the end “**—GENERAL**”.

12 Insertion

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

1 Definitions for o 14A

In this order—

originating process means a document by which proceedings are commenced.

proceedings includes a claim against a third party.

2 Application

This order applies where an originating process has been transmitted under order 11 rule (b) to a foreign additional authority or a foreign Central Authority.

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3 Entry of judgment in default of appearance where a certificate of service has been filed

(1) Where this order applies and the registrar has received a certificate of service in accordance with order 11, rule 6, 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; or

(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.

4 Filing of certificate of service to be deemed to be compliance with requirements of certain other Orders

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 order 11, rule 6 shall be deemed to be sufficient compliance with any requirement to file an affidavit of service or a notice in lieu of service.

5 Entry of judgment in default of appearance where no certificate of service has been filed

Where this order applies and a certificate of service in accordance with order 11, rule 6 has not been received by the registrar, the court may enter judgment in default of appearance by the defendant if—

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(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 on which the originating process was transmitted under order 11, rule 5 (b); 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.

6 Interlocutory, provisional or protective orders

Rule 5 does not limit any power that the court may have to make an interlocutory or a provisional or protective order

7 Setting aside judgment in default of appearance

(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.

8 Application of Rules generally

(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;

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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 with a legal disability is subject to the provisions of any other order that restricts such power".

13 Insertion

The Principal Rules are amended by inserting after Part 14 the following Part:

"Part 15 Service of foreign documents

"Order 84 Douments from a convention country

"1 Interpretation

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.

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 schedule

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15, form 1 or 2 made by a competent authority requesting that a document be served on a person in the Territory.

2 Application of Order

(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.

3 Request for service and accompanying documents

(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; and

(b) the document to be served; and

(c) a copy of the document to be served; and

(d) a summary in accordance with schedule 15, form 4 of the document to be served; and

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(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.

4 Service

(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—

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(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.

5 Affidavit of service

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.

6 Certificate of service

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.

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"Order 85 Documents from a country that is not a party to the Hague convention

1 Interpretation

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.

2 Application

This order applies to the service of a foreign legal document other than service to which order 84 applies.

3 Service of foreign documents—general

(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,

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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.

4 Service of documents from a country that is party to a convention

(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;

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(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.

5 Orders for substituted service

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.”.

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14 Schedule

Schedule 15

(see o 11, r 4 (1))

Forms — Service of foreign process and service of process out of Australia

Form 1 — Request for service abroad of judicial or extrajudicial document

(see o 84 r 1)

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)*:
……

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(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

.....

Done at , the

Signature and/or stamp.

* Delete if inappropriate.

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Form 2

(see o 84 r 1)

DEMANDE AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ÊTRANGERD'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 lattrestation figurant au verso.

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Énumération des pièces

.....

Fait à ,
le

Signature et/ou cachet.

* Rayer les mentions inutiles.

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Form 3

(see o 11r 4 (3))

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

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.
3. The authority is requested to attempt*/not to attempt* service where the period for entering an appearance has expired.

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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

.....

Done at ,
the

Signature and/or stamp.

* Delete if inappropriate.

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Form 4

(see o 11 r 4 (1) and o 84 r 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: .....

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Date and place for entering appearance**: .....

Court that has given judgment**: .....

Date of judgment**:
Time limits stated in the document**: .....

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EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document: .....

Time limits stated in the document**: .....

* If appropriate, identity and address of the person interested in the transmission of the document.

** Delete if inappropriate.

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Form 5

(see o 11 r 6 and o 84 r 6)

CERTIFICATE

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)

— at (place, street, number) .....

— in 1 of the following methods authorised by article 5—

(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* .....

(c) by delivery to the addressee, who accepted it voluntarily*.

The documents referred to in the request have been delivered to:

— (identity and description of person): .....

— Relationship to the addressee (family, business or other): .....

(2) that the document has not been served, by reason of the following facts*:

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*.

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

Annex II

Documents returned: .....

In appropriate cases, documents establishing the service:

Done at , the

Signature and/or stamp.

* Delete if inappropriate.

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Form 6

(see o11 r 4 (1))

identité et adresse du destinataire
identity and address of the addressee

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:

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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

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OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.
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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 bancs 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.

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