Australian Capital Territory

Supreme Court Rules 1937

SL1937-85

in force under the

Court Procedures Act 2004

Republication No 29
Effective: 8 July 2005 – 30 September 2005

Republication date: 8 July 2005

Last amendment made by SL2005-13

Authorised by the ACT Parliamentary Counsel

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Australian Capital Territory

Supreme Court Rules 1937

in force under the

Court Procedures Act 2004

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Part 1 Preliminary

Order 1 Preliminary

1 Name of rules

These rules are the *Supreme Court Rules 1937*.

4 Definitions for rules

In these rules:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

accused person—

(a) for order 80 (Criminal proceedings) generally—see order 80 rule 1; and

(b) for division 80.4 (Service in criminal proceedings)—see order 80 rule 4; and

(c) for division 80.6 (Bail)—see order 80 rule 14.

Act—

(a) for part 3 (Administration and probate jurisdiction)—see order 72 rule 1; and

(b) for order 74A (Reciprocal enforcement of judgments under Foreign Judgments Act 1991 (Cwlth))—see order 74A rule 1; and

(c) for order 76 (Adoption)—see order 76 rule 1; and

(d) for order 78 (Cross-vesting law proceedings)—see order 78 rule 2; and

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(e) for order 79 (Electoral matters)—see order 79 rule 1; and

(f) for order 82 (Procedure for registration of interstate forfeiture orders)—see order 82 rule 1; and

(g) for order 83 (Evidence and Procedure (New Zealand) Act 1994 (Cwlth))—see order 83 rule 1.

Note See also r 5.

action means any proceeding other than a criminal proceeding or an appellate proceeding.

addressee, for a subpoena—see order 1AA rule 1.

address for service means—

(a) for a person represented by a solicitor—

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

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

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

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

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

(c) for an accused person or convicted person acting in person—

(i) if the person is in custody—the address of the place of custody, whether in or outside the ACT; or

(ii) if the person is granted bail—the address given for bail, whether in or outside the ACT; or

(iii) in any other case—the address for service (if any) in the ACT given by the person to the registrar; or

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(d) for the director of public prosecutions—the director's business address in the ACT and any of the following given by the director to the court:

(i) a document exchange box number in the ACT;

(ii) a postbox number at a post office in the ACT;

(iii) a fax number;

(iv) an email address.

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

appearance date, for order 80 (Criminal proceedings)—see order 80 rule 18.

case statement, for order 80 (Criminal proceedings)—see order 80 rule 19.

Commonwealth Evidence Act means the *Evidence Act 1995* (Cwlth).

conduct money, for a subpoena, for order 1AA (Subpoenas)—see order 1AA rule 1.

convicted person means a person who has been convicted or found guilty of an offence.

criminal proceeding—

(a) includes—

(i) an application in relation to bail; and

(ii) a trial on indictment; and

(iii) a proceeding on indictment if a plea of guilty is intended or entered; and

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(iv) a proceeding following a committal for sentence under the *Magistrates Court Act 1930*, section 90A; but

(b) for division 80.5 (Representation in criminal proceedings)—see order 80 rule 9.

defend, for division 19.2 (People with legal disability)—see order 19 rule 16 (Meaning of ***sue*** and ***defend***).

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;

(l) trade commissioner;

(m) consular agent.

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director of public prosecutions includes the director of public prosecutions under the *Director of Public Prosecutions Act 1983* (Cwlth).

Note ***Director of public prosecutions*** is defined in the Legislation Act, dict, pt 1 as the director of public prosecutions under the *Director of Public Prosecutions Act 1990*. The above definition extends the definition to include the Cwlth director of public prosecutions.

discoverable document, for order 34 (Discovery)—see order 34 rule 1.

document, for order 34 (Discovery)—see order 34 rule 1.

electronic communication means a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both.

Examples

1 email

2 email attachment.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

email address means the mailing address to and from which an electronic communication may be sent and received using the internet, an intranet or other similar network.

file—

(a) in relation to a document, means to place the document on the court file; and

(b) for order 79 (Electoral matters)—see order 79 rule 1 (Definitions for o 79).

garnishee—see order 46 rule 1 (Order for attachment of debts).

government, for order 34 (Discovery)—see order 34 rule 1.

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investigatory film, for order 34 (Discovery)—see order 34 rule 1.

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

issuing officer, for order 1AA (Subpoenas)—see order 1AA rule 1.

issuing party, for a subpoena—see order 1AA rule 1.

list of documents, for order 34 (Discovery)—see order 34 rule 1.

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

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(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.

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.

privileged from production, for order 34 (Discovery)—see order 34 rule 2.

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.

sentence, for order 80 (Criminal proceedings)—see order 80 rule 1.

solicitor, for division 80.5 (Representation in criminal proceedings)—see order 80 rule 9.

stamped, for a document, means stamped under order 62 rule 1A.

subpoena—see order 1AA rule 1.

subpoena to attend to give evidence, for order 1AA (Subpoenas)—see order 1AA rule 1 (2).

subpoena to produce—see order 1AA rule 1 (3).

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sue, for division 19.2 (People with legal disability)—see order 19 rule 16 (Meaning of ***sue*** and ***defend***).

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 Certain references to *Act* or *the Act*

A reference to ***Act*** or ***the Act***, without mentioning a particular Act, is a reference to the *Supreme Court Act 1933*.

6 Terms defined in Supreme Court Act

A term defined in the *Supreme Court Act 1933* has the same meaning in these rules.

7 References to forms by number

A reference to a form by number is a reference to the form so numbered that—

(a) is approved under the *Court Procedures Act 2004*; and

(b) either—

(i) was in force under the *Supreme Court Act 1933* immediately before the commencement of the *Court Procedures Act 2004*; or

(ii) is expressed to be made for these rules or the court.

8 Use of seals

All writs, commissions and process issued from the court are to be—

(a) in the name of the Crown; and

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(b) under the seal of the court or any other seal prescribed under these rules; and

(c) signed by the registrar or an officer authorised by the registrar.

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Order 1AA Subpoenas

1 Definitions for o 1AA

(1) In this order:

addressee, for a subpoena, means the person who is the subject of the order expressed in the subpoena.

conduct money, for a subpoena, means an amount of money or its equivalent sufficient to meet the reasonable expenses of the addressee of attending as required by the subpoena and returning after attending.

Example of equivalent of money

prepaid travel

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

issuing officer means an officer empowered to issue a subpoena on behalf of the court.

issuing party, for a subpoena, means the party at whose request the subpoena is issued.

subpoena means an order in writing requiring the addressee—

(a) to attend to give evidence; or

(b) to produce the subpoena or a copy of it and a document or thing; or

(c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a ***subpoena to attend to give evidence***.

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(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a ***subpoena to produce***.

2 Issuing subpoena

(1) In any proceeding, the court may by subpoena order the addressee—

(a) to attend to give evidence as directed by the subpoena; or

(b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or

(c) to do both of those things.

(2) An issuing officer must not issue a subpoena—

(a) without the court's leave if it appears to the issuing officer that the subpoena—

(i) is not substantially complete; or

(ii) does not substantially comply in form with these rules; or

Note The registrar may refuse to accept a subpoena for filing under o 66 r 10B (Refusal to accept documents—abuse of process etc). That rule is applied to criminal proceedings by o 80 r 3 (Application of civil rules to criminal proceedings).

(b) if the court has made an order, or there is a rule of court, having the effect of requiring that the proposed subpoena—

(i) not be issued; or

(ii) not be issued without the court's leave and that leave has not been given; or

(c) requiring the production of a document or thing in the custody of the court or another court.

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(3) The issuing officer must seal with the seal of the court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to be issued on its being sealed or otherwise authenticated under subrule (3).

3 Form of subpoena

(1) A subpoena must be in accordance with form 1.1A.

(2) A subpoena must not be addressed to more than 1 person.

(3) Unless the court otherwise orders, a subpoena must identify the addressee by name or by description of position.

Note The Legislation Act, dict, pt 1 defines ***position*** to include office.

(4) A subpoena to attend to give evidence must specify the date, time and place for attendance.

(5) A subpoena to produce must—

(a) identify the document or thing to be produced; and

(b) specify the date, time and place for production.

(6) The date specified in a subpoena must be the date of trial or any other date permitted by the court.

(7) The place specified for production may be the court or the address of anyone authorised to take evidence in the proceeding.

(8) A subpoena must specify the last date for service of the subpoena.

(9) The last date for service must be—

(a) 5 clear days before the date specified in the subpoena for compliance with it; or

(b) if the court orders a different date—the date ordered.

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(10) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

4 Setting aside subpoena or other relief

(1) The court may, on the application of a party or someone else having a sufficient interest, set aside a subpoena completely or partly, or grant other relief in relation to it.

(2) An application under subrule (1) must be made by motion on notice under order 54 (Motions) to the issuing party.

(3) The court may order that the applicant give notice of the application to any other party or anyone else who has a sufficient interest.

5 Service of subpoena

(1) Unless the court otherwise orders, a subpoena must be served personally on the addressee.

(2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

6 Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date when attendance is required.

(2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

(3) Despite rule 5 (1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee (or, if the court orders service in another way, it has not been served in that way) if the addressee has, by the last date for

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service of the subpoena, actual knowledge of the subpoena and its requirements.

(4) The addressee must comply with a subpoena to produce—

(a) by attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the court or to the person authorised to take evidence in the proceeding; or

(b) by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address specified for the purpose in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.

(5) For a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

7 Production of subpoenaed document etc otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing under rule 6 (4) (b).

(2) The registrar must, if asked by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than 1 document or thing, the addressee must, if asked by the registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

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(5) The addressee may, in the subpoena or at the time of production, inform the registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

8 Removal, return, inspection etc of subpoenaed documents and things

The court may give directions in relation to the removal from and return to the court, and the inspection, copying and disposal, of any document or thing that has been produced to the court in response to a subpoena.

9 Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing under rule 6 (4) (b).

(2) On the request of a party, the registrar must tell the party whether production in response to a subpoena has happened and, if so, include a description, in general terms, of the documents and things produced.

(3) The request mentioned in subrule (2) must be made orally on the return date for the subpoena or in writing after the return date.

(4) Subject to this rule, no-one may inspect a document or thing produced unless the court has given leave and the inspection is in accordance with that leave.

(5) Unless the court otherwise orders, the registrar may permit the parties to inspect at the registry any document or thing produced unless the addressee, a party or someone else having sufficient interest objects to the inspection under this rule.

(6) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must tell the court about the objection and the grounds of the objection.

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(7) The objection mentioned in subrule (6) must be made orally to the court on the return date for the subpoena or in writing to the court before or after the return date.

(8) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may tell the court on the return date for the subpoena or in writing about the objection and the grounds of the objection.

(9) If the court receives an objection under this rule, the registrar—

(a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and

(b) must refer the objection to the court for hearing and decision.

Note The registrar may hear and decide the objection in some circumstances (see o 61 r 3AA (Jurisdiction of registrar—subpoenas)).

(10) The registrar must notify the issuing party in writing about—

(a) the objection; and

(b) the date, time and place the objection will be heard.

(11) The issuing party must, a reasonable time before the date the objection will be heard, notify the addressee, the objector and each other party about—

(a) the objection; and

(b) the date, time and place the objection will be heard.

Note See o 39A r 8 (Power to allow removal of documents and things) for the procedure for the removal of documents and things from the registry.

10 Disposal of subpoenaed documents and things produced

(1) This rule applies in relation to a proceeding before the end of the hearing of the proceeding.

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Note See o 39A r 6 (Return of subpoena document or thing) for the return of documents or things produced on subpoena at the end of the hearing of a proceeding.

(2) Unless the court otherwise orders, the registrar may return to the addressee any document or thing produced in the proceeding in response to the subpoena.

(3) Unless the court otherwise orders, the registrar must not return any document or thing under subrule (2) unless the registrar has given the issuing party at least 14 days notice of the intention to do so and that period has ended.

(4) If the addressee has told the court that a document or copy of a document produced need not be returned and may be destroyed, the registrar may, unless the court otherwise orders, destroy the document or copy instead of returning it.

(5) The registrar must not destroy a document or copy of a document unless the registrar has first given the issuing party and the addressee at least 14 days notice of the intention to destroy the document or copy.

11 Costs and expenses of compliance with subpoena

(1) This rule applies if the addressee for a subpoena in a proceeding is not a party to the proceeding.

(2) The court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(3) If an order is made under subrule (2), the court must fix the amount or direct that it be fixed according to the court's usual procedure in relation to costs.

(4) An amount fixed under this rule is separate from and in addition to—

(a) any conduct money paid to the addressee; and

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(b) any witness expenses payable to the addressee; and

(c) any amount that the addressee is entitled to under order 65 rule 7 (Scale of costs) and schedule 3 (Costs).

12 Failure to comply with subpoena—contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 5 (1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been personally served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the court (including the power to issue a warrant for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

13 Documents and things in custody of court

(1) A party who seeks production of a document or thing in the custody of the court or another court may notify the registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the court, the registrar must produce the document or thing—

(a) in court or to anyone authorised to take evidence in the proceeding, as required by the party; or

(b) as the court directs.

(3) If the document or thing is in the custody of another court, the registrar must, unless the court has otherwise ordered—

(a) ask the other court to send the document or thing to the registrar; and

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(b) after receiving it, produce the document or thing—

(i) in court or to anyone authorised to take evidence in the proceeding, as required by the party; or

(ii) as the court directs.

(4) Subrules (2) and (3) do not apply if order 66 rule 10B (Refusal to accept documents—abuse of process etc) applies.

Note Order 66 r 10B is applied to criminal proceedings by o 80 r 3 (Application of civil rules to criminal proceedings).

14 Banker's books

(1) This rule applies if—

(a) the addressee for a subpoena in a proceeding is an officer of a bank; and

(b) the bank is not a party to the proceeding; and

(c) the subpoena requires the addressee to produce a banker's book; and

(d) the contents of the banker's book can be proved under legislation in force in the ACT in a way other than the production of the book.

(2) Unless the court otherwise orders, the subpoena allows the addressee to produce proof of the relevant entries in accordance with that legislation, instead of producing the banker's book.

15 Application of o 1AA—subpoena under Commercial Arbitration Act

(1) This order applies in relation to a subpoena issued under the Arbitration Act for an arbitration as if—

(a) a reference to a subpoena were a reference to a subpoena issued under the Arbitration Act; and

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(b) a reference to a proceeding were a reference to the arbitration; and

(c) a reference to the registrar in rule 6 (4) (b), rule 7, rule 9 and rule 10 were a reference to the arbitrator or umpire for the arbitration; and

(d) a reference to the court in rule 8, rule 9, rule 10 and rule 11 were a reference to the arbitrator or umpire for the arbitration; and

(e) any other necessary changes were made.

(2) In this rule:

Arbitration Act means the *Commercial Arbitration Act 1986*.

arbitrator, for a subpoena, means the arbitrator for the arbitration in relation to which the subpoena was issued.

umpire, for a subpoena, means the umpire for the arbitration in relation to which the subpoena was issued.

Note The court has wide powers to issue subpoenas under the Arbitration Act (see s 17).

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Order 1AB Matters arising under Commonwealth Evidence Act

1 Evidence of previous representation

(1) A notice of intention to adduce evidence of a previous representation under the Commonwealth Evidence Act, section 67 (1) must be in accordance with form 1.1B.

(2) The notice may be accompanied by an affidavit setting out the evidence of the previous representation.

(3) However, the court may dispense with compliance with subrule (1), in whole or part.

Note 1 The Commonwealth Evidence Act, s 67 (4) provides that the court may, on the application of a party, direct that 1 or more of s 63 (2), s 64 (2) or s 65 (2), (3) or (8) is to apply despite the party's failure to give notice.

Note 2 Noncompliance with this rule does not render any proceeding void unless the court so directs (see o 69 r 1).

2 Objection to hearsay evidence—civil proceedings

(1) A notice of objection to the tender of hearsay evidence under the Commonwealth Evidence Act, section 68 (2) must be in accordance with form 1.1C.

(2) However, the court may dispense with compliance with subrule (1), in whole or part.

3 Tendency evidence

(1) A notice of intention to adduce tendency evidence under the Commonwealth Evidence Act, section 97 (1) must be in accordance with form 1.1D.

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(2) However, the court may dispense with compliance with subrule (1), in whole or part.

Note The Commonwealth Evidence Act, s 100 (1) provides that the court may, on the application of a party, direct that the tendency rule is not to apply to particular tendency evidence despite the party's failure to give notice under s 97.

4 Coincidence evidence

(1) A notice of intention to adduce coincidence evidence under the Commonwealth Evidence Act, section 98 (1) must be in accordance with form 1.1E.

(2) However, the court may dispense with compliance with subrule (1), in whole or part.

Note The Commonwealth Evidence Act, s 100 (2) provides that the court may, on the application of a party, direct that the coincidence rule is not to apply to particular coincidence evidence despite the party's failure to give notice under s 98.

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Part 2 Civil jurisdiction

Order 1A Application of part 2

1 Application to jurisdictions generally

This part applies in relation to all proceedings in the court in any of its jurisdictions other than criminal proceedings except 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 under this order, unless otherwise provided by these rules or any other Territory law.

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 under this order as soon as practicable afterwards.

4 Form of originating application

(1) An originating application shall be in accordance with form 1.2.

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

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(3) For the purposes of an originating application—

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

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

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

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

(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) so far 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; and

(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

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(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;

(i) the particulars of the relief sought specified under rule 9.

(5) 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) a document exchange box number in the ACT;

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

(c) a fax number;

(d) an email address.

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

5 Corporate information

For 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 Act—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;

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(d) if the body is an authorised deposit-taking institution—the address of its registered office;

(e) if the body is a cooperative registered under the *Cooperatives Act 2002*—the address of the cooperative's registered office;

(f) if the body is an owners corporation within the meaning of the *Unit Titles Act 2001*—the address of the corporation.

6 Special endorsement on originating application—Civil Law (Wrongs) Act 2002, pt 3.1

The originating application by which an action under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death) is begun must, in addition to any other endorsements required or permitted to be made, be endorsed with a statement of the names of each of the people for whose benefit the action is brought and the relationship of each of them to the dead person.

7 Time for appearance

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

(a) if the *Service and Execution of Process Act 1992* (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.

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(2) If relief is claimed under a Territory law (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.

(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.

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(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 form 1.3—

(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 on 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 order 42A rule 1 (Interest up to judgment); 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 form 1.4 of the following:

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(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;

(c) the nature and extent of the injuries and disabilities resulting from the use of the motor vehicle, so far as is known, sufficient (where possible) to enable the defendant to nominate the type of expert required to examine the plaintiff;

(d) the name of each health professional who has treated the plaintiff for such injuries and disabilities, and for any condition exacerbated by such an injury or disability;

(e) the nature of any claim for past or future economic loss, so far as is known, including (where relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the use of the motor vehicle.

13 Employment personal injury claims

An originating application which includes a claim for damages for death or bodily injury arising out of an employer's negligence shall have attached a statement in accordance with form 1.5 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 on a breach of statutory duty—particulars of the statutory provision and a precise statement of the acts or omissions constituting the breach;

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(d) the nature and extent of the injuries and disabilities resulting from the acts constituting the negligence, so far as is known, sufficient (where possible) to enable the defendant to nominate the type of expert required to examine the plaintiff;

(e) the name of each health professional who has treated the plaintiff for such injuries and disabilities, and for any condition exacerbated by such an injury or disability;

(f) the nature of any claim for past or future economic loss, so far as is known, including (where relevant) the name and address of each employer of the plaintiff during a reasonable period before and since the acts constituting the negligence.

14 Originating applications with no defendant

(1) An originating application in relation to which there is no defendant shall be accompanied by an affidavit setting out evidence in relation to the claim for relief.

(2) On filing an originating application in relation to which there is no defendant, the registrar shall provide a hearing date to the plaintiff.

15 Notice to defendants

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

16 Filing and sealing of originating applications

(1) On filing an originating application the registrar shall seal the application and a sufficient number of copies for service and proof of service.

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(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.

Note The registrar may refuse to accept an originating application for filing under r 16A or o 66 r 10B (Refusal to accept documents—abuse of process etc).

16A Rejection of certain originating applications

An originating application must not be accepted for filing without the court's leave if it appears to the registrar that the application—

(a) is not substantially complete; or

(b) does not substantially comply in form with these rules; or

(c) is not properly signed or executed.

Note The registrar may also refuse to accept an originating application for filing under o 66 r 10B (Refusal to accept documents—abuse of process etc).

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

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(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 Territory law.

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.

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, other than a conditional 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.

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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 ACT 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 ACT.

(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 ACT 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 these rules.

(2) The cause book may be maintained in electronic form.

(3) The cause book shall be maintained in accordance with the directions of the court.

(4) The registrar shall record in the cause book—

(a) the date, and a distinguishing number, of each originating application filed; and

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(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—

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(a) the commencement of fresh proceedings in the same action would be statute-barred; and

(b) there is good cause for such renewal or further renewal.

26 Endorsement of renewal

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

(a) endorsed in the following form:

‘Renewed under 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 on 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

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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

(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 on 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 on default of appearance under order 14.

(2) If subrule (1) (a), (b) and (c) applies 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—

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(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 on default of appearance under order 14.

(4) In this rule:

renewal includes further renewal.

30 Removal from list

The registrar shall remove an action from the list of inactive cases if, within 2 months after the date of its entry on the list—

(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 on 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)—

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(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

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

(a) more than $500 (plus any filing and service fees actually paid) 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 if—

(a) an originating application issued after 31 December 2001 consists of a claim for debt or a liquidated demand only; and

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(b) the application includes a statement under order 2 rule 11 (Claims for debt and liquidated demands); and

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

(2) If the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than $600, then, subject to order 65 rule 7A (Costs if amount recovered less than Magistrates Court limit), the costs and disbursements must be allowed without taxation together with the fees properly paid for filing and service of the application.

(3) If the costs and disbursements claimed (other than any filing and service fees actually paid) are more than $600, the costs and disbursements must be taxed.

(4) This rule, as in effect immediately before 1 January 2002, continues to apply in relation to an originating application issued before that date.

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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, on 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.

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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.

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

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

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

6 Withdrawal of solicitor from the record

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

(2) Unless and until the solicitor has complied with subrule (3) (a) he or she shall (subject to rules 2 and 5) be deemed to be the solicitor of the party.

(3) 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

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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.

(4) 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 of o 10

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

(2) This order applies to a document that is authorised or required under these rules to be served, whether the word 'serve', 'give', 'notify', 'send', 'tell' or any other word is used.

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 Territory law.

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—

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(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 ACT—by sending a copy by prepaid post addressed to the person at the postbox; or

(d) if the person's address for service includes a document exchange box number—by leaving a copy of the document addressed to the person in the exchange box or at a collection point of the document exchange for delivery 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; or

(g) if the person's address for service includes a reference to an email address—by sending a copy by electronic communication to the email address.

(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), (f) or (g)—

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

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(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.

(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—

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(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.

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

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(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 12, division 6 applies.

11 Service on a corporation—Corporations Act

(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 Act, section 109X.

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

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(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 ACT or was not in the ACT 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.

16 Email service—other matters

(1) This rule applies if a document (the ***emailed document***) is served by electronic communication under these rules.

(2) The emailed document must be capable of being printed by the recipient with the content and in the form in which it was created.

(3) If these rules require or allow the emailed document to be signed, it is sufficient compliance if the person who serves the emailed document—

(a) identifies himself or herself in the electronic communication by stating his or her name and business address; and

(b) certifies in the electronic communication that the original of the emailed document was signed and by whom.

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(4) If these rules require or allow service of a sealed or stamped copy of a document, it is sufficient compliance if the person who serves the emailed document certifies in the electronic communication that the original of the emailed document was sealed or stamped.

(5) If the emailed document is a copy of an affidavit, the original affidavit is taken to have been sworn if the person who serves the copy of the affidavit certifies in the email that the original was properly sworn.

17 Service of subpoenas

(1) If the addressee for a subpoena in a proceeding is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's consent, be served on the addressee by leaving it at the addressee's address for service.

(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.

(3) 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 (4); or

(b) the court otherwise orders.

(4) If a medical expert to whom a notice has been given in accordance with rule 18 fails to attend the court on the date and at the time

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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.

18 Notice instead of subpoena to medical expert

(1) In a proceeding, a notice stating the date and time fixed for the hearing for the proceeding and requesting a medical expert's attendance may be given to the expert instead of a subpoena.

(2) However, a notice under subrule (1)—

(a) may be given in the same way as a subpoena may be served on a medical expert; and

(b) must not be given later than 6 weeks before the date set for the hearing.

19 No shortening of time for service

The parties to a proceeding may not, by consent, shorten the time for service of a subpoena on, or the giving of a notice under rule 18 to, a medical expert.

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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 ACT (with or without rents or profits) or the perpetuation of testimony relating to land within the ACT; or

(b) any law, deed, will, contract, obligation or liability affecting land or hereditaments situate within the ACT 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 ACT; 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 ACT, or for the execution (as to property situate within the ACT) 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 ACT; or

(e) the action is founded—

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

(ii) on a tort committed within the ACT; or

(f) any injunction is sought as to anything to be done within the ACT, or any nuisance within the ACT is sought to be

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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.

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

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(c) stating the grounds on 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.

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 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 Australia, the procedure set out in this rule shall, subject to any special provisions contained in the convention, be adopted.

(2) The party bespeaking such service shall file a request in accordance with form 1.6.

(3) 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.

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

(5) 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.

11 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 Commonwealth Attorney-General for transmission to the consular or other authority making the

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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 Consequential orders

With the consent of the Commonwealth Attorney-General, 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 must not take any step in the action, except under rule 16A or rule 17, before entering an appearance.

2 Mode of appearance

(1) The defendant in an action shall enter an appearance by giving the registrar a memorandum in duplicate in accordance with form 1.7, 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.

(2) 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) a document exchange box number in the ACT;

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

(c) a fax number;

(d) an email address.

(3) 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.

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(4) The sealed duplicate of the memorandum is evidence that the appearance was entered on the day indicated by the seal.

(5) A defendant who—

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

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

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

(6) A defendant who adds to his or her memorandum of appearance a statement under subrule (5) 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.

(7) A defendant who—

(a) having been entitled to do so, does not add to his or her memorandum of appearance a statement under subrule (5); 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.

(8) Any costs that a plaintiff has been ordered to pay under subrule (6) 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.

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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

On receipt of a memorandum of appearance, the registrar shall forthwith enter the appearance in the cause book.

9 Several defendants

If 2 or more defendants in the same action appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in a single memorandum.

10 Appearance not entered on undertaking

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

11 Late appearances

(1) A defendant may appear at any time before final judgment.

(2) If a defendant enters an appearance after the time specified for appearance in the originating application, the defendant is not entitled to any additional time for delivering a defence, or for any other purpose, unless the court otherwise orders.

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

(1) On the filing of an affidavit under subrule (2), the court may grant leave, in an action for the recovery of land, for a person in possession of the land to enter an appearance and defend, although

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the person is not named as a defendant in the plaintiff's originating application.

(2) For 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.

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.

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(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.

16A Conditional appearance

(1) A defendant in an action may enter a conditional appearance by giving the registrar a memorandum in duplicate in accordance with form 1.7A.

(2) A conditional appearance has effect for all purposes as an unconditional appearance, unless the court otherwise orders on application by the defendant.

(3) Application under subrule (2) must be made by notice of motion filed within 14 days after the day the conditional appearance is entered.

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 ACT or confirming service of the originating application outside the ACT; 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

(i) 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 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 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 on 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.

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

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.

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

(a) an affidavit in accordance with form 1.8 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 form 1.9.

(3) 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.

(4) In determining interest or a lump sum for subrule (3) (b), the court may have regard to practice directions issued by the court relating to interest up to judgment.

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(5) 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.

(6) 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.

(7) 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;

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(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 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.

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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 form 1.9.

10 Judgment may be set aside or varied

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

11 Default of appearance in other cases

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

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Order 15 Summary judgment on 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; and

(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.

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(4) 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

(c) subrule (5) applies.

(5) 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.

(6) 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 on 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.

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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.

(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.

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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 on such judgment without prejudice to his or her right to proceed with his or her action against the former defendant.

6 Leave on terms

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

7 Summary disposal

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

9 Directions as to trial

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

(2) Where the plaintiff has obtained leave to enter final judgment subject to a suspension of execution pending the trial of a counterclaim, this rule applies to the counterclaim as if it were an action.

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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.

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

(a) there is a good defence to the action on the merits; or

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

2 Application by motion on notice

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

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

(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.

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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

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cross-examined on oath or to produce any papers, books, or documents, or copies of or extracts therefrom.

3 Directions

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

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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.

(2) If on 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.

(3) 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

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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 on such terms as seem just.

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 coplaintiff 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 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

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before the court and assenting to the compromise, the court, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or 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.

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(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.

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

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(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.

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.

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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 form 1.10.

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.

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(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 on the construction which the court puts on 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 on the heir-at-law, next of kin, or class so represented.

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 on the persons so represented.

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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 on 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.

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.

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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 on 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 on any person of notice of the judgment or order in any action under rule 45 shall be entered in the registrar's office on due proof by affidavit of such service.

48 Notice of judgment

Notice of a judgment or order served under rule 45 shall be entitled in the action, and there shall be indorsed thereon a memorandum in accordance with form 1.11.

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.

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

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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, on 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 1.12 or 1.13 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 on the third party a copy of the originating application and of any pleadings.

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

2 Issuing of claim

(1) The third-party claim shall be issued and served on 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

(1) The applied provisions apply in relation to a third-party claim and to the proceeding begun by the claim as if—

(a) the third-party claim were an originating application and the proceeding begun by the claim 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.

(2) In this rule:

applied provisions means—

(a) order 2 rules 18A to 18D (which are about service of originating applications); and

(b) order 10 (Service of documents in Australia); and

(c) order 12 (Service of documents outside Australia).

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4 Rights of third party in action

The third party shall, as from the time of the service on 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.

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—

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

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

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

(3) The court may at any time set aside or vary a judgment entered under 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

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

10 Judgment on third-party claim

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

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

11 Costs

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

12 Fourth and subsequent parties

(1) A third party may make a claim of the nature referred to in rule 1 against a person not already a party to the action (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.

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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 on 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.

(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.

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

(4) The notice shall be served on 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 on 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—

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(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.

(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.

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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.

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.

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7 Subject to r 1, r 8 and r 9

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

8 Application of defendant to confine action

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

9 Judge may exclude causes inconvenient to be joined

If, on the hearing of such an application as is mentioned in rule 8, it appears to the court that the causes of action are such as cannot be conveniently disposed of together, the court may order any of such causes of action to be excluded and consequential amendments to be made, and may make such order as to costs as is just.

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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, set off, 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.

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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.

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 form 1.14.

(2) The general form of a statement of defence shall be in accordance with form 1.15.

(3) The general form of a reply shall be in accordance with form 1.16.

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.

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(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, on 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.

(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.

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11 Filing and service of pleadings etc and information in pleadings

(1) A party to an action must lodge each pleading for filing, and serve it on each other party who has an address for service on the day the pleading is filed.

(2) Every pleading served on a party must contain—

(a) the date it is served; and

(b) the number and title of the action; and

(c) a description of the pleading; and

(d) the name and address for service of the solicitor and agent (if any) serving the pleading, or the name and address for service of the party, if the party is not represented 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

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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.

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.

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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.

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.

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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 on 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 on 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.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

26 Actions for trespass

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

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

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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 on separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

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

6 Account stated

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

7 Probate actions

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

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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.

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(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 on, together with the facts necessary to establish each such ground.

2 Bills of exchange etc

In actions on 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.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

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—

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(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.

8 Time for defence

When a statement of claim is delivered under 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 on any grounds as supporting a right of counterclaim, he or she shall state specifically that he or she does so by way of counterclaim.

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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.

12 Service on person not party

Where any such person as is mentioned in rule 11 is not a party to the action, he or she shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same provisions as are contained in these rules with respect to the service of an originating application, and every defence so served shall be indorsed in accordance with form 1.17.

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 on him or her of a copy of the defence, or within such other time as the court orders.

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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.

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 on 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 on 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.

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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 on 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 on any ground of defence which he or she can prove, except as mentioned in subrule (1).

21 Defence of judgment recovered

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

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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—amount

(1) In an action for a debt or damages (other than an action under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death)), a defendant may at any time after appearance—

(a) pay an amount into court in satisfaction of—

(i) the claim; or

(ii) if there are 2 or more causes of action joined in a single action—1 or more of the claims; or

(b) in an action for defamation—pay an amount into court by way of compensation, satisfaction and amends.

(2) If an action is brought under the *Civil Law (Wrongs) Act 2002*, part 3.1, a defendant may at any time after appearance pay an amount into court as compensation for the benefit of the people for whose benefit the action is brought, and who are entitled to compensation under the part, without stating the shares into which the amount is to be divided by the court.

(3) The defendant must serve on the plaintiff a notice of payment into court under this rule in accordance with form 1.18 and, if there are 2 or more defendants, on each of the other defendants.

(4) If there are 2 or more causes of action joined in a single action, and an amount is paid into court in satisfaction of 1 or more of the claims, the notice must state, unless the court otherwise orders—

(a) the claim or each claim for which payment is made; and

(b) the part of the amount paid in satisfaction of each claim.

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(5) The notice must state whether liability is admitted or denied.

(6) If a defence of tender before action is pleaded, the amount claimed to have been tendered must be paid into court.

(7) A defendant who has paid an amount into court in accordance with this rule may make further payments increasing the amount without the court's leave.

2 Payment into court—bond

(1) Except under the defence of tender before action, a defendant may file a bond for payment of an amount to the registrar if the plaintiff accepts the amount in satisfaction of the claim under rule 6 (Plaintiff may accept payment etc) in accordance with form 1.19 given by—

(a) an authorised insurer, or the nominal defendant, under the *Road Transport (General) Act 1999*; or

(b) an approved insurer, or the nominal insurer, under the *Workers Compensation Act 1951*; or

(c) a corporation approved by the registrar; or

(d) the Territory, the Commonwealth, a State or another Territory.

(2) The bond must be given by—

(a) a person mentioned in subrule (1) (an ***approved person***); or

(b) a person who is authorised, in writing, to give the bond for the approved person (an ***authorised person***).

(3) The bond remains in effect unless the court otherwise orders.

Note The parties to the action may consent to the discharge of the bond under o 42 r 11 (Consent order or judgment signed by registrar).

(4) The authority may be in accordance with form 1.20.

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(5) If the bond is given by an authorised person, a copy of his or her authority must be filed with the bond unless the authority has already been filed.

(6) An authority given by or for an approved person that has been filed binds the approved person until notice of its revocation is filed.

(7) If a bond is filed by a defendant in accordance with this rule, this order (including rule 1 (4) to (6)) applies as if the defendant had paid the amount of the bond into court under rule 1.

3 Payment into court—security

(1) Instead of paying an amount into court under rule 1 (Payment into court—amount) or filing a bond under rule 2 (Payment into court—bond), a defendant may file a security securing payment of an amount to the registrar if the plaintiff accepts the amount in satisfaction of the claim under rule 6 (Plaintiff may accept payment etc).

(2) The security may be accepted by the registrar.

(3) If the registrar accepts the security, this order (including rule 1 (4) to (6)) applies as if the defendant had paid the amount of the security into court under rule 1.

4 Interest up to date of payment into court

For this order, the plaintiff's claim or cause of action for a debt or damages is taken to include a claim or cause of action for interest that might be included in the judgment under order 42A rule 1 (Interest up to judgment) or otherwise, if judgment were given at the date of the payment into court.

5 Payment in by defendant who has counterclaimed

(1) This rule applies if—

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(a) a defendant makes by counterclaim a claim (the ***defendant's claim***), or 2 or more claims (the ***defendant's claims***), against the plaintiff for a debt or damages; and

(b) the defendant pays an amount into court under rule 1 (Payment into court—amount); and

(c) in making the payment the defendant has taken into account and intends to dispose of—

(i) the defendant's claim; or

(ii) if there are 2 or more claims made by the counterclaim—1 or more of the defendant's claims.

(2) The notice of payment into court must state the relevant matters mentioned in subrule (1) (c).

6 Plaintiff may accept payment etc

(1) If an amount is paid into court under this order by a defendant, the plaintiff may accept the amount—

(a) in satisfaction of—

(i) the claim; or

(ii) if there are 2 or more causes of action joined in a single action—the claim or each claim for which the payment is made; or

(b) if the action is an action for defamation—as compensation, satisfaction and amends.

(2) The plaintiff may accept the amount by serving a notice of acceptance in accordance with form 1.21 on the defendant (or, if the payment was made by 1 of several defendants, each defendant)—

(a) within 14 days after the day notice of payment into court is served on the plaintiff; or

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(b) if 2 or more payments into court have been made—within 14 days after the day notice of the last payment into court is served on the plaintiff.

(3) If the defendant paid the amount into court by bond or other security, the defendant must pay into court the amount of the bond or security within 14 days after the day the notice of acceptance is served on the defendant.

(4) If the defendant does not comply with subrule (3), the defendant is not entitled to any advantage under the rules for the payment into court, and the plaintiff may—

(a) withdraw the plaintiff's acceptance by written notice; or

(b) if the payment was made under rule 1 (2) (which is about payment into court in an action under the *Civil Law (Wrongs) Act 2002*, part 3.1)—apply to the court by motion on notice for the registrar to assign the bond or security to the plaintiff so the plaintiff can enforce it; or

(c) if the payment was not made under rule 1 (2)—require the registrar to assign the bond or security to the plaintiff so the plaintiff can enforce it.

(5) If the amount was paid into court under rule 1 (2), the amount may be paid out of court only under a court order.

(6) If the amount was paid into court by 1 of several defendants, the amount may be paid out of court only under a court order dealing with all of the costs of the action or cause of action.

(7) Unless the court otherwise orders, payment must be made—

(a) to the plaintiff; or

(b) if the plaintiff has given written authority for payment to be made to the plaintiff's solicitor—to the plaintiff's solicitor.

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(8) If payment out of court is made in accordance with this rule, the claim or stated claim is stayed.

(9) If the action is an action for defamation, and the plaintiff accepts the amount paid into court, the plaintiff may by motion on notice apply to the court for leave to make in open court a statement in terms approved by the court.

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

7 Plaintiff accepts payment—costs

(1) This rule applies—

(a) if there is only 1 cause of action—if the plaintiff accepts in accordance with rule 6 an amount paid into court in satisfaction of the claim; or

(b) if there are 2 or more causes of action joined in a single action—if the plaintiff accepts an amount paid into court in satisfaction of all the claims or stated claims and states in the notice of acceptance that the other claims are abandoned.

(2) Unless the court otherwise orders, the plaintiff may file a bill of costs for taxation after 4 days after the day the amount is paid out of court.

(3) The bill of costs consists of the costs incurred to the day of payment into court and the costs reasonably incurred in accepting the payment.

(4) The plaintiff may sign judgment for the amount of taxed costs 48 hours after taxation of the costs.

8 Plaintiff accepts payment—counterclaim

(1) This rule applies if an amount is paid into court by a defendant who—

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(a) made a counterclaim; and

(b) stated in the notice of payment into court that in making the payment the defendant had taken into account and intended to dispose of all the claims, or stated claims, for which the defendant counterclaimed.

(2) If the plaintiff accepts the amount, the claims, or stated claims, are stayed against the plaintiff.

9 Payment out of amount remaining in court

(1) If an amount paid into court is not taken out in accordance with rule 6 (Plaintiff may accept payment etc), the amount may be paid out only—

(a) with the consent of all parties to the action; or

(b) under a court order.

(2) The order may be made at any time before, during or after the trial of the action.

10 Payment into court by defendant to counterclaim

The plaintiff or other person made defendant to a counterclaim may pay an amount into court in accordance with this order, and this order (other than rule 7 (4)) applies with the necessary changes.

11 Nondisclosure of payment into court etc

(1) This rule does not apply in an action—

(a) to which a defence of tender before action is pleaded; or

(b) in which a plea under the *Civil Law (Wrongs) Act 2002*, section 133 (Defence of apology and payment into court—defamation) has been filed.

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(2) Until all questions of liability or the amount of debt or damages have been decided in the action, the pleadings must not include a statement that an amount has been paid into court under this order, and the judge at the trial of the action must not be told about any payment into court.

(3) When exercising a discretion about costs of the action (other than an interlocutory application for which a separate costs order is to be made), the judge must take into account—

(a) the fact that an amount has been paid into court; and

(b) the amount of the payment.

(4) Subrule (3) does not limit the matters that the judge may take into account.

12 Payment in under order

(1) An amount paid into court under a court order may be paid out of court only under a court order.

Note A court order includes a consent order (see o 42 r 11).

(2) If an amount is paid into court by the defendant under an order under order 15 (Summary judgment on statement of claim), the defendant may (unless the court otherwise orders), by the defendant's pleading or written notice, appropriate all or part of the amount, and any additional payment if necessary, to all or a stated part of the plaintiff's claim.

(3) The amount appropriated is taken to be an amount paid into court under this order.

13 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

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disability, a settlement or compromise may only be entered into, and an amount paid into court may only be accepted, with the court's approval.

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

14 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.

15 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 part of the amount to—

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

(A) expenses incurred by or paid for the claimant; or

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

(ii) the claimant's solicitor for costs; or

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

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

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

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

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

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do so within the time limited for that purpose—then at the expiration of the period so limited;

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

(2) Where no defence to a 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.

(2) 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.

(3) 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 form 1.22, 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.

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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.

(2) Such costs shall be taxed, and such discontinuance or withdrawal (as the case may be) shall not be a defence to any subsequent action.

(3) 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, on 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, on 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.

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2 Withdrawal by consent

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

3 Costs

A defendant may enter judgment for the costs of the action if it is wholly discontinued against him or her, or for the costs occasioned by the matter withdrawn if the action is not wholly discontinued, in case such respective costs are not paid within 4 days after taxation.

4 Subsequent action stayed until costs paid

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

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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.

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(3) In determining interest or a lump sum for 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.

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.

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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.

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.

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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 form 1.8 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 form 1.9.

(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;

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(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.

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

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for judgment, and such judgment shall be given as, on 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 on 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.

13A Form of interlocutory or final judgment

An interlocutory or final judgment must be in accordance with form 1.9.

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 on 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

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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 under 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.

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

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

(7) Where—

(a) any relevant period of limitation has expired after an action was commenced; and

(b) after that expiration, an application for leave to amend a document in accordance with subrule (3), (5) or (6) is made;

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

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

2 Without leave

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

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

3 Answering pleading

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

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4 Time for filing or amending answering pleading

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

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

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

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

(2) 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

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notice of the amendment or of the amended pleading under rule 12, disallow all or part of the amendment.

8 Scandalous etc matter

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

9 Directions for mode

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

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

10 Mode—simple amendment

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

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

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

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

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

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

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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.

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 on 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

(i) examination of witnesses; and

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

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

Note The Act, s 55 provides that the court may order that all or part of the evidence in a civil matter may or must be given by affidavit. The court may make the order when giving directions.

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2 Form of application

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

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

3 Affidavit not to be used

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

4 When application to be made

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

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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

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(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

(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

Division 34.1 Definitions for order 34

1 Definitions for o 34

In this order:

discoverable document means a document that is discoverable under rule 3.

document—see the Commonwealth Evidence Act, dictionary, part 1, definition of ***document*** and part 2, clause 8.

Note ***Document*** is defined in the Commonwealth Evidence Act, dict, pt 1 as any record of information, and includes:

(a) anything on which there is writing; or

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or

(d) a map, plan, drawing or photograph.

The Commonwealth Evidence Act, dict, pt 2, cl 8 extends the meaning of document as follows:

A reference in this Act to a document includes a reference to:

(a) any part of the document; or

(b) any copy, reproduction or duplicate of the document or of any part of the document; or

(c) any part of such a copy, reproduction or duplicate.

government means—

(a) the Commonwealth, a State or Territory; or

(b) a Minister, department or agency of the Commonwealth, a State or Territory; or

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(c) the government of a foreign country.

investigatory film, of a person, means any of the following made (otherwise than for medical or therapeutic purposes) to show physical movement or capacity of the person:

(a) developed or undeveloped film of the person;

(b) videotape of the person;

(c) any other visual recording of the person.

list of documents means a list under rule 6 (List of documents).

2 Meaning of *privileged from production* for o 34

For this order, a document is ***privileged from production*** only if—

(a) it is a document of which evidence could not be adduced, or could not be adduced over the objection of a person, because of the Commonwealth Evidence Act, part 3.10 (Privileges), other than section 128 or section 130; or

Note Section 128 deals with privilege against self-incrimination and s 130 deals with exclusion of evidence of matters of state.

(b) the party who would otherwise give discovery is an individual and the contents of the document may tend to prove that the party—

(i) has committed an offence against or arising under an Australian law or a law of a foreign country within the meaning of the Commonwealth Evidence Act; or

(ii) is liable to a civil penalty within the meaning of the Commonwealth Evidence Act; or

(c) it is a document that relates to matters of state within the meaning of the Commonwealth Evidence Act, unless the court

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decides that the document has stopped being privileged from production.

Note 1 The Commonwealth Evidence Act, dict, pt 2 cl 9 deals with the meaning of references to laws, and dict, pt 1 defines ***Australian law***.

Note 2 The Commonwealth Evidence Act, dict, pt 2 cl 3 provides that a person is taken to be liable to a ***civil penalty*** if, in an Australian or overseas proceeding (other than a criminal proceeding), the person would be liable to a penalty arising under an Australian law or a law of a foreign country.

Note 3 For the meaning of ***matters of state***, see the Commonwealth Evidence Act, s 130 (4).

Division 34.2 Disclosure of documents

3 Discoverable documents

(1) A document that is, or has at any time been, in the possession or power of a party to an action is discoverable by the party if it—

(a) relates, directly or indirectly, to a matter in issue in the action; or

(b) is mentioned, expressly or by necessary implication, in a pleading or notice filed in the action.

(2) However, a document is not discoverable by a party if it—

(a) is filed in court in the action; or

(b) relates to only 1 or more items of special damage; or

(c) is mentioned in a pleading or notice filed in the action by another party, unless it is discoverable on another ground; or

(d) is a written communication in relation to the action between a solicitor for the party and a solicitor for another party to the action; or

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(e) is a note of oral communications (whether made in person or by telephone) in relation to the action between a solicitor for the party and a solicitor for another party to the action; or

(f) is the party's brief to the party's counsel; or

(g) is an advice to the party from the party's counsel.

(3) Also, a document is not discoverable by a party to an action if the document is—

(a) a written confidential communication in relation to the action between—

(i) the party and a lawyer for the party; or

(ii) 2 or more lawyers for the party; or

(b) a note of an oral confidential communication (made in person or by telephone) between—

(i) the party and a lawyer for the party; or

(ii) 2 or more lawyers for the party; or

(c) a confidential document (whether delivered or not) and a solicitor for the party certifies in writing to the effect that evidence of the contents of the document would not be admissible in the action under the Commonwealth Evidence Act, part 3.10 (Privileges), division 1 (Client legal privilege) if the party were to object to the admission of the evidence.

(4) This rule applies unless the court otherwise orders.

(5) For this rule, a matter is ***in issue*** until it is—

(a) admitted or taken to be admitted; or

(b) withdrawn, struck out or otherwise disposed of.

(6) In this rule:

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confidential communication—see the Commonwealth Evidence Act, section 117.

confidential document—see the Commonwealth Evidence Act, section 117.

4 Notice to disclose discoverable documents

(1) A party to an action may serve on another party a written notice requiring the other party to disclose discoverable documents for the action.

(2) Unless the court gives leave, the party must not serve a notice—

(a) before the close of pleadings; or

(b) after filing a certificate of readiness.

(3) The party who is served with the notice must—

(a) file the party's list of documents verified by affidavit within 28 days after the day the party receives the notice; and

(b) serve a copy of the list of documents on the other parties unless the court otherwise orders.

5 Orders about disclosure

(1) The court may make the following orders:

(a) an order that limits a party's duty of disclosure;

(b) an order for a party to disclose discoverable documents;

(c) if the court considers that a party has not, or may not have, adequately disclosed discoverable documents—an order for a party to make further and better disclosure;

(d) an order for the lists of documents of the parties, or the list of documents of a party, to be served in a stated electronic form;

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(e) an order for disclosure of discoverable documents by the parties, or a party, to be made in stages or in a stated way;

(f) an order for disclosure, or nondisclosure, by a party of any discoverable document in the party's possession or power;

(g) any other order about disclosure, or nondisclosure, of documents that the court considers appropriate.

Example for par (e) and par (g)

The court may make an order permitting disclosure by bundle.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Before making an order under subrule (1), the court must have regard to the following matters:

(a) the principle that disclosure of documents in an action should be limited to disclosure that is reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs;

(b) the likely relevance and significance, in relation to the action, of the documents, or particular documents, that may be discovered;

(c) the likely time, cost and inconvenience of disclosing documents or particular documents.

(3) Subrule (2) does not limit the matters to which the court may have regard.

(4) The court may inspect any document in a party's possession or power to decide whether it ought to be disclosed by the party.

(5) An affidavit must not be used for an application under this rule unless the court otherwise orders.

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6 List of documents

(1) Unless the court otherwise orders, a party's list of documents verified by affidavit must—

(a) set out, in a convenient order, each document discoverable by the party; and

(b) describe clearly and briefly each document set out in the list; and

(c) for each document not in the party's possession or power, state—

(i) when and how it stopped being in the party's possession or power; and

(ii) to the best of the party's knowledge, information and belief, who now has possession of or power over the document or, failing that, what has become of the document; and

(d) for each document that the party claims to be privileged from production—

(i) state that the privilege is claimed; and

(ii) set out clearly and briefly the circumstances giving rise to the privilege.

(2) For subrule (1), if any documents discoverable by the party come within a group of documents of the same kind, the list of documents must deal with the documents as a group, unless the court otherwise orders.

(3) The verifying affidavit of a party who files a list of documents must be in accordance with form 1.23 unless subrule (4) applies.

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(4) The verifying affidavit must be in accordance with form 1.24 if the list of documents is filed by or on behalf of—

(a) a government, corporation or unincorporated body; or

(b) a party represented by a litigation guardian; or

(c) a party for whom someone else swears the affidavit.

Note Rule 20 (Answers by governments, corporations etc) sets out who may swear the affidavit.

7 Continuing disclosure

(1) This rule applies to a discoverable document if, after disclosing documents under this order—

(a) a party to an action becomes aware that the document was wrongly omitted from the party's list of documents; or

(b) the document comes into the party's possession or power.

(2) Unless the court otherwise orders, the party must disclose the document to each party to whom the party has been required to give discovery—

(a) within 3 business days after the day the party—

(i) becomes aware of the omission; or

(ii) receives possession of, or power over, the document; or

(b) if the hearing of the action is to begin within the 3 days, or has begun—immediately.

(3) However, this rule does not require the party to disclose a document if, apart from this rule, the party is not required to disclose it.

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Division 34.3 Production and inspection

8 Claims for privilege for documents

(1) A claim for privilege from production for a document mentioned in a list of documents served by a party is taken to be waived by the party if the list of documents does not comply with rule 6 (1) (d) in relation to the document, unless the court otherwise orders.

(2) The court may decide a dispute about whether a document is privileged.

Note For privilege, see the Commonwealth Evidence Act, pt 3.10.

9 Production of documents for inspection

(1) This rule applies if a party to an action (the ***inspecting party***) gives written notice to another party (the ***producing party***) to produce for inspection:

(a) a document mentioned in the producing party's list of documents; or

(b) a document mentioned in any originating application, pleading, particular or affidavit filed by the producing party in the action.

(2) The producing party must, in accordance with this rule, produce the document for inspection by the inspecting party.

(3) However, the producing party does not have to produce—

(a) a document not required to be disclosed under this order; or

(b) a document for which the producing party has, in the party's list of documents, claimed privilege from production; or

(c) a document not required by the inspecting party to be produced; or

(d) a document not in the producing party's possession or power; or

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(e) a document relating only to a claim in the action that does not affect the producing party; or

(f) investigatory film of the party.

Example for par (e)

A plaintiff would not ordinarily be affected by a third-party claim under order 20.

(4) Production of documents by the producing party must take place on the day, and at the time and place, stated by the producing party in a written notice given to the inspecting party, unless the producing party and the inspecting party agree on alternative arrangements.

(5) The notice must—

(a) be given by the producing party to the inspecting party within 7 days after the day the producing party is given the notice under subrule (1); and

(b) state—

(i) a day that is a business day and is not earlier than 7 days, nor later than 21 days, after the day the notice under subsection (4) is given to the inspecting party; and

(ii) a time between 9 am and 3 pm; and

(c) state as the place for production—

(i) the address for service of the producing party; or

(ii) if it is not practicable to produce the documents at that address—some other reasonable place in the ACT.

(6) The inspecting party may copy a document produced for inspection and make notes of, or take extracts from, it.

(7) If the producing party makes a copy of a document for, and at the request of, the inspecting party, the producing party is entitled to payment for the copy under schedule 3.

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(8) If the producing party discloses a document to the inspecting party after inspection by the inspecting party, the producing party must allow the inspecting party to inspect the document as soon as practicable, either at the place where the inspection took place or another place agreed by the parties.

(9) However, subrule (8) does not require the producing party to produce a document if, apart from the subrule, the party is not required to produce it.

(10) This rule applies unless the court otherwise orders.

10 Orders about production of documents for inspection

(1) This rule applies to the production of documents by a party to an action for inspection by another party to the action.

(2) The court may do any of the following:

(a) make an order for production of documents by 1 or more parties to be made in stages or in a stated way;

(b) inspect a document to decide whether it ought to be produced;

(c) give a direction about whether a document has to be produced by a party (either generally, at a particular time or to a particular party);

(d) make an order for a document stored on a computer to be produced in a stated way or form;

(e) make any other order about production of documents that the court considers appropriate.

(3) Before making an order under subrule (2), the court must have regard to the following matters:

(a) the principle that production of documents in an action should be limited to production that is reasonably necessary for fairly

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disposing of the action, or part of the action, or for saving costs;

(b) the likely relevance and significance, in relation to the action, of the documents, or particular documents, that may be produced;

(c) the likely time, cost and inconvenience of producing documents or particular documents.

(4) Subrule (3) does not limit the matters to which the court may have regard.

11 Effect of inspection of documents disclosed by another party

(1) A party who inspects a document (the ***inspecting party***) that was disclosed by another party (the ***producing party***) is taken to admit—

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

(b) if the document is described in the list of documents as a copy—that the document is a true copy; and

(c) if the document is described in the list of documents as a copy of a document that was served—that the original was served as described.

(2) However, subrule (1) does not apply if—

(a) the document is not admissible in evidence; or

(b) the inspecting party has in the party's pleadings denied its authenticity or that the original was served as described; or

(c) the inspecting party serves on the producing party, within 14 days after the day the inspecting party inspected the

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document, a notice stating that the inspecting party disputes its authenticity or that the original was served as described; or

(d) the court orders that it does not apply.

(3) In this rule:

serve includes deliver, give, notify and send.

12 Production of documents at hearing of action

A document disclosed under this order must be produced at the hearing of the action if—

(a) notice to produce it has been given with reasonable particularity to a party by another party to the action; and

(b) its production is asked for by the other party at the hearing.

Division 34.4 Interrogatories

13 Service of interrogatories

(1) A party to an action has the right to serve interrogatories on another party to the action.

(2) The interrogatories may be set out in a letter.

(3) However, the court may order that interrogatories not be served in the action, or not be served by or on a particular party to the action, except to the extent (if any) stated in the order.

(4) Also, unless the court gives leave, a party must not serve interrogatories in the action on another party—

(a) before the close of pleadings; or

(b) if the party has previously served interrogatories on the other party; or

(c) after the filing of a certificate of readiness.

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(5) A set of interrogatories that is to be answered by 2 or more people must contain a note stating which of the interrogatories each of them is required to answer.

(6) A party who is served with interrogatories must, within 28 days after the day the party receives the interrogatories—

(a) file an affidavit setting out and verifying (except to the extent that the party objects under rule 14 to answering) the party's answers to the interrogatories; and

(b) serve a copy of the affidavit on the party serving the interrogatories.

(7) Subrule (6) applies unless the court otherwise orders.

Note For the power to make an order about interrogatories, see r 15 (Orders about interrogatories).

14 Objections to answer

(1) An objection by a party to answer an interrogatory must be on 1 or more of the following grounds:

(a) the interrogatory is unnecessary;

(b) the interrogatory is oppressive, scandalous, vexatious or otherwise improper;

(c) the interrogatory is unnecessarily long, wordy or uncertain;

(d) the interrogatory is irrelevant, is of a 'fishing' nature or inquires into a matter of evidence;

(e) the party is privileged under the Commonwealth Evidence Act, part 3.10 (Privileges) from answering the interrogatory;

(f) the answer would disclose (completely or partly) the contents of a document privileged from production by the party;

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(g) it is contrary to the public interest to disclose a matter that the answer would disclose;

(h) a ground arising under a provision of Territory or Commonwealth law, if the ground, the law and the provision are stated in the objection.

(2) An objection to answer on the ground that the interrogatory is unnecessary (subrule (1) (a)) operates as an objection that the interrogatory is not reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs.

15 Orders about interrogatories

(1) The court may, on the application of a party or on its own initiative—

(a) set aside interrogatories, or any interrogatory, on a ground mentioned in rule 14 (1); or

(b) set aside, or order to be removed from the court file, on a ground mentioned in rule 14 (1), any answers to interrogatories that have been filed; or

(c) order a party to answer, or to give a further and better answer to, an interrogatory that the party has—

(i) failed to answer (sufficiently or at all); or

(ii) made an objection to answering that the court disallows; or

(d) make any other order about the service or answering of interrogatories (including an order about costs) that the court considers appropriate.

(2) Before making an order under subrule (1), the court must have regard to the following matters:

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(a) the principle that interrogatories in an action should be limited to interrogatories that are reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs;

(b) the likely relevance and significance, in relation to the action, of interrogatories, or particular interrogatories, and the answers;

(c) the likely time, cost and inconvenience of answering interrogatories or particular interrogatories.

(3) Subrule (2) does not limit the matters to which the court may have regard.

(4) An order under subrule (1) (c) may include, for a party who has failed to answer an interrogatory (sufficiently or at all), an order for the oral examination of—

(a) if the party is an entity mentioned in rule 20 (1) (Answers by governments, corporations etc)—a person, or the holder of a position, stated by the court; or

(b) in any other case—the party.

(5) Unless the court otherwise orders, the questions asked, and answers given, on an examination under subrule (4)—

(a) must be taken down in writing and certified by an officer of the court; and

(b) as certified, are taken for this division to be interrogatories and answers to interrogatories.

(6) An affidavit must not be used for an application under this rule unless the court otherwise orders.

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16 Answers to interrogatories

(1) A party who is served with interrogatories must answer an interrogatory that the party is required to answer under this order—

(a) from the party's own knowledge of the fact or matter raised by the interrogatory; or

(b) if the party does not have the knowledge—from any belief the party has about the fact or matter.

(2) This rule and rule 17 apply to a party that is a government, corporation or unincorporated body as if—

(a) a reference to the party were a reference to the person who answers the interrogatories on behalf of the government, corporation or body; and

(b) a reference to an employee or agent of the party were a reference to an employee or agent of the government, corporation or body; and

(c) any other necessary changes were made.

Note Rule 20 (Answers by governments, corporations etc) sets out who may swear an affidavit verifying answers to interrogatories.

17 Answers to interrogatories—belief

(1) This rule applies if a party mentioned in rule 16 does not have knowledge of the fact or matter raised by an interrogatory and must answer the interrogatory from any belief the party has about the fact or matter.

(2) The party is taken not to have a belief about the fact or matter—

(a) if the party does not have information relating to the fact or matter on which to form a belief; or

(b) if the party has the information, but the party has reasonable grounds for not believing that the information is true.

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(3) The party must answer from any belief the party has about the fact or matter irrespective of the source of the information on which the belief is formed.

(4) However, the party is not required to answer from the party's belief about the fact or matter if the belief is formed on information that was given to the party in a communication or document that is privileged under the Commonwealth Evidence Act, part 3.10 (Privileges).

(5) To help the party form a belief about the fact or matter, the party must make all reasonable inquiries to find out—

(a) whether a person who is or has been the party's employee or agent has knowledge of the fact or matter that was acquired by the person as the party's employee or agent; and

(b) if a person has the knowledge—what the knowledge is.

(6) To remove any doubt, the party must make the inquiries mentioned in subrule (5) even if at the time the party is required to answer the interrogatory a person having the relevant knowledge has stopped being the party's employee or agent.

18 Affidavits verifying answers

(1) An affidavit verifying answers to interrogatories must be in accordance with form 1.25.

(2) However, the affidavit must be in accordance with form 1.26 if the answers to interrogatories are filed by or on behalf of—

(a) a government, corporation or unincorporated body; or

(b) a party represented by a litigation guardian; or

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(c) a party for whom someone else, for an adequate reason or by order of the court, answers the interrogatories.

Note Rule 20 (Answers by governments, corporations etc) sets out who may swear the affidavit.

19 Tendering of answers to interrogatories in evidence

(1) A party to an action who has served interrogatories on another party may tender the answers, or some of the answers, in evidence against the other party on the hearing of the action.

(2) However, the court must not allow an answer to be tendered in evidence without another answer if the court considers that, in the interests of justice, the other answer should also be tendered in evidence.

(3) For subrule (2), the court may inspect all of the answers to the interrogatories.

(4) Subrule (1) does not make an answer admissible in evidence if, apart from the subrule, it is not admissible in evidence.

Division 34.5 Who may verify list of documents or answers to interrogatories?

20 Answers by governments, corporations etc

(1) This rule applies if any of the following is a party who has to verify a list of documents, or answer interrogatories:

(a) a government;

(b) a corporation;

(c) the holder of a position (including, for example, the sheriff);

(d) an unincorporated body;

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(e) a person represented by a litigation guardian.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The affidavit verifying the party's list of documents, or answers to the interrogatories, must be sworn as follows:

(a) for a government—by a Minister, or an authorised officer, employee or agent, of the government;

(b) for a corporation—by a director, the secretary, or an authorised officer or employee, of the corporation;

(c) for the holder of a position—by the holder of the position or an authorised officer, employee or agent of the holder;

(d) for an unincorporated body—by the members, or 1 or more authorised members, or an authorised employee or agent, of the body;

(e) for a person represented by a litigation guardian—by the litigation guardian.

(3) However, the court may make an order for a party's list of documents or answers to interrogatories to be verified by the affidavit of a person not mentioned in subrule (2).

21 Party who cannot answer personally

If the court is satisfied that a party cannot, for adequate reason, swear an affidavit verifying the party's list of documents or answers to interrogatories, the court may authorise a suitable person to swear the affidavit.

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Division 34.6 Penalty provisions

22 Contravention of order of the court

(1) A person who, without reasonable excuse, contravenes a court order made under this order may be dealt with for contempt of court.

(2) This rule does not limit any other power of the court in relation to the contravention.

23 Solicitor to notify party of certain matters

(1) This rule applies if a solicitor who acts for a party to an action receives in relation to the action—

(a) a notice under rule 4 (1) (Notice to disclose discoverable documents) or 9 (1) (Production of documents for inspection); or

(b) interrogatories under rule 13 (1) (Service of interrogatories); or

(c) a court order made under this order that imposes an obligation (however expressed) on the party.

(2) The solicitor must, without unnecessary delay, take all reasonable steps to tell the party fully about the party's obligation in relation to the notice, interrogatories or order.

(3) If the solicitor fails, without reasonable excuse, to comply with subrule (2), the solicitor may be dealt with for contempt of court.

(4) This rule does not limit any other power of the court in relation to the failure.

24 Improper use of disclosed document

(1) This rule applies to someone if the person—

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(a) receives a document produced to the person under this order or division 39.8 (Disclosure of experts' reports and hospital reports) in relation to an action; or

(b) receives a document, directly or indirectly, from someone else and the document has, to the person's knowledge, been produced under this order or division 39.8 to the other person.

(2) The person must not, without leave of the court or other lawful authority, make use of the document otherwise than for the proper purposes of the action.

(3) If the person, without reasonable excuse, contravenes subrule (2), the person may be dealt with for contempt of court.

(4) The fact that a document has been filed, received in evidence or read out in court does not affect the application of this rule to the document, but the court may take that fact into account in deciding the penalty (if any) that should be imposed.

(5) This rule does not limit any other power of the court in relation to the contravention.

25 Noncompliance with order

(1) If a party fails, without reasonable excuse, to comply with a court order made under this order, the court may—

(a) if the party is a plaintiff or other claimant—order that all, or a stated part, of the action, claim or counterclaim of the party be struck out, dismissed or stayed; or

(b) if the party is a defendant or respondent—order that the party not be allowed to defend all, or a stated part, of the action or claim against the party.

(2) This rule does not limit any other power of the court in relation to the noncompliance.

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26 Failure to disclose document

(1) This rule applies if a party fails, without reasonable excuse, to disclose to another party a document that the party is required to disclose under this order, including under a court order made under this order.

(2) The party must not tender the document in evidence against the other party on the hearing of the action, or tender evidence of its contents, without the leave of the court.

(3) In deciding whether to give leave under subrule (2), the court must act in accordance with the Commonwealth Evidence Act, part 3.11 (Discretions to exclude evidence).

(4) The party must also pay any costs incurred by another party because of the failure.

(5) This rule does not limit any other power of the court in relation to the failure.

Division 34.7 Practice directions

27 Practice directions about discovery by electronic means

(1) The registrar may, with the judges' approval, issue practice directions about the discovery of documents by electronic means.

(2) A practice direction is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(3) A practice direction must be complied with despite anything to the contrary in these rules.

(4) This division expires on 1 January 2006.

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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

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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.

(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 1AA rule 6 (1) (Compliance with subpoena) and rule 11 (Costs and expenses of compliance with subpoena) apply in relation to an order for attendance under rule 3 as if the order were a subpoena.

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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

(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—

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(a) that it is reasonable to believe is a claim that the applicant has, or may have, the right to make against the person; and

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

7 Service of application and supporting affidavit

(1) An application for an order under rule 3 or 5 shall be served personally on the person the subject of the intended order unless a judge orders otherwise.

(2) An application under this order shall be supported by an affidavit—

(a) stating the facts on which the applicant relies; and

(b) specifying or describing the documents or class of documents in respect of which an order is sought.

(3) A copy of the supporting affidavit shall be served on every person on whom the notice of motion is served.

8 Order for inspection, preservation etc of property

When making an order under this order, the court may make a further order in relation to the subject matter of the proceedings or property that relates to the subject matter or as to which any question arises in the proceedings, providing for any of the following matters:

(a) the inspection, observation, measurement, photocopying, preservation, custody or detention of the subject matter or other property;

(b) taking samples;

(c) carrying out experiments;

(d) making, playing or screening any kind of recording of sight or sound;

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(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 form 1.27.

4 Service of notice

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

(2) A copy of the notice must be served on each other party to the action who has an address for service by leaving it at that address within 2 days after the day the notice is served on the respondent to the notice.

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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 under 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.

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 the day the notice is served 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.

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

8 Copying produced documents

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

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

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

9 Costs

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

(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) On the taxing officer determining an amount for subrule (2), the applicant for the notice for non-party production shall pay that amount to the respondent to the notice.

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(4) A determination for 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 under 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 form 1.28.

(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).

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3 Notice to admit facts

(1) A party may request another party in the same proceedings to admit any fact by notice—

(a) in accordance with form 1.29; and

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

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

(a) in accordance with form 1.30; 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.

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(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 on 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 on 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, on such application, make such order, or give such judgment, as the court thinks just.

7 Affidavit of signature to admissions

An affidavit of the solicitor or his or her clerk, of the due signature of any admissions made under any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

8 Notice to produce documents

(1) Notice to produce documents shall be in accordance with form 1.31.

(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

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contained, with liberty to the parties interested to take such objections thereto as they are advised.

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

On the taking of any account, the court may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as are contested or surcharged shall be brought before the judge in chambers.

7 Surcharge

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

9 Directions to be numbered

Whenever by any judgment or order any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in accordance with form 1.32.

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10 Just allowances

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

11 Registrar to report

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

12 Delay in prosecution of accounts

If it appears to the court, on the representation of the registrar or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries or any other proceedings under any judgment or order, the court may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case require.

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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—

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(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

(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 (2); 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.

(2) For 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

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alleges he or she would have engaged, but for the accident; and

(ii) the identity of that award or agreement.

(3) 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

(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

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(b) state the facts concisely; and

(c) have annexed all documents necessary to enable the court to decide the questions raised by the special case.

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

2 Preliminary question of law

If it appears to the court that there is in any cause or matter a question of law which it would be convenient to have decided before any evidence is given, or any question or issue of fact is tried, or before any reference is made to a referee or arbitrator, the court may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court deems expedient, and all such other or further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3 Preparation and filing of special case

A special case shall—

(a) be prepared in draft by the party having carriage of the proceeding after consultation with each other party; 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.

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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.

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.

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7 Agreement of damages and costs

The parties to a special case may, if they think fit, enter into an agreement in writing that, on 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 on 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 on, without formal pleadings, and such questions may be stated for trial in an issue.

(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, on 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 on 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

On 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 on 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 on 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 on 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 on 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

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of companies, unless he or she has given, within 20 days after appearance, notice to the plaintiff stating the grounds and the particulars on which he or she relies.

(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 on 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 on such terms as are just, on 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 on 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.

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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—

(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

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(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.

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.

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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

At 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 form 1.35.

25 Trial with assessors

Trials with assessors shall take place in such manner and on 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,

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and the registrar shall indorse on 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 on the finding of a jury on 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.

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.

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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, on 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.

2A Evidence by telephone etc by consent

A party to a proceeding may consent to evidence being given by telephone, video link or another form of communication in the proceeding.

Division 39.2 Taking evidence at trial from outside ACT by audiovisual link or audio link

3 Application for direction

An application for a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT) 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

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(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

(g) that the requirements of the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (2) (Territory courts may take evidence and submissions from outside ACT) 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 20, the court may direct the registrar to arrange for and coordinate the use of the appropriate facilities in the ACT 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

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

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 ACT—where it is ordered under the Act, section 57 (a); or

(b) if the examination is to be conducted outside the ACT, 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 ACT, 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 rules under the *Court Procedures Act 2004* applying to an order for the examination of witnesses in a civil proceeding in the Magistrates Court.

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9 When order for examination may be made

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

10 Application for order

(1) An application for an order for examination may be made by any party to the relevant proceeding.

(2) An application may be made—

(a) if the proceeding is in the court—by notice of motion; or

(b) if the proceeding is in the Magistrates Court—by summons.

(3) All other parties to the proceeding shall be made respondent to the notice of motion or the summons, as the case may be.

(4) Evidence in support of an application shall be given by affidavit.

(5) Where an order is applied for under 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;

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(d) any other person considered by the court to be suitable.

(2) A judge, the master or an officer of the court shall only be appointed with the concurrence of the Chief Justice.

12 Forms of order

(1) An order for the examination of a person within the ACT shall be made in accordance with form 1.36.

(2) An order for the examination of a person outside the ACT but within Australia shall be made in accordance with form 1.37.

13 Documents for examiner

(1) The party obtaining an order for examination shall give the examiner copies of the documents in the proceeding that are necessary to inform the examiner of the questions to which the examination is to relate.

(2) If the documents in the proceeding are not sufficient to inform the examiner of the questions, the court shall state the questions in the order or in a later order.

14 Appointment for examination

(1) The examiner shall appoint a place and time for an examination unless the court orders otherwise.

(2) The appointed time shall be as soon as practicable after the making of the order, having regard to the convenience of the person to be examined and to the circumstances of the examination.

(3) Notice of the appointment for examination shall be given—

(a) by the examiner to the party obtaining the order; and

(b) at least 3 days before the day appointed for the examination—by the party obtaining the order to each other party to the proceeding, and to the person to be examined.

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15 Conduct of examination

(1) Subject to this division, an examination shall be conducted in accordance with the procedure of the court.

(2) Each party to the relevant proceeding and each party's counsel and solicitor may attend the examination.

(3) The person examined may be cross-examined and re-examined unless the court orders otherwise.

(4) The examination, cross-examination and re-examination of a person before an examiner shall be conducted in like manner as at a trial unless the court orders otherwise.

(5) The examiner may put any question to the person being examined as to—

(a) the meaning of an answer made by the person; or

(b) any matter arising in the course of the examination.

(6) The examiner may adjourn the examination from time to time or from place to place.

16 Examination of additional persons

(1) An examiner may examine a person additional to the person named or described in the order for examination where each party to the proceeding consents in writing.

(2) The examiner shall annex to the deposition of the person additionally examined the consent of each party to the proceeding.

17 Objections

Where a person being examined objects to answering a question or to producing a document or thing—

(a) the question, the ground for the objection, the opinion of the examiner and any answer given shall be set out in the

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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.

(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

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(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

(b) the absence of a person from an examination; or

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(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;

on 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.

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Division 39.4 Taking evidence otherwise than at trial—outside Australia

23 Application of div 39.4

This division applies to an order for an examination, or for the issue of a letter of request, in relation to the taking of evidence outside Australia—

(a) for the purposes of civil or criminal proceedings—under 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)

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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

(ii) the content of any such convention.

24B Forms of order

(1) An order for the examination of a person outside Australia shall be made in accordance with form 1.37.

(2) An order for the issue of a letter of request to the judicial authorities of a foreign country shall be made in accordance with form 1.38.

24C Letters of request

(1) On 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

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(iii) if necessary, a translation of the documents referred to in subparagraphs (i) and (ii) into the official language of the foreign country; and

(b) file in court—

(i) a copy of each of the documents referred to in paragraph (a); and

(ii) an undertaking in accordance with form 1.39 to pay any reasonable expenses incurred by the Territory, the Commonwealth, or both, on 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.

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

(1) 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, on 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

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(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 under 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.

(2) 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 22, apply as far as practicable, with necessary changes, to the taking of evidence under a letter of request as if the foreign court or tribunal where the evidence is to be taken were an examiner appointed for those rules.

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

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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 under 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 to which div 39.5 applies

(1) An application for an order to which this division applies may only be made by motion by a person nominated by the requesting tribunal, or, if a person is not nominated, by the Attorney-General.

(2) After an order is made, an application for any related order must be made by motion.

(3) Notice of a motion under this rule need not be given to anyone, but a notice of motion must be filed.

24J Form

An order to which this division applies shall be made in accordance with form 1.40.

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24K Appointment of examiner

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

(a) a judge;

(b) the master;

(c) an officer of the court;

(d) any other person considered by the court to be suitable.

(2) A judge, the master or an officer of the court shall only be appointed with the concurrence of the Chief Justice.

24L Attendance at examination by applicant

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

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24P Certificate of order and depositions

On receipt of a deposition of a witness, and of any transcript of a deposition, taken in the course of an examination to which this division applies, the registrar shall—

(a) issue a certificate, sealed with the court seal, in accordance with form 1.41; and

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

24Q Privilege of witnesses

(1) This rule applies to evidence which is the subject of a claim for privilege referred to in 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.

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(4) After the determination of the claim for privilege by the court or tribunal which requested the examination, the registrar shall—

(a) if the claim is rejected by the requesting court or tribunal—send to that court or tribunal the deposition, and any transcript, recording the evidence to which the claim relates; or

(b) if the claim is upheld by the requesting court or tribunal—return the deposition and any transcript to the person claiming privilege.

(5) After the requesting court or tribunal has made a determination about a claim for privilege, the registrar shall accordingly notify—

(a) the person claiming privilege; and

(b) the applicant for the order for examination.

Division 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, on 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

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shall be admissible notwithstanding any objection to such depositions on 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

38 Application of div 39.8

The rules contained in this division apply—

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

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

39 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—

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(a) is purely responsive to another report served under this rule; or

(b) serves only to update a report previously served;

shall be served on the parties referred to in rule 38 within 3 working days of its receipt by the party who commissioned it.

40 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 39.

(2) For subrule (1), evidence is covered by a report if the report contains the substance of the matters sought to be adduced in evidence.

41 Expert's reports admissible as evidence of facts

Where an expert's report or hospital report is served in accordance with rule 39 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 on 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.

42 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.

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(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 39.8A Appointment of medical expert for Civil Law (Wrongs) Act

43 Definitions for div 39.8A

In this division:

appointed expert—see the Wrongs Act, section 84.

expert, in relation to an issue—see the Wrongs Act, section 82.

expert medical evidence—see the Wrongs Act, section 82.

Wrongs Act means the *Civil Law (Wrongs) Act 2002*.

44 Application for appointment of expert—Wrongs Act, s 86

(1) An application to the court by a party to a proceeding for the appointment of a person to give expert medical evidence in the proceeding must be made by notice of motion under order 54.

(2) The application may seek any of the following orders:

(a) an order for the appointment of a person, an additional person, or 2 or more people, to give expert medical evidence;

(b) an order about payment of costs and expenses of a person proposed to be appointed.

45 Supporting affidavit for appointment of expert

An application under rule 44 must be supported by an affidavit setting out—

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(a) the attempts made by the parties to agree on the appointment of a person to give expert medical evidence in the proceeding; and

(b) the issues on which expert medical evidence is proposed to be given in the proceeding; and

(c) if the application is for the appointment of an additional expert to give expert medical evidence in the proceeding—the issues for which the appointment is proposed to be made and why the appointment should be made; and

(d) if the application is for the appointment of 2 or more experts to give expert medical evidence on a particular issue—the issue for which the appointment is proposed to be made and why more than 1 expert should be appointed to give expert medical evidence on the issue; and

(e) for each appointment for which application is made—a list of appropriately qualified people who are available and willing to be appointed; and

(f) for each person on a list mentioned in paragraph (e)—the following information:

(i) why the person is an expert in relation to the issue for which the appointment is proposed to be made;

(ii) the hourly rate of the fees the person proposes to charge and, if possible, an estimate of the total amount likely to be charged for the person's expert medical evidence; and

(g) if an order is sought about the payment of the costs and expenses of a person proposed to be appointed—why the order should be made; and

(h) any matters relevant to whether the party or parties should be heard on the application.

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46 Service on other parties

The party making an application under rule 44 must serve a copy of the application and supporting affidavit on each other party on or before the day the party files the application.

47 Response by other parties

(1) A party on whom a copy of an application under rule 44 (the ***rule 44 application***) and supporting affidavit is served may, within the required time, do either or both of the following:

(a) apply to the court by notice of motion under order 54 for any of the orders mentioned in rule 44 (2);

(b) file, and serve on each other party, an affidavit responding to anything mentioned in the rule 44 application or its supporting affidavit.

(2) For subrule (1), the ***required time*** for a party is 14 days after the day the party receives the rule 44 application and its supporting affidavit or, if the court allows a longer period, that period.

(3) Rule 45 (Supporting affidavit for appointment of expert) applies in relation to an application under subrule (1) (a) as if it were an application under rule 44.

48 Selection of expert etc by court

(1) This rule applies to the making of the following decisions by the court:

(a) a decision whether to appoint an expert;

(b) a decision about the person to be appointed as an expert;

(c) a decision whether to make an order under the Wrongs Act, section 90 about payment of the costs and expenses of an appointed expert.

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(2) The court must make a decision to which this rule applies by considering the applications and affidavits filed by the parties and need not hear the parties unless it is satisfied that the interests of justice require the parties to be heard.

(3) A person appointed as an expert in relation to an issue by the court may (but need not) be a person mentioned in a list of appropriately qualified people in relation to the issue set out in an affidavit filed by a party.

(4) If the court proposes to make a decision to which this rule applies, the court must give each of the parties written notice of the proposed decision.

(5) Within 7 days after the day a party is given notice of the proposed decision, the party may apply to the court by notice of motion under order 54 for an order in relation to the proposed decision.

(6) If an application is not made under subrule (5) in relation to the proposed decision, the court must, within 7 days of the day the period mentioned in the subrule expires, make the decision and give each of the parties written notice of the making of the decision.

49 Appointed experts to be briefed etc

(1) Within 14 days after the day a party is given written notice of the appointment of an expert by the court, the party must—

(a) give the expert a statement of the issues on which the expert is to give expert medical evidence; and

(b) comply with the Wrongs Act, section 88 (Documents etc to be given to expert).

(2) Not later than 14 days after the day the expert files the expert's report under rule 49B, each party must pay any amount payable by the party to the expert.

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49A Request by appointed expert for directions

(1) An appointed expert may write to the registrar seeking directions in relation to the expert medical evidence the expert is to give.

Example

letter requesting directions about whether the plaintiff should be physically examined

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Unless the court otherwise orders, the registrar must give a copy of the letter seeking directions to each party at least 7 days before the day the letter is placed before a judge or the master.

(3) A party to the proceeding may file written submissions about the directions sought within 7 days after the day the party is given a copy of the letter.

(4) The court may appoint a date for a directions hearing about the directions sought by the appointed expert.

(5) After considering any submissions made by the parties, the court may give the appointed expert directions the court considers just.

49B Expert to report

(1) As soon as practicable after an expert is appointed by the parties or the court, the expert must prepare and file a written report on the issues on which the expert is to give expert medical evidence.

(2) In preparing the report, the expert must comply with any expert witness code of conduct adopted under rule 49C.

(3) The expert must give a copy of the report to each of the parties within 7 days after the day the expert files the report.

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49C Expert witness code of conduct

(1) The registrar may, with the judges' approval, issue practice directions adopting, for these rules (including this division), a code of conduct for experts.

(2) A practice direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

49D Expert report to be admitted in evidence

Unless the court otherwise orders, an expert's report filed under rule 49B must be admitted in evidence at the beginning of the hearing of the proceeding if that rule is complied with in relation to the report.

49E Attendance of expert

(1) An expert must, on reasonable notice by the registrar or a party, attend the hearing of the proceeding for which the expert has filed a report under rule 49B.

(2) A party may cross-examine the expert in relation to the report.

Division 39.9 Evidence of expert witnesses

49F 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.

49G Court may direct manner that experts give evidence

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

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(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

(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

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(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.

Order 39A Exhibits, documents and things

1 Meaning of *subpoena document or thing* for o 39A

In this order:

subpoena document or thing means a document or thing, produced in a proceeding because of a subpoena, by someone 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—

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(a) take charge of a document or thing 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 addressee.

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

(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 otherwise orders, the clerk at a proceeding must keep exhibits in the proceeding for—

(a) 21 days after the day judgment is given in the proceeding; or

(b) if leave to appeal from the judgment is given within that period of 21 days—21 days after the day leave is given.

Note O 86 r 32 (Keeping exhibits) deals with the keeping of the exhibits if an appeal is begun in the Court of Appeal from a judgment given in the proceeding.

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

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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, 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 thing 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 thing) 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 thing, the party must return the document or thing to the addressee.

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

(7) In this rule:

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

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6 Return of subpoena document or thing

(1) This rule applies to a subpoena document or thing produced in a proceeding.

(2) The registrar must return, or arrange for the return of, the document or thing to the addressee.

(3) If the document or thing was not put into evidence as an exhibit in the proceeding (whether or not it was marked for identification), it must be returned as soon as practicable after the hearing of the proceeding.

(4) If the document or thing was put into evidence as an exhibit in the proceeding, it must be returned 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 the day 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 thing) 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 allow removal of documents and things

(1) This rule applies to a document or thing that the registrar has in relation to a proceeding, whether or not the document or thing—

(a) is an exhibit; or

(b) was produced on subpoena.

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(2) The registrar must not permit the document or thing to be removed from the registry except on application signed by the solicitor for a party to the proceeding.

(3) The registrar may—

(a) permit the document or thing to be removed from the registry either unconditionally or subject to conditions; or

(b) refuse to permit the document or thing to be removed.

(4) If a solicitor removes the document or thing from the registry under a permission under subrule (3), the solicitor is taken to undertake to the court that—

(a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and

(b) the document or thing will be returned to the registry in the same condition, order and packaging in which it was removed, when directed by the registrar; and

(c) the solicitor will comply with the conditions (if any) to which the permission is subject.

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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 affidavits generally

(1) An affidavit must be in accordance with form 1.49A and made in the first person.

(2) If the person making the affidavit is, or is employed by, a party to the proceeding in which the affidavit is to be used, the affidavit must state that fact.

(3) The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph as far as possible limited to a distinct part of the subject.

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(4) Each page of an affidavit, including any annexure, must be numbered sequentially, starting at number 1 for the first page of the affidavit.

(5) Amounts of money, numbers, and references in dates to days of the months and years, must be in figures and not words.

(6) Costs must not be allowed for an affidavit or part of an affidavit that substantially departs 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) Each annexure to an affidavit must be identified sequentially on the first page of each annexure by a letter, starting at 'A' for the first annexure.

(3) Each annexure must include on its first page the information mentioned in form 1.49B.

(4) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

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(5) 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.

(6) Each exhibit to an affidavit must be identified by a separate certificate.

(7) The certificate is the title page for the exhibit, and must be securely fastened to it.

(8) Unless the court otherwise orders, the certificate must—

(a) be signed by the person before whom the affidavit is taken; and

(b) include the initials of the person making the affidavit, followed by an identifying number corresponding to the number of the exhibit.

Examples for subrule (8) (b)

1 for the 1st exhibit, the identifying number is 1

2 for the 4th exhibit, the identifying number is 4

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

(9) The certificate must be in accordance with form 1.49C.

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 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 or affirmed 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.

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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 or affirmed before him or her—

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

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

(c) that he or she had interpreted to the deponent the oath or affirmation; and

(d) that the deponent had sworn or affirmed 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.

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(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

(1) A copy of an affidavit intended to be used by a party in a proceeding must be served on each other party to the proceeding.

(2) The copy must be served—

(a) if the court sets a time for the service—within that time; or

(b) if the court does not set a time for the service—a reasonable time before the hearing of the proceeding.

(3) This rule does not apply to an application made without notice to another party.

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

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(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) The party must serve a written notice on the party filing or proposing to use the affidavit, requiring the attendance of the person making the affidavit.

(3) The notice must be served—

(a) if the court sets a time for the service—within that time; or

(b) if the court does not set a time for the service—a reasonable time before the attendance is required.

(4) 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.

(5) 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—Act, s 54

(1) An agreement of the parties to a suit, that the evidence at the trial of the suit will be given by affidavit, must be made before the suit is set down for trial.

(2) The parties must tell the court about the agreement before the suit is set down for trial.

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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.

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4 Where certain issues only determined

(1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the court for leave to set down a motion for judgment, without waiting for such trial or determination.

(2) The court may, if satisfied of the expediency thereof, give such leave, on 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 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 under subrule (1) or under 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 under this rule, the registrar—

(a) may approve the draft either with or without amendment; and

(b) shall, on 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 Corporations Act, the registrar may enter a judgment or order—

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

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

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

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

(a) 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 form 1.9; or

(ii) any other judgment—be in accordance with form 1.50.

(b) for a draft or minute relating to an order—be in accordance with form 1.51.

(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'.

(8) Subrules (6) and (7) do not apply to a draft of a judgment or order to which rule 11 applies.

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.

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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 16, the judgment shall, unless the court otherwise orders, be dated as of the day on which the order is made and the judgment shall take effect from that date.

(2) The order may direct that the judgment shall not be entered until a given date, in which case the judgment shall take effect from that date.

5 In other cases

In all cases not within rules 3 and 4, the entry of judgment shall be dated as of the day on which the requisite documents are left with the registrar for the purpose of such entry, and the judgment shall take effect from that date.

6 Orders for performance of acts to state time

Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and on the copy of the judgment or order served on 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).'.

6A Order to contain date of making

(1) An order that is drawn up must state the date it was made.

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(2) An order takes effect on the day it is made, unless the court otherwise directs.

7 Examination of documents by officer

Where under any law or these rules, it is provided that any judgment may be entered on 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 under order or certificate

Where under any law or these rules any judgment may be entered under any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the court, or of such return, shall be a sufficient authority to the registrar to enter judgment accordingly.

9 Certificate to be filed

Where reference is made to the registrar to ascertain the amount for which final judgment is to be entered, the registrar's certificate shall be filed when judgment is entered.

10 Judgment by consent

(1) If a party has appeared by a solicitor in a cause or matter, an order for entering judgment may be made by consent only if the consent of the party is given by the party's solicitor or agent.

(2) If a party has appeared in person in a cause or matter, an order for entering judgment may be made by consent only if—

(a) the party attends before the judge and gives his or her consent in person; or

(b) the consent is in writing and is witnessed by a solicitor.

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(3) However, a party who is a lawyer complies with subrule (2) (b) if the consent is in writing.

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 in accordance with form 1.52 or draft judgment in accordance with form 1.53.

(b) there is endorsed on the draft the consent for 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 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.

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.

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(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.

14 Copies

(1) The registrar shall, on the request of a party, furnish that party with a certified or office copy of the order entered in the proceeding.

(2) The registrar may, on payment of the prescribed fee, furnish to any person appearing to have a sufficient interest in the order entered in any proceeding a certified or office copy of the order.

(3) The registrar shall, on the request of a judgment creditor, furnish to the judgment creditor a certificate in accordance with form 1.54 setting out the particulars of the judgment.

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Order 42A Interest up to and on judgments

1 Interest up to judgment

(1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) the court shall, on application, unless good cause is shown to the contrary—

(a) order that there be included in the sum for which judgment is given interest at the rate the court considers appropriate on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date when the judgment is entered; or

(b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which judgment is given a lump sum instead of any such interest.

(2) Subsection (1) does not—

(a) authorise the giving of interest upon interest or of a sum instead of such interest; or

(b) apply in relation to any debt on which interest is payable as of right whether because of an agreement or otherwise; or

(c) affect the damages recoverable for the dishonour of a bill of exchange.

(3) If the sum for which judgment is given (the relevant sum) includes, or if the court determines that the relevant sum includes, any amount for—

(a) compensation in relation to liabilities incurred that do not carry interest as against the person claiming interest or claiming a sum instead of interest; or

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(b) compensation for loss or damage to be incurred or suffered after the date when judgment is given; or

(c) exemplary or punitive damages;

interest, or a sum instead of interest, shall not be given under subsection (1) in respect of any such amount or in respect of so much of the relevant sum as in the opinion of the court represents any cash amount.

2 Interest on judgments

A judgment debt under a judgment of the court carries interest at the rate applying under the following table from the day judgment is entered:

Table 42A.1

column 1 item	column 2 period	column 3 interest rate
1	on and before 30 April 1986	if judgment was entered before 1 October 1977—5% a year for the whole period; or 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

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column 1 item	column 2 period	column 3 interest rate
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 42B Notices to sheriff

1 No order for return of writ etc necessary

(1) An order must not be issued for the return of a writ or to bring in the body of a person ordered to be attached or committed.

(2) However, a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or from the person's solicitor, calling on the sheriff to return the writ, or to bring in the body within a stated time, if not complied with, entitles the person to apply for an order for the committal of the sheriff.

2 Notice to sheriff, out of office

(1) This rule applies if the sheriff, before going out of office, arrests a defendant, and makes return of *sepi corpus*.

(2) The sheriff may be called on by a notice mentioned in rule 1 to bring in the body within the time allowed by law, although the sheriff may be out of office before the notice is given.

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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 on being duly served with the same, without demand.

2 Waiver of judgment on condition

Where any person who has obtained any judgment or order on 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.

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5 For recovery of land

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

6 For recovery of other property

A judgment for the recovery of any property other than land or money may be enforced—

(a) by writ for delivery of the property; 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 on the fulfilment of, any condition or contingency, the party so entitled may, on the fulfilment of the condition or contingency, and demand made on 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.

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9 Production of judgment

A writ of execution shall not be issued without the production to the registrar of the judgment or order on which the writ of execution is to issue, or an office copy thereof, showing the date of entry, and the registrar shall be satisfied that the proper time (if any) to entitle the party to execution has elapsed.

10 Praecipe

(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 form 1.55, 1.56 or 1.57, 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 on 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.

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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 form 1.58, 1.59 or 1.60, or with such other form as is applicable in the circumstances.

13 Fees and expenses

In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

14 Additional fees and expenses

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

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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 until payment, besides sheriff's poundage, officer's fees, costs of levying, the fees, expenses, and costs mentioned in order 43 rule 14, if and when incurred, and all other legal incidental expenses.'.

17 Execution for money or costs on entry of judgment

Every person to whom any sum of money or any costs is or are payable under a judgment or order may, as soon as the money or costs is or are payable, sue out 1 or more writs of 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.

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18 Separate writs for money and costs

On any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either 1 writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall be only for costs, and shall be issued not less than 8 days after the first writ.

19 Writ in force for 1 year—with power to renew

A writ of execution, if unexecuted, shall remain in force for 1 year only from its issue, unless renewed in the manner provided in this rule, but such writ may, at any time before its expiration, by leave of the court, be renewed, by the party issuing it, for 1 year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being sealed with a seal bearing the word 'Renewed' and the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his or her solicitor, and sealed with the like seal, and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

20 Evidence of renewal

The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as is mentioned in rule 19 showing the same to have been renewed, shall be prima facie evidence of its having been so renewed.

21 Execution within 6 years

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

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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; or

(b) where a husband is entitled or liable to execution on a judgment or order for or against a wife; or

(c) where a party is entitled to execution on a judgment of assets *in futuro*; or

(d) where a party is entitled to execution against any of the shareholders of a company on a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself or herself to be entitled to execution may apply by summons for leave to issue execution accordingly, and the judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried, and in either case the judge may impose such terms, as to costs or otherwise, as are just.

23 Order enforceable as judgment

Every order of the court, in any cause or matter, may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

24 Execution by or against person not party

Any person, not being a party to any cause or matter, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he or she

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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, on the ground of facts which have arisen too late to be pleaded, and the court may give such relief and on such terms as are just.

26 Former rights reserved

Nothing in this order shall take away or curtail any right to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

27 Order of issue of writs

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

28 Enforcement of mandatory judgment etc

If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract is not complied with, the court may direct that besides, or instead of, proceedings against the disobedient party for contempt, the act required to be done may be done so far as is practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the court, at the cost of the disobedient party, and on 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.

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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

(d) whether the judgment debtor has any, and, if so, what other property or means of satisfying the judgment or order;

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and to produce at the time and place so specified any books or documents in the possession of or under the control of the judgment debtor relevant to those questions.

(2) The order shall be in accordance with form 1.61.

(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.

(5) 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.

(6) 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.

(7) The registrar may at any time adjourn the examination for further hearing before the court.

(8) The registrar shall cause a record to be made of the examination.

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32 In cases of difficulty, party may apply

(1) Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than a judgment or order mentioned in rule 31, the court may on an application made ex parte by a person entitled to enforce the judgment or order, order that the party liable to satisfy the judgment or order, or, if that party is a body corporate, an officer thereof, attend before the registrar to be examined on such questions as are specified in the order.

(2) The provisions of rule 31 shall apply with such modifications as may be necessary to an order made under this rule and the proceedings thereunder.

33 Costs

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

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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, on 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—

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(a) the sheriff; and

(b) the judgment debtor; and

(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; 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.

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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, on 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 on 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.

(2) On 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.

(3) 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.

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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 on the hearing of the summons, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from the garnishee, or so much thereof as is sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

4 Trial of liability of garnishee

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

5 Lien of third person on debt of garnishee

Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge on it, the court may order such third person to appear, and state the nature and particulars of his or her claim on 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,

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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, on such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court thinks just and reasonable.

7 Discharge of garnishee

Payment made by, or execution levied on, the garnishee under any proceeding under 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 on 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 *Court Procedures Act 2004*, division 7.6 (Judgment creditor remedies).

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.

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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.

5 Filing and service of affidavit and notice as to stock

Any person claiming to be interested in any stock standing in the books of a company may, on an affidavit by himself or herself or his or her solicitor in accordance with form 1.62, and on filing the same, together with a notice in accordance with form 1.63, 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.

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

The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect as if these rules had not been made and a writ of *distringas* in respect of the stock had been duly issued.

10 Withdrawal or discharge of notice

A notice filed under rule 5 may at any time be withdrawn by the person by whom or on whose behalf it was given, on a written request signed by him or her, or its operation may be made to cease by an order obtained by motion on notice, or by summons at chambers, duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

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

If, while a notice filed under rule 5 continues in force, the company on whom it is served receives from the person in whose name the stock specified in the notice is standing, or from some person acting on his or her behalf or representing him or her, a request to permit the stock to be transferred, or to pay the dividends thereon, the company shall not, by force or in consequence of the service of the notice, be authorised without the order of the court, to refuse to 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

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have been made on the day on which the amended duplicate is so served.

13 Costs of stop order

Where any moneys or securities are in court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order is obtained on the shares of such moneys or securities affected by such order shall be liable, at the discretion of the court, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, are occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

14 Service

Any person moving on notice, or taking out a summons, for any order under rule 13, shall not be required to serve such notice or summons on the parties to the cause or matter, or on 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

On 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

On 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, on 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 on 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 until the defendant delivers the property, or, at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value (if any) of the property.

2 Form—execution for damages and costs

A writ of delivery shall be in accordance with form 1.64, 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, on an application for that purpose, be stayed on 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.

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5 Appearance of partners

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

6 No appearance except by partners

Where an originating application is served under 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

(1) Anyone served as a partner under order 2 rule 18D (Service on partners sued in firm name) may enter an appearance under protest, denying being a partner, but doing so does not prevent the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner enters an appearance in the ordinary form.

(2) Order 13 rule 16A (Conditional appearance) does not apply to an appearance entered under this rule.

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.

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(2) If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he or she may apply to the court for leave so to do, and the court may give such leave if the liability is not disputed, or, if such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

(3) Except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the action commenced, and has not entered an appearance to the action, unless the member—

(a) is made a party to the action under the law relating to the service of originating applications out of the jurisdiction; or

(b) is served with the originating application within the jurisdiction after the action commenced.

9 Attachment of debts owing from a firm

(1) Debts owing from a firm carrying on business within the jurisdiction may be attached under order 46, although 1 or more members of the firm is resident abroad if a person having the control or management of the partnership business or some member of the firm within the jurisdiction is served with the garnishee order.

(2) An appearance by any member under 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

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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, on the application of any party to a cause or matter, and on 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

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arise therein, and for all or any of those purposes, may authorise any person to enter on or into any land or building in the possession of any party to such cause or matter, and for all or any of those purposes may authorise any samples to be taken, or any observation to be made or experiment to be tried, which seems necessary or expedient for the purpose of obtaining full information or evidence.

4 Judge may inspect

The judge, with or without the jury (if any), may inspect any property or thing concerning which any question may arise in any cause or matter.

5 Jury may inspect

The provisions of rule 3 shall apply to inspection by a jury, and in such case the court may make all such orders on 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

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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, 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 on 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.

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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 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 on 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.

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14 Order for

The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the court has given him or her leave to compound the action.

15 Crown's half of penalty

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

Division 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

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security in accordance with this rule, unless the court otherwise orders.

(3) For this rule, a security must be—

(a) approved by the court; and

(b) given in respect of an undertaking by the receiver, or prospective receiver, in accordance with form 1.65 that what is received as receiver will be—

(i) accounted for; and

(ii) dealt with as the court may direct.

(4) The court may make orders for the vacation of a security filed under this rule.

20 Powers

(1) A receiver appointed by the court has the powers of a receiver and manager, unless the court otherwise orders.

(2) The court may authorise a receiver to do (in the receiver's name or in the name of the parties or of a party and either generally or in a particular instance) any act or thing that the parties or a party might do if of full age and capacity.

(3) Subrule (2) 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.

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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) If a notice is served on the receiver under subrule (3), the receiver must file a copy of the accounts in accordance with form 1.66 within the period required by the notice.

(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;

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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 under order 42A rule 2 (Interest on judgments); or

(b) at such other rate as the court determines to be just;

in respect of the period of that failure.

(3) This rule does not affect the court's powers to enforce its orders or to punish contempt of the court.

24 Account on death

(1) If a receiver, being a natural person, dies, the court may, on the motion of a party, make such orders as the court thinks fit for—

(a) filing and passing of accounts—

(i) by the representatives of the receiver; or

(ii) by any other person who has, or has had, possession or control of property the subject of the receivership; and

(b) payment into court of any amount shown to be due; and

(c) delivery of property the subject of the receivership.

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(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

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shall be prefaced by a declaration that the judge is so satisfied and a statement of the evidence on which such declaration is made.

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

In debenture-holders actions, where the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself or herself and other debenture-holders, and the judge is of opinion that there must eventually be a sale, he or she may in his or her discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not.

4 Sale under order

Where a judgment or order is given or made directing any property to be sold, unless otherwise ordered, the same shall be sold with the approbation of the judge to the best purchaser that can be got for the same, to be allowed by the judge, and all such proper parties as the judge directs shall join in the sale and conveyance.

5 Reserved biddings

Affidavits for the purpose of enabling the judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

6 Particulars and conditions of sale

As soon as particulars and conditions of sale settled at chambers have been printed, 2 prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the judge's chambers, shall be left at chambers.

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7 Affidavit of result of sale

An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at chambers at least 1 clear day before the day appointed for settling the certificate of the result of the sale.

8 Opinion of counsel

The court may require or receive the opinion of counsel for his or her aid and assistance in the investigation of the title to an estate with a view to an investment of money in the purchase, or on mortgage thereof, or with a view to the sale thereof, or to the settlement of a draft of a lease, transfer, mortgage, settlement, conditions of sale, or other instrument, or any other matter which the court thinks fit to refer.

9 Subject to objection

Any party may object to any opinion of any such counsel and thereupon the point in dispute shall be disposed of by the court or by the judge according to the nature of the case.

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Order 54 Motions

Division 54.1 Preliminary

1 Meaning of *supporting material*

In this order:

supporting material, for a notice of motion, means an affidavit, schedule of correspondence or anything else properly filed in support of the motion.

2 Filing and service of notice of motion—supporting material

If a notice of motion is to be filed and served under this order, the supporting material (if any) for the notice must be filed and served with the notice unless the court otherwise orders.

Division 54.2 Interlocutory or other applications in proceedings already begun

3 Applications by motion

(1) An interlocutory or other application in a proceeding that has already been begun in accordance with these rules must be made by motion.

(2) The motion may be supported by—

(a) an affidavit setting out the facts relied on; or

(b) a schedule of correspondence; or

(c) anything else properly filed in support of the motion.

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(3) However, a motion for directions under order 33 must not be supported by affidavit except in accordance with that order.

(4) If the court considers that the supporting material (if any) is insufficient to support the motion, the court may—

(a) adjourn the hearing of the motion; and

(b) make any other orders it considers appropriate, including an order that supporting material or further supporting material be prepared.

(5) If the court orders that supporting material or further supporting material be prepared, the material must be filed and served at least 2 days before the day for hearing the motion unless the court otherwise orders.

4 Notice of motion

(1) A person must not move the court for an order unless the person has filed a notice of motion in accordance with form 1.67A and has served a stamped copy of the notice on each interested party.

(2) However, a party to the proceeding who has not entered an appearance need not be served with a stamped copy of the notice unless an order is sought requiring the party to do, or not to do, anything.

(3) Also, a person may move the court without having filed or served a notice of motion if—

(a) the preparation of the notice, or the filing or service of a notice, would cause undue delay or other mischief to the applicant; or

(b) each interested party consents to the order; or

(c) under the rules the motion may be made without the prior filing or service of a notice; or

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(d) the court orders that the person does not have to file or serve a notice.

(4) A notice must—

(a) state the party moving the motion; and

(b) state the date and time when, and place where, the motion is to be made; and

(c) if the court makes an order under rule 9 (Service of notice of motion)—state the terms of the order; and

(d) state briefly the order (or orders) sought; and

(e) name each party affected by the order or each order sought; and

(f) for a notice to set aside, remit, or enforce an award, or for attachment—state the grounds of the application.

(5) Costs need not be specifically claimed.

(6) In this rule:

interested party, for a proceeding, means a party with an interest in the proceeding who has an address for service in the proceeding.

Division 54.3 Originating motions

5 Beginning actions by motion

(1) This rule applies if, under a law or these rules, an action is not to be begun by an originating application under order 2, and no other procedure is provided.

(2) The action must be begun by an originating notice of motion.

(3) The motion must be supported by an affidavit setting out the facts relied on unless the court otherwise orders.

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6 Originating notice of motion

(1) The originating notice of motion must be in accordance with form 1.67B.

(2) A notice must—

(a) state the party moving the motion; and

(b) state the date and time when, and place where, the motion is to be made; and

(c) if the court makes an order under rule 9 (Service of notice of motion)—state the terms of the order; and

(d) state briefly the order (or orders) sought; and

(e) state the relief sought for each cause of action and each party affected by the relief; and

(f) state briefly, but specifically, the grounds relied on in support of the motion.

7 Filing and service of originating notice of motion

The applicant must file an originating notice of motion and serve a stamped copy of the notice on each other party to the motion.

Division 54.4 Motions—generally

8 Rule to show cause

A motion or application for a rule nisi, or order to show cause, must not be made—

(a) in an action; or

(b) to set aside, remit or enforce an award; or

(c) for attachment; or

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

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

9 Service of notice of motion

(1) Unless the court otherwise orders, there must be—

(a) for a notice of motion under division 54.2—at least 2 clear days between the day of service of the notice and the day stated in the notice for hearing the motion; or

(b) for an originating notice of motion under division 54.3—at least 5 clear days between the day of service of the notice and the day stated in the notice for hearing the motion.

(2) If a notice of motion is to be served on a person who has not entered an appearance, the notice must be served personally unless the court otherwise orders.

(3) The court may order service of a notice of motion on any person it considers appropriate.

10 Absence of party

The court may hear and dispose of a motion in the absence of a party if—

(a) service of the notice of motion on the absent party is not required under the rules or by an order of the court; or

(b) the notice of motion has been served on the absent party in accordance with these rules.

11 Dismissal or adjournment if notice not given

(1) This rule applies if—

(a) a person has not been given notice of a motion; and

(b) on the hearing of the motion, the court considers that the person should have been given notice of the motion.

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(2) The court may—

(a) dismiss the motion; or

(b) adjourn the hearing of the motion so that notice may be given on the conditions (if any) the court considers appropriate.

12 Adjournment at request of parties

(1) This rule applies if a motion is to be heard on a date and, before that date—

(a) a party files a request for an adjournment; and

(b) each other party has agreed to, and signed, the request.

(2) The hearing of the motion is adjourned to the date stated in the notice or, if the court sets a later date, that date.

(3) If the court sets a later date in the absence of the parties, the registrar must serve notice of the later date on each party.

13 Adjournment generally

The court may adjourn the hearing of a motion on the conditions (if any) it considers appropriate.

14 Further hearing

(1) This rule applies if a notice of motion (the ***original notice***) has been filed and served, and the motion is not dealt with on the date stated in the notice.

(2) The court may deal with the motion on a later date set by the court.

(3) A further notice of motion must be filed if the court orders it to be filed.

(4) The further notice must be served on a party if—

(a) the court orders service on the party; or

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(b) the party was not served with the original notice.

15 Formal order not required

(1) This rule applies if an order has been made that—

(a) only increases the time for taking any proceeding or doing anything else; or

(b) only gives leave for—

(i) the issue of a writ, other than a writ of attachment; or

(ii) the amendment of a document or pleadings; or

(iii) the filing of a document; or

(iv) anything to be done by an officer of the court.

(2) Also, this rule applies even if a direction is given that the costs of the order must be costs in any cause or matter.

(3) It is not necessary to draw up the order unless the court otherwise orders.

(4) A written record of the order signed by the judge, master or registrar who made the order, or signed by the associate to the judge, master or registrar, is sufficient authority for the increase of time or giving of leave.

(5) The person (or the solicitor of the person) on whose application the order is made must give written notice of the order to anyone who would have been required to be served with the order if the order was drawn up.

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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.

(2) 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.

(3) 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.

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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.

(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.

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9 Objections to be stated in order

Any mistake or omission in any judgment, order or other proceeding, which is intended to be relied on as a ground for quashing the judgment, order, or proceeding, shall be stated in the order nisi, otherwise an objection on account of the omission or mistake shall not be allowed.

10 Service

In the case of orders to show cause why a writ of certiorari should not be issued addressed to the Magistrates Court, service of the order on the 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 on the writ by the officer by whom it is issued.

(2) In any such case the judgment or order shall be quashed, on being returned to the court, without further order.

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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 on notice to the parties interested in supporting the judgment or order.

14 Form of writ of certiorari

A writ of certiorari shall be in accordance with form 1.68.

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 on 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 on, 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.

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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 form 1.69, 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 on 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 on all of them but 1 in the manner prescribed for personal service of an originating application, and shall be served on 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.

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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 on the prosecutor on the same day as it is filed.

23 Pleading to return

If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time, as if the return were a defence in an action in which the prosecutor was the plaintiff and the person to whom the writ is directed was the defendant, and had pleaded this return as his or her defence.

24 Peremptory writ

If the question of fact and law (if any) raised by the return is determined in favour of the prosecutor by judgment of the court or otherwise, the prosecutor shall be entitled to a peremptory writ of mandamus, commanding the persons to whom the first writ was directed to do the act commanded, and such writ shall be awarded by the judgment (if any) or, if there is no judgment, by a separate order.

25 Costs when peremptory writ awarded in the first instance or on obedience

(1) When a peremptory writ is awarded in the first instance, the court shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.

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(2) When a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time after the return is filed, not being later than the 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 on 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 on 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.

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(2) A writ of prohibition shall be in accordance with form 1.70.

Division 55.5 Quo warranto

34 Relator to be named

(1) On 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.

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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 on the defendant, or, if at the return of the order nisi he or she appeared by solicitor, then on his or her solicitor.

39 Defence and subsequent proceedings

The defendant shall plead to the information within the same time and in the same manner as if the information were a statement of claim in an action, and the same proceedings shall be taken in all respects as if the proceeding by information were an action in which the relator was plaintiff and the defendant was defendant.

40 Judgment costs

If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped by him or her.

41 Disclaimer

(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.

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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 on 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 on 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.

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 on 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 on 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,

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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.

(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 on 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.

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48 Proceedings on return

On 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 on a question of construction of any Act, ordinance or regulation in force in the ACT, 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;

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(f) the approval of any sale, purchase, compromise, or other transaction;

(g) the determination of any question arising in the administration of the estate or trust.

2 Applications for administration

Any of the persons named in rule 1 may in like manner apply for and obtain an order for—

(a) the administration of the personal estate of the deceased; 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;

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(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.

(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.

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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 on an application under rule 4 pronounce such judgment as the nature of the case requires.

9 Special directions

The court may give any special directions touching the carriage or execution of the judgment, or the service thereof on 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

On 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

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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.

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 on 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

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(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.

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 on at chambers, whether on a matter adjourned into court from chambers, or on 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.

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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.

21 Summons to proceed with accounts or inquiries

On a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and, on 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.

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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 on 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 on 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 on 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.

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 on 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

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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 on 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.

Division 58.6 Attendances

27 Judge may nominate 1 solicitor for a class

Where on 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 on 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 on being represented by a different solicitor, such party

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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 on paying the costs (if any) occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action, either in addition to or in substitution for any of the parties who have been directed to attend.

30 Order to state parties to attend

An order is to be drawn up on a summons taken out by the plaintiff or the party having the conduct of the action, stating the parties who have been directed to attend and such of them (if any) as have elected to attend at their own expense, and such order is to be recited in the registrar's certificate.

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Division 58.7 Claims of creditors and other claimants

31 Advertisements

On 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.

(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.

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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, on application made by summons, otherwise orders.

(2) Any such order may be made on such terms and conditions as to costs and otherwise as the court thinks fit.

35 Service of notices on claimants

(1) This rule applies to a notice mentioned in this order that must be served on claimants.

(2) Unless the court otherwise orders, the notice is properly served if it is sent—

(a) if the claimant is represented by a solicitor—to the solicitor's address for service; or

(b) if the claimant is not represented by a solicitor—to the claimant by prepaid post addressed to the claimant at the address stated in the claim.

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.

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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.

(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.

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39 Adjudication on claims

When adjudicating on 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 on such claims as are not then allowed.

40 Adjournment—further evidence

Where on the day appointed for adjudicating on the claims of persons claiming to be creditors, any of such claims are adjourned or remain undisposed of, another day for adjudicating on such claims shall be fixed, and, where further evidence is to be adduced, the times for filing evidence in support of and in opposition to the claims may be fixed, and in that case the proceedings shall be adjourned until the evidence is completed.

41 Notice of claims allowed or disallowed

(1) Notice of allowance shall be given by such party as the judge directs to every creditor whose claim, or any part thereof, has been allowed.

(2) Notice shall be given by such party as the judge directs to every person claiming to be a creditor whose claim or any part thereof has not been allowed to prove his or her claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than 7 days after such notice, and to attend at a time to be therein mentioned, being the time appointed for adjudicating on the claim, and in case the claimant does not comply with such notice, his or her claim, or part thereof, may be disallowed.

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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

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adjudication, or within such time as the judge directs, file an affidavit made by the executors of the will or administrators of the estate of the deceased or by the trustees, and in each case by the person to whom claims are required by the advertisement to be sent (or by such persons as the judge directs) verifying lists of the claims the particulars of which have come to the knowledge of the executors, administrators or trustees or any of them or which have been sent in pursuant to the advertisement.

45 Adjudication on claims

At the time appointed for adjudicating on 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 under 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

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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 or order of the court or of the judge in chambers, shall, unless otherwise ordered, be entitled to interest on 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 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

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order, document and evidence, or particular paragraphs thereof, so that it appears on what the result stated in the certificate is founded.

52 Form of certificate

The certificate of the registrar shall, when prepared and settled, be transcribed by the solicitor prosecuting the proceedings in such form and within such time as the registrar requires, and shall be signed by the registrar either then, or (if necessary) at an adjournment to be made for the purpose, and, when the judge approves of such certificate or report, he or she shall sign the same in testimony of his or her adopting the same.

53 Where accounts are directed

(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.

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54 Taking of judge's opinion

Any party may, before the proceedings before the registrar are concluded, take the opinion of the judge on 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 on application by summons made before the expiration of 8 clear days after the filing of the certificate.

56 Discharge or variation of certificate after lapse of any time

The judge may, if the special circumstances of the case require it, on 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.

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(2) Such summons shall be in the form following:

'That this matter, the further consideration whereof was adjourned by order dated , may be further considered.';

and shall be served 6 clear days before the return.

(3) 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.

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.

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3 Where claims adverse

The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

4 Time defendant may apply

Where the applicant is a defendant, application for relief may be made at any time after service of the originating application.

5 Summons to state claim

The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

6 Stay of proceedings

If the application is made by a defendant in an action, the court may stay all further proceedings in the action.

7 Order on summons

If the claimants appear in pursuance of the summons, the court may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant, and the mode in which such trial shall be had.

8 On consent or request of claimant court may decide

The court may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject matter in dispute, it seems desirable so to do, dispose of the merits of their

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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 Court of Appeal.

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

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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 on such terms as are just.

13 Trial of issue

Orders 35 and 39 shall, with the necessary modifications, apply to an interpleader issue, and the court may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

14 Where several causes pending

Where in any interpleader proceedings it is necessary or expedient to make 1 order in several causes or matters pending in the court, such order may be made, and shall be entitled in all such causes or matters, and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

15 Costs

The court may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as are just and reasonable.

16 Sheriff's costs

(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 on the receipt of the claim the sheriff or his or her officer shall forthwith give notice thereof to the execution creditor in accordance with form 1.71, and the execution creditor shall, within 4 days after receiving the notice, give notice in accordance with form 1.72 to the sheriff or his or her officer that he or she admits or disputes the claim.

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(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.

(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 1AA rule 3 (9) (b), rule 5, rule 8, rule 9 (other than subrule (5) and subrule (9) (b)) and rule 11
- 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 6 (9), 13 and 15
- orders 27 and 28
- order 29 rule 4

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- orders 30, 31, 32, 33 and 34
- division 39.8A
- order 40
- orders 46 and 50
- order 56A
- order 64 rules 3 and 5
- order 69
- order 84 rule 14 (3); 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); and

(c) under a provision of the Corporations Act mentioned in column 2, or a provision of the *Supreme Court (Corporations) Rules 2003* mentioned in column 3, of an item in schedule 2, part 2.1; and

(d) under a provision of the *Australian Securities and Investments Commission Act 2001* (Cwlth) mentioned in column 2, or a provision of the *Supreme Court (Corporations) Rules 2003* mentioned in column 3, of an item in schedule 2, part 2.2; and

(e) under the *Civil Law (Wrongs) Act 2002*, chapter 6 (Expert medical evidence).

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3AA Jurisdiction of registrar—subpoenas

(1) This rule applies to a subpoena issued in a proceeding if the jurisdiction of the court in the proceeding is to be, or is being exercised, by the registrar.

(2) The registrar may hear and decide an objection under order 1AA rule 9 (Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance) in relation to the subpoena instead of referring the objection to the court.

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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4A Appeals from decisions etc of registrar in relation to corporations

An application for the review of a decision, direction or act of the registrar made, given or done under the *Supreme Court (Corporations) Rules 2003* must be made within—

(a) 21 days after the decision, direction or act; or

(b) any further time allowed by the court.

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;

(c) the notice of appeal shall be in accordance with form 1.73;

(d) 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;

(e) where the application was made ex parte—an appeal shall be instituted by the making of a fresh application to the court;

(f) notice of appeal need not set out grounds of appeal;

(g) 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;

(h) an appeal shall be by way of a rehearing de novo of the application, but each party may, subject to paragraph (i) and to

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any proper objections as to admissibility, rely on any affidavit used, and any evidence given orally, before the registrar;

(i) 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

(b) 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

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

(d) 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

(e) in trials of suits where the only matters in question are interest under order 42A rule 1 (Interest up to judgment) and costs; and

(f) 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

(g) 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

(h) in trials and hearings of matters that, if begun in the Magistrates Court, would have been within the jurisdiction of the Magistrates Court under the *Magistrates Court Act 1930*; chapter 4 (Civil proceedings); and

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(i) 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

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

(k) 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 (i)
- orders 55, 57, 58 and 59
- order 61
- order 61A rule 1 (f) and (g)
- order 65 rules 66, 82 and 83
- order 72; and

(l) an appeal from a decision of the registrar under order 66 rule 10B (1) (Refusal to accept documents—abuse of process etc) or order 80 rule 14 (1) (Refusal to accept documents—abuse of process etc) to refuse to accept a document; and

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

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- 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

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

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

(p) 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

(q) 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

(r) 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

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

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(t) in the hearing and deciding of applications under the following provisions of the *Magistrates Court Act 1930* regarding the transfer of proceedings:

- section 268 (Transfer of action from Supreme Court)
- section 270 (Removal of proceedings into Supreme Court)
- section 271 (Stay of proceedings); and

(u) in the hearing and deciding of interlocutory applications under the *Magistrates Court Act 1930,* part 4.5 (Civil appeals) in relation to appeals; and

(v) 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 Territory law; and

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

(x) in the hearing and determination of applications under the *Public Trustee Act 1985* in respect of the following matters:

(i) a direction under section 24;

(ii) an order under section 25 (2), (3) or (4) or 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

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

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(z) 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 (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

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

(zb) under a provision of the Corporations Act mentioned in column 2, or a provision of the *Supreme Court (Corporations) Rules 2003* mentioned in column 3, of an item in schedule 2, part 2.1; and

(zc) under a provision of the *Australian Securities and Investments Commission Act 2001* (Cwlth) mentioned in column 2, or a provision of the *Supreme Court (Corporations) Rules 2003* mentioned in column 3, of an item in schedule 2, part 2.2; and

(zd) under the *Civil Law (Wrongs) Act 2002*.

Note See o 88 r 11 for the master's jurisdiction under the *Commercial Arbitration Act 1986*.

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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 under a provision of this order, the master may exercise the court's inherent jurisdiction relating to the matter.

4A Appeals from decisions etc of master in relation to corporations

An application for the review of a decision, direction or act of the master made, given or done under the *Supreme Court (Corporations) Rules 2003* must be made within—

(a) 21 days after the decision, direction or act; or

(b) any further time allowed by the court.

4B Reference by master

(1) If a proceeding before the master in relation to a matter mentioned in rule 1 (za) or (zb) appears to the master to be proper for the decision of the court or a judge, the master may refer the matter to the court or a judge.

(2) If the master refers a matter to the court or a judge, the court or judge may dispose of the matter or refer it back to the master with any direction the court or judge considers appropriate.

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 (other than an appeal to which rule 4A applies) must be instituted within 5 days after the date of the judgment complained of;

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(b) the appeal shall be instituted by the service of notice of appeal on the respondent and the filing of a copy of the notice of appeal;

(c) the notice of appeal shall be in accordance with form 1.74;

(d) 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;

(e) the notice of appeal need not set out grounds of appeal;

(f) 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 on its being filed the appeal shall be abandoned.

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

(3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by the appeal.

(4) A party whose costs are payable under subrule (3) may tax the costs and, if the costs when taxed are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs.

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.

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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.

1A Stamping

If a document has been filed by a party, and the document must or may be served on another party, the registrar may stamp a copy of the document to indicate that it is a copy of a filed document.

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 on every pleading or other proceeding which is filed.

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5 Entries on filing documents

There shall be indorsed on every document delivered at the registrar's office to be filed, the date of the filing.

6 Distinguishing marks on documents

Every judgment, order, certificate, petition, affidavit, or document made, presented, filed or used in any cause or matter shall be distinguished by having plainly written or stamped on the first page the year and the number by which the cause or matter is distinguished in the cause book.

7 Entry of date of judgment

There shall also be entered in the cause books the date of every judgment, order, and certificate made in every cause or matter.

8 Searches

The registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes or calendars under his or her custody, and issue a certificate of the result of the search.

9 Certificate of state of cause

For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the registrar shall, at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the prescribed fee, give a certificate specifying the dates and general description of the several proceedings which have been taken in such cause or matter in the registrar's office.

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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 on notice to the proper officer by the person requiring the same.

11 Deposit for officer's expenses

Any officer being required to attend with any record or document at any court or place out of the court at Canberra shall be entitled to require that the solicitor or party desiring his or her attendance shall deposit with him or her a sufficient sum of money to answer his or her just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which are not fully answered by such deposit.

12 Deposit of deeds

Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers, or otherwise, the same shall be left or deposited in the registrar's office, and shall be subject to such directions as are given for the production thereof.

13 Impounded documents

(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 on an order made by the judge.

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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 ACT.

2 Office hours

The offices of the court may be opened at other times for the transaction of business on 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, on 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 on 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.

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(4) Where an act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

9 Proceedings after a year

(1) In any cause or matter in which there has been no proceeding for 1 year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his or her intention to proceed.

(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.

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Order 65 Costs

Division 65.1 Costs generally

1 Costs, with certain exceptions, to be in discretion of 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 on 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.

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3 Solicitor personally liable for costs

Where on the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his or her behalf, or having omitted to deliver any paper necessary for the use of the court, which according to the practice or these rules, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the court thinks fit to award.

7 Scales of costs

(1) Subrules (2) and (3) have effect subject to this order and to any order of the court.

(2) In respect of work done or services performed on or after 1 January 1998, a solicitor is entitled to charge and be allowed the costs set out in schedule 3.

(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 determined fees if amount recovered less than Magistrates Court limit

(1) This rule applies to a suit that the Magistrates Court—

(a) would have had jurisdiction and power to hear and decide; or

(b) would, apart from the amount claimed, have had jurisdiction and power to hear and decide.

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(2) If the plaintiff is entitled to the costs of the suit, and recovers an amount (excluding costs) of not more than $40 000, the plaintiff is entitled only to—

(a) the costs, at the appropriate scale, that the plaintiff would have been entitled to recover if the suit had been begun in the Magistrates Court; and

(b) the amount of any Magistrates Court determined fee that the plaintiff would have been entitled to recover if the suit had been begun in the Magistrates Court.

(3) The costs (including the amount of any Magistrates Court determined fee) that the plaintiff is entitled to must be reduced by the additional costs (including the determined fee difference) properly incurred by the defendant because the suit was begun in the Supreme Court instead of the Magistrates Court, but the plaintiff is not required to pay the defendant any amount that the additional costs (including the determined fee difference) exceed the costs payable to the plaintiff.

(4) This rule does not apply in relation to disbursements (other than for any determined fee).

(5) The court may order that the plaintiff is entitled to a different amount for the costs (including the amount of any Magistrates Court determined fee).

(6) This rule as in effect before the day this rule commences continues to apply in relation to a suit that is heard and decided before that day.

(7) In this rule:

determined fee difference means the amount of the Supreme Court determined fee less the amount of the Magistrates Court determined fee.

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Magistrates Court determined fee means the relevant determined fee under the *Court Procedures Act 2004*, part 3 (Court and tribunal fees).

Supreme Court determined fee means the relevant determined fee under the *Court Procedures Act 2004*, part 3 (Court and tribunal fees).

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

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(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.

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

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ascertaining and payment of the costs incurred down to and including such payment as the court thinks reasonable.

14 Costs may be ordered out of portion of an estate

In any action in which it is ordered that any costs shall be paid out of the estate, the judge may direct out of what portion or portions of the estate such costs shall be paid, and such costs shall be paid accordingly.

15 On award

Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

17 Where no appearance

Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his or her solicitor or guardian.

18 Order to tax to be left with taxing officer

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, under any direction by the court in chambers, drafts are settled by any counsel, the expense of procuring such drafts to be

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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.

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.

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23 Fees to include copy for use

As to drawing any pleading or other documents, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

24 Further allowance on special grounds

As to instructions to sue or defend or the preparation of briefs, if the taxing officer on special grounds considers the fee provided inadequate, he or she may make such further allowance as he or she in his or her discretion considers reasonable.

25 And on affidavit of several deponents

As to affidavits, when there are several deponents to be sworn or it is necessary for the purpose of an affidavit being sworn to go to a distance or to employ an agent, such reasonable allowance may be made as the taxing officer in his or her discretion thinks fit.

26 Allowance on affidavits to include attendances

The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponents to settle and read over.

27 Where same solicitor for both parties

As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

28 Mileage on several writs etc

When 2 or more writs, summonses, orders, or notices in the same cause or matter can be served at the same time on any party, they

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shall be so served, and, when such is the case, mileage shall be allowed for the service of 1 only.

29 Perusals

As to perusals, the fees are not to apply where the same solicitor is for both parties.

30 Separate pleadings where same solicitor

Where the same solicitor is employed for 2 or more defendants, and separate pleadings are delivered or other proceedings had by or for 2 or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he or she is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

31 Procuring evidence

As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

32 Agency correspondence

As to agency correspondence in agency causes and matters, if it is shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he or she may make such special allowance in respect thereof as in his or her discretion he or she thinks proper.

33 Settling and passing judgments

As to the attendance of solicitors on the registrar for the purpose of settling the terms of and passing judgments or orders, the taxing

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officer may make such special allowances in respect thereof as he or she considers reasonable.

34 In special circumstances higher remuneration may be allowed for attendance at chambers

As to the attendance at the judge's chambers, where, from the length of the attendance, or from the difficulty of the case, the judge thinks the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the judge, has required skill and labour for which no fee has been allowed, or in proceedings to wind up a company, the judge may allow such fee as in his or her discretion he or she thinks fit, and where the preparation of the case or matter to lay it before a judge in chambers on a summons has required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore appears to the judge to deserve higher remuneration than the ordinary fees, the judge may allow the solicitor, by memorandum in writing expressly made for that purpose and signed by the judge specifying distinctly the grounds of such allowance, such fee as the judge in his or her discretion thinks fit.

35 On 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

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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 3 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 3 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 3 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 3 for the attendance of a clerk.

(3) No allowance shall be made for the attendance of a clerk in court or in chambers or before the registrar to instruct counsel unless he or she was competent to instruct counsel in the particular matter.

36 Folios

A folio shall comprise 72 words, every figure comprised in a column being counted as 1 word.

37 Costs of procuring advice of counsel

Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing

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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 on 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,

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unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or to be caused by misconduct or negligence, and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties, and in any case where such question has not been raised before and dealt with by the court the taxing officer shall look into the same (and, as to evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he 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 on any application or proceeding in court or at chambers in which he or she is not interested, or on which, according to the practice of the court, he or she ought not to attend,

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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.

(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 on 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.

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49 Registrar to be taxing officer

The registrar shall be the taxing officer of the court.

50 Account in part consisting of bill of costs

Where an account consists in part of any bill of costs, the court may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the accounts of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof as if the same had been referred to the taxing officer by an order, and he or she shall return the same, with his or her opinion thereon, to the court.

51 Taxing officer regulates the attendance of parties on taxation

The taxing officer may arrange and direct what parties are to attend before him or her on the taxation of costs to be borne by a fund or estate, and may disallow the costs of any party whose attendance such officer in his or her discretion considers unnecessary.

52 On neglect of party to tax costs, taxing officer may prevent prejudice to other party

When any party entitled to costs refuses or neglects to bring in his or her costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer may certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

53 Costs to be allowed on taxation

On every taxation the taxing officer shall allow all such costs, charges, and expenses as appear to him or her to have been

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necessary or proper for the attainment of justice or for enforcing or defending the rights of any party, but save as against the party who incurred the same, costs shall not be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence, or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses.

53A Costs incidental to negotiations

Any costs of and incidental to negotiations for settlement which appear to the taxing officer to have been reasonably and properly incurred shall be allowed on taxation whether or not the negotiations were successful.

54 Fees for work and labour not otherwise provided for

As to any work and labour properly performed and not provided for by these rules, and in respect of which, in the opinion of the taxing officer, an allowance should be made, such sum shall be allowed as is just and reasonable.

55 Costs in the cause

Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to the defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which appears to have been rendered necessary by the default of such defendant), but there shall be deducted from such costs any sum which has been paid by the plaintiff according to the course of the court at the time of any amendment.

56 Costs of amendments

Where on taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his or her

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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, on the application of the party alleging himself or herself to be aggrieved, prohibits the taxation of such costs.

58 Where parties differ

(1) If, following an order for costs, the parties are unable to agree on the amount, the party entitled to costs may submit the bill of costs to the taxing officer.

(2) On receipt of a bill of costs under subrule (1), the taxing officer must mark—

(a) on the bill; and

(b) on a copy of the bill for service on the other party;

the day and time when the bill will be taxed.

(3) Service of a bill shall be effected 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.

(5) A notice under subrule (4) shall—

(a) list each item or part of an item which is objected to; and

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(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.

(6) 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).

(7) 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.

(8) The taxing officer—

(a) may, during the course of taxing a bill, issue to the parties interim certificates; and

(b) must, when taxing of the bill is complete, issue to the parties a certificate.

(9) 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).

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(10) A tender made under subrule (9) 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.

(11) If a tender is not returned to the tenderer before the end of the period referred to in subrule (10)—

(a) the tender is taken to have been accepted; and

(b) the taxing officer is not to tax the bill.

(12) 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.

(13) In forming an opinion for subrule (12), the taxing officer must have regard to—

(a) costs of the party entitled to costs at the date the tender is received by that party; and

(b) costs properly incurred by that party after that date; and

(c) interest (if any) accrued on the costs referred to in paragraphs (a) and (b).

59 Costs out of fund

Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in court, the taxing officer in his or her certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

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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

(1) If on 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, 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 on such objections.

65 Taxing officer may review taxation

On an application under rule 64, the taxing officer shall reconsider and review his or her taxation on 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.

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66 Party dissatisfied with taxing officer may apply to judge

Any party who is dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which has been objected to, may, within 14 days from the date of the certificate or allocatur, or such other time as the court, or the taxing officer at the time he or she signs his or her certificate or allocatur, allows, apply to the judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as the judge thinks just, but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which have not been objected to in the manner provided in this order.

67 Evidence

An application under rule 66 shall be heard and determined by the judge on the evidence which has been brought in before the taxing officer, and no further evidence shall be received on 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.

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70 Allowances of 2 junior counsel

Where the costs of retaining 2 counsel may properly be allowed, such allowance may be made, although both such counsel may have been selected from the outer bar.

71 Refreshers

Where a cause or matter is tried or heard in open court, and occupies, either on the first day only, or partly on the first day and partly on a subsequent day or days, more than 5 hours, an allowance may be made for every 5 hours or part of 5 hours subsequent to the expiration of the first 5 hours, which allowance shall, unless otherwise ordered by the court be such an amount as the taxing officer thinks fit.

72 Brief where cause not tried

Where a cause or matter has not been brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer is of opinion that such costs were prematurely incurred.

73 Where set down again after being struck out

Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he or she does not obtain the costs of the cause or matter.

75 Counsel's fees

A fee to counsel that has, in the opinion of the taxing officer, been properly incurred shall be allowed on taxation whether or not the fee has already been paid.

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77 Of affidavit of discovery

It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used against such party.

78 Delay before taxing officer

Where in proceedings before the taxing officer any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his or her solicitor to pay such costs as he or she thinks proper, or may deal with them under rule 44.

79 Where costs out of fund bill to be sent to clients

Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he or she considers there is a reasonable ground for so doing, require the solicitor to deliver or send to his or her clients, or any of them, free of charge, a copy of such bill or any part thereof previously to such officer completing the taxation thereof, accompanied by any statement such officer directs, and by a letter informing such client that the bill of costs has been referred to the taxing officer, for taxation, and will be proceeded with at the time the officer has appointed for this purpose, and such officer may suspend the taxation for such time as he or she considers reasonable.

80 Taxing officer may limit or extend time

The taxing officer may limit or extend the time for any proceeding before him or her, and where, by these rules or any order of the court, a time is appointed for any proceeding before or by a taxing officer, unless the court otherwise directs, such officer shall have power from time to time to extend the time appointed, on such terms (if any) as the justice of the case requires, and, although the application for the same is not made until after the expiration of the

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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.

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

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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 a proceeding for use by or in the court, and includes an originating application or any other document beginning an action.

2 General heading style—civil proceedings forms

(1) A document in accordance with a form approved under the *Court Procedures Act 2004* for use in Supreme Court civil proceedings must be headed in the way set out in the form.

(2) However, a document may be headed using an abbreviation of title sufficient to identify the proceeding.

Example

AB and others

Defendants

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Subrule (2) does not apply to—

(a) an originating application or any other document beginning an action; or

(b) a document to be served on a person not a party to the proceeding; or

(c) a final judgment.

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(4) If the parties to a proceeding change, the names of the parties on each document filed after the change must reflect the state of the parties after the change.

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

(1) Writing must be permanent in form and easily legible.

(2) 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.

(3) Each succeeding line of writing in a document must be separated from the preceding line of writing by a space not less than 3mm.

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.

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(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

(B) if the solicitor is the agent of another solicitor for the proceeding—the name and place of business of the other solicitor.

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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 Refusal to accept documents for filing

10A Refusal to accept documents—non-compliance with div 66.1

(1) The registrar may refuse to accept a document for filing that does not comply with division 66.1 (Style) to the extent that the nature of the document permits.

(2) Costs incurred by a party in relation to a document refused acceptance under this rule may be disallowed on taxation of the party's costs.

10B Refusal to accept documents—abuse of process etc

(1) If a document lodged for filing appears to the registrar on its face to be an abuse of the court's process or to be frivolous or vexatious,

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the registrar may refuse to accept the document or may seek the direction of a judge about how to deal with it.

(2) If the registrar seeks the direction of a judge under subrule (1), the judge may direct the registrar—

(a) to accept the document; or

(b) to refuse to accept it; or

(c) to refuse to accept it without the court's leave.

Note If the registrar refuses to accept a document under r (1), the party filing the document may appeal to a judge (see the *Supreme Court Act 1933*, s 10 (2)) or the master (see o 61A r 1 (ka)).

(3) Subrule (2) (c) does not apply if the court later gives leave.

(4) This rule applies to a written notification under order 1AA rule 13 (1) (Documents and things in custody of court) as if it were a document lodged for filing.

Division 66.3 Inspection

11 Inspection of registry files

(1) During office hours, anyone may search the registry for, inspect, or take a copy of, any document filed in the registry.

Note A fee may be determined under the *Court Procedures Act 2004* for this provision.

(2) However, a person who is not a party to a matter may search the registry for, inspect, or take a copy of, any of the following documents about the matter only with the court's leave:

(a) a 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) a part of an affidavit ruled to be inadmissible in evidence;

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(d) an interrogatory, or an answer to an interrogatory, that has not been admitted into evidence;

(e) a list of documents given on discovery;

(f) an admission that has not been admitted into evidence;

(g) a subpoena, or a document filed with the registrar in answer to a subpoena to produce;

(h) a document in relation to a proceeding about the adoption, custody or guardianship of a child;

(i) a document in relation to a proceeding under the *Family Law Act 1975* (Cwlth);

(j) a document filed in the probate jurisdiction, other than—

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

(ii) an order to administer an estate; or

(iii) a proceeding about a contested matter;

(k) a deposition taken before an examiner;

(l) a document filed in support of an application made in the absence of a party;

(m) a written submission that has not been read in court;

(n) an unsworn statement of evidence;

(o) a document that the registrar decides should be confidential to the parties to the matter in the interests of justice.

(3) Also, a party to a matter may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.

(4) However, subrule (3) does not apply to a subpoena that has been served on the party.

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(5) Further, a party to a matter may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:

(a) an application for a document, evidence or thing to be kept confidential;

(b) an application for a document or thing to be granted privilege from production.

(6) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

(a) anything on which there is writing; or

(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

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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.

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5 Place of sale

(1) The sheriff shall cause any property taken in execution to be sold at the place of levy, or elsewhere, as he or she deems most advantageous.

(2) All property real and personal taken in execution shall be offered for sale by the sheriff by public auction, and shall not be offered for sale in any licensed house or premises.

6 How sheriff to pay moneys received in certain cases

In cases not within the *Bankruptcy Act 1966* (Cwlth), section 119 (Duties of sheriff after receiving notice of presentation of petition etc) and section 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 under the writ, without regard to the notice.

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8 Suspension of execution

(1) The sheriff shall not suspend the execution of any writ or process directed to him or her, except on 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.

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 on 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.

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(2) The sheriff shall, as far as practicable, levy the poundage and other fees and the expenses of the execution in addition to the amount directed to be recovered.

12 Security for costs

In every action against the sheriff for anything done or omitted to be done by him or her in the intended execution of his or her duty, the plaintiff shall be compelled to give security for costs.

13 Duties discharged by serjeant-at-arms in England to be discharged by sheriff

Except as provided by these rules, all duties discharged in the Chancery Division of the High Court of Justice in England in respect of process issued out of that court, or otherwise, by a serjeant-at-arms, shall be discharged within the ACT 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 on 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 on, and the ground for it, shall be stated in the notice of motion.

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Order 69A Applications to transfer proceedings—Magistrates Court Act, pt 4.4

1 Applications by motion

(1) An application under the *Magistrates Court Act 1930*, section 268 (Transfer of action from Supreme Court) must be made by motion on notice under order 54 (Motions).

(2) An application under the *Magistrates Court Act 1930*, section 270 (Removal of proceedings into Supreme Court) or section 271 (Stay of proceedings) must be made by motion on notice under order 54 supported by affidavit.

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Part 3 Administration and probate jurisdiction

Order 72 Administration and probate

Division 72.1 Preliminary

1 Definitions for o 72

In this order:

Act means the *Administration and Probate Act 1929*.

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

1A Words and expressions used in Administration and Probate Act

A word or expression used in the Act has the same meaning in this order and in a form approved under the *Court Procedures Act 2004* for use in a proceeding under the Act.

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 2.1.

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(2) 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 2.2.

(3) A notice of intended application for letters of administration of the estate of a deceased person shall be in accordance with form 2.3.

(4) A notice of intended application for letters of administration must—

(a) ask creditors to send in their claims; and

(b) if the applicant wants to ask the registrar for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under rule 30A—state the proposed request.

(5) An affidavit of the publication of the notice of intended application, and brief details of any responses from creditors, must be filed.

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 2.4.

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 2.5.

(3) An application for letters of administration with the will annexed of the estate of a deceased person shall be in accordance with form 2.6.

(4) An application for letters of administration of the estate of a deceased person shall be in accordance with form 2.7.

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(5) An application for the reseal of a foreign grant of representation shall be in accordance with form 2.8.

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 form 2.9 and form 2.10.

(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 2.9 is sworn.

7 Proof of execution of will and attestation

(1) Where an applicant for probate seeks to prove a will or codicil that does not contain a sufficient attestation clause or contains no attestation clause, then subject to subrules (2) and (3), the applicant shall file an affidavit of a subscribing witness to the will or codicil as to the due execution of the will or codicil.

(2) Where the applicant is unable to comply with subrule (1), then, subject to subrule (3), the applicant shall file an affidavit explaining the reason for the 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—

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(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.

(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

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(b) an interlineation, alteration, obliteration or erasure appears in the will or codicil; and

(c) the interlineation, alteration, obliteration or erasure has not been duly authenticated or otherwise validated;

the court may require evidence of whether the interlineation, alteration, obliteration or erasure was made before the execution of the will or codicil.

10 Deeds etc referred to in will

If a will or codicil contains a reference to any deed, paper, memorandum or other document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will or codicil, the deed, paper, memorandum or other document must be produced with a view to ascertaining whether it is entitled to probate, and, if it is not produced, its nonproduction shall be accounted for.

11 Appearance of the paper

If there are any vestiges of sealing wax, or wafers, or other marks on 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 form 2.10 and form 2.13.

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(2) The will shall be signed in the margin by the applicant and by the person before whom the affidavit in accordance with form 2.10 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 form 2.11 and form 2.13.

(2) An affidavit in accordance with form 2.11 shall have annexed to it such birth, death, marriage and other certificates as tend to support the statements made in the affidavit.

14A Application for reseal of foreign grant—supporting affidavits

An application for the reseal of a foreign grant of representation shall be accompanied by affidavits in accordance with form 2.12 and form 2.13.

15 Application by creditors

A creditor who intends to apply for administration shall, before so applying, issue a citation calling on 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.

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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

On every application for representation a notice of an address where all notices may be served shall be filed, and service at that address by registered letter, or as the court directs, shall be deemed sufficient service of any notice, notification or summons under the Act or under this part, unless the contrary intention appears in the Act or this part.

18 Notice to other next of kin

(1) Where administration is applied for by 1 or some only of the persons entitled to administration, there being another or other next of kin equally entitled thereto, or a spouse of the deceased within the jurisdiction, their consent duly verified shall be filed, or evidence shall be adduced of their having been served with notice of the application, or that they cannot be found.

(2) Where the spouse of the deceased applies, notice of the application shall be given to all the next of kin of the deceased of full age within the jurisdiction, or evidence shall be adduced that they cannot be found.

19 Registrar refusing to deal with application

(1) This rule applies if an application for representation, or an application for the court to seal a probate or letters of administration, has been filed, and—

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(a) a caveat against the application is filed before the application has been granted; or

(b) the registrar doubts whether the application should be granted; or

(c) the application is made under the Act, part 4 (Small estates) and the registrar considers it appropriate that the court deal with the application or it is necessary to get the court's directions.

(2) This rule also applies if—

(a) in an application for letters of administration, or by motion on notice under order 54 (Motions), in relation to an estate, there is a request—

(i) that the administration bond be dispensed with under rule 30A (Dispensing with administration bond); or

(ii) under rule 30 (4) (Administration bond) that the amount of the bond be less than the value of the estate; and

(b) 1 of the following applies:

(i) the registrar doubts whether the request should be granted;

(ii) a person interested in the estate or creditor has filed a written notice objecting to the request.

(3) This rule also applies if—

(a) the court or registrar requires an administration bond under rule 30 for an estate to be given by a surety or sureties for a particular amount; and

(b) a person interested in the estate applies to the court under rule 32A (Administration bond—addition or reduction after required but before given) for the amount to be reduced; and

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(c) 1 of the following applies:

(i) the registrar doubts whether the application should be granted;

(ii) a person interested in the estate or creditor has filed a written notice objecting to the application.

(4) This rule also applies if—

(a) an administration bond is given under rule 30 for an estate, and a person interested in the estate does 1 of the following under rule 32B (Administration bond—addition or reduction after given):

(i) applies to the court for an order requiring the surety or sureties to give an additional administration bond;

(ii) applies to the court for an order reducing the liability of a surety under the bond; and

(b) 1 of the following applies:

(i) the registrar doubts whether the application should be granted;

(ii) a person interested in the estate or creditor has filed a written notice objecting to the application.

(5) If this rule applies, the registrar must serve on the applicant a written notice stating that the registrar will not deal with the application and the registrar's reasons for not dealing with the application.

(6) The applicant may then apply to the court by motion on notice under order 54 (Motions) for the court to decide the application mentioned in subrule (5).

(7) However, the day stated in the notice of motion for hearing the motion must be at least 7 clear days after the day of service of the notice.

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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 under 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.

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26 Where directions of court obtained

Whenever, in the opinion of the registrar, it becomes necessary, in the course of a personal application, to obtain the directions of the court, the application shall not be further proceeded with as a personal one except by leave of the court.

27 Affidavits etc to be filled up by registrar

(1) All affidavits and other forms necessary to support the grant applied for shall be filled in by the registrar if so desired.

(2) Any further papers that are required shall be prepared by the registrar.

(3) Testamentary papers deposited with the registrar shall not be given out unless by order of the judge.

28 Certificate of death to be produced

Every applicant for a first grant of representations shall produce a certificate of the death of the deceased, or give a reason, to the satisfaction of the registrar, for the 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 Administration bond

(1) As a condition of granting administration of a deceased person's estate to a person, the court or registrar may require 1 or more sureties acceptable to the court or registrar to guarantee by bond (an

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administration bond) that they will make good, up to the required amount, any loss that anyone interested in the administration of the estate may have because of a breach by the administrator of the administrator's duties.

(2) However, an administration bond must not be required if administration is granted to—

(a) a person on behalf of the Territory, the Commonwealth or a State; or

(b) the public trustee of the Territory or a State; or

(c) a trustee company.

(3) An administration bond for an estate has effect for the benefit of everyone interested in the administration of the estate as if contained in a deed made by the surety or sureties with each interested person and, if there are 2 or more sureties, as if they had bound themselves jointly and severally.

(4) The court may, on application or of its own initiative, decide that the required amount for an administration bond for an estate is less than the value of the estate.

(5) The application may be made in the application for letters of administration or by motion on notice under order 54 (Motions).

(6) In this rule:

required amount, for an administration bond for an estate, means—

(a) the value of the estate; or

(b) a lesser amount decided by the court under subrule (4); or

(c) if the value of the estate is less than $10 000—a lesser amount decided by the registrar.

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30A Dispensing with administration bond

(1) This rule applies in relation to an estate if—

(a) all or any part of the estate passes to the person to whom administration is granted; or

(b) all or any part of the estate passes to beneficiaries who are of full legal capacity and the beneficiaries consent, in writing, to the administration bond for the estate being dispensed with.

(2) The court or registrar may, on application or of its own initiative, dispense with the administration bond in relation to the estate or part of the estate.

(3) The application may be made in the application for letters of administration or by motion on notice under order 54 (Motions).

31 Form of administration bond

An administration bond must be in accordance with form 2.14.

31A Affidavit of justification

(1) A surety, other than an exempt surety, must justify by affidavit.

(2) An affidavit of justification must be in accordance with form 2.15.

(3) A surety that is a corporation must make an affidavit by a proper officer.

(4) An affidavit by a surety for an administration bond must contain enough information about the surety's financial position to satisfy the registrar that the surety can meet any claim under the bond.

(5) The registrar may accept an affidavit of justification from a corporation at least once every year instead of requiring an affidavit in every case that the corporation is a surety.

(6) The registrar may require a surety for an administration bond who justifies by affidavit to give the registrar further information if there

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is not enough information in the affidavit for the registrar to be satisfied that the surety can meet any claim under the bond.

(7) The further information must be given in the way the registrar requires, either—

(a) by another affidavit; or

(b) by the oral examination of the person who made the affidavit of justification on oath or affirmation before the registrar.

(8) In this rule:

exempt surety means—

(a) an authorised deposit-taking institution; or

(b) an entity declared by the registrar under rule 32 to be an exempt surety.

Note ***Authorised deposit-taking institution*** is defined in the Legislation Act, dict, pt 1 as an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

32 Exempt surety

(1) The registrar may, in writing, declare an entity to be an exempt surety.

(2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

32A Administration bond—addition or reduction after required but before given

(1) This rule applies if the court or registrar requires an administration bond under rule 30 (Administration bond) for an estate to be given by a surety or sureties for a particular amount.

(2) The court may, at any time before the bond has been given by the surety or sureties, on the application of anyone interested in the

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estate or of its own initiative on the registrar's report, order that the amount be reduced or increased.

(3) However, application may not be made if the court has made a decision about the amount under rule 30 (4).

(4) The application must be made by motion on notice under order 54 (Motions).

(5) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—

(a) the court makes an order under subrule (2) that the amount be increased; and

(b) the surety or sureties will not guarantee the increased amount; and

(c) the administrator does not produce another surety or other sureties to cover the increased amount.

(6) In this rule:

required amount—see rule 30 (6).

32B Administration bond—addition or reduction after given

(1) If an administration bond is given under rule 30 (Administration bond) for an estate, the court may, at any time, on the application of anyone interested in the estate or of its own initiative on the registrar's report—

(a) require the surety or sureties to give an additional administration bond; or

(b) order that the liability of a surety under the bond be reduced by a stated amount.

(2) The application must be made by motion on notice under order 54 (Motions).

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(3) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—

(a) the additional administration bond is not given by the surety or sureties; and

(b) the administrator does not produce another surety or other sureties to give the additional bond.

(4) For these rules, an additional administration bond under this rule is taken to be an administration bond under rule 30.

33 Proceeding on an administration bond

(1) A proceeding on an administration bond must not be begun without the court's leave.

(2) An application for leave to sue on an administration bond must be made by motion on notice under order 54 (Motions).

(3) The notice of motion must be served on the administrator and surety.

33A Application by surety

On application made by motion on notice under order 54 (Motions) by a surety to an administration bond, the court may grant the relief it considers appropriate if it appears to the court that the following applies:

(a) the estate is being wasted, or is in danger of being wasted;

(b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or omission of the person administering the estate.

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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.

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, on 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.

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(2) Every such application shall be supported by affidavits setting out fully the circumstances of the case and the grounds on which the order is applied for.

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—

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(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 2.17, and of the day fixed for passing the accounts, shall be published in a newspaper published and circulating in the ACT, 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) If there is an administration bond for the estate, the administrator must also serve on the bond's sureties notice of the filing of the administrator's accounts and of the application to pass the accounts.

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

On taking the accounts, the registrar may make such order as to service on any of the parties interested as he or she thinks fit.

42 Persons interested may attend on taking accounts

Any person interested may attend before the registrar on the taking of the accounts.

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43 Certificate as to correctness of accounts

The registrar shall give his or her certificate as to the correctness of the accounts, and also as to the amount on which commission is allowable.

44 Entry of accounts for allowance by court

Within 14 days after the signing of the certificate by the registrar, the accounting party shall, if he or she desires to be allowed commission, enter the accounts for allowance by the court, and for allowance of commission.

45 Appeal from finding of registrar

If the accounting party, or any person who has filed a notice of objection under rule 40, 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 if registrar refuses accounts

(1) This rule applies if accounts relating to an estate have been filed with the registrar under rule 38, and—

(a) a doubt or difficulty arises; or

(b) an interested person wants the matter referred to the court.

(2) The registrar must give the accounting party a written notice that—

(a) tells the accounting party that the registrar will not pass the accounts; and

(b) gives reasons for not passing the accounts.

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(3) The accounting party may apply to the court to pass the accounts by motion on notice under order 54 (Motions) within 14 days after the day the notice under subrule (2) is given to the accounting party.

47 Time for beginning appeal

If a person has filed a notice under rule 45, the person must apply, by motion on notice under order 54 (Motions), within 21 days after the day the notice is filed, for the appeal to be decided.

48 Service of notice of motion under r 46 and r 47

Notice of motion under rule 46 or rule 47 must be served on the registrar and each beneficiary of the estate at least 7 days before the day for hearing the motion.

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

(1) This rule applies if an executor or administrator of an estate applies to the court or registrar for an order that the filing of an inventory and the filing and passing of the accounts mentioned in the Act, section 58 (Filing and passing accounts) for the estate be dispensed with, and—

(a) 1 of the following applies:

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(i) the executor is the only person beneficially entitled under the will or the administrator is the only person beneficially entitled in the distribution of the estate;

(ii) everyone who is beneficially entitled under the will or in the distribution of the estate is of full legal capacity and consents, in writing, to the order being made; and

(b) if there is an administration bond—the bond's sureties consent, in writing, to the order being made.

(2) If this rule applies, the court or registrar may make the order.

(3) However, if the court or registrar makes the order, the court may later order the executor or administrator to file the inventory and file and pass the accounts.

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 2.29.

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Division 72.10 Caveats

52 Caveats

(1) Every caveat shall be in accordance with form 2.18 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

On 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

(1) Within 4 days after the day a direction is given under rule 53, unless the court otherwise orders, the caveator must serve on the party seeking representation—

(a) if the objection is to a will—the relevant particulars of objection mentioned in subrule (2); or

(b) if the objection is to the grant of administration of intestacy—the relevant particulars of objection mentioned in subrule (3).

(2) The particulars of objection to a will are as follows:

(a) that there is a later will or the will has been revoked, and the date of the later will or revocation;

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(b) that the will was not signed by the testator;

(c) that the will was not executed in accordance with the *Wills Act 1968*;

(d) that the testator lacked testamentary capacity—

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

(ii) before that period because of mental incapacity, and the date the symptoms first appeared;

(e) that a stated person exercised undue influence on the testator.

(3) The particulars of objections to grant of administration of intestacy are as follows:

(a) that there is a will, and the date of the will;

(b) that the person applying does not have the capacity or relationship in which the person seeks administration; or

(c) that the caveator or someone else seeking administration has a better right to seek administration, and why;

(d) that the proposed administrator is disqualified, and why.

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 on 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

On 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 on 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

58A Motion for revocation

At any time after probate of the will, or administration of the estate, of a deceased person has been granted, the court may revoke the probate or administration on the motion of a person who is interested in the estate.

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 ACT; and

(e) whether any spouse or next of kin; and

(f) any other particulars which are deemed necessary.

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(2) For this rule, form 2.19 and form 2.20 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 2.21.

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 2.22.

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 2.23, 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 connection 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 on the public trustee to show cause obtained under the Act, section 95 shall state whether proof shall be given orally or on affidavit.

65 Notification by public trustee

On 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

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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 on 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.

Division 72.13 Miscellaneous

69 Form of acknowledgment under Act, s 56

The acknowledgment which may be signed by an executor or administrator under the Act, section 56 shall be in accordance with form 2.24.

70 Grants of representation

(1) A grant of probate of the will of a deceased person shall be in accordance with form 2.25.

(2) A grant of letters of administration with the will annexed of the estate of a deceased person shall be in accordance with form 2.26.

(3) A grant of letters of administration of the estate of a deceased person shall be in accordance with form 2.27.

(4) A reseal of a foreign grant of administration shall be in accordance with form 2.28.

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Part 4 Foreign judgments

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

1 Meaning of *Act* in o 74A

In this order:

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 1.75; 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

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(d) be supported by affidavits filed in accordance with rule 4.

(2) An application may be made ex parte.

4 Supporting affidavits

(1) An affidavit shall be filed with the application and shall state the following:

(a) the full name, occupation and the usual or last-known place of residence, or of business, of the parties;

(b) that 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 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* (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.

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(2) A further affidavit in support of the application shall be filed on the day on which the application is to be heard and shall state—

(a) that on that day the judgment can be enforced in the country of the original court; and

(b) if the judgment is a money judgment—

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

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5 Registration

(1) An order for the registration of a money judgment shall be in accordance with form 1.76.

(2) An order for the registration of a non-money judgment shall be in accordance with form 1.77.

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 1.78 or 1.79, 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.

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10 Security for costs

The court may order an applicant for registration of a judgment to give such security as the court thinks fit for the costs of the application and of any application that may be brought to set aside the registration of the judgment.

11 Record of registered judgment

The registrar shall maintain a record of the following particulars of each registered judgment:

(a) the details of the judgment of the original court;

(b) the date of the order that the judgment be registered;

(c) the full name and address of the party named in the order as the judgment creditor, or the name and address of that party's solicitor or agent on whom a document can be served;

(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 5 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.

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1A Words and expressions used in Adoption Act

A word or expression used in the Act has the same meaning in this order and in a form approved under the *Court Procedures Act 2004* for use in a proceeding under the Act.

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 3.1; 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.

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(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.

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

(a) be accordance with form 3.2; 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 3.2.

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;

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(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;

(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

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

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

(k) 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

(l) 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

(m) 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.

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;

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(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

(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—

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(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 3.3 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) the applicant or applicants.

(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 3.3 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

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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 3.4.

9 Form of adoption order

An adoption order shall be in accordance with form 3.5.

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 3.6; 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.

11 Dispensing orders—notice of application

(1) No later than 28 days before the date fixed for hearing an application for a dispensing order, notice of the application, and of that date, shall be given to—

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(a) each person interested in the relevant application, or proposed application, for adoption; 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 3.7.

(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 3.8 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 3.8 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 3.9.

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 3.10; 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 3.11.

(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 3.12 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 3.13; 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 Act, section 26 (5), a notice of an application for a discharging order shall be—

(a) in accordance with form 3.14; 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 3.15 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 3.16.

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, division 5.3 to entitle the applicant to the identifying information; and

(ii) who has refused approval.

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(2) A notice under subrule (1) must be in accordance with form 3.17.

22 Access to identifying information—entry of appearance opposing application

(1) A person who is given notice of an application for an order for access to identifying information may enter an appearance to oppose the application by filing with the court a notice of appearance in accordance with form 3.18 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 3.19.

Division 76.7 General procedures

24 Applications by motion without notice

An application under the Act may be made on motion without notice, except where—

(a) otherwise provided by the Act or this order; or

(b) the court otherwise orders.

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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

(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 3.20.

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).

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28 Adjournments, extensions of time, directions

(1) On 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.

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

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Part 6 Proceedings under Jurisdiction of Courts (Cross-vesting) Act 1993

Order 78 Cross-vesting law proceedings

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:

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

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).

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.

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(3) Proceedings may be served out of the jurisdiction with the leave of the court if the proceedings include a matter for determination in respect of which jurisdiction under a cross-vesting law may be invoked.

(4) Leave will not be granted under subrule (3) unless the court is satisfied that the court may, having regard to the Act, be an appropriate court to determine the proceedings.

(5) Proceedings may be transferred to another court under the Act notwithstanding that leave to serve the proceedings outside the jurisdiction has been given.

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.

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(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.

(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; and

(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 7 Disputed elections and questions referred by Legislative Assembly—Electoral Act 1992

Order 79 Electoral matters

Division 79.1 Preliminary

1 Definitions for o 79

In this order:

Act means the *Electoral Act 1992*.

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).

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.

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(2) The rules apply in relation to a reference to the court under the Act, division 16.4 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.

Division 79.2 Disputed elections

3 Deposit as security for costs

For 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 ACT.

(2) The notice referred to in subrule (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, division 16.3 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

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(ii) enters an appearance in accordance with order 13.

6 Particulars of contested ballot papers

(1) Where an application—

(a) seeks—

(i) a declaration that a person who has been declared elected was not duly elected; or

(ii) a declaration that a person who has not been declared elected was duly elected; and

(b) specifies a claim or an objection to ballot papers or a class of ballot papers;

each party to the proceeding shall, not later than 7 days before the day appointed for the hearing of the application, file and deliver to each other party at his or her address for service a list of the ballot papers or classes of ballot papers intended to be claimed or objected to, specifying in the case of the latter ballot papers, the ground on which the objection is made.

(2) An objection shall not be entertained against the validity of a ballot paper on a ground not specified in the grounds so filed and delivered except by leave of the court, and on such terms as to amendment of the grounds, adjournment of the hearing and payment of costs, as the court orders.

7 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.

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(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)—

(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 ACT;

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.

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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 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.

(2) For 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 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.

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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, division 16.4; 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 8 Criminal jurisdiction

Order 80 Criminal proceedings

Division 80.1 Preliminary

1 Definitions for o 80

In this order:

accused person means a person charged with an indictable offence—

(a) who is committed to the court for trial or sentence; or

(b) for whom an indictment has been filed in the court.

Note For applications in relation to bail, see also the definitions of ***accused person*** in the following rules:

- r 4 (Meaning of ***accused person*** for div 80.4—bail applications)
- r 14 (Meaning of ***accused person*** for div 80.6).

appearance date—see rule 18.

case statement—see rule 19.

sentence means an order, decision or other sentence (however described) imposed by the court on a person—

(a) after the person has been convicted or found guilty; or

(b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

1 a reparation order under the *Crimes Act 1900*, section 350 (Reparation orders)

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2 a person released on conditions under the *Crimes Act 1900*, section 403 (Conditional release of offenders)

3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 80.2 Dispensing with compliance—criminal proceedings

2 Dispensing with compliance with o 80

The court may dispense with compliance with any requirement of this order, before or after the time for compliance arises and on the conditions (if any) the court considers appropriate.

Division 80.3 Application of pt 2 to criminal proceedings

3 Application of civil rules to criminal proceedings

(1) In this rule:

applied civil rules means the following:

- order 39 rule 2A (Evidence by telephone etc by consent)
- division 39.2 (Taking evidence at trial from outside ACT by audiovisual link or audio link)
- order 39A (Exhibits, documents and things)
- division 40.1 (Affidavits generally), other than order 40 rule 1
- order 54 (Motions) rules 10 to 15
- order 62 (Seals, filing, searches etc)
- order 63 (Offices of the court)
- order 64 rule 1 (Certain days not reckoned)

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- order 64 rule 2 (Time expiring on Sunday or when offices closed)
- order 64 rule 3 (Time not reckoned)
- order 64 rule 4 (Time for proceedings where security ordered)
- order 64 rule 8 (Reckoning of time)
- division 66.1 (Style)
- division 66.2 (Refusal to accept documents for filing), other than order 66 rule 10A (2)
- order 69 (Effect of noncompliance).

(2) The applied civil rules apply to a criminal proceeding as if—

(a) a reference to a ***proceeding*** were a reference to a criminal proceeding; and

(b) the reference in order 40 rule 2 (1) (Form of affidavits generally) to ***form 1.49A*** were a reference to form 4.1; and

(c) the reference in order 40 rule 4 (3) (Annexures and exhibits) to ***form 1.49B*** were a reference to form 4.2; and

(d) the reference in order 40 rule 4 (9) to ***form 1.49C*** were a reference to form 4.3; and

(e) any other necessary changes were made.

Division 80.4 Service in criminal proceedings

4 Meaning of *accused person* for div 80.4—bail applications

In this division:

accused person includes—

(a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—a person who is an accused person for that division; and

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(b) for any other application in relation to bail—a convicted person.

Note See also r 1, def ***accused person***.

5 Application of o 10 to criminal proceedings

Order 10, other than rule 5, rule 6 and rule 15, applies to a criminal proceeding as if—

(a) a reference to a proceeding were a reference to a criminal proceeding; and

(b) a reference to a defendant were a reference to an accused person; and

(c) any other necessary changes were made.

6 Service on accused person by filing if no address for service

(1) This rule applies if an accused person in a criminal proceeding—

(a) is not in custody; and

(b) is not represented by a solicitor.

(2) If the accused person does not have an address for service, a document for which personal service is not necessary may be served on the person by—

(a) filing it; and

(b) sending a copy by prepaid post addressed to the accused person at the person's last-known address.

(3) A document filed under subrule (2) (a) must have endorsed on its first page a statement that it is filed under the paragraph.

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7 Service if no-one found at accused person's address for service

(1) This rule applies if—

(a) an accused person in a criminal proceeding—

(i) is not in custody; and

(ii) is not represented by a solicitor; and

(iii) has an address for service; and

(b) no-one can be found at the address.

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

8 Service of documents when unrepresented accused person in custody

(1) This rule applies if an accused person in a criminal proceeding—

(a) is in custody; and

(b) is not represented by a solicitor.

(2) A document required or permitted to be served by the accused person for the proceeding may be served on the registrar for service by the registrar on another party to the proceeding.

(3) A document required or permitted to be served on the accused person for the proceeding may be served by leaving the document with the person in charge of the place where the accused person is in custody.

(4) If a document mentioned in subrule (3) is served by or on behalf of the registrar, the document may be served—

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(a) by sending a copy by prepaid post to the place where the accused person is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

Division 80.5 Representation in criminal proceedings

9 Definitions for div 80.5

In this division:

criminal proceeding does not include an application in relation to bail.

Note See also o 1 r 4, def ***criminal proceeding***.

solicitor—to remove any doubt, ***solicitor*** includes a firm of solicitors.

10 Notice of solicitor acting

(1) If a solicitor begins acting for an accused person in a criminal matter after the matter becomes a criminal proceeding in the court, the solicitor must, as soon as practicable after, but within 14 days after the day, the solicitor begins acting—

(a) lodge a notice in accordance with form 4.4 for filing; and

(b) serve a copy of the notice on—

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(i) the director of public prosecutions; and

(ii) any solicitor who was acting for the accused person immediately before the notice was lodged for filing.

(2) A notice under subrule (1) must contain an address for service.

(3) If a solicitor acts for 2 or more accused people in the same proceeding and at the same time, the solicitor must lodge for filing a single notice under subrule (1) that lists all the people the solicitor acts for in the proceeding.

(4) If a solicitor lodges for filing a notice under subrule (1) in relation to an accused person, the solicitor is taken to act for the accused person until—

(a) another solicitor lodges a notice under subrule (1) for filing in relation to the accused person; or

(b) the solicitor is given leave to withdraw under rule 12, and complies with rule 12 (5).

11 Solicitor's instructions to act for accused person ended

(1) This rule applies to a solicitor if the solicitor's instructions to act for an accused person in a criminal proceeding are ended before the proceeding is finally disposed of in the court.

Note Order 86 r 64 applies to a solicitor if the solicitor's instructions to act for a convicted person who is a party to an application or appeal in the Court of Appeal are ended.

(2) The solicitor must file and serve on each party to the proceeding (including the accused person) written notice that the solicitor is no longer acting for the accused person.

(3) The solicitor must file and serve the notice as soon as practicable after, but within 14 days after the day, the solicitor's instructions are ended.

(4) In this rule:

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accused person includes a person who has been convicted of an offence and is awaiting sentence for the offence in the court.

Note See also r 1, def ***accused person***.

court does not include the Court of Appeal.

12 Withdrawal of solicitor

(1) A solicitor may withdraw from acting for an accused person only with the court's leave.

(2) The application must be made by motion on notice in accordance with form 4.9.

(3) However, if the solicitor wants to withdraw from acting for the accused person during the person's trial or sentence hearing, the application may be made orally to the court.

(4) The notice must—

(a) state the solicitor moving the motion; and

(b) state the date and time when, and place where, the motion is to be made; and

(c) if the court makes an order under subrule (6)—state the terms of the order; and

(d) state briefly the order sought.

(5) A copy of the notice must be served—

(a) on the accused person—

(i) personally; or

(ii) by registered letter addressed to the person's last-known address; or

(iii) if the court orders another way of service—as ordered; and

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(b) on the director of public prosecutions.

(6) Unless the court otherwise orders, there must be at least 2 clear days between the day of service of the notice and the day stated in the notice for hearing the motion.

(7) The court may order service of the notice on anyone it considers appropriate.

(8) If the court gives the solicitor leave to withdraw, the solicitor must—

(a) lodge a notice in accordance with form 4.5 (Notice of solicitor ceasing to act) for filing; and

(b) serve a copy of the notice on the accused person personally, or by registered letter addressed to the person's last-known address; and

(c) serve a copy of the notice on the director of public prosecutions.

13 Handing over depositions

If a solicitor ceases to act for an accused person, the solicitor must, as soon as practicable after ceasing to act, give the depositions (if any) the solicitor has received under the *Magistrates Court Act 1930*, section 108 (Accused person may obtain copies of depositions etc) to—

(a) if the solicitor has received a notice under rule 10 (Notice of solicitor acting) from another solicitor—the other solicitor; or

(b) if the solicitor has not received a notice under rule 10—the accused person.

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Division 80.6 Bail

14 Meaning of *accused person* for div 80.6

In this division:

accused person—

(a) for an application under the *Bail Act 1992*, division 6.2 (Review of decisions by courts)—means a person who is an accused person for that division; and

Note to par (a) ***Accused person*** is defined for that division in the *Bail Act 1992*, dict.

(b) for any other application in relation to bail—includes a convicted person.

Note to par (b) See also r 1, def ***accused person***.

15 Application in relation to bail by accused person

(1) An application in relation to bail by an accused person must be made by motion on notice in accordance with form 4.6.

(2) Unless the court otherwise orders, the notice must—

(a) state the accused person's name; and

(b) state the date and time when, and place where, the motion is to be made; and

(c) if the court makes an order under subrule (6)—state the terms of the order; and

(d) state briefly the order (or orders) sought; and

(e) state briefly particulars of the grounds relied on in support of the order (or orders) sought.

(3) The motion must be supported by an affidavit stating—

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(a) the charges (if any) outstanding against the accused person; and

(b) if the accused person has been committed for sentence or trial to the court—that fact, and the date the person was committed; and

(c) if the accused person has been convicted or found guilty of an offence relevant to the application—that fact, the offence and the date the person was convicted or found guilty; and

(d) if the accused person has been sentenced for an offence relevant to the application—that fact, the sentence and the date the person was sentenced; and

(e) if bail has previously been refused for an offence relevant to the application—the reasons bail was refused; and

(f) the accused person's date of birth; and

(g) whether the accused person has a criminal record; and

(h) if the accused person is in custody—the day the person was placed in custody; and

(i) the day the matter is next listed before a court; and

(j) the informant's name; and

(k) if the *Bail Act 1992*, section 9C (Bail for murder), section 9D (Bail for serious offence committed while charge for another pending or outstanding) or section 9E (Bail for person sentenced to imprisonment) applies in relation to the application—the special or exceptional circumstances that exist favouring the grant of bail; and

(l) if a court has made a decision in relation to an application for bail by the accused person and the application is a further application for bail—

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(i) whether the accused person was represented by a lawyer at the hearing of the person's first application to a court for bail in relation to the offence with which the person is charged; or

(ii) any significant change in circumstances relevant to the granting of bail since the most recent application to a court for bail; or

(iii) any fresh evidence or information of material significance to the granting of bail that was unavailable on the most recent application to a court for bail; and

Note See the *Bail Act 1992*, s 19 (General provisions relating to court bail).

(m) if the application is for review of a decision in relation to bail—

(i) any significant change in circumstances relevant to the granting of bail; or

(ii) the availability of fresh evidence or information of material significance to the granting of bail that was unavailable on the most recent application to the court for bail; and

Note See the *Bail Act 1992*, s 43 (Power of Supreme Court to review).

(n) the conditions (if any) on which bail is sought.

(4) The supporting affidavit must be in accordance with form 4.7.

(5) The accused person must lodge the notice and supporting affidavit for filing and serve a copy on the director of public prosecutions.

(6) Unless the court otherwise orders, there must be at least 2 clear days between the day of service of the notice and the day stated in the notice for hearing the motion.

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(7) The court may order service of the notice and supporting affidavit on anyone it considers appropriate.

16 Application in relation to bail by informant

(1) An application in relation to bail by an informant must be made by motion on notice in accordance with form 4.6.

(2) Unless the court otherwise orders, the notice must—

(a) state the accused person's name; and

(b) state the date and time when, and place where, the motion is to be made; and

(c) if the court makes an order under subrule (5)—state the terms of the order; and

(d) state briefly the order (or orders) sought; and

(e) state briefly particulars of the grounds relied on in support of the order (or orders) sought.

(3) The motion must be supported by an affidavit.

(4) The informant must lodge the notice and supporting affidavit for filing and serve a copy on the accused person.

(5) Unless the court otherwise orders, there must be at least 2 clear days between the day of service of the notice and the day stated in the notice for hearing the motion.

(6) The court may order service of the notice and supporting affidavit on anyone it considers appropriate.

Division 80.7 Pre-trial procedure

17 Application of div 80.7

This division applies if an accused person is committed to the court for trial or sentence.

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18 Appearance of accused person

The accused person must appear before the court on the date (the ***appearance date***) set as a condition of bail or by the court or Magistrates Court.

19 Appearance when committed for sentence

If the accused person is committed for sentence, the court may, on the appearance date—

(a) ask the accused person about the person's representation, including legal aid; and

(b) if the accused person pleaded guilty in the Magistrates Court—confirm the accused person's plea of guilty; and

(c) direct the director of public prosecutions to lodge with the court a statement of the facts (the ***case statement***) on which the prosecution relies; and

(d) direct the director of public prosecutions to give a copy of the case statement to the accused person or, if the accused person is represented by a lawyer, the person's lawyer by the date set by the court; and

(e) ask the parties if the matter is urgent; and

(f) set a date for sentence; and

(g) make orders in relation to pre-sentence reports; and

(h) ask if any variation of bail is sought; and

(i) deal with any application to suppress the accused person's name; and

(j) give any other directions that the court considers appropriate.

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20 Appearance when committed for trial

If the accused person is committed for trial, the court may, on the appearance date—

(a) ask the accused person about the person's representation, including legal aid; and

(b) ask the accused person whether the person has decided to have the trial by judge alone; and

Note See the *Supreme Court Act 1933*, s 68B (Trial by judge alone in criminal proceedings).

(c) direct the director of public prosecutions to lodge with the court—

(i) a draft indictment; and

(ii) the case statement; and

(iii) a list of proposed prosecution witnesses; and

(d) direct the director of public prosecutions to give a copy of the draft indictment, case statement and list of proposed prosecution witnesses to the accused person or, if the accused person is represented by a lawyer, the person's lawyer by the date set by the court; and

(e) direct the parties to complete and lodge with the court a pre-trial questionnaire in accordance with form 4.8 by the date set by the court; and

(f) ask the parties if the matter is urgent; and

(g) ask about any unusual features of the matter; and

(h) ask about the length of the trial; and

(i) ask if any variation of bail is sought; and

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(j) deal with any application to suppress the accused person's name; and

(k) give any other directions that the court considers appropriate.

21 Pre-trial questionnaire

If the parties are directed to complete a pre-trial questionnaire—

(a) the director of public prosecutions must—

(i) complete the column of the questionnaire headed 'DPP'; and

(ii) give the completed questionnaire to the accused person or, if the accused person is represented by a lawyer, the person's lawyer—

(A) at least 7 days before the day the questionnaire must be lodged with the court; or

(B) if the court sets another date—by that date; and

(b) the accused person or the person's lawyer must—

(i) complete the column of the questionnaire headed 'Accused'; and

(ii) lodge the completed questionnaire with the court by the date set by the court.

22 Pre-arraignment conference

(1) After the pre-trial questionnaire is completed by the accused person or the person's lawyer, and lodged with the court, the registrar must—

(a) set a date and time for a pre-arraignment conference; and

(b) tell the parties the date and time for the conference.

(2) At the pre-arraignment conference, the registrar may—

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(a) give directions about matters raised in the pre-trial questionnaire, including a direction that the matter be listed before a judge; and

(b) ask the parties about the length of the trial; and

(c) consider whether it is appropriate for the matter to be dealt with as a reserve trial and, if so, give appropriate directions; and

(d) set a date, at least 14 days after the day of the pre-arraignment conference, for arraignment of the accused person before the court; and

(e) adjourn the conference to another date.

(3) The registrar may refer a matter to a judge, if a party does not comply with directions made by the registrar or the court.

23 Arraignment

(1) On the arraignment of the accused person, the director of public prosecutions may present an indictment in relation to the person to the court.

(2) If an indictment is presented by the director of public prosecutions, the accused person must enter a plea.

Note The *Crimes Act 1900*, s 282 provides that if a person refuses to plead, the court may order a plea of not guilty to be entered on behalf of the person, and the plea has the same effect as if the person had pleaded not guilty.

(3) If the accused person enters a plea of guilty, the court must set a date for sentence.

(4) If the accused person enters a plea of not guilty, the court must—

(a) allocate a date for trial; and

(b) set a date for the pre-trial directions hearing; and

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(c) order the accused person to appear before the court on the date set for the pre-trial directions hearing.

24 Pre-trial directions hearing

At the pre-trial directions hearing, the court may—

(a) confirm the trial length; and

(b) hear and decide any preliminary or other matters.

Division 80.8 Pre-trial applications

25 Applications to set aside or stay proceedings

(1) An accused person may apply to set aside or stay any criminal proceeding against the person.

(2) The application must be made and heard before the accused person is arraigned.

(3) If the application is dismissed, the accused person may make a further application under subrule (1) in relation to the same or similar charges only if—

(a) there has been a significant change of circumstances; and

(b) the application is limited to the change of circumstances.

26 Applications for separate trials

An accused person may apply for—

(a) separate trials of different charges alleged against the person in the same indictment; and

(b) a separate trial from that of someone else committed for trial and charged in the same indictment.

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27 Other pre-trial applications

An application made in the course of a criminal proceeding must be made in writing if—

(a) the application—

(i) is made before the prosecution's case opens or witnesses are called; and

(ii) raises any question about the admissibility of evidence, or any other question of law affecting the conduct of the trial, or

(b) the application would postpone or delay a trial that has been listed for hearing if it were granted; or

(c) the application cannot reasonably be made without notice to other parties; or

(d) the application is directed by a judge to be in writing.

28 Applications under r 25, r 26 and r 27

(1) An application under rule 25, rule 26 or rule 27 must be made by motion on notice in accordance with form 4.9.

(2) Unless the court otherwise orders, the notice must—

(a) state the party moving the motion; and

(b) state the date and time when, and place where, the motion is to be made; and

(c) if the court makes an order under subrule (3)—state the terms of the order; and

(d) state briefly the order (or orders) sought; and

(e) state briefly particulars of the grounds relied on that are sufficient for any other party to decide whether to call evidence to resolve the issues raised; and

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(f) state briefly any questions of law; and

(g) be supported by an affidavit lodged for filing with the notice stating—

(i) any evidence necessary to establish the grounds of the application; and

(ii) any evidence that the applicant wants the court to receive.

(3) Unless the court otherwise orders—

(a) the notice and any supporting affidavits must be served on all other parties as soon as possible after the notice is lodged for filing but at least 14 days before the date set for the trial to which the notice relates; and

(b) there must be at least 2 clear days between the day of service of the notice and the day stated in the notice for hearing the motion.

(4) The court may order service of the notice on anyone it considers appropriate.

(5) This rule is subject to rule 25 (2) (Applications to set aside or stay proceedings).

(6) The registrar—

(a) must endorse the notice with the date, time and place of hearing; and

(b) if the trial date has been set, may endorse the notice to be heard by the court immediately before the trial begins.

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Division 80.9 Criminal proceedings—other provisions

29 Arraignment dates

The registrar must publish a list of arraignment dates for each year.

30 Production of person in custody

(1) The court may make the following orders:

(a) an order requiring the production of a person who is in custody;

(b) an order about the continuing custody of a person who is in custody.

(2) The court may order that the person in custody be produced—

(a) in person; or

(b) by audiovisual link or audio link in accordance with the *Evidence (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

(3) The registrar may exercise the jurisdiction of the court for subrule (1) (a) or (2).

(4) An order under this rule may be made on the application of a party or on the court's initiative.

(5) An order under this rule may, but need not, be in accordance with form 4.10.

31 Defence response to prosecutor's opening address

If an accused person, or the person's lawyer, makes an opening response to the prosecutor's opening address in a trial, the response—

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(a) must identify the acts, facts, matters and circumstances with which issue is taken in the prosecutor's opening address and the basis on which issue is taken; and

(b) must not state facts that cannot be supported by evidence to be presented, or that has been presented, at the trial.

32 Execution of documents

The registrar or a justice of the peace may witness any recognisance or other document required or permitted to be entered into under an order, decision or other sentence (however described) of the court in a criminal proceeding.

33 Inspection of registry files

(1) During office hours, anyone may search the registry for, inspect, or take a copy of, any document filed in the registry in a criminal proceeding.

Note A fee may be determined under the *Court Procedures Act 2004* for this rule.

(2) However, a person who is not a party to a matter may search the registry for, inspect, or take a copy of, any of the following documents about the matter only with the court's leave:

(a) a 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) a part of an affidavit ruled to be inadmissible in evidence;

(d) an admission that has not been admitted into evidence;

(e) a subpoena, or a document filed with the registrar in answer to a subpoena to produce;

(f) a deposition taken before an examiner;

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(g) a document filed in support of an application made in the absence of a party;

(h) a written submission that has not been read in court;

(i) an unsworn statement of evidence;

(j) a draft indictment lodged with the court by the prosecution;

(k) a case statement filed by the prosecution until read in court;

(l) a questionnaire completed by the parties;

(m) a document that the registrar decides should be confidential to the parties to the matter in the interests of justice.

(3) Also, a party to a matter may search the registry for, inspect, or take a copy of, a subpoena issued at the request of another party only with the court's leave.

(4) However, subrule (3) does not apply to a subpoena that has been served on the party.

(5) Further, a party to a matter may search the registry for, inspect, or take a copy of, a document filed to support any of the following applications only with the court's leave:

(a) an application for a document, evidence or thing to be kept confidential;

(b) an application for a document or thing to be granted privilege from production.

(6) In this rule:

document—to remove any doubt, ***document*** includes a document kept electronically or in any other way.

Note The Legislation Act, dict, pt 1, defines ***document*** to mean any record of information, and includes—

(a) anything on which there is writing; or

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(b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for persons qualified to interpret them; or

(c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or

(d) a drawing, map, photograph or plan.

34 Certificate of conviction

(1) For a criminal proceeding, the registrar may issue a certificate of conviction.

(2) In this rule:

conviction, for a person who has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment, means—

(a) a conviction recorded by the court for the person; or

(b) a finding of guilt recorded by the court for the person.

35 Preparation of judgments

(1) In this rule:

judgment means sentence or other order.

(2) At any time after a judgment has been given in a criminal proceeding, a party may give a draft of the judgment to the registrar.

(3) If an appeal is made from the judgment, or an application is made in relation to the judgment, the appellant or applicant must give a draft of the judgment to the registrar, unless the judgment has been already entered.

(4) The registrar—

(a) may approve a draft of the judgment given to the registrar, with or without amendment; and

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(b) must, on the filing of the engrossed judgment with the approved draft, enter the judgment.

(5) The registrar may file a minute of a judgment on the registrar's own initiative.

(6) A draft judgment must be in accordance with form 4.11.

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Part 9 Registration of foreign forfeiture orders

Order 81 Procedure for registration of foreign forfeiture orders

1 Definitions for o 81

In this order:

foreign order means—

(a) a foreign forfeiture order, foreign pecuniary penalty order or foreign restraining order, within the meaning of the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 3 (1); or

(b) a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995* (Cwlth), section 4.

register means the register kept under rule 2.

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, is registered when it is included in the register.

Note The *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), s 34A (5), and the *International War Crimes Tribunals Act 1995* (Cwlth), s 45 (2) provide for foreign orders (and amendments) to be registered in the Supreme Court of a State or Territory where the property (or part of the property) that is the subject of the order is

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situated. Registration is required by those provisions to be in accordance with the rules of court.

4 Proceedings for registration

(1) An application for the registration of a foreign order or of an amendment of a foreign order shall be by motion on notice joining the person against whom the foreign order was made as the respondent.

(2) For an application for the registration of a forfeiture order within the meaning of the *International War Crimes Tribunals Act 1995* (Cwlth), section 4, the applicant must file with the notice of motion an affidavit setting out particulars necessary to enable the court to comply with that Act, section 45 (1).

Note Section 45 (1) requires the court, on registration of the order, to direct the Commonwealth Director of Public Prosecutions to give notice of registration 'to specified persons…the court has reason to believe may have an interest in the property [that is the subject of the order]'.

(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 10 Registration of interstate forfeiture orders

Order 82 Procedure for registration of interstate forfeiture orders

1 Definitions for o 82

Act means the *Confiscation of Criminal Assets Act 2003*.

interstate order means any of the following, within the meaning of the Act:

(a) an interstate restraining order;

(b) an interstate automatic forfeiture decision;

(c) an interstate civil forfeiture order;

(d) an interstate conviction forfeiture order.

register means the register kept under rule 2.

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, is registered when it is included in the register.

Note The Act, s 137 provides for interstate orders (and amendments) to be registered in court if the property (or part of the property) is situated in the ACT. They may be registered in the Supreme Court or the Magistrates Court (see the Act, s 238, s 240 and s 241). Registration is

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required to be in accordance with the procedure of the relevant court (see the Act, s 137 (5)).

4 Proceedings for registration

(1) An application for the registration of an interstate order or of an amendment of an interstate order shall be by motion on notice joining the person against whom the interstate order was made as the respondent.

(2) The applicant may, unless the court otherwise orders, proceed without serving a copy of the notice of motion on the respondent.

(3) Where the applicant includes in the notice of motion a request that the application be granted under this subrule, the court may make an order for the registration of the interstate order or of the amendment of the interstate order in camera and without any appearance by or on behalf of the applicant.

(4) Where an order is made for the registration of an interstate order or of an amendment of an interstate order, the applicant shall serve a copy of the order for registration and of the registered interstate order or registered amendment on the respondent.

(5) The registration of an interstate order is cancelled when a note of its cancellation is endorsed on the copy of the order included in the register.

5 Filing of amendments to forfeiture orders

For the Act, section 141 (1) (b), details of any amendment of a forfeiture order, or any direction of the entity that made the order, may be given to the court only by filing a sealed copy of the amendment or direction.

Note The Act, s 141 (1) provides that unless details of these amendments or directions are given to the court in accordance with the procedures of the court, the registration of the forfeiture order may be cancelled.

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6 Registration of interstate orders under Proceeds of Crime Act 1991 (repealed)—transitional

(1) This order as in effect immediately before the commencement of this rule continues to apply in relation to—

(a) an interstate restraining order, or interstate forfeiture order, within the meaning of the *Proceeds of Crime Act 1991* (repealed), section 4 (1) registered under this order at that time; and

(b) an application for the registration of an order mentioned in paragraph (a), if the application had been made, but not finalised, at that time.

Note Continuing registration of interstate restraining orders and interstate forfeiture orders under the repealed Act is subject to the *Confiscation of Criminal Assets Act*, section 262 (Orders under repealed Act). That section provides for the continued application of the repealed Act to the orders. For example, this would allow the registration of interstate orders to be cancelled in the circumstances provided in the repealed Act, s 81 or s 87.

(2) This rule expires 2 years after its date of commencement.

Note The expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

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

Order 83 Evidence and Procedure (New Zealand) Act 1994 (Cwlth)

Division 83.1 Preliminary

1 Meaning of *Act* in o 83

In this order:

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

2 Words and expressions used in Evidence and Procedure (New Zealand) Act

A word or expression used in the Act has the same meaning in this order and in a form approved under the *Court Procedures Act 2004* for use in a proceeding under the Act.

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Division 83.2 Service of subpoena in New Zealand

3 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.

4 Supporting affidavit

An application referred to in rule 3 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

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(ii) how that amount (whether as money or otherwise) is to be paid to the person named; and

(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).

5 Ex parte hearing

A motion referred to in rule 3 shall be heard ex parte.

6 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.

7 Leave to search etc

A document filed relating to an application referred to in rule 3 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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Division 83.3 Failure to comply with subpoena

8 Issue of certificate

(1) A certificate under the Act, section 16 in accordance with form 5.1 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.

9 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.

10 Supporting affidavit

A motion referred to in rule 9 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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Division 83.4 Setting aside subpoena

11 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.

12 Copy of affidavit to party

The registrar shall cause a copy of an affidavit referred to in rule 11 to be served, by post or by fax, on the party who obtained leave for the subpoena to be served in New Zealand.

13 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.

14 Objection to no hearing

An objection under the Act, section 14 (4) shall be made by filing a notice in accordance with form 5.2 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

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(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.

15 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 5.3.

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Division 83.5 Evidence by videolink or telephone

16 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.

17 Supporting affidavit

An application referred to in rule 16 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.

18 Relevant considerations

In deciding whether to grant an application referred to in rule 16, 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

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material, including cost and convenience to the witnesses and parties.

19 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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Division 83.6 Fax copies

20 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).

21 Filed copy of fax

If a fax of a document is adduced in evidence under rule 20, 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 84 Appeals to Supreme Court other than to Court of Appeal

1 Definitions for o 84

In this order:

appeal means an appeal from a decision of a tribunal.

court means the court other than when it is the Court of Appeal or Full Court, but does not include—

(a) the master in relation to interlocutory judgments of the master; or

(b) the registrar.

decision includes judgment.

Note ***Judgment*** is defined in the Act, dict.

relevant Act, in relation to an appeal, means the Act under which the appeal is brought.

tribunal means a court, tribunal or other entity from which an appeal may be made to the court, and includes—

(a) the master in relation to interlocutory judgments of the master; and

(b) the registrar of the court.

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1A Meaning of *registrar* for o 84

(1) In this order:

registrar, of a tribunal, means—

(a) except in relation to the master or registrar of the court—the registrar of the tribunal or, if there is not a registrar of the tribunal, the person in charge of the tribunal's administration; or

(b) in relation to the master or registrar of the court—the registrar of the court.

(2) In this rule:

registrar of the tribunal includes a deputy registrar of the tribunal.

2 Application of o 84

This order applies to an appeal subject to—

(a) any Act or subordinate law applying to the appeal; and

(b) any direction of the court on the application of a party to the appeal.

Note Appeals may be made to the court from the tribunals mentioned in the following table:

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Tribunals appealed from

column 1 item	column 2 tribunal	column 3 law appealed under
1	administrative appeals tribunal	*Administrative Appeals Tribunal Act 1989*, s 46
2	consumer and trader tribunal	*Consumer and Trader Tribunal Act 2003*, s 51
3	credit tribunal	*Consumer Credit (Administration) Act 1996*, s 94
4	discrimination tribunal	*Discrimination Act 1991*, s 108DB
5	guardianship tribunal	*Guardianship and Management of Property Act 1991*, s 56
6	Magistrates Court	*Community and Health Services Complaints Act 1993*, s 39G (1)
		Consumer Credit (Administration) Act 1996, s 95
		Health Records (Privacy and Access) Act 1997, s 32 (1)
		Leases (Commercial and Retail) Act 2001, s 133
		Magistrates Court Act 1930, div 3.10.1, div 3.10.2 and pt 4.5
7	mental health tribunal	*Mental Health (Treatment and Care) Act 1994*, s 141
8	registrar of the Supreme Court	*Criminal Injuries (Compensation) Act 1983*, s 28
9	residential tenancies tribunal	*Residential Tenancies Act 1997*, s 125
10	Small Claims Court	*Magistrates Court Act 1930*, pt 4.5
11	Supreme Court (constituted by the master in relation to interlocutory judgments of the master)	*Supreme Court Act 1933*, s 9 (2) (a)

2A Non-publication order

(1) This rule applies if—

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(a) an appeal is brought from a decision of a tribunal; and

(b) the tribunal made an order prohibiting the publication of a party's name (the ***non-publication order***); and

(c) the non-publication order has not been discharged by the tribunal or the court.

(2) For the notice of appeal, the non-publication order remains in force as if it were an order of the court.

(3) In this rule:

party means a party to the proceeding to which the decision relates.

3 Institution of appeals

An appeal may be instituted by filing a notice of appeal in accordance with form 6.1.

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 judgment sought; and

(c) briefly, but specifically, the grounds relied on in support of the judgment 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 judgment 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 judgment 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

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(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 judgment sought by the notice of appeal or by the maintenance of the decision.

(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 form 6.2.

(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

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(c) the reason why the extension of time should be given.

9 Date for settlement of appeal papers

The registrar must set a date for settlement of the appeal papers for an appeal by writing the date on the notice of appeal.

10 Service of notice of appeal

(1) An appellant shall, within the time specified under subrule (2), serve a copy of the notice of appeal personally on each respondent, and on the registrar of the tribunal.

(2) A copy of a notice of appeal shall be served under subrule (1) within 7 days after the notice is filed, but no later than 5 days before the date endorsed for settling the appeal papers, unless the court orders otherwise.

(3) If the court makes an order under subrule (2), the registrar shall endorse the notice of appeal with a note of the order made.

11 Security for costs

(1) No security for the costs of an appeal is required, except where subrule (2) applies.

(2) In special circumstances, the court may order that security for the costs of an appeal be given as it thinks fit.

12 Stay of decision

(1) The institution of an appeal does not operate as a stay of the decision appealed from unless the relevant Act or these rules provide otherwise.

(2) Where the relevant Act provides for an application to the court for an order staying or otherwise affecting the operation or implementation of a decision appealed from, that application may be made by motion on notice.

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(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

(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—

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(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.

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.

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(5) A party lodging a notice of discontinuance is liable to pay the costs of the other parties occasioned by the appeal, unless the court orders otherwise.

(6) A party whose costs are payable under subrule (5) may submit a bill of costs to the taxing officer for taxing.

(7) If the costs payable under subrule (5), as taxed, are not paid within 14 days after service of the certificate of taxation, the party submitting the bill may enter judgment for the taxed costs.

15 Amendment of notice of appeal

(1) A notice of appeal may be amended without leave by the filing of a supplementary notice before the date appointed by the registrar of the court for settling the appeal papers.

(2) A supplementary notice shall be lodged for filing and served under rules 7 and 10 as if it were a notice of appeal.

16 Cross-appeals

(1) This rule applies where a respondent to an appeal desires—

(a) to appeal from a part of the decision from which the appellant has appealed; or

(b) to seek a variation of a part of that decision.

(2) Where this rule applies, the respondent may institute a cross-appeal by lodging for filing a notice of cross-appeal within 21 days after the service on the respondent of the notice of the appeal.

(3) The respondent shall serve a copy of a notice of cross-appeal on the appellant and each other party to the appeal.

(4) A notice of cross-appeal shall state—

(a) what part of the decision is cross-appealed from, or is sought to be varied; and

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(b) the judgment sought; and

(c) briefly, but specifically, the grounds relied on in support of the judgment sought.

17 Notice of contention

(1) This rule applies where a respondent—

(a) desires to contend that a matter of law has been erroneously decided against the respondent in the decision appealed from by the appellant; and

(b) does not desire to seek a discharge or variation of a part of the decision.

(2) Where this rule applies, the respondent shall give notice to the appellant of the respondent's contention.

(3) When the appeal papers are settled under rule 18, the appellant shall, at the request of the respondent, include in the appeal papers that part of the record of evidence, and any documents, before the tribunal which are relevant to the respondent's contention.

18 Settling of appeal papers

(1) On settling the appeal papers, the court may give such directions about the conduct of the appeal as the court thinks proper.

(2) Without limiting the generality of subrule (1), on settling the appeal papers, the court has the following powers:

(a) to determine what documents and matters were before the tribunal;

(b) to determine what documents and matters are to be included in the appeal papers, and the order of inclusion;

(c) to settle the index of documents to be included in the appeal papers;

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(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 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.

21 Further evidence on appeal—*Magistrates Court Act 1930*, s 214

(1) This rule applies to an application to the court to receive evidence mentioned in the *Magistrates Court Act 1930*, section 214 (3) and (4) in an appeal mentioned in that section.

(2) The application must be made by motion on the hearing of the appeal.

(3) The grounds of the application must be stated in an affidavit.

(4) Any evidence necessary to establish the grounds of the application, and the evidence that the applicant wants the court to receive, must be given by affidavit.

(5) Within 21 days before the hearing of the appeal, the applicant must file an affidavit mentioned in subrules (3) and (4) and serve it on the other party to the appeal.

(6) Unless the court otherwise orders, the evidence of the other party to the appeal must be given by affidavit.

(7) Within 14 days before the hearing of the appeal, the other party to the appeal must file the affidavit and serve it on the applicant.

22 Written summary and list for appeal hearing

(1) A party to an appeal that has been set down for hearing must prepare a written summary of arguments in accordance with rule 23 and a

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list of authorities, legislation and texts in accordance with rule 24, unless the court otherwise orders.

(2) At least 5 days before the day set down for the hearing of the appeal, the appellant must lodge for filing 2 copies of the appellant's summary and list, and serve a copy of each on each other party to the appeal.

(3) At least 2 days before the day set down for the hearing of the appeal, the respondent must lodge for filing 2 copies of the respondent's summary and list, and serve a copy of each on each other party to the appeal.

(4) At least 1 day before the day set down for the hearing of the appeal, the appellant may lodge for filing 2 copies of a written summary of arguments in reply, and serve a copy on each other party to the appeal.

(5) This rule does not apply to appeals from interlocutory judgments of the master.

23 Summaries of arguments

(1) A party's summary of arguments must state as briefly as possible—

(a) the issues in the appeal; and

(b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and

(c) if there is to be a challenge to any of the tribunal's findings of fact—

(i) the claimed error (including any failure to make a finding of fact); and

(ii) the reasons why the party considers the finding was an error; and

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(iii) the finding that the party considers should have been made; and

(d) for an appellant—a chronology of the facts; and

(e) if a respondent disagrees with an appellant's chronology of facts—the respondent's chronology of facts that highlights where the respondent's chronology differs from the appellant's chronology.

(2) If the summary relies on a matter in another document, the summary must—

(a) for a document mentioned in rule 24 (3) (a) to (c)—identify the document as mentioned in the rule; and

(b) for other documents—if relevant, identify the page of the document relied on.

24 List of authorities, legislation and texts

(1) A party's list of authorities, legislation and texts must list any authority, legislation or text that the party expects will be quoted from, or that may be referred to, by the party.

(2) A party's list of authorities, legislation and texts may be divided into 2 parts (parts A and B) and list any authority, legislation or text—

(a) in part A—that the party expects will be quoted from by the party; and

(b) in part B—that may be referred to by the party.

(3) An authority, legislation or text must be identified as follows:

(a) for an authority—by case, citation and relevant part;

(b) for legislation—by provision;

(c) for a text—by edition and page number.

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25 Abandonment of ground of appeal

(1) This rule applies if an appellant wants to abandon a ground of appeal.

(2) The appellant must give notice to each other party that the ground of appeal will not be relied on.

(3) The notice must be given—

(a) as soon as possible; but

(b) within a reasonable time before the day set down for the hearing.

(4) The court may make any order the court considers just in relation to costs incurred because of a failure by the appellant to comply with this rule.

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Order 85 Order nisi to review

1 Definitions for o 85

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 Application for order nisi

An application for an order nisi must be—

(a) made orally to the Supreme Court within the time provided by the *Magistrates Court Act 1930*; and

(b) made without notice to another party; 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', or to similar effect.

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4 Service of applications

The court may direct that notice of an application be given to a person interested in maintaining the relevant decision of the Magistrates Court.

5 Parties

A party served with an application is entitled to be heard on the application.

6 Form of order nisi

An order nisi shall be in accordance with form 6.3.

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 on 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.

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(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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Order 86 Appeals to Court of Appeal

Division 86.1 Interpretation for order 86

1 Meaning of *court* in o 86

(1) In this order:

court means the court other than when it is the Court of Appeal.

(2) Also, ***court*** includes the master, except in relation to interlocutory judgments of the master.

(3) However, ***court*** does not include—

(a) the Full Court exercising appellate jurisdiction; or

(b) the registrar.

Division 86.2 Leave to appeal from interlocutory judgments of court

2 Application of div 86.2

This division applies to an application for leave to appeal from an interlocutory judgment of the court.

3 Application for leave to appeal—interlocutory judgment

The application must be made to the Court of Appeal by motion on notice in accordance with this division and, for matters not dealt with in this division, in accordance with order 54 (Motions).

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4 Requirements for notice of motion for leave to appeal—interlocutory judgment

(1) The notice of motion must be in accordance with form 6.4.

(2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases), the notice of motion must state that the applicant wants to do so.

(3) The notice of motion must be accompanied by—

(a) an affidavit showing—

(i) the nature of the case; and

(ii) the questions involved; and

(iii) the reasons why leave should be given; and

(b) the draft notice of appeal.

5 Time for filing notice of motion for leave to appeal—interlocutory judgment

The notice of motion and accompanying affidavit and draft notice of appeal must be filed within 7 days after the day the interlocutory judgment is given, or within any further time allowed by the Court of Appeal or the judge who gave the interlocutory judgment.

6 Service of notice of motion for leave to appeal—interlocutory judgment

(1) The notice of motion and accompanying affidavit and draft notice of appeal must be served on each person who was a party to, or given leave to intervene in, the proceeding in which the interlocutory judgment was given.

(2) The notice of motion and accompanying affidavit and draft notice of appeal must be served within 3 days after the day the notice is filed.

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7 Appearance to notice of motion for leave to appeal—interlocutory judgment

A respondent to the notice of motion must enter an appearance in accordance with order 13 (Appearance) as if—

(a) the notice were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff.

8 Time for filing and service of affidavits by respondents to notice of motion for leave to appeal—interlocutory judgment

A respondent who wants to present evidence must file and serve the respondent's affidavits within 14 days after the day the notice of motion is served on the respondent.

Division 86.3 Leave to appeal out of time from final judgments of court

9 Definitions for div 86.3

In this division:

conviction means, if a person has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment—

(a) a conviction recorded by the court for the person; or

(b) a finding of guilt recorded by the court for the person.

final judgment, of the court, means a judgment that is not an interlocutory judgment, but does not include a conviction or sentence.

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out of time, for leave to appeal from a final judgment, means more than 21 days after the day the judgment was given.

sentence means an order, decision or other sentence (however described) imposed by the court on a person—

(a) after the person has been convicted or found guilty; or

(b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

1 a reparation order under the *Crimes Act 1900*, section 350 (Reparation orders)

2 a person released on conditions under the *Crimes Act 1900*, section 403 (Conditional release of offenders)

3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

10 Application of div 86.3

This division applies to an application for leave to appeal out of time from a final judgment of the court.

Note For leave to appeal out of time from a conviction or sentence (as defined in r 9), see subdiv 86.5.2 (Leave to appeal out of time against certain convictions and sentences—convicted person) and subdiv 86.5.3 (Leave to appeal out of time against sentence—director of public prosecutions).

11 Application for leave to appeal out of time—final judgment

The application must be made to the Court of Appeal by motion on notice in accordance with this division and, for matters not dealt with in this division, in accordance with order 54 (Motions).

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12 Requirements for notice of motion for leave to appeal out of time—final judgment

(1) The notice of motion must be in accordance with form 6.5.

(2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases), the notice of motion must state that the applicant wants to do so.

(3) The notice of motion must be accompanied by—

(a) an affidavit showing—

(i) the nature of the case; and

(ii) the questions involved; and

(iii) the reasons why leave should be given; and

(b) the draft notice of appeal.

13 Filing and service of notice of motion for leave to appeal out of time—final judgment

(1) The notice of motion and accompanying affidavit and draft notice of appeal must be filed, and served on each person who was a party to, or given leave to intervene in, the proceeding in which the final judgment was given.

(2) The notice of motion and accompanying affidavit and draft notice of appeal must be served within 3 days after the day the notice is filed.

14 Appearance to notice of motion for leave to appeal out of time—final judgment

A respondent to the notice of motion must enter an appearance in accordance with order 13 (Appearance) as if—

(a) the notice were an originating application; and

(b) the respondent were a defendant; and

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(c) the appellant were the plaintiff.

15 Time for filing and service of affidavits by respondents to notice of motion for leave to appeal out of time—final judgment

A respondent who wants to present evidence must file and serve the respondent's affidavits within 14 days after the day the notice of motion is served on the respondent.

Division 86.4 Appeals from court

Note See also subdiv 86.5.4 (Additional rules for appeals against certain convictions and sentences).

16 Meaning of *appeal* in div 86.4

(1) In this division:

appeal means an appeal from a judgment of the court.

judgment includes—

(a) a decree, order or direction of the court; or

(b) a conviction recorded by the court; or

(c) a sentence imposed by the court.

(2) However, an ***appeal*** does not include—

(a) a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal; or

(b) an appeal under the Act, section 37S (Reference appeal following acquittal on indictment).

17 Application of div 86.4

This division applies to an appeal.

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18 Filing of notice of appeal

The appeal is begun by filing a notice of appeal.

19 Requirements for notice of appeal

(1) The notice of appeal must be in accordance with form 6.6.

(2) The notice of appeal must state—

(a) whether the appeal is from all or part of the judgment; and

(b) if the appeal is from part of the judgment—the part appealed from; and

(c) briefly, but specifically, the grounds relied on in support of the appeal; and

(d) the judgment sought.

(3) If the appeal is brought by leave of the Court of Appeal—

(a) the notice of appeal must state that the appeal is brought by leave; and

(b) a copy of the judgment giving leave to appeal must be attached to the notice of appeal and every copy of the notice of appeal served under rule 23 (Service of notice of appeal).

(4) If the appellant wants to present the appellant's case in writing under division 86.8 (Written cases), the notice of appeal must state that the appellant wants to do so.

20 Parties to appeal

(1) Each party to the proceeding in which the judgment appealed from was given must be joined as an appellant or respondent to the appeal if the party is affected by the judgment sought by the notice of appeal or is interested in maintaining the judgment under appeal.

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(2) The Court of Appeal may order the addition or removal of anyone as a party to the appeal.

(3) However, a person may be made an appellant only with the person's consent.

21 Appearance to appeal

(1) A respondent to the appeal must enter an appearance in accordance with order 13 (Appearance) as if—

(a) the notice of appeal were an originating application; and

(b) the respondent were a defendant; and

(c) the appellant were the plaintiff.

(2) However, this rule does not apply to a respondent if the respondent has already entered a notice of appearance under rule 7 (Appearance to notice of motion for leave to appeal—interlocutory judgment) or rule 14 (Appearance to notice of motion for leave to appeal out of time—final judgment).

22 Time for filing and serving notice of appeal

(1) The notice of appeal must be filed and served—

(a) if leave to appeal has been given—

(i) within 21 days after the day leave to appeal is given or within any further time allowed by the Court of Appeal on motion on notice in accordance with order 54 (Motions) filed within the 21 days; or

(ii) if the Court of Appeal sets a time for the filing and service when giving leave to appeal—within the time or within any further time allowed by the Court of Appeal on motion on notice in accordance with order 54 filed within the time set; or

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(b) in any other case—within 21 days after the day the judgment appealed from was given.

(2) However, the Court of Appeal may, at any time, give leave to file and serve a notice of appeal, for special reasons.

23 Service of notice of appeal

(1) The notice of appeal must be served on each person who was a party to, or was given leave to intervene in, the proceeding in which the judgment appealed from was given.

(2) However, a notice of appeal from a decision refusing an application made without notice does not have to be served unless the Court of Appeal otherwise orders.

(3) The Court of Appeal may direct that the notice of appeal be served on anyone else.

24 Stay

(1) Unless the Court of Appeal or the court otherwise directs, an appeal to the Court of Appeal does not—

(a) operate as a stay of execution or of a proceeding under the judgment appealed from; or

(b) invalidate any intermediate act or proceeding.

(2) The Court of Appeal may, by order, vary or set aside a direction mentioned in subrule (1).

(3) An application for a direction of the Court of Appeal under subrule (1)—

(a) must be made by motion on notice in accordance with order 54 (Motions); and

(b) may be made whether or not a similar application has been made to the court.

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(4) An application for an order under subrule (2) must be made by motion on notice in accordance with order 54.

25 Competency of appeal

(1) A respondent may apply to the Court of Appeal at any time by motion on notice in accordance with order 54 (Motions) for an order striking out an appeal as incompetent.

(2) The notice of motion must be in accordance with form 6.7.

(3) The burden of establishing the competency of the appeal is on the appellant.

26 Failure to apply for appeal to be struck out as incompetent—costs

(1) This rule applies if a respondent does not make an application under rule 25 (1) and the appeal is struck out by the Court of Appeal as incompetent.

(2) The respondent must not receive any costs of the appeal, unless the Court of Appeal otherwise orders.

(3) The Court of Appeal may order that the respondent pay the appellant any costs of the appeal wasted because of the respondent's failure to make an application under rule 25 (1).

27 Discontinuance of appeal

(1) An appellant may file and serve a notice of discontinuance of the appeal or part of the appeal—

(a) at any time before the hearing of the appeal without the leave of the Court of Appeal; or

(b) at the hearing, or after the hearing and before judgment, with the leave of the Court of Appeal.

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(2) However, if an appeal is to be decided by written cases under division 86.8 (Written cases), an appellant may file and serve a notice of discontinuance of the appeal or part of the appeal—

(a) at any time before (and including) the last day that the appellant may file a written submission under rule 83 (3) (Filing and serving written case—appeal), without the leave of the Court of Appeal; or

(b) after the period mentioned in paragraph (a), and before judgment, with the leave of the Court of Appeal.

(3) The notice of discontinuance must be in accordance with form 6.8.

(4) If an appellant files and serves a notice of discontinuance of an appeal or part of an appeal—

(a) the appeal or part of the appeal is abandoned by the appellant; but

(b) the notice of discontinuance does not affect any other appellant in the appeal.

(5) If subrule (4) applies, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal, unless the Court of Appeal otherwise orders.

(6) A party whose costs are payable under subrule (5) may tax the costs and may enter judgment for the taxed costs if they are not paid within 14 days after the day of service of the certificate of taxation.

28 Security for costs

Security for costs of an appeal is not required, unless the Court of Appeal otherwise directs.

29 Amending notice of appeal

(1) Before the date set for settling the appeal papers, an appellant may, without leave, amend a notice of appeal.

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(2) After that date, the Court of Appeal may give leave for a notice of appeal to be amended.

(3) The following rules of order 32 (Amendment) apply to an amendment of a notice of appeal as if it were a pleading (and with all other necessary changes):

- rule 7 (Disallowance of amendment)
- rule 9 (Directions for mode)
- rule 10 (Mode—simple amendment)
- rule 11 (Mode—fresh document)
- rule 12 (Service after amendment)
- rule 13 (Costs).

30 Cross-appeal

(1) A respondent who wants to appeal from part of a judgment, or to seek a variation of part of a judgment, need not begin a substantive appeal.

(2) However, the respondent must—

(a) file a notice of cross-appeal within 21 days after the day the notice of appeal is served on the respondent, or within any further time allowed by the Court of Appeal; and

(b) serve the notice on—

(i) the appellant (or each appellant); and

(ii) any other party to the proceeding in which the judgment appealed from was given, who is affected by the judgment that the respondent seeks.

(3) The notice of cross-appeal must state—

(a) what part of the judgment the respondent cross-appeals from or contends should be varied; and

(b) briefly, but specifically, the grounds of the cross-appeal; and

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(c) either—

(i) the judgment that the respondent seeks instead of the judgment cross-appealed; or

(ii) the variation of the judgment that the respondent seeks.

(4) If a respondent proposes to contend that a matter of fact or law has been incorrectly decided against the respondent but does not seek a discharge or variation of a part of the judgment, the respondent need not file a notice of cross-appeal.

(5) However, the respondent must—

(a) file and serve notice of the respondent's contention on the appellant (or each appellant) before the date set for settling the appeal papers; and

(b) give notice to the appellant of the record of evidence or documents before the court relevant to the respondent's contention, for inclusion in the appellant's draft index to be prepared in accordance with rule 35 (1) (Draft index of appeal papers); and

(c) when the appeal papers are being settled, ask the Court of Appeal to include the record of evidence or documents in the appeal papers.

(6) The master or registrar may exercise the jurisdiction of the Court of Appeal for subrule (5) (c).

31 Application of certain rules to cross-appeals

(1) The rules and forms mentioned in subrule (2) apply to a cross-appeal as if—

(a) a reference to an appeal were a reference to a cross-appeal; and

(b) a reference to the appellant were a reference to the respondent filing the cross-appeal; and

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(c) a reference to the respondent were a reference to the appellant (or an appellant) on whom the cross-appeal is served; and

(d) any other necessary changes were made.

(2) The rules and forms applying to a cross-appeal are as follows:

- rule 25 (Competency of appeal)
- rule 26 (Failure to apply for appeal to be struck out as incompetent—costs)
- rule 27 (Discontinuance of appeal)
- rule 45 (Abandonment of ground of appeal)
- form 6.7 (Notice of motion for striking out appeal)
- form 6.8 (Notice of discontinuance).

32 Keeping exhibits

(1) This rule applies in relation to an appeal in the Court of Appeal from a judgment given in a proceeding in the court.

(2) If the clerk at the proceeding has the exhibits in the proceeding, the clerk must give the exhibits to the registrar.

(3) The registrar must keep the exhibits in the proceeding until 21 days after the day the appeal is disposed of.

(4) However, the register may lend an exhibit in accordance with order 39A (Exhibits, documents and things) rule 8 (Power to allow removal of documents and objects).

(5) In this rule:

clerk at a proceeding—see order 39A rule 2.

33 Date for settlement of appeal papers

The registrar must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

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34 Filing of things before settlement of appeal papers

(1) Before the date set for settling the appeal papers, the appellant must get and file—

(a) the reasons for judgment or the summing up of the judge or master who gave the judgment appealed from, certified by the judge's or master's associate; and

(b) a copy of the transcript of the proceeding in which the judgment was given, corrected in accordance with subrules (2) and (3).

(2) If the appellant gets a copy of the transcript of the proceeding, the appellant must—

(a) correct any errors in it; and

(b) give a list of the corrections to the respondent; and

(c) give the respondent a reasonable time to examine the transcript and corrections.

(3) If the parties disagree on the accuracy of any part of the transcript, or cannot agree on a correction, the disagreement must be submitted to the judge or master who gave the judgment appealed from, or to the registrar, for directions.

35 Draft index of appeal papers

(1) Before the date set for settling the appeal papers, an appellant must prepare and file—

(a) a draft index of the appeal papers; and

(b) a separate, chronological list of all documents received in evidence in the proceeding in which the judgment appealed from was given, including documents exhibited or attached to affidavits.

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(2) The appellant must serve the draft index, and list, on the respondent a reasonable time before the date set for settling the appeal papers.

36 Content of appeal papers

(1) The title page of the appeal papers must give the title of the proceeding and the names of each party (and the party's solicitor (if any)) and their addresses for service.

(2) Following the title page of the appeal papers, there must be—

(a) an index of the documents making up the appeal papers that shows the date and page number of each document; and

(b) a chronological list of all documents received in evidence in the proceeding in which the judgment appealed from was given, including documents exhibited or attached to affidavits, showing the date and page number of each document.

(3) The appeal papers must be paginated, and the documents arranged, in the following order:

(a) notice of appeal or, if amended, the amended notice of appeal;

(b) any notice of cross-appeal or notice of contention;

(c) if leave to appeal has been given—the judgment giving leave;

(d) the formal order of the court from which the appeal is brought;

(e) reasons for the judgment of the court;

(f) process and pleading;

(g) evidence, as follows:

(i) the transcript of any oral evidence;

(ii) affidavit evidence in which, after each affidavit, documents exhibited or attached to the affidavit are arranged in the order in which they have been numbered in the affidavit;

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(iii) other exhibits that are documents (other than affidavits and documents exhibited or attached to each affidavit) arranged in the order in which they have been numbered as exhibits in the court, and any list of the exhibits appearing in the transcript;

(iv) a list of exhibits that are not documents.

(h) testimony taken on commission or before an examiner and received in evidence in the proceeding in which the judgment appealed from was given;

(i) if the judgment appealed from was given in an appeal from a tribunal, as follows:

(i) reasons for decisions of the tribunal;

(ii) the formal decision of the tribunal;

(iii) any notice of appeal to the court;

(j) the certificate under rule 39 (1) (Filing and serving appeal papers).

(4) Interrogatories and answers and affidavits of documents must not be copied except so far as they were put in evidence in the proceeding in which the judgment appealed from was given.

(5) If the text of an oral judgment or summing up of a judge or master is included in the appeal papers, the text must first be submitted to the judge or master for correction and must, when included in the appeal papers, be accompanied by a certificate from the judge's or master's associate that this has been done.

(6) The requirements of this rule are subject to any direction given by the Court of Appeal, master or registrar.

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(7) In subrule (3) (i):

appeal includes an application for—

(a) an order nisi to review a decision of the Magistrates Court; or

(b) remedy or relief by way of prerogative writ.

tribunal—see order 84 rule 1.

37 Settlement of appeal papers

(1) When settling the appeal papers, the Court of Appeal may give directions about the conduct of the appeal that the court considers appropriate.

(2) Without limiting subrule (1), the Court of Appeal may do the following:

(a) work out what documents and matters were before the judge or master who gave the judgment appealed from;

(b) decide what documents and matters are to be included in the appeal papers, and the order of inclusion;

(c) settle the index in accordance with rule 36 (Content of appeal papers);

(d) decide the number of copies of the appeal papers required and when they should be served;

(e) direct the joinder of parties;

(f) get an estimate of the length of the hearing from the parties;

(g) direct the place, date and kind of hearing.

(3) The master or registrar may exercise the jurisdiction of the Court of Appeal for this rule.

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38 Presentation of appeal papers

(1) The appeal papers need not be printed or in bound form, but must be clear, legible and securely fastened.

(2) The registrar must be satisfied about the presentation of the appeal papers.

(3) The requirements of this rule are subject to any direction given by the Court of Appeal, master or registrar.

39 Filing and serving appeal papers

(1) An appellant must file the appeal papers with a certificate by the parties or their solicitors that the papers have been examined and are correct.

(2) The certificate must be in accordance with form 6.9.

(3) The appellant must file the number of copies of the appeal papers, and serve them, as decided under rule 37 (2) (d) (Settlement of appeal papers).

40 Setting down appeal for hearing

(1) This rule applies if the Court of Appeal, the master or registrar does not set down a date for hearing when the appeal papers are settled under rule 37 (Settlement of appeal papers).

(2) The registrar may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.

41 Power to change appeal hearing date

The Court of Appeal may, at any time, order that an appeal be heard on a date other than that set under rule 37 (Settlement of appeal papers) or rule 40 (Setting down appeal for hearing).

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42 Written summary and list for appeal hearing

(1) A party to an appeal that has been set down for hearing must prepare a written summary of arguments in accordance with rule 43 (Summaries of arguments) and a list of authorities, legislation and texts in accordance with rule 44 (List of authorities, legislation and texts), unless the Court of Appeal otherwise orders.

(2) At least 5 days before the day set down for the hearing of the appeal, the appellant must lodge for filing 5 copies of the appellant's summary and list, and serve a copy of each on each other party to the appeal.

(3) At least 2 days before the day set down for the hearing of the appeal, the respondent must lodge for filing 5 copies of the respondent's summary and list, and serve a copy of each on each other party to the appeal.

(4) At least 1 day before the day set down for the hearing of the appeal, the appellant may lodge for filing 5 copies of a written summary of arguments in reply, and serve a copy on each other party to the appeal.

43 Summaries of arguments

(1) A party's summary of arguments must state as briefly as possible—

(a) the issues in the appeal; and

(b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and

(c) if there is to be a challenge to any of the court's findings of fact—

(i) the claimed error (including any failure to make a finding of fact); and

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(ii) the reasons why the party considers the finding was an error; and

(iii) the finding that the party considers should have been made; and

(d) for an appellant—a chronology of the facts; and

(e) if a respondent disagrees with an appellant's chronology of facts—the respondent's chronology of facts that highlights where the respondent's chronology differs from the appellant's chronology.

(2) If the summary relies on a matter in another document, the summary must—

(a) for a document mentioned in rule 44 (3) (a) to (c) (List of authorities, legislation and texts)—identify the document as mentioned in the rule; and

(b) for other documents—if relevant, identify the page of the document relied on.

44 List of authorities, legislation and texts

(1) A party's list of authorities, legislation and texts must list any authority, legislation or text that the party expects will be quoted from, or that may be referred to, by the party.

(2) A party's list of authorities, legislation and texts may be divided into 2 parts (parts A and B) and list any authority, legislation or text—

(a) in part A—that the party expects will be quoted from by the party; and

(b) in part B—that may be referred to by the party.

(3) An authority, legislation or text must be identified as follows:

(a) for an authority—by case, citation and relevant part;

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(b) for legislation—by provision;

(c) for a text—by edition and page number.

45 Abandonment of ground of appeal

(1) This rule applies if an appellant wants to abandon a ground of appeal.

(2) The appellant must give notice to each other party that the ground of appeal will not be relied on.

(3) The notice must be given—

(a) as soon as possible; but

(b) if the appeal is not to be decided by written cases under division 86.8 (Written cases)—within a reasonable time before the day set down for the hearing.

(4) The Court of Appeal may make any order the court considers just in relation to costs incurred because of a failure by the appellant to comply with this rule.

46 Further evidence on appeal

(1) This rule applies—

(a) to an application to the Court of Appeal to receive evidence on a hearing of an appeal in addition to evidence in the proceeding appealed from; and

(b) unless the Court of Appeal otherwise directs.

(2) The application must be made by motion, in accordance with order 54 (Motions), on the hearing of the appeal.

(3) Not later than 21 days before the hearing of the appeal, the applicant must file 1 or more affidavits stating—

(a) the grounds of the application; and

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(b) any evidence necessary to establish the grounds of the application; and

(c) any evidence that the applicant wants the Court of Appeal to receive.

(4) The evidence of any other party to the appeal must be given by affidavit filed not later than 7 days before the day set for the start of the hearing of the appeal.

(5) A party to the appeal must, within the time for the party to file an affidavit under this rule—

(a) file the number of copies of the affidavit that the registrar directs; and

(b) serve 3 copies of the affidavit on each other party to the appeal.

47 Absence of party

(1) If a party is not present when an appeal is called on for hearing, the Court of Appeal may—

(a) order that the hearing not proceed unless the appeal is again set down for hearing or the other steps directed by the Court of Appeal are taken; or

(b) adjourn the hearing; or

(c) if the absent party is an appellant or cross-appellant—dismiss the appeal or cross-appeal; or

(d) proceed with the hearing, either generally or in relation to the judgment sought in the appeal; or

(e) for an appeal against conviction or sentence, if the party is the appellant who is on bail and is not legally represented—make another order the court considers appropriate or issue a warrant for the appellant's arrest.

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(2) If the hearing proceeds in the absence of the party and an order is made, the Court of Appeal may, on motion by notice by the party in accordance with order 54 (Motions)—

(a) set aside or vary the order; and

(b) give directions for the further conduct of the appeal.

Division 86.5 Certain convictions and sentences

Subdivision 86.5.1 Preliminary

48 Definitions for div 86.5

In this division:

appeal means an appeal against conviction or sentence.

conviction means, if a person has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment—

(a) a conviction recorded by the court for the person; or

(b) a finding of guilt recorded by the court for the person.

out of time, for leave to appeal against conviction or sentence, means more than 21 days after the day the conviction was recorded or sentence was imposed.

sentence means an order, decision or other sentence (however described) imposed by the court on a person—

(a) after the person has been convicted or found guilty; or

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(b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

Examples of sentences

1 a reparation order under the *Crimes Act 1900*, section 350 (Reparation orders)

2 a person released on conditions under the *Crimes Act 1900*, section 403 (Conditional release of offenders)

3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

Subdivision 86.5.2 Leave to appeal out of time against certain convictions and sentences—convicted person

49 Application of subdiv 86.5.2

This subdivision applies to an application by a convicted person for leave to appeal out of time against conviction or sentence.

50 Application for leave to appeal out of time—conviction or sentence

The application must be made to the registrar in the first instance.

51 Requirements for application for leave to appeal out of time—conviction or sentence

(1) The application must be in accordance with form 6.10.

(2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases) the application must state that the applicant wants to do so.

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(3) The application must be accompanied by—

(a) an affidavit showing—

(i) the nature of the case; and

(ii) the questions involved; and

(iii) the reasons why leave should be given; and

(b) the draft notice of appeal.

52 Service of application for leave to appeal out of time—conviction or sentence

The application and accompanying affidavit and draft notice of appeal must be served on the director of public prosecutions within 5 days after the day the application is filed.

Note Rule 60 (Service of documents when unrepresented party in custody) deals with the service of documents if a party is in custody and not represented by a lawyer.

53 Response by director of public prosecutions to application for leave to appeal out of time—conviction or sentence

(1) The director of public prosecutions must lodge for filing a response to the application in accordance with form 6.11.

(2) The response must state—

(a) whether the director opposes, consents to, or does not oppose, the application; and

(b) whether the director proposes to file any affidavits in response to the application; and

(c) an address for service.

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(3) The director of public prosecutions must lodge the response for filing, and serve a stamped copy of it on the applicant, within 7 days after the day the application is served on the director.

54 Time for filing and service of affidavits by director of public prosecutions

If the director of public prosecutions wants to present evidence, the director must file and serve the director's affidavits within 14 days after the day the application is served on the director.

55 Registrar's decision to give or refuse leave to appeal out of time—conviction or sentence

(1) The registrar must tell the applicant, and the director of public prosecutions, of the registrar's decision to give or refuse leave to appeal out of time.

(2) If the registrar gives leave, the director of public prosecutions may move by motion on notice to the Court of Appeal in accordance with order 54 (Motions) for an order that the application be refused.

(3) If the registrar refuses leave—

(a) the registrar must give the applicant a copy of form 6.12 when telling the applicant about the refusal; and

(b) the applicant may apply to the Court of Appeal by notice of motion in accordance with subrule (4) to have the application decided by the Court of Appeal.

(4) The notice of motion must be—

(a) in accordance with form 6.12 and order 54; and

(b) filed within 14 days after the day the applicant is told about the registrar's decision.

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Subdivision 86.5.3 Leave to appeal out of time against sentence—director of public prosecutions

56 Application of div 86.3 to certain appeals by DPP

Division 86.3 (Leave to appeal out of time from final judgments of court) applies to an application for leave to appeal out of time against sentence by the director of public prosecutions as if—

(a) a reference to a final judgment were a reference to a sentence; and

(b) any other necessary changes were made.

Subdivision 86.5.4 Additional rules for appeals against certain convictions and sentences

57 Application may be treated as appeal

If an application for leave to appeal out of time against conviction or sentence is made by a convicted person to the Court of Appeal, the court may treat the hearing of the application as the hearing of the appeal.

58 Grounds of appeal

Unless the Court of Appeal otherwise orders, the following may not be allowed as a ground for appeal unless objection was taken at the trial by the party appealing:

(a) a direction given by the trial judge;

(b) the trial judge's failure to give a direction;

(c) the trial judge's decision about the admission or rejection of evidence.

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59 Trial judge's report

(1) During the hearing of an appeal against conviction or sentence, the Court of Appeal may ask the trial judge to give the court (through the registrar) a report on any aspect of the case.

(2) The report is not available for inspection by the parties or anyone else unless the Court of Appeal otherwise directs.

Subdivision 86.5.5 Certain convictions and sentences—miscellaneous

60 Service of documents when unrepresented party in custody

(1) This rule applies if a party to an application or appeal—

(a) is in custody; and

(b) is not represented by a lawyer.

(2) A document required or permitted to be served by the party for the application or appeal may be served on the registrar for service by the registrar on another party.

(3) A document required or permitted to be served on the party for the application or appeal may be served by leaving the document with the person in charge of the place where the party is in custody.

(4) If a document mentioned in subrule (3) is served by or on behalf of the registrar, the document may be served—

(a) by sending a copy by prepaid post to the place where the party is in custody, addressed to the person in charge of the place; or

(b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or

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(c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or

(d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

(5) In this rule—

application means—

(a) an application for further time to apply for leave to appeal; or

(b) an application for leave to appeal; or

(c) an application for further time to appeal; or

(d) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

61 Convicted person is appellant—written case and presence

(1) This rule applies to a convicted person who is the appellant.

(2) The convicted person may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

Note The convicted person must state that he or she wants to present his or her case in writing. See the following:

- rule 4 (2) (Requirements for notice of motion for leave to appeal—interlocutory judgment)
- rule 19 (4) (Requirements for notice of appeal)
- rule 51 (2) (Requirements for application for leave to appeal out of time—conviction or sentence).

(3) If the convicted person presents his or her case in writing, the person need not appear or be present at the hearing of the application or appeal unless the Court of Appeal otherwise orders.

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(4) If the convicted person is in custody and does not present his or her case in writing, the person is entitled to be present at the hearing of the application or appeal in the way that the Court of Appeal orders.

(5) The Court of Appeal may order that the convicted person be present—

(a) in person; or

(b) by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

(6) In this rule:

appellant means—

(a) a person applying for further time to apply for leave to appeal; or

(b) an applicant for leave to appeal; or

(c) a person appealing against conviction or sentence; or

(d) an applicant for further time to appeal; or

(e) an applicant for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

application—see rule 60 (Service of documents when unrepresented party in custody).

62 Order for production of prisoner

(1) The Court of Appeal may make the following orders in relation to the hearing of an application or appeal:

(a) an order requiring the production of a person who is in custody;

(b) an order about the continuing custody of a person who is in custody.

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(2) The Court of Appeal may order that the person in custody be produced—

(a) in person; or

(b) by audiovisual link or audio link in accordance with the *Evidence (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

(3) The registrar may exercise the jurisdiction of the Court of Appeal for subrule (1) (a) or (2).

(4) An order under this rule may be made on the application of a party or on the Court of Appeal's initiative.

(5) An order under this rule may, but need not, be in accordance with form 6.13.

(6) In this rule:

application—see rule 60 (Service of documents when unrepresented party in custody).

63 Fine paid to be kept pending appeal

(1) This rule applies if a convicted person is sentenced to pay a fine.

(2) If the convicted person appeals against the conviction or sentence, an amount paid by the person as the fine, or part of the fine, must be kept by the person authorised to receive the fine until the appeal is finally decided.

(3) If the convicted person has paid an amount mentioned in subrule (2), and the person's appeal is upheld, the person is entitled to a refund, unless the Court of Appeal otherwise orders.

(4) In this rule:

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fine includes an amount for costs or any other amount ordered to be paid by a convicted person in relation to an offence.

Examples

1 a financial penalty imposed by a court for an offence

2 a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence

3 costs payable to the Territory under a court order in a proceeding for an offence

4 a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*

5 an amount payable under an order for reparation under the *Crimes Act 1900*, section 350 (Reparation orders)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

64 Solicitor's instructions to act for convicted person ended

(1) This rule applies to a solicitor if the solicitor's instructions to act for a convicted person who is a party to an application or appeal are ended before—

(a) for an application—the application is decided; or

(b) for an appeal—judgment is given in the appeal.

(2) The solicitor must file and serve on each party to the application or appeal (including the convicted person) written notice that the solicitor is no longer acting for the convicted person.

(3) The solicitor must file and serve the notice as soon as practicable after, but within 14 days after the day, the solicitor's instructions are ended.

(4) In this rule:

application—see rule 60 (Service of documents when unrepresented party in custody).

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65 Solicitor wants to withdraw from acting for convicted person

(1) This rule applies to a solicitor if the solicitor no longer wants to act for a convicted person who is a party to an application or appeal.

(2) The solicitor must—

(a) give the registrar written notice that the solicitor intends to ask the Court of Appeal for leave to withdraw; and

(b) serve a copy of the notice on each party other than the convicted person; and

(c) serve a copy of the notice on the convicted person personally, or by registered letter addressed to the person's last-known address.

(3) The copies of the notice must be served as soon as possible after the solicitor gives the notice to the registrar.

(4) The solicitor may withdraw from acting for the convicted person only with the Court of Appeal's leave.

(5) If the Court of Appeal gives the solicitor leave to withdraw, the solicitor must—

(a) lodge a notice in accordance with form 6.14 (Notice of solicitor ceasing to act—Court of Appeal) for filing; and

(b) serve a copy of the notice on the convicted person personally, or by registered letter addressed to the person's last-known address; and

(c) serve a copy of the notice on the director of public prosecutions.

(6) In this rule:

application—see rule 60 (Service of documents when unrepresented party in custody).

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66 Notification of result etc

(1) For an application or appeal, the registrar must give written notice—

(a) to each relevant person about the final determination of the application or appeal; and

(b) to each party to the application or appeal, or anyone else the registrar considers appropriate, about an order or direction made in relation to the application or appeal.

(2) However, the registrar need only give notice to a person mentioned in subrule (1) if the person was not present when the application or appeal was decided, or the order or direction made.

(3) In this rule:

application—see rule 60 (Service of documents when unrepresented party in custody).

present means—

(a) present in person; or

(b) present by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

relevant person means—

(a) a party to the application or appeal; or

(b) the judge who gave the judgment appealed from; or

(c) anyone else the registrar considers appropriate.

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Division 86.6 Cases stated or questions reserved

67 Form and contents

(1) A case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal must be in the form of a special case.

(2) The special case must—

(a) be in accordance with form 6.15; and

(b) briefly state the facts, and have attached all documents, necessary to allow the Court of Appeal to decide the questions raised by the special case; and

(c) state the questions to be decided.

(3) If the special case is to be presented in writing under division 86.8 (Written cases), the special case must state that.

68 Preparation and settling of special case

Unless the court stating the case or reserving the question otherwise directs, the special case must be—

(a) prepared in draft by the party having carriage of the proceeding after consultation with the other parties concerned, and include an address for service for each party; and

(b) settled by the court stating the case or reserving the question; and

(c) given to the registrar.

69 Setting down special case for hearing

On receipt of a special case, if the registrar is satisfied that all parties concerned have been served with the special case, the registrar must set a date for hearing by the Court of Appeal.

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70 Court of Appeal can draw inferences for special case

For a special case, the Court of Appeal may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at a trial.

Division 86.7 Reference appeals following acquittals on indictment

71 Definitions for div 86.7

In this division:

applicant—see the Act, section 37S (2) (Reference appeal following acquittal on indictment).

Note The ***applicant*** for a reference appeal is the Attorney-General or director of public prosecutions.

interested party—see the Act, section 37S (4).

Note An ***interested party***, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

reference appeal means an appeal under the Act, section 37S.

72 Application for reference appeal

(1) An application for a reference appeal must—

(a) be in accordance with form 6.16; and

(b) state the grounds of the application; and

(c) state the question of law to be decided.

(2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases), the application must state that the applicant wants to do so.

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73 Service of application or amended application for reference appeal

The application or an amended application (if any) must be served on each interested party within 7 days after the day the application is filed.

74 Appearance by interested party in reference appeal

(1) An interested party may enter an appearance in accordance with order 13 (Appearance) as if—

(a) the application were an originating application; and

(b) the party were a defendant; and

(c) the applicant were the plaintiff.

(2) If an interested party is not represented in the appeal, counsel instructed by the applicant under the Act, section 37S (5) appears for the party and must enter an appearance as mentioned in subrule (1).

75 Discontinuance of reference appeal

(1) The applicant may file and serve on each interested party a notice of discontinuance of the reference appeal or part of the reference appeal—

(a) at any time before the hearing of the reference appeal, without the leave of the Court of Appeal; or

(b) at the hearing, or after the hearing and before judgment, with the leave of the Court of Appeal.

(2) However, if a reference appeal is to be decided on written cases without oral argument, the applicant may file and serve a notice of discontinuance of the appeal or part of the appeal—

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(a) at any time before (and including) the last day that the applicant may file written submissions under rule 83 (3), (Filing and serving written case—appeal), without the leave of the Court of Appeal; or

(b) after the period mentioned in paragraph (a), with the leave of the Court of Appeal.

(3) If the applicant files and serves a notice of discontinuance of a reference appeal or part of a reference appeal, the appeal or part of the appeal is abandoned by the applicant.

76 Application of certain rules to reference appeals

(1) The rules and forms mentioned in subrule (2) apply to a reference appeal as if—

(a) a reference to an appeal were a reference to the reference appeal; and

(b) a reference to the appellant were a reference to the applicant; and

(c) a reference to the respondent were a reference to each interested party; and

(d) a reference to a notice of appeal were a reference to the application for a reference appeal; and

(e) any other necessary changes were made.

(2) The rules and forms applying to reference appeals are as follows:

- rule 29 (Amending notice of appeal)
- rule 32 (Keeping exhibits)
- rule 33 (Date for settlement of appeal papers)
- rule 34 (Filing of things before settlement of appeal papers)
- rule 35 (Draft index of appeal papers)
- rule 36 (Content of appeal papers)

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- rule 37 (Settlement of appeal papers)
- rule 38 (Presentation of appeal papers)
- rule 39 (Filing and serving appeal papers)
- rule 40 (Setting down appeal for hearing)
- rule 41 (Power to change appeal hearing date)
- rule 42 (Written summary and list for appeal hearing)
- rule 43 (Summaries of arguments) other than subrule (1) (c)
- rule 44 (List of authorities, legislation and texts)
- rule 45 (Abandonment of ground of appeal)
- rule 47 (Absence of party)
- form 6.8 (Notice of discontinuance)
- form 6.9 (Certificate about appeal papers).

Division 86.8 Written cases

77 Definitions for div 86.8

In this division:

appeal means an appeal from a judgment of the court, and includes a reference appeal.

appellant means—

(a) a person applying for further time to apply for leave to appeal; or

(b) an applicant (including a convicted person under division 86.5.2 (Leave to appeal out of time against certain convictions and sentences—convicted person)) for leave to appeal; or

(c) a person appealing from a judgment of the court; or

(d) an applicant for further time to appeal; or

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(e) an applicant for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal); or

(f) an applicant for a reference appeal.

applicant, for a reference appeal—see the Act, section 37S (2) (Reference appeal following acquittal on indictment).

Note The ***applicant*** for a reference appeal is the Attorney-General or director of public prosecutions.

application means—

(a) an application for further time to apply for leave to appeal; or

(b) an application for leave to appeal (including a convicted person's application); or

Note An application under subdiv 86.5.3 (Leave to appeal out of time against sentence—director of public prosecutions) is taken to be an application under r 12 (see r 56).

(c) an application for further time to appeal; or

(d) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

convicted person's application means an application by a convicted person under subdivision 86.5.2 (Leave to appeal out of time against certain convictions and sentences—convicted person).

interested party, for a reference appeal—see the Act, section 37S (4).

Note An ***interested party***, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

judgment includes—

(a) a decree, order or direction of the court; or

(b) a conviction recorded by the court; or

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(c) a sentence imposed by the court.

reference appeal means an appeal under the Act, section 37S.

respondent, for a reference appeal, means an interested party.

78 Application of div 86.8 to case stated etc

This division applies, with any necessary changes, to a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal.

79 When are written cases used?

(1) If all the parties to an appeal or application indicate, in accordance with this order, that they want to present their cases in writing, the appeal or application may be dealt with by written cases.

(2) If any of the parties to an appeal or application (other than the director of public prosecutions as respondent to a convicted person's application) does not indicate, in accordance with this order, that the party wants to present his or her case in writing, the appeal or application must be dealt with by oral hearing.

Note Rule 61 (2) (Convicted person is appellant—written case and presence) provides that a convicted person who is the appellant may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

(3) This rule does not prevent the Court of Appeal requiring the parties or a party to present oral argument.

80 Appellant wants written case

An appellant may indicate, in accordance with this order, that the appellant wants to present his or her case in writing.

Note See the following provisions:

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- rule 4 (2) (Requirements for notice of motion for leave to appeal—interlocutory judgment)
- rule 12 (2) (Requirements for notice of motion for leave to appeal out of time—final judgment)
- rule 19 (4) (Requirements for notice of appeal)
- rule 51 (2) (Requirements for application for leave to appeal out of time—conviction or sentence)
- rule 67 (3) (Form and contents)
- rule 72 (2) (Application for reference appeal).

81 Respondent wants written case

(1) This rule applies if—

(a) an appellant indicates, in accordance with this order, that the appellant wants to present the appellant's case in writing; and

(b) a respondent also wants to present his or her case in writing.

(2) The respondent must file a notice stating that the respondent wants to present his or her case in writing.

(3) The notice must be filed, and served on each other party, within 7 days after the day the appellant's application or notice of appeal is served on the respondent.

(4) If all the parties to an appeal or application indicate, in accordance with this order, that they want to present their cases in writing, the hearing date for the appeal or application is vacated on the filing of the respondent's notice under subrule (2) (or, if there are 2 or more respondents, on the filing of the last notice under subrule (2)).

82 Filing and serving written case—applications

(1) This rule applies if an application is to be dealt with by written case.

(2) The appellant (or each appellant) to an application must—

(a) if there is only 1 respondent—file 4 copies, and serve 3 copies on the respondent, of the appellant's written case within

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28 days after the day the notice mentioned in rule 81 (2) is served on the appellant; or

(b) if there are 2 or more respondents and the notice mentioned in rule 81 (2) was served by them on different days—file 4 copies, and serve 3 copies on each respondent, of the appellant's written case within 28 days after the earliest of those days.

(3) The respondent (or each respondent) to an application must file 4 copies, and serve 3 copies on each other party, of the respondent's written case within 28 days after the day the appellant's written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants' written cases are served on the respondent).

(4) An appellant to an application may file 4 copies, and serve 3 copies on the respondent (or each respondent), of written submissions in reply to a respondent's written case within 14 days after the day the written case is served on the appellant.

83 Filing and serving written case—appeal

(1) The appellant (or each appellant) to an appeal must file 4 copies, and serve 3 copies on the respondent (or each respondent), of the appellant's written case within 28 days after the day the appeal papers are filed.

(2) The respondent (or each respondent) to an appeal must file 4 copies, and serve 3 copies on each other party, of the respondent's written case within 35 days after the day the appellant's written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants' written cases are served on the respondent).

(3) An appellant to an appeal may file 4 copies, and serve 3 copies on the respondent (or each respondent), of written submissions in reply

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to a respondent's written case within 14 days after the day the written case is served on the appellant.

84 Form of written case

(1) The written case of a party must—

(a) have a title that includes the name of the proceeding; and

(b) identify the party; and

(c) have consecutively numbered paragraphs; and

(d) state the issues; and

(e) state the argument to be made on each issue, mentioning the steps in the argument and any authority, legislation or finding of fact to be relied on for each step; and

(f) if there is to be a challenge to any of the court's findings of fact, state—

(i) the claimed error (including any failure to make a finding of fact); and

(ii) the reasons why the party considers the finding was an error; and

(iii) the finding that the party considers should have been made; and

(g) include a chronology of the facts; and

(h) include a list of authorities, legislation and texts relied on by the party that identifies them in accordance with rule 44 (3) (List of authorities, legislation and texts).

(2) If the written case relies on a matter in another document, the following applies:

(a) for a document mentioned in subrule (1) (h)—the document must be identified as mentioned in that subrule;

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(b) for a transcript—relevant parts must be identified by page and line and attached to the case;

(c) for other documents—if relevant, the page of the document relied on must be identified.

(3) A written case need not be printed or in bound form, but must be clear, legible and securely fastened.

85 Inspection of written cases

A case cannot be inspected at the registry unless all parties have filed their cases.

Division 86.9 Miscellaneous

86 Service for o 86 generally

(1) This rule applies if service of a document is required under this order.

(2) If the document is an appeal document, the document must be served—

(a) by serving a signed and sealed, or signed and stamped, copy of the document personally on the party to be served; or

(b) by delivering a signed and sealed, or signed and stamped, copy of the document to the party's address for service in the proceeding in which the judgment appealed from was given.

(3) If the document is not an appeal document, the document must be served—

(a) as mentioned in subrule (2) (a); or

(b) in accordance with order 10 (Service of documents in Australia) rule 4 (Non-personal service of documents).

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(4) This rule is subject to rule 60 (Service of documents when unrepresented party in custody).

(5) In this rule:

appeal document means—

(a) a notice of appeal; or

(b) an application for further time to apply for leave to appeal; or

(c) an application for leave to appeal; or

(d) an application for further time to appeal; or

(e) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

87 Power to amend proceedings in court below

The Court of Appeal may amend the proceeding in which the judgment appealed from was given.

88 Expediting appeals

(1) The Court of Appeal may, at any time, make any order the Court of Appeal considers just to expedite an appeal.

(2) A party wanting leave to appeal may move by motion on notice to the Court of Appeal in accordance with order 54 (Motions) for an order that the application for leave to appeal be heard with, or immediately before, the hearing of the appeal, and for any consequential orders.

89 Directions by Court of Appeal and registrar about appeal etc

(1) At any time after the filing of a notice of appeal or application for leave to appeal, the Court of Appeal or registrar may give directions about any matter relevant to the appeal or application.

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(2) A direction under this rule may be made at the request of a party or on the initiative of the Court of Appeal.

(3) A request by a party must be made by motion on notice to the Court of Appeal in accordance with order 54 (Motions).

90 Want of prosecution of appeal

(1) In this rule:

appeal includes—

(a) an application for further time to apply for leave to appeal; or

(b) an application for leave to appeal; or

(c) an application for further time to appeal; or

(d) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

appellant includes—

(a) a person applying for further time to apply for leave to appeal; or

(b) an applicant for leave to appeal; or

(c) an applicant for further time to appeal; or

(d) an applicant for leave under rule 22 (2).

(2) If an appellant has not done anything required to be done under these rules, or otherwise has not prosecuted the appellant's appeal with appropriate effort, the Court of Appeal may—

(a) order that the appeal be dismissed for want of prosecution; or

(b) on its own initiative, set a time for the doing of the thing and—

(i) at the same time order that, if the appellant does not do the thing within the time, the appeal will be dismissed for want of prosecution; or

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(ii) if the appellant does not do the thing within the time—order that the appeal be dismissed for want of prosecution; or

(c) make any other order the Court of Appeal considers just.

(3) A respondent may apply to the Court of Appeal by motion on notice in accordance with order 54 (Motions) to require the appellant to show cause why the appeal should not be dismissed for want of prosecution.

(4) If the respondent makes an application, the respondent must serve the application on each other party to the appeal.

(5) On the hearing of the motion, the Court of Appeal may make an order mentioned in subrule (2).

(6) An order mentioned in subrule (2) (b) may be varied at any time before the appeal is dismissed for want of prosecution and, in special circumstances, may be varied or revoked after that time.

91 Judgments—accidental slips or omissions

The Court of Appeal may, on application by a party or on its own initiative, correct a clerical mistake in a judgment or an error in a judgment arising from an accidental slip or omission.

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

Order 87

1 Meaning of *Review Act* in o 87

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 1.80

(1) A review by the court of a decision to which the Review Act applies may be instituted by filing an application in accordance, with form 1.80.

(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 application not later than 5 days after filing.

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3A Other parties—decision made by tribunal

(1) A person must be joined as a respondent to an application for an order of review of a decision if the decision was made by a tribunal and the person—

(a) was a party to the proceedings before the tribunal; and

(b) would be affected by the order sought by the applicant or is interested in maintaining the decision.

(2) In this rule:

tribunal means an entity authorised to make a decision to which the Review Act applies.

4 Documents to be filed

(1) When filing an application for an order of review of a decision to which the Review Act applies, or as soon afterwards as is practicable, the applicant must file a copy of the following documents (other than a document that is not in the possession of the applicant):

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

(b) a statement under 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.

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(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

If a respondent to an application objects to the competency of the application, the respondent may, not later than 14 days after the day the application is served on the respondent—

(a) file a notice of objection to competency in accordance with form 1.81; and

(b) serve a copy of the notice on each other party to the proceeding.

6 Directions

In addition to the powers of the court specified in order 33, the court, a judge, the master or the registrar may give directions—

(a) that the applicant serve a copy of the application on the Attorney-General; and

(b) that the applicant give notice of the application to such persons or classes of persons in such manner as the court directs; and

(c) if a notice of objection to the competency of the application has been filed, that the objection be heard and determined before the hearing of the application to which the objection relates.

7 Staying or dismissing applications

(1) If, in an application for an order of review, it appears to the court that in relation to the application generally or in relation to any claims for relief in the application—

(a) no reasonable basis for the application is disclosed; or

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(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 Arbitration and referees

Order 88 Commercial arbitration

Division 88.1 Awards

1 Definitions for o 88

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—

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(d) if, by agreement of the parties to the arbitration agreement, the award is made without inclusion of a statement of reasons—the day the statement of reasons is given to the appellant; or

(e) in any other case—the day notice of the award is given to the appellant;

or within such extended time as the court allows.

(3) An appeal brought under 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 form 1.82 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.

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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.

(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 form 1.83.

(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.

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(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.

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.

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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.

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

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such longer period as the court orders) apply to have the order set aside; and

(b) be served on the person against whom it is sought to enforce the award.

(2) An order does not operate to enable an award to be enforced until—

(a) the expiration of the period referred to in subrule (1); and

(b) if the person against whom it is sought to enforce the award applies, within the period referred to in subrule (1), to have the order set aside—the determination of that application.

Division 88.2 Master

12 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

(iii) heard one immediately after another;

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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

(i) under section 46 (2) (Delay in prosecuting claims), to make an order terminating proceedings; and

(j) under section 47 (General power of court to make interlocutory orders), to make interlocutory orders; and

(k) under section 48 (1) (Extension of time), to extend the time appointed for doing an act or taking a proceeding; and

(l) 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

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(m) under section 53 (2) (Power to stay court proceedings), to grant leave to apply for a stay of proceedings; and

(n) under section 57 (Service of notices), direct the manner of service of a notice.

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Order 89 Court-appointed referees

1 Meaning of *question* in o 89

In this order:

question includes any question or issue of fact or law arising in any proceeding, whether raised by pleading, agreement of parties or otherwise.

2 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

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(ii) specified by the court; or

(iii) specified by a person nominated by the court to select a suitable referee.

3 Order referring may be varied or set aside

(1) The court may set aside or vary an order made under rule 2 (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 2 (1).

4 Conduct of proceedings under a reference

(1) A proceeding under a reference mentioned in rule 2 (1) (d) (Order referring) is, subject to this rule, to be conducted as if the reference were an arbitration agreement under the *Commercial Arbitration Act 1986*.

(2) An order under rule 2 (1) may include directions regarding the conduct of proceedings under the reference.

(3) Subject to rule 3—

(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

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(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.

5 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.

6 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 4 (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.

7 Proceedings on report of referee

(1) In relation to a report referred to in rule 2 (1) (c) (Order referring), the court may—

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(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.

8 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.

9 Court rooms etc

The court may give directions for the provision of—

(a) services of officers of the court; and

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(b) court rooms and other facilities;

for the purpose of a reference under rule 2 (Order referring).

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Schedule 2 Powers of court that may be exercised by master or registrar

(see o 61 r 3 and o 61A r 1)

Part 2.1 Corporations Act

column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
1		1.8	power to give directions
2		2.13	power to grant leave to creditor, contributory or officer to be heard in proceeding or be added as a defendant, etc
3		2.14	power to direct an inquiry in relation to a corporation's debts, etc
4	section 227		power to declare that conditions prescribed by division 3 of part 2E.1 have been satisfied
5	sections 247A and 247B		power to order inspection of books
6	section 252E		power to order meeting of members of registered scheme

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
7	section 266 (4)		power to extend period for lodgment of notice in relation to charge
8	section 267 (3)		power to give leave to enforce charge
9	section 274		power to rectify register of charges
10	section 283AE (2) (a)		power to appoint body corporate as trustee for debenture holders
11	section 283EC		power to give directions or determine any question on application of trustee for debenture holders
12	section 283HA		power to make an order for meeting of debenture holders to direct trustee
13	section 283HB (1)		power to make an order in relation to borrowing corporations
14	section 283HB (1) (c)		power to order security for debentures to be enforceable
15	section 411	3.3 3.4 3.5	power to make order in relation to administration of compromise or arrangement etc

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
16	section 418A		power to make declaration about validity of controller's appointment and in relation to control of property
17	section 419		power to make order relieving person who incurs liability in belief that properly appointed as a receiver
18	section 419A		power to relieve controller from liability
19	section 420B		power to authorise managing controller to dispose of property despite prior charge
20	section 420C		power to authorise receiver to carry on corporation's business during the winding-up
21	section 423	4.1	power to inquire into conduct of controller
22	section 424		power to give directions in relation to controller's functions and powers
23	section 425	9.1	power to fix amount of remuneration of a receiver

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
24	section 429 (3)		power to extend time for report
25	section 434B		power to remove redundant controller
26	section 438D		power to direct administrator to give a report
27	section 440B		power to grant leave to enforce a charge if an administrator has been appointed
28	section 440C		power to grant leave to take possession of property
29	section 440D		power to grant leave to begin or proceed with a proceeding in a court against a company that is in administration, or in relation to any of its property
30	section 440F		power to grant leave to begin or proceed with enforcement process in relation to the property of a company

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
31	section 440G (7)		power to authorise a court officer to take action or to make a payment that would be prohibited
32	section 440J		power to grant leave to take enforcement action under a guarantee
33	section 441D		power to limit powers of chargee in relation to charged property
34	section 441H		power to limit powers of receiver etc in relation to property used by company
35	section 442C		power to grant leave to administrator to dispose of encumbered property
36	section 443B (8)		power to grant relief of administrator from personal liability for rent
37	section 444B (2)		power to extend time for execution of deed of company arrangement
38	section 444C (2)		power to grant leave to act inconsistently with deed of company arrangement

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
39	section 444E (3)		power to grant leave to person bound by deed of company arrangement to begin or proceed with enforcement process in relation to property of company
40	section 444F		power to order secured creditor or owner or lessor of property not to take certain actions
41	section 445B		power to make an order cancelling a variation of a deed of company arrangement
42	section 445D		power to make order terminating a deed of company arrangement
43	section 445G		power to avoid or validate deed of company arrangement
44	section 447A		power to make order to bring administration to an end
45	section 447B		power to make order to protect interests of company's creditors during an administration

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
46	section 447C		power to declare whether administrator is validly appointed
47	section 447D		power to give directions to administrator
48	section 447E		power to make order about supervision of administrator of company or deed of company arrangement
49	section 449B		power to make order about removal and appointment of administrator
50	sections 449C and 449D		power to make order in relation to vacancy in office of administrator of company or in office of administrator of deed of company arrangement
51	section 449E	9.2	power to determine or review the remuneration of administrator
52	sections 459F, 459H, 459J, 459L, 459M and 459N		power to make order in relation to statutory demands

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
53	sections 459A, 459B (except in relation to applications under section 246AA), 459C, 459D, 459P, 459R, 459S, 459T, 461, 462, 464, 465B, 465C, 466, 467, 467A and 467B (except in relation to applications under section 246AA)	div 5	power to make orders in relation to winding-up applications
54	section 468		power in relation to validation of disposition of property
55	section 470 (2) (b)		power to direct service of copy of order on another person
56	section 471B		power to give leave to begin or proceed with proceeding or enforcement process
57	section 472	5.5 6.1	power to appoint official liquidator or provisional liquidator

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
58	section 473 (1)	7.1	power to remove liquidator
59	section 473 (2)	9.3	power to determine provisional liquidator's remuneration
60	sections 473 (3) and 473 (5)	9.4	power to determine or review liquidator's remuneration
61	section 473 (7)	7.2	power to fill vacancy in office of official liquidator
62	section 473 (8)		power to declare what may be done by liquidator, if more than 1 liquidator is appointed by the court
63	section 474 (2)		power to order that property vest in liquidator
64	section 475 (8)	7.3	power to grant leave for payment of costs and expenses incurred in preparing report under section 475
65	section 479		power to give directions in matters arising in winding-up
66	section 480	7.5	power to release liquidator and deregister company

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
67	section 481	7.7	power to order preparation of report on accounts of liquidator
68	section 483 (1)		power to require payment of money or transfer of property
69	section 483 (3)	7.8	power to order payment of a call
70	section 484	8.1 8.2 8.3	power to appoint special manager
71	section 486		power to make order for inspection of books by creditors or contributories
72	section 488 (2)	7.9	power to grant leave to distribute a surplus
73	section 490		power to grant leave to company to wind up voluntarily
74	section 495 (4)		power to make order in relation to conduct of meeting in course of members' voluntary winding-up

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
75	section 496 (3)		power to order that list of creditors be sent to creditors in members' voluntary winding-up
76	section 497 (3)		power to order that list of creditors be sent to creditors in creditors' voluntary winding-up
77	section 499		power to make order about liquidator if different liquidator chosen
78	section 500		power to make order about execution and civil proceedings
79	section 502	7.2	power to appoint liquidator
80	section 503		power to remove liquidator
81	section 504		power to review liquidator's remuneration in voluntary winding-up
82	section 507 (6)		power to sanction resolution to accept shares as consideration for sale of property of company
83	section 507 (9)		power to give directions necessary for arbitration

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
84	section 507 (10)		power to approve liquidator's exercise of powers in creditors' voluntary winding-up
85	section 509 (6)		power to order ASIC to deregister company on specified day
86	section 510 (3)		power to settle dispute about value of security or lien or amount of debt or set-off
87	section 511 (1) (a)		power to decide question in winding-up of company
88	section 511 (1) (b)		power to make order in relation to an application to the court to exercise powers which might be exercised if a company were being wound up by the court
89	section 532 (2)		power to grant leave for person to be appointed as liquidator
90	section 536	7.11 11.2 11.8	power to make order in relation to supervision of liquidators

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
91	section 542 (3) (a)		power to give directions in relation to destruction of books of company
92	section 543 (1)		power to make order about the investment of surplus funds
93	section 544 (2)		power to order account of funds in hands of liquidator, audit or payment of money by liquidator
94	section 545		power to direct liquidator to incur particular expense
95	section 551		power to give leave for member of committee of inspection to accept extra benefit etc
96	section 552		power to give direction or permission if no committee of inspection is appointed
97	section 554A	14.1	power to estimate or determine value of debts and claims of uncertain value in liquidation

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
98	section 554G		power to grant leave to secured creditor to amend valuation of security in proof of debt
99	section 564		power to make order in favour of creditors who give company indemnity for costs of litigation
100	sections 568, 568B, 568E and 568F	10.2	power to make order in relation to disclaimer of onerous property
101	sections 583 and 585	10.3	power in relation to winding up Part 5.7 bodies
102	sections 596A, 596B, 596F, 597, 597A and 597B	11.3 11.6 11.7 11.9	power to make order in relation to examinations
103	sections 600A to 600D		power to make order in relation to creditor's resolutions
104	section 601AH (2)		power to order reinstatement of registration of company
105	section 601BJ (2)		power to approve modification in constituent documents of registered company

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
106	section 601CC (9)		power to order restoration of name of registered Australian body to the Register
107	section 601CL (10)		power to order restoration of name of registered foreign company to the Register
108	section 1071D (4)	12.2	power to make order in relation to a person summoned
109	section 1071F		power to make an order in relation to a company's refusal to register a share transfer
110	section 1071H (6)		power to make an order to remedy default in issuing certificate etc
111	section 1274		power to make order if failure to give, amend etc document
112	section 1303		power to order that books be available for inspection
113	section 1319		power to give directions in relation to meetings

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column 1 item	column 2 provision of Corporations Act	column 3 rule of Supreme Court (Corporations) Rules	column 4 description (for information only)
114	section 1321	14.1	power to make order in appeal from decision of administrator, receiver or liquidator
115	section 1322		power to make order in relation to irregularities
116	section 1325D		power to make order where contravention of a provision of chapter 6 due to inadvertence
117	section 1335		power to make order about costs

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Part 2.2 ASIC Act

column 1 item	column 2 provision of the ASIC Act	column 3 rule	column 4 description (for information only)
1	section 79 (4)		power to extend period to give notice of intention to have statements made at examination admitted

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Schedule 3 Costs

(see o 65 r 7)

column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
Part 3.1	**Instructions**		
1	to sue or defend, to appeal or oppose an appeal	125.30	
2	for statement of claim, petition, special case or counterclaim	125.30	or the additional amount the taxing officer considers appropriate
3	for defence	107.20	or the additional amount the taxing officer considers appropriate
4	for— (a) a reply; or (b) amending a pleading; or (c) a document to be brought into the registrar's office (for example, an account or deed); or (d) adding parties by order; or	44.70	or the additional amount the taxing officer considers appropriate

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
	(e) a bond or other deed; or (f) retaining counsel, including preparing retainer		
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) discovery or an affidavit of discovery; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	89.40	or the additional amount the taxing officer considers appropriate

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
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	89.40	or the additional amount the taxing officer considers appropriate
7	for brief to advise on evidence	80.50	or the additional amount the taxing officer considers appropriate
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	89.40	or the additional amount the taxing officer considers appropriate
9	for brief in preparation for trial	the amount the taxing officer considers appropriate	

Part 3.2 Drawing

10	for an originating process or counterclaim	66.80	or, if longer than 7 folios, 9.40 per folio
11	for any other pleading, or an amendment of a pleading	44.70	or, if longer than 4 folios, 9.40 per folio

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
12	for— (a) a notice of interlocutory motion; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	40.90	or, if the document is longer than 4 folios, 9.40 per folio
13	a formal affidavit, including an affidavit of service	31.50	
14	any other document	17.70	or, if longer than 1 folio, 10.50 per folio

Part 3.3 Engrossing

15	of a document	2.70	per folio

Part 3.4 Copies

16	of any document, or of multiple documents copied at the same time—		

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
	(a) for each of the first 10 copies; or	2.40	per page
	(b) for each additional copy up to 100 copies; or	1.00	per page
	(c) for each additional copy over 100 copies	0.30	per page

Part 3.5 Perusal

17	of— (a) an originating process; or (b) a pleading; or (c) a notice of motion; or (d) interrogatories; or (e) a special case; or (f) a notice to admit	31.50	or, if the document is longer than 8 folios, 3.60 per folio
18	of any other document, if it is necessary to peruse	3.60	per folio
19	of a document by scanning it, if it is not necessary to peruse	4.90	or, if the document has more than 10 pages, the additional amount the taxing officer considers appropriate

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
Part 3.6	**Attendances**		
20	for personal service, if necessary	66.80	or the additional amount the taxing officer considers appropriate
21	for service— (a) at the office of a solicitor on the record or the address for service of a party; or (b) by post; or (c) made through a document exchange	27.00	
22	by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years— (a) to instruct counsel; or (b) on taxation of a bill of costs or other matter; or (c) at conference with counsel; or	178.80	per hour

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
	(d) on a view; or (e) on witness or other person; or (f) to inspect or produce a document; or (g) to prepare appeal papers		
23	by a solicitor, necessarily or properly engaged, if the solicitor is a solicitor not mentioned in item 22— (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; or (g) to prepare appeal papers	125.30	per hour

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
24	by a clerk, necessarily or properly engaged—	62.50	per hour
	(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; or		
	(g) to prepare appeal papers		
25	other than an attendance already mentioned, 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	268.10	per hour or the additional amount the taxing officer considers appropriate

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
	(b) by any other solicitor	187.70	per hour or the additional amount the taxing officer considers appropriate
26	by a solicitor involving a high degree of skill and responsibility	268.10	per hour
27	in court or chambers or before the registrar— (a) to take a reserved judgment; or (b) to mention a matter; or (c) for an adjournment; or (d) for another reason	71.50	or 178.80 per hour
28	at the registry or other office or place for— (a) filing, delivering, or collecting a document; or (b) a purpose not involving the exercise of legal skill or knowledge	22.20	or the additional amount the taxing officer considers appropriate
29	formal telephone attendance	22.20	

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
30	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	35.80	or 44.70 per quarter hour
31	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	22.20	or 15.50 per quarter hour
32	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 the solicitor carries on practice; or	an allowance (in addition to reasonable travelling expenses) for each day (other than Saturdays and Sundays) that the solicitor is absent, of the amount the taxing officer considers reasonable, that is not more than 1 043.90	

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)	
	(b) a clerk has attended in place of the solicitor	an allowance (in addition to reasonable travelling expenses) for each day (other than Saturdays and Sundays) that the clerk is absent, of the amount the taxing officer considers reasonable, that is not more than 268.10	

Part 3.7 Letters

33	ordinary letter	22.20	or 10.80 per folio
34	special letter	36.80	or 10.80 per folio
35	formal letter of acknowledgment	15.00	
36	circular letters after the first	6.80	
37	fax copy or telex, including attendance to send	35.20	or a fee that is reasonable in the circumstances
38	receiving and filing any incoming letter (postage and transmission fees properly incurred may be claimed as a disbursement)	9.40	

Part 3.8 Witness expenses

39	a witness called because of the witness's professional, scientific or other special skill or knowledge	877.10	per day

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column 1 item	column 2 matter in relation to which charge is made	column 3 charge ($)
40	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	92.50 per day
41	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court
42	a witness qualifying to give skilled evidence	the additional amount the taxing officer considers reasonable and properly incurred and paid
43	if the witness lives more than 50km from the court	the additional amount the taxing officer considers reasonable for the actual cost of travel, and for accommodation and meals
44	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the taxing officer considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)

Part 3.9 Disbursements

45	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

Note Order 3 rule 3 prescribes when certain costs and disbursements must be allowed without taxation.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended
amdt = amendment
ch = chapter
cl = clause
def = definition
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = Gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reg = regulation/subregulation
renum = renumbered
reloc = relocated
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
sub = substituted
SL = Subordinate Law
<u>underlining</u> = whole or part not commenced or to be expired

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3 Legislation history

The *Supreme Court Rules 1937* were originally called the *Rules of the Supreme Court of the Australian Capital Territory* (Cwlth) and were originally made under a Commonwealth Act—the *Seat of Government Supreme Court Act 1933* No 34 (Cwlth). The Act was renamed the *Australian Capital Territory Supreme Court Act 1933* by the *Statute Revision Act 1950* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (2) converted some Commonwealth Acts (including the *Australian Capital Territory Supreme Court Act 1933*) in force in the ACT, and the regulations and rules made under them, into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws.

The *Australian Capital Territory Supreme Court Act 1933* (renamed the *Supreme Court Act 1933* by the *A.C.T. Supreme Court (Transfer) Act 1992* (Cwlth), sch 1) and the *Rules of the Supreme Court of the Australian Capital Territory* (Cwlth) were converted into ACT enactments on 1 July 1992 under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (3) (see the *A.C.T. Supreme Court (Transfer) Act 1992* (Cwlth), s 7).

The rules were renamed by the *Supreme Court Rules (Amendment)* SL 1992 No 16 (see r 2) and later by the *Supreme Court Amendment Rules 2004 (No 5)* SL2004-54 (see r 4).

Before 12 September 2001, rules commenced on their notification day unless otherwise stated (see *Interpretation Ordinance 1914* s 5, *Interpretation Ordinance 1937* s 16, *Interpretation Act 1967* s 50, *Subordinate Laws Act 1989* s 6).

Legislation before becoming Territory enactment

Supreme Court Rules 1937 SL1937-85

notified 19 August 1937 (Cwlth Gaz 1937 No 48)
commenced 1 January 1938

Note Rules exp 1 July 2006 (see Court Procedures Act 2004 A2004-59, s 60)

as amended by

Rules of the Supreme Court of the Australian Capital Territory 1938 No 99

notified 27 October 1938 (Cwlth Gaz 1928 No 61)
commenced 27 October 1938

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Rules of the Supreme Court of the Australian Capital Territory 1939 No 48

notified 15 June 1939 (Cwlth Gaz 1939 No 37)
commenced 15 June 1939

Rules of the Supreme Court of the Australian Capital Territory 1939 No 61

notified 10 August 1939 (Cwlth Gaz 1939 No 51)
commenced 10 August 1939

Rules of the Supreme Court of the Australian Capital Territory 1950 No 22

notified 4 May 1950 (Cwlth Gaz 1950 No 24)
commenced 4 May 1950

Rules of the Supreme Court of the Australian Capital Territory 1956 No 135

notified 24 December 1956 (Cwlth Gaz 1956 No 77)
commenced 31 December 1956 (words before r 1)

Rules of the Supreme Court of the Australian Capital Territory 1958 No 64

notified 2 October 1958 (Cwlth Gaz 1958 No 61)
commenced 2 October 1958 (words before r 1)

Rules of the Supreme Court of the Australian Capital Territory 1962 No 47

notified 25 June 1962 (Cwlth Gaz 1962 No 50)
commenced 1 July 1962

Rules of the Supreme Court of the Australian Capital Territory 1962 No 76

notified 30 August 1962 (Cwlth Gaz 1962 No 73)
commenced 30 August 1962

Rules of the Supreme Court of the Australian Capital Territory 1966 No 132

notified 22 September 1966 (Cwlth Gaz 1966 No 81)
commenced 22 September 1966

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Rules of the Supreme Court of the Australian Capital Territory 1967 No 68

notified 1 June 1967 (Cwlth Gaz 1967 No 47)
commenced 1 June 1967

Rules of the Supreme Court of the Australian Capital Territory 1968 No 13

notified 15 February 1968 (Cwlth Gaz 1968 No 16)
commenced 15 February 1968

Rules of the Supreme Court of the Australian Capital Territory 1969 No 57

notified 23 April 1969 (Cwlth Gaz 1969 No 34)
commenced 23 April 1969

Rules of the Supreme Court of the Australian Capital Territory 1969 No 66

notified 8 May 1969 (Cwlth Gaz 1969 No 39)
commenced 1 June 1969 (r 1)

Rules of the Supreme Court of the Australian Capital Territory 1969 No 221

notified 30 December 1969 (Cwlth Gaz 1969 No 110)
commenced 1 February 1970 (r 1)

Rules of the Supreme Court of the Australian Capital Territory 1969 No 222

notified 31 December 1969 (Cwlth Gaz 1969 No 111)
commenced 19 January 1970 (r 1)

Rules of the Supreme Court of the Australian Capital Territory 1972 No 189

notified 16 November 1972 (Cwlth Gaz 1972 No 113)
commenced 27 November 1972 (r 1)

Rules of the Supreme Court of the Australian Capital Territory 1973 No 95

notified 31 May 1973 (Cwlth Gaz 1973 No 62)
commenced 31 May 1973

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Rules of the Supreme Court of the Australian Capital Territory 1973 No 149

notified 9 August 1973 (Cwlth Gaz 1973 No 96)
commenced 9 August 1973

Rules of Court of the Supreme Court of the Australian Capital Territory 1974 No 25

notified 8 March 1974 (Cwlth Gaz 1974 No 21B)
commenced 8 March 1974

Rules of Court of the Supreme Court of the Australian Capital Territory 1974 No 60

notified 18 April 1974 (Cwlth Gaz 1974 No 31F)
commenced 18 April 1974

Rules of Court of the Supreme Court of the Australian Capital Territory 1974 No 197

notified 23 October 1974 (Cwlth Gaz 1974 No 86D)
commenced 23 October 1974

Rules of the Supreme Court of the Australian Capital Territory 1975 No 81

notified 16 May 1975 (Cwlth Gaz 1975 No S88)
commenced 16 May 1975

Rules of the Supreme Court of the Australian Capital Territory 1976 No 190

notified 2 September 1976 (Cwlth Gaz 1974 No S154)
commenced 2 September 1976

Amendments of the Rules of the Supreme Court of the Australian Capital Territory 1977 No 152

notified 15 September 1977 (Cwlth Gaz 1977 No S196)
commenced 26 September 1977 (r 2)

Amendments of the Rules of the Supreme Court of the Australian Capital Territory 1978 No 86

notified 27 June 1978 (Cwlth Gaz 1978 No G25)
commenced 27 June 1978

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Amendments of the Rules of the Supreme Court of the Australian Capital Territory 1978 No 173
notified 26 September 1978 (Cwlth Gaz 1978 No G38)
commenced 16 October 1978 (r 2)

Amendments of the Rules of the Supreme Court of the Australian Capital Territory 1980 No 210
notified 24 July 1980 (Cwlth Gaz 1970 No S164)
commenced 24 July 1980

Amendments of the Rules of the Supreme Court of the Australian Capital Territory 1980 No 214
notified 31 July 1980 (Cwlth Gaz 1980 No S167)
commenced 31 July 1980

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1981 No 104
notified 13 May 1981 (Cwlth Gaz 1981 No S92)
commenced 13 May 1981

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1981 No 196
notified 14 July 1981 (Cwlth Gaz 1981 No S28)
commenced 14 July 1981

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1981 No 296
notified 16 October 1981 (Cwlth Gaz 1981 No S215)
commenced 1 November 1981 (r 2)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1981 No 328
notified 17 November 1981 (Cwlth Gaz 1981 No S241)
commenced 1 December 1981 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1982 No 202
notified 27 August 1982 (Cwlth Gaz 1982 No S183)
commenced 1 September 1982 (r 1)

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Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1982 No 316
notified 23 November 1982 (Cwlth Gaz 1982 No G 47)
commenced 23 November 1982

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1982 No 365
notified 21 December 1982 (Cwlth Gaz 1982 No S267)
commenced 21 December 1982

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1983 No 26
notified 15 March 1983 (Cwlth Gaz 1982 No G10)
commenced 15 March 1983

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1983 No 27
notified 18 March 1983 (Cwlth Gaz 1983 No S50)
commenced 18 March 1983

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1983 No 228
notified 26 October 1983 (Cwlth Gaz 1983 No S 254)
commenced 26 October 1983

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1984 No 110
notified 21 June 1984 (Cwlth Gaz 1984 No S230)
commenced 21 June 1984

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1984 No 281
notified 12 October 1984 (Cwlth Gaz 1984 No S406)
commenced 1 November 1984 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1984 No 285 (as am by SR 1984 No 313)
notified 16 October 1984 (Cwlth Gaz 1984 No S410)
commenced 1 November 1984 (r 1)

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Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1984 No 313
notified 31 October 1984 (Cwlth Gaz 1984 No S416)
commenced 31 October 1984

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1984 No 405
notified 5 December 1984 (Cwlth Gaz 1984 No S515)
commenced 5 December 1984

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1985 No 27
notified 15 March 1985 (Cwlth Gaz 1985 No S77)
commenced 15 March 1985

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1985 No 69
notified 17 May 1985 (Cwlth Gaz 1985 No 164)
commenced 17 May 1985

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1986 No 8
notified 31 January 1986 (Cwlth Gaz 1986 No S25)
commenced 1 February 1986 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1986 No 26
notified 28 February 1986 (Cwlth Gaz 1986 No S80)
commenced 1 March 1986 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1986 No 86
notified 30 April 1986 (Cwlth Gaz 1986 No S190)
commenced 1 May 1986 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1986 No 349
notified 28 November 1986 (Cwlth Gaz 1986 No S615)
commenced 1 December 1986 (r 1)

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Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1987 No 67
notified 1 May 1987 (Cwlth Gaz 1987 No S67)
commenced 1 May 1987

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1987 No 93
notified 29 May 1987 (Cwlth Gaz 1987 No S98)
commenced 1 June 1987 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1987 No 219
notified 30 September 1987 (Cwlth Gaz 1987 No S258)
commenced 1 October 1987 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1988 No 24
notified 29 February 1988 (Cwlth Gaz 1988 No S62)
commenced 1 March 1988 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1988 No 145
notified 30 June 1988 (Cwlth Gaz 1988 No S62)
commenced 1 July 1988 [r 1]

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1988 No 221
notified 31 August 1988 (Cwlth Gaz 1988 No S252)
commenced 31 August 1988

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1988 No 257
notified 31 October 1988 (Cwlth Gaz 1988 No S329)
commenced 1 November 1988 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1988 No 331
notified 8 December 1988 (Cwlth Gaz 1988 No S375)
commenced 8 December 1988

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Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1989 No 18
notified 27 February 1989 (Cwlth Gaz 1989 No S69)
commenced 1 March 1989 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1989 No 30
notified 6 March 1989 (Cwlth Gaz 1989 No S81)
commenced 7 March 1989 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1989 No 191
notified 4 July 1989 (Cwlth Gaz 1989 No S239)
commenced 4 July 1989

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1989 No 273
notified 19 October 1989 (Cwlth Gaz 1989 No S330)
commenced 23 October 1989 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1990 No 2
notified 25 January 1990 (Cwlth Gaz 1990 No S19)
commenced 1 February 1990 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1990 No 129
notified 25 June 1990 (Cwlth Gaz 1990 No S165)
commenced 1 July 1990 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1990 No 372
notified 30 November 1990 (Cwlth Gaz 1990 No S309)
commenced 1 December 1990 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1990 No 458
notified 21 December 1990 (Cwlth Gaz 1990 No S334)
commenced 1 January 1991 (r 1)

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Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1991 No 108
notified 31 May 1991 (Cwlth Gaz 1991 No S136)
commenced 1 June 1991 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1991 No 251
notified 26 August 1991 (Cwlth Gaz 1991 No S232)
commenced 1 September 1991 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1991 No 252
notified 26 August 1991 (Cwlth Gaz 1991 No S232)
commenced 1 September 1991 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1991 No 294
notified 30 September 1991 (Cwlth Gaz 1991 No S265)
commenced 1 October 1991 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1991 No 416
notified 19 December 1991 (Cwlth Gaz 1991 No S354)
commenced 1 January 1992 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1991 No 472
notified 19 December 1991 (Cwlth Gaz 1991 No S354)
commenced 1 January 1992 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1992 No 79
notified 31 March 1992 (Cwlth Gaz 1992 No S86)
commenced 1 April 1992 (r 1)

Rules of the Supreme Court of the Australian Capital Territory (Amendment) 1992 No 82
notified 31 March 1992 (Cwlth Gaz 1992 No S86)
commenced 1 April 1992 (r 1)

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Legislation after becoming Territory enactment

Supreme Court Rules (Amendment) 1992 No 16
notified 1 September 1992 (Gaz 1992 No S152)
commenced 1 September 1992

Supreme Court Rules (Amendment) 1992 No 21
notified 28 October 1992 (Gaz 1992 No S189)
commenced 28 October 1992

Supreme Court Rules (Amendment) 1992 No 23
notified 3 November 1992 (Gaz 1992 No S194)
commenced 3 November 1992

Supreme Court Rules (Amendment) 1992 No 34
notified 18 December 1992 (Gaz 1992 No S241)
commenced 18 December 1992

Supreme Court Rules (Amendment) 1992 No 35
notified 18 December 1992 (Gaz 1992 No S241)
commenced 18 December 1992

Supreme Court Rules (Amendment) 1993 No 4
notified 19 February 1993 (Gaz 1993 No S19)
commenced 19 February 1993 (r 1)

Supreme Court Rules (Amendment) 1993 No 11
notified 29 March 1993 (Gaz 1993 No S49)
commenced 1 April 1993 (r 1)

Supreme Court Rules (Amendment) 1993 No 20
notified 7 May 1993 (Gaz 1993 No S77)
commenced 7 May 1993 (r 1)

Supreme Court Rules (Amendment) 1993 No 22
notified 27 May 1993 (Gaz 1993 No S96)
commenced 1 July 1993 (r 1 see Gaz 1993 No S130)

Supreme Court Rules (Amendment) 1993 No 23
notified 10 June 1993 (Gaz 1993 No S105)
commenced 10 June 1993

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Supreme Court Rules (Amendment) 1993 No 28
notified 29 July 1993 (Gaz 1993 No S153)
commenced 29 July 1993 (r 1)

Supreme Court Rules (Amendment) 1993 No 30
notified 30 July 1993 (Gaz 1993 No S155)
r 1 commenced 30 July 1993 (r 1 (1))
remainder commenced 31 July 1993 (r 1 (2))

Supreme Court Rules (Amendment) 1993 No 35
notified 7 September 1993 (Gaz 1993 No S178)
rr 1-5 commenced 7 September 1993 (r 1 (1))
remainder commenced 23 June 1993 (r 1 (2))

Supreme Court Rules (Amendment) 1993 No 46
notified 2 December 1993 (Gaz 1993 No S249)
commenced 2 December 1993 (r 1)

Supreme Court Rules (Amendment) 1994 No 2
notified 28 February 1994 (Gaz 1994 No S30)
commenced 28 February 1994 (r 1)

Supreme Court Rules (Amendment) 1994 No 17
notified 30 May 1994 (Gaz 1994 No S96)
commenced 1 June 1994 (r 1)

Supreme Court Rules (Amendment) 1994 No 20
notified 24 June 1994 (Gaz 1994 No S120)
commenced 24 June 1994 (r 1)

Supreme Court Rules (Amendment) 1994 No 21
notified 27 June 1994 (Gaz 1994 No S122)
commenced 27 June 1994 (r 1)

Supreme Court Rules (Amendment) 1994 No 34
notified 14 October 1994 (Gaz 1994 No S223)
commenced 14 October 1994 (r 2)

Supreme Court Rules (Amendment) 1994 No 42
notified 5 December 1994 (Gaz 1994 No S278)
commenced 19 February 1995 (r 1)

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Supreme Court Rules (Amendment) 1995 No 11
notified 29 March 1995 (Gaz 1990 No S19)
commenced 29 March 1995 (r 1)

Supreme Court Rules (Amendment) 1995 No 12
notified 29 March 1995 (Gaz 1990 No S73)
commenced 1 April 1995 (r 1)

Supreme Court Rules (Amendment) 1995 No 13
notified 5 April 1995 (Gaz 1990 No S74)
commenced 5 April 1995 (r 1)

Supreme Court Rules (Amendment) 1995 No 15 (as am by Supreme Court Rules (Amendment) 1997 No 8 (r 12); Supreme Court Rules Amendment 1999 No 26 (rr 25-31); Supreme Court Rules Amendment 2000 No 46 (r 33)); repealed by Supreme Court Amendment Rules 2001 (No 3) No 48 (r 14)
notified 5 May 1995 (Gaz 1990 No S89)
r 1 commenced 5 May 1995 (r 1 (1))
remainder never commenced and repealed by 2001 No 48 r 14

Supreme Court Rules (Amendment) 1995 No 19
notified 15 June 1995 (Gaz 1995 No S127)
commenced 15 June 1995 (r 1)

Supreme Court Rules (Amendment) 1995 No 27
notified 3 August 1995 (Gaz 1995 No S195)
commenced 3 August 1995 (r 1)

Supreme Court Rules (Amendment) 1995 No 44
notified 15 December 1995 (Gaz 1995 No S308)
commenced 15 December 1995 (r 1)

Supreme Court Rules (Amendment) 1996 No 4
notified 29 March 1996 (Gaz 1996 No S54
commenced 29 March 1996 (r 1)

Supreme Court Rules (Amendment) 1996 No 10
notified 28 June 1996 (Gaz 1996 No S129)
commenced 28 June 1996 (r 1)

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Supreme Court Rules (Amendment) 1996 No 11
notified 28 June 1996 (Gaz 1996 No S128)
commenced 28 June 1996 (r 1)

Supreme Court Rules (Amendment) 1996 No 22
notified 2 October 1996 (Gaz 1996 No S253)
commenced 2 October 1996 (r 1)

Supreme Court Rules (Amendment) 1996 No 27
notified 13 November 1996 (Gaz 1996 No S300)
commenced 13 November 1996 (r 1)

Supreme Court Rules (Amendment) 1996 No 31
notified 20 December 1996 (Gaz 1996 No S342)
commenced 20 December 1996 (r 1)

Supreme Court Rules (Amendment) 1997 No 8
notified 23 April 1997 (Gaz 1997 No S107)
commenced 1 July 1997 (r 1)

Supreme Court Rules (Amendment) 1997 No 9
notified 23 April 1997 (Gaz 1997 No S108)
commenced 23 April 1997 (r 1)

Supreme Court Rules (Amendment) 1997 No 20
notified 14 July 1997 (Gaz 1997 No S218)
commenced 14 July 1997 (r 1)

Supreme Court Rules (Amendment) 1997 No 30
notified 30 October 1997 (Gaz 1997 No S328)
commenced 30 October 1997 (r 1)

Supreme Court Rules (Amendment) 1997 No 31
notified 30 October 1997 (Gaz 1997 No S329)
commenced 30 October 1997 (r 1)

Supreme Court Rules (Amendment) 1997 No 33
notified 11 November 1997 (Gaz 1997 No S349)
commenced 11 November 1997 (r 1)

Supreme Court Rules (Amendment) 1997 No 38
notified 10 December 1997 (Gaz 1997 No S406)
commenced 10 December 1997 (r 1)

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Supreme Court Rules (Amendment) 1997 No 43
notified 13 January 1998 (Gaz 1998 No S20)
r 8 commenced 2 February 1998 (r 1 (2) and Gaz 1998 No S42)
remainder commenced 1 January 1998 (r 1 (1))

Supreme Court Rules (Amendment) 1998 No 23
notified 24 June 1998 (Gaz 1998 No 25)
commenced 24 June 1998 (r 1)

Supreme Court Rules (Amendment) 1998 No 35 (as am by SL 1999 No 26 r 32)
notified 9 December 1998 (Gaz 1998 No 49)
rr 1-4 and 6-8 commenced 15 December 1998 (r 1(1))
remainder commenced 1 February 1999 (r 1 (2))

Supreme Court Rules Amendment 1999 No 26
notified 27 October 1999 (Gaz 1990 No 43)
pts 1 and 3 commenced 27 October 1999 (r 1 (1))
pt 4 commenced 1 February 1999 (r 1 (2))
pt 2 commenced 1 November 1999 (r 1 (3))

Supreme Court Rules Amendment 2000 No 17
notified 23 March 2000 (Gaz 2000 No 12)
commenced 3 April 2000 (r 1)

Supreme Court Rules Amendment 2000 No 23
notified 25 May 2000 (Gaz 2000 No 21)
commenced 25 May 2000 (r 1)

Supreme Court Rules Amendment 2000 No 24
notified 15 June 2000 (Gaz 2000 No 23)
commenced 15 June 2000 (r 1)

Supreme Court Rules Amendment 2000 No 44
notified 2 November 2000 (Gaz 2000 No 44)
commenced 30 November 2000 (r 1)

Supreme Court Rules Amendment 2000 No 46
notified 16 November 2000 (Gaz 2000 No 46)
commenced 14 December 2000 (r 1)

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Supreme Court Rules Amendment 2000 No 50
notified 14 December 2000 (Gaz 2000 No 50)
commenced 18 December 2000 (r 1)

Supreme Court Rules Amendment SL 2001 No 10 (as am by SL 2001 No 48 (r 15))
notified 19 April 2001 (Gaz 2001 No 16)
r 1 commenced 19 April 2001 (IA s 10B)
remainder commenced 1 May 2001 (r 1)

Supreme Court Rules Amendment SL 2001 No 23
notified 16 July 2001 (Gaz 2001 No S46)
commenced 16 July 2001 (r 1)

Supreme Court Rules Amendment Rules 2001 (No 3) SL 2001 No 48
notified LR 19 December 2001
r 6, r 13 commenced 1 February 2002 (r 2 (1))
r 15 taken to have commenced 30 April 2001 (r 2 (2))
amdt 1.25 commenced 1 July 2002 (r 2 (3))
remainder commenced 19 December 2001 (r 2 (4))

Supreme Court Amendment Rules 2002 (No 1) SL2002-16
notified LR 19 June 2002
r 1, r 2 commenced 19 June 2002 (LA s 75)
r 5 commenced 17 September 2002 (r 2 (2) and see Statute Law Amendment Act 2002 No 30 s 2 (1))
remainder commenced 17 July 2002 (r 2 (1))

Supreme Court Amendment Rules 2002 (No 2) SL2002-24
notified LR 18 September 2002
r 1, r 2 commenced 18 September 2002 (LA s 75)
commenced 19 September 2002 (r 2)

Supreme Court Amendment Rules 2002 (No 3) SL2002-27
notified LR 11 October 2002
r 1, r 2 commenced 11 October 2002 (LA s 75 (1))
remainder commenced 14 October 2002 (r 2)

Supreme Court Amendment Rules 2003 (No 1) SL2003-6
notified LR 18 February 2003
r 1, r 2 commenced 18 February 2003 (LA s 75 (1))
remainder commenced 19 February 2003 (r 2)

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Supreme Court Amendment Rules 2003 (No 2) SL2003-26
notified LR 14 August 2003
r 1, r 2 commenced 14 August 2003 (LA s 75 (1))
remainder commenced 11 September 2003 (r 2)

Supreme Court Amendment Rules 2003 (No 3) SL2003-41
notified LR 11 November 2003
r 1, r 2 commenced 11 November 2003 (LA s 75 (1))
remainder commenced 12 November 2003 (r 2)

Supreme Court Amendment Rules 2003 (No 4) SL2003-48
notified LR 15 December 2003
r 1, r 2 commenced 15 December 2003 (LA s 75 (1))
remainder commenced 12 January 2004 (r 2)

Supreme Court Amendment Rules 2003 (No 5) SL2003-49
notified LR 22 December 2003
r 1, r 2 commenced 22 December 2003 (LA s 75 (1))
remainder commenced 19 January 2004 (r 2)

Supreme Court Amendment Rules 2004 (No 1) SL2004-7
notified LR 25 February 2004
r 1, r 2 commenced 25 February 2004 (LA s 75 (1))
remainder commenced 26 February 2004 (r 2)

Supreme Court Amendment Rules 2004 (No 2) SL2004-11
notified LR 22 April 2004
r 1, r 2 commenced 22 April 2004 (LA s 75 (1))
remainder commenced 23 April 2004 (r 2)

Supreme Court Amendment Rules 2004 (No 3) SL2004-15
notified LR 20 May 2004
r 1, r 2 commenced 20 May 2004 (LA s 75 (1))
remainder commenced 21 May 2004 (r 2)

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.70 (in part), pt 1.71
notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.70, pt 1.71 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

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Supreme Court Amendment Rules 2004 (No 4) SL2004-53
notified LR 2 December 2004
r 1, r 2 commenced 2 December 2004 (LA s 75 (1))
remainder commenced 31 December 2004 (r 2)

Supreme Court Amendment Rules 2004 (No 5) SL2004-54
notified LR 9 December 2004
r 1, r 2 commenced 9 December 2004 (LA s 75 (1))
remainder commenced 31 December 2004 (r 2)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.65
notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.65 commenced 2 June 2005 (s 2 (1))

Court Procedures Amendment Rules 2005 (No 1) SL2005-13 pt 3
notified LR 7 July 2005
r 1, r 2 commenced 7 July 2005 (LA s 75 (1))
pt 3 commenced 8 July 2005 (r 2)

4 Amendment history

Notes — SL 1992 No 34 r 2 amended the Rules by omitting 'Court or Judge', 'Court or a Judge' and 'Court or the Judge' and substituting 'Court' (wherever occurring). The amendments have been incorporated in the republication but have not been noted in this table.
Amending rules annotated in square brackets were not numbered in the amending rules but appeared at the rule 1 position.

words before pt 1 — om 2000 No 46 amdt 1.1

Table of orders
table of orders hdg — om 1978 No 173 r 11
table of orders — am 1956 No 135 r 1; 1962 No 47 r 1; 1966 No 132 r 1; 1969 No 221 r 2; 1969 No 222 r 2; 1972 No 189 r 2
om 1978 No 173 r 11

Name of rules
o 1 r 1 — am 1992 No 16 r 2
sub 2001 No 48 amdt 1.1; SL2004-54 r 4

Repeal
r 2 — om 1956 No 135 r 2

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Parts

r 3 am 1956 No 135 r 3; 1966 No 132 r 2
om 1978 No 173 r 11

Definitions for rules

r 4 hdg sub 2000 No 46 amdt 1.2

r 4 am 1995 No 15 r 3 (1995 No 15 never commenced and repealed by 2001 No 48 r 14); 2000 No 46, amdt 1.3, amdt 1.6
def ***accused person*** ins SL2004-53 r 4
def ***Act*** ins 1992 No 34 sch
sub 2001 No 48 amdt 1.2
am 2002 No 16 amdts 1.1-1.3; SL2004-54 r 6; A2004-60 amdt 1.657, amdt 1.658; pars renum R27 LA
def ***action*** am 1997 No 8 r 4
def ***addressee*** ins SL2004-54 r 6
def ***address for service*** ins 1999 No 26 r 3
sub SL2004-53 r 5
def ***administration and probate jurisdiction*** am 1992 No 16 sch
def ***appearance date*** in SL2004-53 r 6
def ***ASC Law*** ins 1990 No 458 r 3
om 1992 No 34 sch
def ***body corporate*** ins 1999 No 26 r 3
om 2000 No 17 r 3
def ***case statement*** ins SL2004-53 r 6
def ***cause book*** am 1997 No 8 r 4
def ***Commonwealth Evidence Act*** ins SL2003-49 r 4
sub SL2004-53 r 7
def ***company*** ins 1999 No 26 r 3
om 2000 No 17 r 3
def ***conduct money*** ins SL2004-54 r 6
def ***contributory*** ins 1999 No 26 r 3
om 2000 No 17 r 3
def ***convicted person*** ins SL2004-53 r 8
def ***corporation*** ins 1999 No 26 r 3
om 2000 No 17 r 3
def ***Corporations Law*** ins 1990 No 458 r 3
om 1992 No 34 sch
def ***criminal proceeding*** ins 1997 No 8 r 4
sub 2001 No 48 r 4; SL2004-53 r 9
def ***Crown Solicitor*** am 1992 No 34 sch
om 1997 No 8 r 4
def ***defend*** ins 2000 No 46 r 3
sub 2001 No 48 amdt 1.3

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def ***diplomatic or consular representative*** ins 1968 No 13 r 1
def ***director of public prosecutions*** ins SL2004-53 r 10
def ***discoverable document*** ins SL2003-49 r 4
def ***document*** ins SL2003-49 r 4
def ***electronic communication*** ins SL2004-7 r 4
def ***email address*** ins SL2004-7 r 4
def ***file*** ins 1992 No 34 sch
am 1997 No 8 r 4
sub 2001 No 48 amdt 1.4
def ***garnishee*** ins 2001 No 10 amdt 1.1
sub 2001 No 48 amdt 1.5
def ***government*** ins SL2003-49 r 4
def ***investigatory film*** ins SL2003-49 r 4
def ***issue execution*** ins 2000 No 46 amdt 1.5
def ***issuing officer*** ins SL2004-54 r 6
def ***issuing party*** ins SL2004-54 r 6
def ***list of documents*** ins SL2003-49 r 4
def ***matrimonial causes jurisdiction*** om 1978 No 173 r 3
def ***motor accident*** ins 2000 No 17 r 3
def ***motor vehicle*** ins 1997 No 8 r 4
sub 2000 No 17 r 3
def ***negligence*** ins 1997 No 8 r 4
def ***office*** ins 2000 No 46 amdt 1.5
def ***officer*** ins 1999 No 26 r 3
om 2000 No 17 r 3
def ***official liquidator*** ins 1999 No 26 r 3
om 2000 No 17 r 3
def ***originating application*** ins 1997 No 8 r 4
def ***originating summons*** om 1997 No 8 r 4
def ***personal service*** ins 1999 No 26 r 3
def ***person with a legal disability*** ins 2000 No 46 r 3
def ***person with a mental disability*** ins 1999 No 26 r 3
def ***privileged from production*** ins SL2003-49 r 4
def ***registrar of companies*** ins 1978 No 173 r 3
om 1994 No 21 r 3
def ***registrar's office*** or ***the office of the registrar*** om 1992 No 21 r 2
def ***registrar's office***, ***registry*** or ***the office of the registrar*** ins 1992 No 21 r 2
om 2000 No 46 amdt 1.4
def ***registry*** ins 2000 No 46 amdt 1.5
def ***sealed*** om 1977 No 152 r 3
def ***sentence*** ins SL2004-53 r 10
def ***solicitor*** in SL2004-53 r 10
def ***stamped*** ins 2002 No 16 r 4

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def ***subpoena*** ins SL2004-54 r 6
def ***subpoena to attend to give evidence*** ins SL2004-54 r 6
def ***subpoena to produce*** ins SL2004-54 r 6
def ***sue*** ins 2000 No 46 r 3
sub 2001 No 48 amdt 1.6
def ***the Act*** sub 1978 No 173 r 3
om 1992 No 34 sch
def ***the Court of Petty Sessions*** om 1986 No 8 r 3
def ***the court*** or ***the Supreme Court*** om 1992 No 34 sch
def ***the Magistrates Court*** ins 1986 No 8 r 3
om 1992 No 34 sch
def ***the Registrar*** om 1992 No 34 sch
def ***the Sheriff*** om 1992 No 34 sch
def ***to file*** om 1992 No 34 sch
def ***writ of execution*** ins 2000 No 46 amdt 1.5
def ***writ of execution*** and ***issuing execution against any party*** om 2000 No 46 amdt 1.4

Certain references to *Act* or the *Act*
r 5 om 1995 No 11 r 3
ins 1997 No 8 r 5
am 1999 No 26 sch
sub 2002 No 16 amdt 1.4
om SL2004-11 r 4
reloc from Supreme Court Act 1933 r 65 by A2004-60 amdt 1.651
renum as r 8
ins A2004-60 amdt 1.660

Terms defined in Supreme Court Act
r 6 ins A2004-60 amdt 1.660

References to forms by number
r 7 ins A2004-60 amdt 1.660

Use of seals
r 8 (prev r 5) renum R27 LA

Subpoenas
o 1AA hdg ins SL2004-54 r 7

Definitions for o 1AA
r 1 ins SL2004-54 r 7
def ***addressee*** ins SL2004-54 r 7
def ***conduct money*** ins SL2004-54 r 7
def ***issuing officer*** ins SL2004-54 r 7
def ***issuing party*** ins SL2004-54 r 7
def ***subpoena*** ins SL2004-54 r 7

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Issuing subpoena
r 2 ins SL2004-54 r 7

Form of subpoena
r 3 ins SL2004-54 r 7

Setting aside subpoena or other relief
r 4 ins SL2004-54 r 7

Service of subpoena
r 5 ins SL2004-54 r 7

Compliance with subpoena
r 6 ins SL2004-54 r 7

Production of subpoenaed document etc otherwise than on attendance
r 7 ins SL2004-54 r 7

Removal, return, inspection etc of subpoenaed documents and things
r 8 ins SL2004-54 r 7

Inspection of, and dealing with, subpoenaed documents and things produced otherwise than on attendance
r 9 ins SL2004-54 r 7

Disposal of subpoenaed documents and things produced
r 10 ins SL2004-54 r 7

Costs and expenses of compliance with subpoena
r 11 ins SL2004-54 r 7

Failure to comply with subpoena—contempt of court
r 12 ins SL2004-54 r 7

Documents and things in custody of court
r 13 ins SL2004-54 r 7

Banker's books
r 14 ins SL2004-54 r 7

Application of o 1AA—subpoena under Commercial Arbitration Act
r 15 ins SL2004-54 r 7

Matters arising under Commonwealth Evidence Act
o 1AB hdg ins SL2004-53 r 11

Evidence of previous representation
r 1 ins SL2004-53 r 11

Objection to hearsay evidence—civil proceedings
r 2 ins SL2004-53 r 11

Tendency evidence
r 3 ins SL2004-53 r 11

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Coincidence evidence
r 4 ins SL2004-53 r 11

Application of part 2
o 1A hdg ins 1995 No 11 r 4

Application to jurisdictions generally
r 1 ins 1995 No 11 r 4
am 2001 No 48 r 5

Commencement of actions
o 2 hdg sub 1997 No 8 r 6

Procedure on originating application
div 2.1 hdg (prev o 2 div 1 hdg) ins 1997 No 8 r 6
renum 2000 No 46 amdt 1.7

Commencement by originating application
r 1 am 1981 No 296 r 3
sub 1997 No 8 r 6

Date of commencement
r 2 ins 1990 No 458 r 4
sub 1997 No 8 r 6
am 2000 No 46 amdt 1.8

Oral applications
r 3 ins 1997 No 8 r 6

Form of originating application
r 4 ins 1997 No 8 r 6
am 1999 No 26 r 4; 2001 No 48 amdt 1.7; R10 LA (see 2001 No 48 amdt 1.8); SL2004-7 r 5; SL2004-53 r 12

Corporate information
r 5 ins 1997 No 8 r 6
am 2000 No 17 r 4; 2001 No 48 amdts 1.9-1.11; SL2004-54 r 8

Special endorsement on originating application—Civil Law (Wrongs) Act 2002, pt 3.1
r 6 ins 1997 No 8 r 6
om 1999 No 26 r 5
ins SL2003-6 amdt 1.1

Time for appearance
r 7 ins 1997 No 8 r 6

Identification of action
r 8 ins 1997 No 8 r 6

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Identification of relief sought
r 9 ins 1997 No 8 r 6
am 2000 No 17 r 5

Statements of claim
r 10 ins 1997 No 8 r 6
am 2000 No 17 r 6

Claims for debt and liquidated demands
r 11 ins 1997 No 8 r 6
am 1999 No 26 sch; A2004-60 amdt 1.661

Motor vehicle personal injury claims
r 12 ins 1997 No 8 r 6
am 1999 No 26 sch; 2000 No 17 r 7

Employment personal injury claims
r 13 ins 1997 No 8 r 6
am 1999 No 26 sch

Originating applications with no defendant
r 14 ins 1997 No 8 r 6

Notice to defendants
r 15 ins 1997 No 8 r 6

Filing and sealing of originating applications
r 16 ins 1997 No 8 r 6
am SL2004-7 r 6

Rejection of certain originating applications
r 16A ins SL2004-7 r 7

Further sealed copies
r 17 ins 1997 No 8 r 6

Authorisation for service
r 18 ins 1997 No 8 r 6

Personal service of originating applications generally required
r 18A ins 1999 No 26 r 6

Service of application to recover unoccupied land
r 18B ins 1999 No 26 r 6

Defendant taken to be served by entering appearance
r 18C ins 1999 No 26 r 6
am SL2003-48 r 4

Service on partners sued in firm name
r 18D ins 1999 No 26 r 6

Cause book
r 19 ins 1997 No 8 r 6

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Solicitor's declaration as to filing
r 20 ins 1997 No 8 r 6
am 1999 No 26 sch

Directions hearings
r 21 ins 1997 No 8 r 6

Interlocutory hearings
r 22 ins 1997 No 8 r 6

Duration and renewal of originating applications
div 2.2 hdg (prev o 2 div 2 hdg) ins 1997 No 8 r 6
renum 2000 No 46 amdt 1.9

Duration of originating applications
r 23 ins 1997 No 8 r 6

Renewal for good cause
r 24 ins 1997 No 8 r 6

Renewal to avoid statute-bar
r 25 ins 1997 No 8 r 6

Endorsement of renewal
r 26 ins 1997 No 8 r 6

Inactive cases
div 2.3 hdg (prev o 2 div 3 hdg) ins 1997 No 8 r 6
renum 2000 No 46 amdt 1.9

List of inactive cases
r 27 ins 1997 No 8 r 6

Entry on list—7 months after commencement of action
r 28 ins 1997 No 8 r 6
am 2000 No 46 amdt 1.10

Entry on list—4 months after renewal of originating application
r 29 ins 1997 No 8 r 6
am 2000 No 46 amdt 1.11

Removal from list
r 30 ins 1997 No 8 r 6

Dismissal of action following entry on list
r 31 ins 1997 No 8 r 6

Evidence
div 2.4 hdg (prev o 2 div 4 hdg) ins 1997 No 8 r 6
renum 2000 No 46 amdt 1.12

Sealing of originating applications
r 32 ins 1997 No 8 r 6

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Commencement of corporations proceedings

o 2A hdg	ins 1990 No 458 r 5 om 1997 No 8 r 6

Commencement by application—form 5

r 1	ins 1990 No 458 r 5 om 1997 No 8 r 6

Parties

r 2	ins 1990 No 458 r 5 om 1997 No 8 r 6

Relief claimed

r 3	ins 1990 No 458 r 5 om 1997 No 8 r 6

Name, address etc

r 4	ins 1990 No 458 r 5 om 1997 No 8 r 6

Notice to appear

r 5	ins 1990 No 458 r 5 om 1997 No 8 r 6

Affidavit

r 6	ins 1990 No 458 r 5 om 1997 No 8 r 6

Filing and copies

r 7	ins 1990 No 458 r 5 om 1997 No 8 r 6

Date for directions hearing

r 8	ins 1990 No 458 r 5 om 1997 No 8 r 6

Claim for interlocutory relief

r 9	ins 1990 No 458 r 5 om 1997 No 8 r 6

Endorsement of date

r 10	ins 1990 No 458 r 5 om 1997 No 8 r 6

Time for service

r 11	ins 1990 No 458 r 5 om 1997 No 8 r 6

Alteration of date

r 12	ins 1990 No 458 r 5 am 1993 No 35 r 6 om 1997 No 8 r 6

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Alteration where service out of time

r 13	ins 1990 No 458 r 5
	om 1997 No 8 r 6

Suit in person

r 14	ins 1990 No 458 r 5
	om 1997 No 8 r 6

Uncontested actions—debts and liquidated demands

o 3 hdg	sub 1997 No 8 r 6

Payment of amounts claimed in originating applications

r 1	am 1990 No 458 r 6
	sub 1997 No 8 r 6

Taxation of costs

r 2	sub 1997 No 8 r 6
	am 1997 No 43 r 3
	sub 2001 No 48 r 6

Taxation of costs—judgment in default of appearance

r 3	sub 1997 No 8 r 6
	am 1997 No 43 r 4
	sub 2001 No 48 r 6
	am SL2004-7 r 8

Writs for service out of Territory

r 4	om 1997 No 8 r 6

Date and teste

r 5	am 1958 No 64 r 1
	sub 1977 No 152 r 4
	om 1997 No 8 r 6

Time for appearance

r 6	am 1956 No 135 r 4
	sub 1977 No 152 r 4
	am 1995 No 27 r 3
	om 1997 No 8 r 6

Indorsement of claim

o 4 hdg	om 1997 No 8 r 6

When to be made

r 1	om 1997 No 8 r 6

Contents of indorsement

r 2	om 1997 No 8 r 6

Representative character

r 3	om 1997 No 8 r 6

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Probate actions

r 4	om 1997 No 8 r 6

Special indorsement

r 5	sub 1989 No 273 r 3 om 1997 No 8 r 6

Indorsement of notice as to stay of proceedings

r 6	am 1956 No 135 r 5; 1962 No 76 r 1; 1969 No 57 r 1 sub 1973 No 149 r 1 am 1975 No 81 r 1, r 2; 1976 No 190 r 1; 1978 No 86 r 2 sub 1980 No 214 r 2 am 1981 No 196 r 2; 1982 No 365 r 1; 1984 No 285 r 3; 1986 No 8 sch; 1986 No 26 r 3; 1986 No 349 r 3; 1987 No 67 r 2; 1987 No 93 r 3; 1987 No 219 r 3; 1988 No 24 r 3; 1988 No 221 r 2; 1989 No 18 r 3; 1989 No 191 [r 1]; 1990 No 372 r 3; 1992 No 82 r 3; 1993 No 11 r 3; 1994 No 17 r 3; 1995 No 11 r 5 om 1997 No 8 r 6

Specified amounts

r 6A	ins 1994 No 17 r 4 am 1995 No 12 r 3 om 1997 No 8 r 6

Indorsement of claim for account

r 7	om 1997 No 8 r 6

In actions for libel

r 8	om 1997 No 8 r 6

Indorsement of address

o 5 hdg	om 1997 No 8 r 6

Where plaintiff sues by solicitor

r 1	am 1977 No 152 r 5; 1991 No 108 r 3 om 1997 No 8 r 6

Where plaintiff sues in person

r 2	am 1977 No 152 r 6; 1991 No 108 r 4 om 1997 No 8 r 6

Where plaintiff cannot be found

r 3	om 1997 No 8 r 6

Proceedings other than actions

r 4	om 1997 No 8 r 6

Issue of writs of summons

o 6 hdg	om 1997 No 8 r 6

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Place of issue
r 1 om 1997 No 8 r 6

Preparation of writ
r 2 om 1997 No 8 r 6

Sealing of writ
r 3 sub 1978 No 173 r 4
om 1997 No 8 r 6

Copy to be left with officer
r 4 om 1997 No 8 r 6

Officer to file copy
r 5 om 1997 No 8 r 6

Writ in probate actions to be verified
r 6 om 1997 No 8 r 6

Concurrent writs and originating summons
o 7 hdg om 1997 No 8 r 6

Issue of concurrent writs
r 1 om 1997 No 8 r 6

Concurrent originating summons
r 2 om 1997 No 8 r 6

Concurrent writs within and beyond the jurisdiction
r 3 om 1997 No 8 r 6

Concurrent originating summons within and beyond the jurisdiction
r 4 om 1997 No 8 r 6

Representation by solicitors
o 8 hdg sub 1997 No 8 sch 3

Disclosures by solicitors and plaintiffs
o 8 div 1 hdg om 1997 No 8 sch 3

Right of proceeding in court
r 1 sub 1997 No 8 sch 3
am 2000 No 46 r 4

Change of solicitors
o 8 div 2 hdg om 1997 No 8 sch 3

Notice of change of solicitor
r 2 am 1999 No 26 r 7

Notice of appointment of solicitor
r 3 am 1999 No 26 sch

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Notice of intention to act in person
r 4 am 1999 No 26 sch

Removal of solicitor from the record
r 5 am 1999 No 26 sch

Withdrawal of solicitor from the record
r 6 am 1997 No 8 sch 3; R10 LA (see 2001 No 48 amdt 1.12)

Address for service
r 7 sub 1997 No 8 sch 3
om 1999 No 26 r 8

Renewal of writ
o 9 hdg om 1997 No 8 sch 3

Original writ to be in force for 12 months—may be renewed
r 1 om 1997 No 8 sch 3

Evidence of renewal
r 2 om 1997 No 8 sch 3

Lost writ—copy may sealed
r 3 om 1997 No 8 sch 3

Service of documents in Australia
o 10 hdg am 1978 No 173 r 5
sub 1995 No 15 r 4 (as am 1999 No 26 r 26) (1995 No 15 never commenced and repealed by 2001 No 48 r 14); 1999 No 26 r 9

Application of o 10
r 1 sub 1977 No 152 r 7
am 1995 No 15 r 4A (as am 1999 No 26 r 26) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)
sub 1997 No 8 sch 3; 1999 No 26 r 9; SL2004-7 r 9, r 10

Documents not generally required to be served personally
r 2 sub 1978 No 173 r 6; 1997 No 8 sch 3; 1999 No 26 r 9

Personal service of applications
r 2A ins 1978 No 173 r 6
sub 1997 No 8 sch 3
om 1999 No 26 r 9

Meaning of personal service
r 2B ins 1978 No 173 r 6
om 1999 No 26 r 9

Acceptance of service by solicitor
r 3 sub 1999 No 26 r 9

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Non-personal service of documents

r 4	sub 1997 No 8 sch 3; 1999 No 26 r 9 am SL2004-7 rr 11-13; SL2004-53 r 13

Service on defendant by filing if no appearance or address

r 5	sub 1997 No 8 sch 3; 1999 No 26 r 9

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

r 6	sub 1978 No 173 r 7 am 1983 No 27 r 2; 1984 No 281 r 3; 1990 No 458 r 7; 1993 No 35 r 4 sub 1999 No 26 r 9

Service on defendants who are children

r 7	am 1997 No 8 sch 3 sub 1999 No 26 r 9

Service on defendants with a mental disability

r 8	sub 1997 No 8 sch 3; 1999 No 26 r 9; 2000 No 46 r 5

Service of documents on both spouses

r 9	ins 1997 No 33 r 3 sub 1999 No 26 r 9

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

r 10	ins 1999 No 26 r 9

Service on a corporation—Corporations Act

r 11 hdg	ins 1999 No 26 r 9 sub 2001 No 48 amdt 1.13
r 11	ins 1999 No 26 r 9 am 2001 No 48 amdt 1.14

Substituted service

r 12	ins 1999 No 26 r 9

Affidavit of service

r 13	ins 1999 No 26 r 9

Inconvenient address for service

r 14	ins 1999 No 26 r 9

Change of address for service

r 15	ins 1999 No 26 r 9

Email service—other matters

r 16	ins SL2004-7 r 14

Service of subpoenas

r 17	ins SL2004-54 r 9

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Notice instead of subpoena to medical expert
r 18 ins SL2004-54 r 9

No shortening of time for service
r 19 ins SL2004-54 r 9

Service under the Hague Convention
o 11 hdg ins 1995 No 15 r 5 (as am by 1999 No 26 r 27) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Substituted service
r 1 sub 1978 No 173 r 8
am 1995 No 15 r 4 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)
om 1999 No 26 r 9

Application for order
r 2 ins 1978 No 173 r 8

Service under the Hague Convention
o 11A hdg ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Interpretation
r 1 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)
def ***requesting party*** ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Application for order
r 2 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Register of Convention particulars
r 3 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Documents to be filed
r 4 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Forwarding of documents abroad
r 5 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Receipt of certificate of service
r 6 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Costs
r 7 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

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Evidence of service

r 8 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Application of rules generally

r 9 ins 1995 No 15 r 5 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Service of documents outside Australia

o 12 hdg sub 1995 No 15 r 6 (1995 No 15 never commenced and repealed by 2001 No 48 r 14); 1999 No 26 sch

Service within the Commonwealth

r 1 om 1977 No 152 r 8
ins 1995 No 15 r 7 (as am by 1999 No 26 r 27) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Jurisdictional criteria

r 2 am 1997 No 8 sch 3; 1999 No 26 sch

Jurisdiction by consent

r 3 am 1997 No 8 sch 3; 1999 No 26 sch

Application for leave

r 4 am 1997 No 8 sch 3; 1999 No 26 sch; R10 LA (see 2001 No 48 amdt 1.15)

Leave not to be granted except in proper cases

r 5 om 1997 No 8 sch 3

Time for appearance

r 6 am 1997 No 8 sch 3; 1999 No 26 sch

Notice of writ

r 7 om 1997 No 8 sch 3

Service of notice of writ

r 8 om 1997 No 8 sch 3

Application of o 12 to other originating process

r 9 sub 1997 No 8 sch 3
am 1999 No 26 sch

Service where a convention applies

r 10 am 1968 No 13 r 2; 1995 No 15 r 8 (1995 No 15 never commenced and repealed by 2001 No 48 r 14); 1997 No 8 sch 3; 1999 No 26 sch; 2000 No 46 amdt 1.13; R10 LA (see 2001 No 48 amdt 1.16

Letters of request

r 11 am 1997 No 8 sch 3
om 1995 No 15 r 9 (1995 No 15 never commenced and repealed by 2001 No 48 r 14); 1999 No 26 r 9

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Consequential orders
r 12 am 1995 No 15 r 10 (as am 1999 No 26 r 29) (1995 No 15 never commenced and repealed by 2001 No 48 r 14); 1997 No 8 sch 3; 1999 No 26 sch

Entry of appearance
o 13 r 1 sub 1997 No 8 sch 3; SL2003-48 r 5

Mode of appearance
r 2 am 1992 No 23 r 2; 1997 No 8 sch 3; 1999 No 26 r 10; R10 LA (see 2001 No 48 amdt 1.17); SL2004-7 r 15; SL2004-53 r 14

Notice of appearance
r 3 sub 1997 No 8 sch 3

Defendant's address for service
r 4 am 1980 No 214 sch; 1991 No 108 r 5
sub 1997 No 8 sch 3
am 1997 No 33 r 4
om 1999 No 26 r 11

Address for service of defendant appearing in person
r 5 am 1980 No 214 sch
sub 1993 No 23 r 2
om 1997 No 8 sch 3

Defective address
r 6 am 1997 No 8 sch 3; 1999 No 26 sch

Form of appearance
r 7 om 1997 No 8 sch 3

Several defendants
r 9 am 1997 No 8 sch 3

Late appearances
r 11 am 1983 No 27 r 3
sub 1997 No 8 sch 3

Actions for the recovery of land—appearance by person not named in the application
r 12 sub 1997 No 8 sch 3

Actions for recovery of land—appearances by persons not in possession
r 13 sub 1997 No 8 sch 3

Actions for recovery of land—statement of landlord's interest
r 14 sub 1997 No 8 sch 3

Actions for recovery of land—limitation of defence to part of land
r 15 sub 1997 No 8 sch 3

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Notice of limitation
r 16 om 1997 No 8 sch 3

Conditional appearance
r 16A ins SL2003-48 r 6

Setting aside originating process etc
r 17 sub 1992 No 23 r 3
am 1997 No 8 sch 3; 2001 No 48 amdt 1.18

Default of appearance
o 14 hdg am 1995 No 15 r 11 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Interpretation—time for appearance
r 1 sub 1997 No 8 sch 3

Affidavit of service
r 2 am 1995 No 11 r 6
sub 1997 No 8 sch 3

Default by defendant with a legal disability
r 3 am 1980 No 214 sch; 1987 No 67 sch; 1995 No 11 r 7
sub 1997 No 8 sch 3
am 1999 No 26 sch
sub 2000 No 46 r 6

Claims for debt and liquidated demands—final judgment
r 4 am 1995 No 11 r 8
sub 1997 No 8 sch 3
am 1999 No 26 sch; 2000 No 46 r 7; R10 LA (see 2001 No 48 amdt 1.19)

Claims for pecuniary damages or for the detention of goods—interlocutory judgment
r 5 am 1983 No 228 r 2
sub 1997 No 8 sch 3

Entry of interlocutory judgment against defendants not appearing
r 6 am 1983 No 228 r 3
om 1997 No 8 sch 3

Interlocutory and final judgment when writ includes indorsement for debt or liquidated demand
r 7 am 1983 No 228 r 4; 1995 No 11 r 9
om 1997 No 8 sch 3

Trial of action after entry of interlocutory judgment
r 7A ins 1983 No 228 r 5
am 1997 No 8 sch 3
om 1999 No 26 sch

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Possession of land where no appearance
r 8 am 1997 No 8 sch 3; 1999 No 26 sch

Recovery of land—mesne profits, damages etc
r 9 sub 1997 No 8 sch 3
am 1999 No 26 sch

Trial of action after entry of interlocutory judgment
r 9A ins 1999 No 26 sch

Form of interlocutory or final judgment
r 9B ins 1999 No 26 sch

Default of appearance in other cases
r 11 sub 1997 No 8 sch 3

Proceedings mentioned on writ may be taken
r 12 om 1997 No 8 sch 3

Suggestion of breaches in action in bond
r 13 om 1997 No 8 sch 3

Default of appearance to originating summons
r 14 om 1997 No 8 sch 3

Judgment in default of appearance where originating process is served under the Hague Convention
o 14A hdg ins 1995 No 15 r 12 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Interpretation
r 1 ins 1995 No 15 r 12 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)
def ***originating process*** ins 1995 No 15 r 12 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)
def ***proceedings*** ins 1995 No 15 r 12 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Application
r 2 ins 1995 No 15 r 12 (as am 1999 No 26 r 30) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Entry of judgment in default of appearance where a certificate of service has been filed
r 3 ins 1995 No 15 r 12 (as am 1999 No 26 r 30) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Filing of certificate of servile to be deemed to be compliance with requirements of certain other orders
r 4 ins 1995 No 15 r 12 (as am 1999 No 26 r 30) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

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Entry of judgment in default of appearance where no certificate of service has been filed

r 5 ins 1995 No 15 r 12 (as am 1999 No 26 r 30) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Interlocutory, provisional or protective orders

r 6 ins 1995 No 15 r 12 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Setting aside judgment in default of appearance

r 7 ins 1995 No 15 r 12 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Application of rules generally

r 8 ins 1995 No 15 r 12 (as am 2000 No 46 r 33) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Summary judgment on statement of claim

o 15 hdg sub 1997 No 8 sch 3

Application of o 15

r 1A ins 1997 No 8 sch 3

Summary judgment

r 1 am 1977 No 152 r 9; 1989 No 273 r 4; 1997 No 8 sch 3; R10 LA (see 2001 No 48 amdt 1.20)

Application by motion on notice

r 2 sub 1993 No 23 r 3

Defence

r 3 am 1997 No 8 sch 3

Summary judgment for part of claim

r 4 am 1997 No 8 sch 3

Multiple defendants

r 5 am 1997 No 8 sch 3

Leave on terms

r 6 am 1997 No 8 sch 3

Summary disposal

r 7 am 1997 No 8 sch 3

Assessment of damages

r 8 om 1983 No 228 r 6

Directions as to trial

r 9 am 1997 No 8 sch 3

Costs

r 10 om 1997 No 8 sch 3

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Application of o 16
o 16 r 1A ins 1997 No 8 sch 3

Summary judgment
r 1 sub 1997 No 8 sch 3

Application by motion on notice
r 2 sub 1993 No 23 r 4

Defence
r 3 am 1997 No 8 sch 3

Leave on terms
r 4 am 1997 No 8 sch 3

Summary disposal
r 5 am 1997 No 8 sch 3

Directions as to trial
r 6 am 1997 No 8 sch 3

Costs
r 7 om 1997 No 8 sch 3

Summary judgment
o 17 r 1 sub 1997 No 8 sch 3

Defence by plaintiff
r 2 am 1997 No 8 sch 3; 1999 No 26 sch

Directions
r 3 am 1997 No 8 sch 3

Order for accounts
o 18 r 1 sub 1997 No 8 sch 3
am 1998 No 35 r 3

Application for it
r 2 om 1997 No 8 sch 3

Generally
o 19 div 19.1 hdg (prev o 19 div 1 hdg) renum 2000 No 46 amdt 1.14

Persons claiming jointly, severally, or in the alternative may be plaintiffs
r 1 am R10 LA (see 2001 No 48 amdt 1.21)

Amendment on misjoinder or nonjoinder of parties
r 12 am 1997 No 8 sch 3
sub 2000 No 46 r 8

Change of parties—amendment of application and service etc
r 14 am 1997 No 8 sch 3
sub 2000 No 46 r 9

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Probate actions
r 15 sub 2000 No 46 r 9

Title of proceedings after change of parties
r 15A ins 1981 No 296 r 4

People with legal disability
div 19.2 hdg (prev o 19 div 2 hdg) sub 2000 No 46 r 10

Meaning of *sue* and *defend*
r 16 am 1969 No 66 r 2
sub 2000 No 46 r 10

Children
r 17 sub 1999 No 26 sch; 2000 No 46 r 10

People with a mental disability
r 18 am 1999 No 26 sch
sub 2000 No 46 r 10

Appearance of people with a legal disability
r 19 sub 2000 No 46 r 10

Appointment of litigation guardian
r 20 sub 2000 No 46 r 10

Written authority of litigation guardian or relator
r 21 am 1999 No 26 sch
sub 2000 No 46 r 10

Consent on behalf of person with a legal disability
r 22 om 1978 No 173 r 11
ins 2000 No 46 r 10

Disqualification
r 23 om 1978 No 173 r 11

Case before counsel
r 24 om 1978 No 173 r 11

Affidavit verifying case
r 25 om 1978 No 173 r 11

Court fees
r 26 om 1978 No 173 r 11

Assignment of counsel
r 27 om 1978 No 173 r 11

No fees from poor persons
r 28 om 1978 No 173 r 11

No fees from intending poor persons
r 29 om 1978 No 173 r 11

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Dispaupering
r 30 om 1978 No 173 r 11

Notices
r 31 om 1978 No 173 r 11

Duty of solicitor
r 32 om 1978 No 173 r 11

Failure to proceed
r 33 om 1978 No 173 r 11

Discontinuance of proceedings
r 34 om 1978 No 173 r 11

Taxation of costs
r 35 om 1978 No 173 r 11

Payment of costs to poor person's solicitor in certain cases
r 36 om 1978 No 173 r 11

Administration and execution of trusts
div 19.3 hdg orig o 19 div 3 hdg om 1978 No 173 r 11
(prev o 19 div 4 hdg) renum 2000 No 46 amdt 1.15

Heir-at-law, next of kin, class
r 37 am 2000 No 46 amdt 1.16

Power to appoint persons to represent absent parties
r 37A (prev r 37 (2)) renum 2000 No 46 amdt 1.17

Legatees where legacy charged on real estate
r 39 am 1980 No 214 sch

Beneficiaries
r 41 am 1999 No 26 sch

Executors etc
r 43 am 1999 No 26 sch

Notice of judgment to be given
r 45 am 1968 No 13 r 3

Notice of judgment
r 48 am 1999 No 26 sch

Service of notice on person with a legal disability
r 49 am 1997 No 8 sch 3
sub 2000 No 46 r 11

Parties to administration proceedings
r 52 am 2000 No 46 amdt 1.18, amdt 1.19

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Third-party claim and form

o 20 r 1	sub 1969 No 66 r 3 am 1997 No 8 sch 3

Issuing of claim

r 2	sub 1969 No 66 r 3

Service of claim

r 3	sub 1969 No 66 r 3 am 1997 No 8 sch 3; 1999 No 26 sch sub SL2003-26 r 4

Rights of third party in action

r 4	sub 1969 No 66 r 3

Time for appearance

r 5	sub 1969 No 66 r 3 am 1997 No 8 sch 3

Appearances

r 6	sub 1969 No 66 r 3

Defence and pleadings after service

r 7	sub 1969 No 66 r 3

Procedure on default before trial

r 8	sub 1969 No 66 r 3

Procedure on trial

r 9	sub 1969 No 66 r 3

Judgment on third-party claim

r 10	sub 1969 No 66 r 3

Costs

r 11	sub 1969 No 66 r 3

Fourth and subsequent parties

r 12	sub 1969 No 66 r 3 am 2000 No 46 amdt 1.20

Service of pleadings

r 13	sub 1969 No 66 r 3

Counterclaims

r 14	ins 1969 No 66 r 3

Codefendants

r 15	ins 1969 No 66 r 3

Change of parties by devolution or transfer

o 21 hdg	sub 2000 No 46 r 12

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Effect of death or bankruptcy
r 1 sub 2000 No 46 r 12

Change of party—new party
r 2 sub 2000 No 46 r 12

Change of party—new side or capacity
r 3 sub 2000 No 46 r 12

Variation or discharge of order for new party etc
r 4 sub 2000 No 46 r 12

Notation of order in cause book
r 5 am 1997 No 8 sch 3
sub 2000 No 46 r 12

Death and no continuation
r 6 sub 1999 No 26 sch; 2000 No 46 r 12

Enforcement of order—person under disability
r 7 sub 1999 No 26 sch
om 2000 No 46 r 12

Death of party and failure to proceed
r 8 om 2000 No 46 r 12

Abatement to be certified and entered
r 9 om 2000 No 46 r 12

Abated cause to be struck out
r 10 om 2000 No 46 r 12

Not with action for recovery of land
o 22 r 2 om 1997 No 30 r 3

Statements in pleadings
o 23 r 4 am 1983 No 228 r 7; 2000 No 46 amdt 1.21, amdt 1.22

Name of settling counsel to be included in pleadings
r 4A ins 1983 No 228 r 8
am 2000 No 46 amdt 1.23

Forms of pleading
r 5 am 1999 No 26 sch

Letter for particulars
r 8 am 2000 No 46 amdts 1.24-1.26

Time for pleading after particulars
r 9 am 2000 No 46 amdt 1.27, amdt 1.28

Filing and service of pleadings etc and information in pleadings
r 11 sub 1969 No 66 r 4; SL2004-7 r 16

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Mode of delivery

r 12	sub 1949 No 44 r 5; 1969 No 66 r 5 om SL2004-7 r 16

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

r 13	am 1999 No 26 sch sub 2000 No 46 r 13

Joinder of issue

r 18	om 1981 No 296 r 5

Denial to be substantial answer

r 19	am 2000 No 46 amdts 1.29-1.31

Allegation of malice, intent, or knowledge

r 22	om 1981 No 296 r 5

Of implied contract or relation

r 24	am 2000 No 46 amdt 1.32, amdt 1.33

Statement of claim

o 24 r 1	am 1969 No 66 r 6 om 1997 No 8 sch 3

Alteration of claim without amendment of writ

r 3	am 1997 No 8 sch 3

Specific relief to be claimed

r 4	am 2000 No 46 amdt 1.34, amdt 1.35

Several claims and defences

r 5	am 2000 No 46 amdt 1.36, amdt 1.37

Defence to claims for debt and liquidated demands

o 25 r 1	sub 1997 No 8 r 7

Defences to motor vehicle and employment personal injuries claims

r 1A	ins 1997 No 8 r 7

Simple contracts, bonds etc

r 3	om 1997 No 8 sch 3

Time for delivery of defence

r 6	sub 1997 No 8 sch 3

Service on person not party

r 12	am 1997 No 8 sch 3; 1999 No 26 sch

Payment into and out of court and tender

o 26 hdg	sub SL2004-7 r 17

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Payment into court—amount

r 1 hdg	sub SL2003-6 amdt 1.2
r 1	am 1974 No 25 r 1; 1990 No 129 r 3, r 4; 1992 No 16 sch; 1992 No 34 sch; 1999 No 26 sch; 2000 No 17 r 8; 2000 No 46 amdts 1.38-1.40; 2001 No 48 amdt 1.22; R10 LA (see 2001 No 48 amdt 1.23); SL2003-6 amdts 1.2-1.5 sub SL2004-7 r 17

Interest up to date of payment into court

r 1AA	(prev r 1 (6)) renum 2000 No 46 amdt 1.40 om SL2004-7 r 17

Payment in by defendant who has counterclaimed

r 1A	ins 1990 No 129 r 5 om SL2004-7 r 17

Payment into court—bond

r 2	am 1974 No 25 r 2; 1989 No 30 r 3; 1990 No 129 r 6; 1999 No 26 sch; 2000 No 46 amdt 1.41; R10 LA (see 2001 No 48 amdt 1.24) sub SL2003-6 amdt 1.6; SL2004-7 r 17

Payment into court—security

r 3	sub 1997 No 9 r 2; SL2004-7 r 17

Interest up to date of payment into court

r 4	am 1980 No 214 sch; 1999 No 26 sch sub SL2004-7 r 17 am A2004-60 amdt 1.662

Australian Capital Territory as defendant

r 4A	ins 1989 No 30 r 4 am 1990 No 129 r 7 om SL2004-7 r 17

Payment in by defendant who has counterclaimed

r 5	am 1990 No 129 r 8; SL2003-6 amdt 1.7 sub SL2004-7 r 17

Plaintiff may accept payment etc

r 6	am 1974 No 25 r 3; 2000 No 46 amdt 1.42, amdt 1.43; 2001 No 48 amdt 1.25; SL2003-6 amdt 1.8 sub SL2004-7 r 17

Plaintiff accepts payment—costs

r 7	sub SL2004-7 r 17

Plaintiff accepts payment—counterclaim

r 8	am 1967 No 68 [r 1] sub 1968 No 13 r 4; 2000 No 46 r 14; SL2004-7 r 17

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Payment out of amount remaining in court

r 9	sub 1968 No 13 r 4 am 1974 No 25 r 4; 1974 No 197 r 1 sub 2000 No 46 r 14; SL2004-7 r 17

Payment into court by defendant to counterclaim

r 10	om 1968 No 13 r 4 ins 2000 No 46 r 14 sub SL2004-7 r 17

Nondisclosure of payment into court etc

r 11	ins SL2004-7 r 17

Payment in under order

r 12	ins SL2004-7 r 17

Approval of settlement of action by person with a legal disability

r 13	ins SL2004-7 r 17

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

r 14	ins SL2004-7 r 17

Court orders about recovered etc amounts

r 15	ins SL2004-7 r 17

Time for delivery of reply

o 27 r 1	am 1981 No 296 r 6

Defence to counterclaim

r 2	sub 1977 No 152 r 10

Close of pleadings

r 3	am 1977 No 152 r 11

Memorandum of close of pleadings to be filed

r 4	om 1989 No 30 r 5

No new assignment

r 5	om 1983 No 228 r 9

Defence arising before statement of defence

o 28 r 1	am 2000 No 46 amdt 1.44; R10 LA (see 2001 No 48 amdt 1.26)

Confession of defence

r 3	am 1999 No 26 sch; 2000 No 46 amdt 1.45

May be entire or partial

o 30 r 1	am 1993 No 35 r 7; 2000 No 17 r 9; 2000 No 46 amdt 1.46; R10 LA (see 2001 No 48 amdt 1.27)

Striking out defence

r 1A	(prev r 1 (3)) renum 2000 No 46 amdt 1.47

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Claims for debt and liquidated demands
o 31 r 2 am 1995 No 11 r 10
sub 1997 No 8 sch 3

Default of one of several defendants
r 3 om 1997 No 8 sch 3

Damages, detention of goods
r 4 am 1983 No 228 r 10

On default of 1 or more of several defendants
r 5 am 1983 No 228 r 11

Claims for debt and liquidated demands—interlocutory and final judgments
r 6 am 1980 No 214 r 3; 1983 No 228 r 12; 1995 No 11 r 11

Recovery of land
r 7 am 1997 No 8 sch 3; 1999 No 26 sch

Mesne profits
r 8 am 1997 No 8 sch 3; 1999 No 26 sch

Application for final judgment—debt or liquidated amount
r 9A ins 1999 No 26 sch
am 2000 No 46 r 15; R10 LA (see 2001 No 48 amdt 1.28)

Trial of action after entry of interlocutory judgment
r 9B ins 1999 No 26 sch

Motion for judgment on default
r 11 am 1997 No 8 sch 3

Form of interlocutory or final judgment
r 13A ins 1999 No 26 sch

Amendment
o 32 hdg sub 1993 No 4 r 3

By order or with leave
r 1 sub 1993 No 4 r 3; 1998 No 23 r 3
am 2000 No 46 amdt 1.48

Without leave
r 2 sub 1993 No 4 r 3
am 1997 No 8 sch 3

Answering pleading
r 3 sub 1993 No 4 r 3

Time for filing or amending answering pleading
r 4 sub 1993 No 4 r 3

Failure to amend answering pleading
r 5 sub 1993 No 4 r 3

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Time for reply to unamended defence
r 6 sub 1993 No 4 r 3

Disallowance of amendment
r 7 sub 1993 No 4 r 3

Scandalous etc matter
r 8 sub 1993 No 4 r 3

Directions for mode
r 9 sub 1993 No 4 r 3

Mode—simple amendment
r 10 sub 1993 No 4 r 3

Mode—fresh document
r 11 sub 1993 No 4 r 3

Scandalous, vexatious, etc matter in a document
r 11A ins 1991 No 251 r 3
om 1993 No 4 r 3

Service after amendment
r 12 sub 1993 No 4 r 3

Costs
r 13 sub 1993 No 4 r 3

Judgments and orders—accidental slips or omissions
r 14 ins 1993 No 4 r 3
am 2000 No 46 amdt 1.49

Directions
o 33 hdg sub 1983 No 228 r 13

Directions
r 1 sub 1983 No 228 r 13
am 1997 No 8 sch 3; R10 LA (see 2001 No 48 amdt 1.29) ; 2002 No 16 r 5

Directions—company proceedings
r 1A ins 1984 No 281 r 4
om 1993 No 35 r 4

Form of application
r 2 sub 1983 No 228 r 13

Affidavit not to be used
r 3 sub 1983 No 228 r 13

When application to be made
r 4 sub 1983 No 228 r 13

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Parties to apply for directions
r 5 om 1983 No 228 r 13

Subsequent applications
r 6 om 1983 No 228 r 13

Costs of subsequent applications
r 7 om 1983 No 228 r 13

Evidence
r 8 om 1983 No 228 r 13

Interlocutory proceedings when no summons for directions
r 9 om 1983 No 228 r 13

Failure to conduct proceedings
o 33A hdg ins 1992 No 16 r 3

Power to stay or dismiss
r 1 ins 1992 No 16 r 3

Security for costs
o 33B hdg ins 1992 No 16 r 3

Meaning of *defendant* and *plaintiff* for o 33B
r 1 ins 1992 No 16 r 3

Application procedure
r 2 ins 1992 No 16 r 3

Circumstances in which order may be made
r 3 ins 1992 No 16 r 3

Value and mode of security
r 4 ins 1992 No 16 r 3

Discovery
o 34 hdg sub SL2003-49 r 5

Definitions for order 34
div 34.1 hdg ins SL2003-49 r 5

Privileged documents
r 1A ins 1996 No 22 r 3
om 2000 No 46 r 16

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Definitions for o 34

r 1 sub 1969 No 66 r 7
am 1981 No 296 r 7; 1997 No 8 sch 3
sub SL2003-49 r 5
def ***Commonwealth Evidence Act*** ins SL2003-49 r 5
om SL2004-53 r 15
def ***discoverable document*** ins SL2003-49 r 5
def ***document*** ins SL2003-49 r 5
def ***government*** ins SL2003-49 r 5
def ***investigatory film*** ins SL2003-49 r 5
def ***list of documents*** ins SL2003-49 r 5

Meaning of *privileged from production* for o 34

r 2 sub SL2003-49 r 5

Disclosure of documents

div 34.2 hdg ins SL2003-49 r 5

Discoverable documents

r 3 sub SL2003-49 r 5
am SL2004-54 r 10, r 11; rr renum R25 LA (see SL2004-54 r 12)

Notice to disclose discoverable documents

r 4 sub SL2003-49 r 5

Orders about disclosure

r 5 om 1981 No 296 r 8
ins SL2003-49 r 5

List of documents

r 6 om 1981 No 296 r 8
ins SL2003-49 r 5

Continuing disclosure

r 7 sub 1969 No 66 r 8; SL2003-49 r 5

Production and inspection

div 34.3 hdg ins SL2003-49 r 5

Claims for privilege for documents

r 8 sub SL2003-49 r 5

Production of documents for inspection

r 9 sub SL2003-49 r 5

Orders about production of documents for inspection

r 10 sub 1969 No 66 r 9; SL2003-49 r 5

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Effect of inspection of documents disclosed by another party

r 11	sub 1981 No 296 r 9 am 1999 No 26 sch sub SL2003-49 r 5

Production of documents at hearing of action

r 12	am 1999 No 26 sch sub SL2003-49 r 5

Interrogatories

div 34.4 hdg	ins SL2003-49 r 5

Service of interrogatories

r 13	am 2000 No 46 amdt 1.50; R10 LA (see 2001 No 48 amdt 1.30) sub SL2003-49 r 5

Objections to answer

r 14	am 1999 No 26 sch sub SL2003-49 r 5

Orders about interrogatories

r 15	sub SL2003-49 r 5

Effect of discovery in writing

r 15A	ins 1983 No 228 r 14 om SL2003-49 r 5

Answers to interrogatories

r 16	sub SL2003-49 r 5

Answers to interrogatories—belief

r 17	am 1997 No 8 sch 3 sub SL2003-49 r 5

Effect of inspection of documents discovered by another party

r 17A	ins 1983 No 228 r 15 om SL2003-49 r 5

Affidavits verifying answers

r 18	am 1997 No 8 sch 3; 1999 No 26 sch sub SL2003-49 r 5

Tendering of answers to interrogatories in evidence

r 19	am 1968 No 13 r 5; 1980 No 214 sch sub 1993 No 23 r 5 am 1999 No 26 sch sub SL2003-49 r 5

Who may verify list of documents or answers to interrogatories?

div 34.5 hdg	ins SL2003-49 r 5

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Answers by governments, corporations etc

r 20	sub 1993 No 23 r 5 am 1997 No 8 sch 3 sub SL2003-49 r 5

Party who cannot answer personally

r 21	am 2001 No 48 amdt 1.31 sub SL2003-49 r 5

Privileged documents

r 21A	(prev r 21 (2)) renum 2000 No 46 amdt 1.51 om SL2003-49 r 5

Power to order discovery of particular document or class of documents

r 21B	(prev r 21 (3)) renum 2000 No 46 amdt 1.52, amdt 1.53 om SL2003-49 r 5

Penalty provisions

div 34.6 hdg	ins SL2003-49 r 5

Contravention of order of the court

r 22	sub SL2003-49 r 5

Solicitor to notify party of certain matters

r 23	sub 2000 No 46 r 17 am 2000 No 46 amdt 1.54, amdt 1.55 sub SL2003-49 r 5

Improper use of disclosed document

r 24	sub SL2003-49 r 5

Noncompliance with order

r 25	sub SL2003-49 r 5

Failure to disclose document

r 26	sub SL2003-49 r 5

Practice directions

div 34.7 hdg	ins SL2003-49 r 5 exp 1 January 2006 (r 27 (4))

Practice directions about discovery by electronic means

r 27	sub SL2003-49 r 5 exp 1 January 2006 (r 27 (4))

Order to apply to infants

r 28	om 2000 No 46 r 18

Proceedings under order 75A

r 29	ins 1984 No 281 r 5 om 1993 No 35 r 4

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Preliminary discovery
o 34A hdg ins 1992 No 21 r 3

Definitions for o 34A
r 1 ins 1992 No 21 r 3
def ***applicant*** ins 1992 No 21 r 3
def ***description*** ins 1992 No 21 r 3
def ***possession*** ins 1992 No 21 r 3

Privilege
r 2 ins 1992 No 21 r 3
am 1992 No 35 r 2

Discovery to identify defendant
r 3 ins 1992 No 21 r 3

Conduct money
r 4 ins 1992 No 21 r 3
am SL2004-54 r 13

Discovery to identify right to obtain relief
r 5 ins 1992 No 21 r 3

Applicant who is party to a proceeding
r 6 ins 1992 No 21 r 3

Service of application and supporting affidavit
r 7 ins 1992 No 21 r 3

Order for inspection, preservation etc of property
r 8 ins 1992 No 21 r 3

Non-party production
o 34B hdg ins 1997 No 38 r 3

Definitions for o 34B
r 1 ins 1997 No 38 r 3
def ***notice for non-party production*** ins 1997 No 38 r 3
def ***respondent*** ins 1997 No 38 r 3

Notice for non-party production
r 2 ins 1997 No 38 r 3

Form of notice
r 3 ins 1997 No 38 r 3
am 1999 No 26 sch

Service of notice
r 4 ins 1997 No 38 r 3
am SL2003-26 r 5

Inspection by other parties
r 5 ins 1997 No 38 r 3

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Application to set aside or vary
r 6 ins 1997 No 38 r 3
am SL2003-26 r 6

Privilege or objection
r 7 ins 1997 No 38 r 3

Copying produced documents
r 8 ins 1997 No 38 r 3

Costs
r 9 ins 1997 No 38 r 3

Notice to admit documents
o 35 r 2 sub 1993 No 23 r 6
am 1999 No 26 sch

Notice to admit facts
r 3 sub 1993 No 23 r 6
am 1999 No 26 sch

Notice to admit facts
r 4 om 1993 No 23 r 6

Form of notice of admissions
r 5 om 1993 No 23 r 6

Notice to produce documents
r 8 am 1999 No 26 sch

Application for
o 36 r 2 am 1999 No 26 sch

Accounts to be verified by affidavit
r 5 am 2000 No 46 amdt 1.56, amdt 1.57

Inquiry as to outstanding estate
r 8 om 1998 No 35 r 4

Directions to be numbered
r 9 am 1992 No 34 sch; 1999 No 26 sch

Statement of particulars before trial
o 36A hdg ins 1990 No 2 r 6

Application of o 36A
r 1 ins 1990 No 2 r 6

Definitions for o 36A
r 2 ins 1990 No 2 r 6
sub 2000 No 46 amdt 1.58
def ***defendant*** ins 1990 No 2 r 6
sub 2000 No 46 amdt 1.58

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def ***earnings*** ins 1990 No 2 r 6
sub 2000 No 46 amdt 1.58
def ***plaintiff*** ins 1990 No 2 r 6
sub 2000 No 46 amdt 1.58

Statement of particulars
r 3 hdg ins 1994 No 2 r 3
r 3 ins 1990 No 2 r 6
am 1994 No 2 r 3; R10 LA (see 2001 No 48 amdt 1.32)

Questions of law—special cases
o 37 hdg sub 1997 No 31 r 4

Special case
div 1 hdg om 1997 No 31 r 5

Interpretation
r 1A ins 1997 No 31 r 6
def ***party having carriage of the proceeding*** ins 1997 No 31 r 6
am 2000 No 46 amdt 1.59
def ***tribunal*** ins 1997 No 31 r 6

Application
r 1B ins 1997 No 31 r 6

Special case
r 1 sub 1997 No 31 r 6

Preparation and filing of special case
r 3 sub 1997 No 31 r 7

Copies for the judges
r 4 om 1997 No 31 r 7

Person with a legal disability
r 5 sub 2000 No 46 r 19

Directions hearings
r 6 sub 1997 No 31 r 8

Insufficient statement of case
r 6A ins 1997 No 31 r 8

Application order
r 8 om 1997 No 31 r 9

Issues of fact without pleadings
div 2 hdg om 1997 No 31 r 10

Issues of fact without pleadings
o 37A hdg ins 1997 No 31 r 10

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Trial of questions of fact by consent

r 1	(prev o 37 r 9) am 1997 No 8 sch 3 renum 1997 No 31 r 11 am 1999 No 26 sch; 2000 No 46 amdts 1.60-1.62; SL2003-48 r 7

Amount agreed to be paid

r 2	(prev o 37 r 10) renum 1997 No 31 r 11 am 2001 No 10 amdt 1.2

Judgment and execution

r 3	(prev o 37 r 11) renum 1997 No 31 r 11 am 2001 No 10 amdt 1.2, amdt 1.3

Proceedings may be recorded

r 4	(prev o 37 r 12) renum 1997 No 31 r 11 am 2001 No 10 amdt 1.2

Trial by jury before a single judge

o 38 r 1	om 1980 No 214 r 4

Mode of entry of trial

r 3	om 1989 No 30 r 5

Notice of trial where no summons for directions

r 4	om 1989 No 30 r 5

Dismissal for want of prosecution

r 5	om 1989 No 30 r 5

For sittings in Canberra

r 6	om 1989 No 30 r 5

For sittings out of Canberra

r 7	om 1989 No 30 r 5

Trial in Canberra

r 8	om 1989 No 30 r 5

Delivery of copies of pleadings

r 9	sub 1969 No 66 r 10 om 1989 No 30 r 5

Special defences where no pleadings

r 13	am 1999 No 26 sch; 2000 No 46 amdt 1.63, amdt 1.64

Habeas corpus where adjournment

r 17	am 1980 No 214 sch

Order of evidence and addresses

r 18	sub 2000 No 46 r 20

Disallowance of questions

r 20	om 1995 No 44 r 3

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Authority for judgment
r 24 am 1999 No 26 sch; 2000 No 46 amdt 1.65, amdt 1.66

Writs of trial and inquiry abolished
r 26 am 1983 No 228 r 16

Procedure on inquiry
r 27 om 1983 No 228 r 17

Calculation of damages
r 28 am 1983 No 228 r 18

General
o 39 div 39.1 hdg (prev o 39 div 1 hdg) sub 1993 No 20 r 3
renum 2000 No 46 amdt 1.67

Definitions for o 39
r 1A ins 1983 No 27 r 4
def ***expert*** ins 1999 No 26 r 12
def ***expert's report*** ins 1990 No 2 r 3
def ***hospital report*** ins 1990 No 2 r 3
def ***person named*** ins 1983 No 27 r 4
om SL2004-54 r 14
def ***subpoena for production*** ins 1983 No 27 r 4
om SL2004-54 r 14
def ***subpoena to give evidence*** ins 1983 No 27 r 4
om SL2004-54 r 14

Examination of witnesses at trial
r 1 am 1999 No 26 sch

Evidence by telephone etc by consent
r 2A ins SL2004-53 r 16

Taking evidence at trial from outside ACT by audiovisual link or audio link
div 39.2 hdg (prev o 39 div 2 hdg) sub 1993 No 20 r 4
om 1997 No 38 r 4
ins 2000 No 24 r 3
renum 2000 No 46 amdt 1.67

Application for direction
r 3 om 1995 No 44 r 3
ins 2000 No 24 r 3
am SL2004-54 r 15

Supporting affidavit
r 4 om 1993 No 20 r 5
ins 2000 No 24 r 3
am SL2004-54 r 16

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Relevant considerations

r 5	am 1968 No 13 r 6 om 1993 No 20 r 5 ins 2000 No 24 r 3

Directions

r 6	om 1993 No 20 r 5 ins 2000 No 24 r 3 am SL2004-54 r 17

Inspection of documents in the possession of a person not a party to the cause or matter

r 6A	ins 1983 No 27 r 5 om 1997 No 38 r 4

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

div 39.3 hdg	(prev o 39 div 3 hdg) om 1993 No 20 r 7 ins 1993 No 20 r 6 renum 2000 No 46 amdt 1.67

Application of div 39.3

r 7	sub 1993 No 20 r 6

Application to Magistrates Court proceedings

r 8	sub 1993 No 20 r 6 am 1995 No 19 r 3; A2004-60 amdt 1.663

When order for examination may be made

r 9	sub 1993 No 20 r 6

Application for order

r 10	sub 1993 No 20 r 6

Appointment of examiner

r 11	sub 1993 No 20 r 6

Forms of order

r 12	sub 1993 No 20 r 6 am 1999 No 26 sch

Documents for examiner

r 13	sub 1993 No 20 r 6

Appointment for examination

r 14	sub 1993 No 20 r 6

Conduct of examination

r 15	sub 1993 No 20 r 6

Examination of additional persons

r 16	sub 1993 No 20 r 6

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Objections
r 17 sub 1993 No 20 r 6

Recording of depositions
r 18 sub 1993 No 20 r 6

Authentication and filing
r 19 sub 1993 No 20 r 6

Special report
r 20 sub 1993 No 20 r 6

Default of witness
r 21 sub 1993 No 20 r 6

Conduct money
r 22 sub 1993 No 20 r 6

Taking evidence otherwise than at trial—outside Australia
div 39.4 hdg (prev o 39 div 4 hdg) ins 1993 No 20 r 6
renum 2000 No 46 amdt 1.67

Application of div 39.4
r 23 sub 1993 No 20 r 6
am 1996 No 10 r 3; 2001 No 48 amdt 1.33

When order may be made
r 24 sub 1993 No 20 r 6

Application for order
r 24A ins 1993 No 20 r 6
am 1996 No 10 r 4

Forms of order
r 24B ins 1993 No 20 r 6
am 1996 No 10 r 5; 1999 No 26 sch

Letters of request
24C ins 1993 No 20 r 6
am 1996 No 10 r 6; 1999 No 26 sch

Order for payment of expenses—r 24C (1) (b) (ii)
r 24D ins 1993 No 20 r 6
am 2001 No 48 amdt 1.34

Procedure for taking evidence by examination—application of div 39.3 rules
r 24E ins 1993 No 20 r 6
am 1996 No 10 r 7; 2001 No 48 amdt 1.35

Procedure for taking evidence under a letter of request—application of div 39.3 rules
r 24F ins 1993 No 20 r 6

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Taking evidence for interstate and foreign courts and tribunals

div 39.5 hdg	(prev o 39 div 5 hdg) om 1993 No 20 r 9 ins 1993 No 20 r 6 renum 2000 No 46 amdt 1.67

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

r 24G	ins 1993 No 20 r 6

Application for order to which div 39.5 applies

r 24H	ins 1993 No 20 r 6 sub 2002 No 24 r 4

Form

r 24J	ins 1993 No 20 r 6 am 1999 No 26 sch

Appointment of examiner

r 24K	ins 1993 No 20 r 6

Attendance at examination by applicant

r 24L	ins 1993 No 20 r 6

Procedure for taking evidence—application of div 39.3 rules

r 24M	ins 1993 No 20 r 6

Retention of exhibits

r 24N	ins 1993 No 20 r 6

Certificate of order and depositions

r 24P	ins 1993 No 20 r 6 am 1999 No 26 sch

Privilege of witnesses

r 24Q	ins 1993 No 20 r 6

Subpoenas

div 39.6 hdg	(prev o 39 div 6 hdg) ins 1990 No 2 r 5 om 1993 No 20 r 10 ins 1993 No 20 r 7 renum 2000 No 46 amdt 1.67 om SL2004-54 r 18

Power to issue

r 25	sub 1983 No 27 r 6 om SL2004-54 r 18

Return date for subpoena for production

r 26	sub 1983 No 27 r 6 om SL2004-54 r 18

Power of registrar to grant leave to inspect documents

r 26A	ins 1990 No 2 r 4 om SL2004-54 r 18

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Conduct money

r 27	sub 1983 No 27 r 6; 1995 No 27 r 4 om SL2004-54 r 18

Production by non-party

r 28	sub 1983 No 27 r 6 om SL2004-54 r 18

Costs of complying with subpoena

r 29	sub 1983 No 27 r 6 am 1995 No 27 r 5 om SL2004-54 r 18

Banker's books

r 30	sub 1983 No 27 r 6 om SL2004-54 r 18

Issue—form of subpoena

r 31	sub 1983 No 27 r 6 am 1999 No 26 sch sub SL2004-7 r 18 om SL2004-54 r 18

Rejection of certain requests for subpoena

r 31A	ins SL2004-7 r 19 om SL2004-54 r 18

Document or thing in custody of a court

r 32	sub 1983 No 27 r 6 am SL2004-7 r 20, r 21 om SL2004-54 r 18

Service of subpoenas

r 32A	ins 1983 No 27 r 6 am 1985 No 69 r 1; 1991 No 251 r 4 sub 1999 No 26 r 13 om SL2004-54 r 18

Notice in lieu of subpoena to medical expert

r 32B	ins 1985 No 69 r 2 om SL2004-54 r 18

No abridgement of time prescribed for service

r 32C	ins 1985 No 69 r 2 om SL2004-54 r 18

Setting aside

r 33	sub 1983 No 27 r 6 om SL2004-54 r 18

Delivery of documents to the registrar

r 33A	ins 1969 No 221 r 3

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om SL2004-54 r 18

Perpetuating testimony

div 39.7 hdg (prev o 39 div 7 hdg) ins 1993 No 20 r 8
renum 2000 No 46 amdt 1.67

Disclosure of experts' reports and hospital reports

div 39.8 hdg (prev o 39 div 8 hdg) ins 1993 No 20 r 10
renum 2000 No 46 amdt 1.67

Application of div 39.8

r 38 orig r 38 om 1993 No 20 r 9
(prev r 45) ins 1990 No 2 r 5
am 2000 No 46 amdt 1.68
renum SL2004-15 r 4

Service of experts' reports and hospital reports

r 39 hdg (prev r 46 hdg) ins 2000 No 46 amdt 1.69
renum SL2004-15 r 4
r 39 orig r 39 om 1993 No 20 r 9
(prev r 46) ins 1990 No 2 r 5
renum SL2004-15 r 4

Evidence of expert to be covered by expert's report

r 40 hdg (prev r 47 hdg) ins 2000 No 46 amdt 1.70
renum SL2004-15 r 4
r 40 orig r 40 om 1993 No 20 r 9
(prev r 47) ins 1990 No 2 r 5
renum SL2004-15 r 4

Expert's reports admissible as evidence of facts

r 41 hdg (prev r 48 hdg) ins 1999 No 26 r 14
renum SL2004-15 r 4
r 41 orig r 41 am 1968 No 13 r 7
om 1993 No 20 r 9
(prev r 48) ins 1990 No 2 r 5
am 1999 No 26 r 14
renum SL2004-15 r 4

Attendance of experts and tender of experts' reports

r 42 hdg (prev r 49 hdg) ins 2000 No 46 amdt 1.71
renum SL2004-15 r 4
r 42 orig r 42 am 1968 No 13 r 7
om 1993 No 20 r 9
(prev r 49) ins 1990 No 2 r 5
renum SL2004-15 r 4

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Appointment of medical expert for Civil Law (Wrongs) Act

div 39.8A hdg ins SL2004-15 r 5

Definitions for div 39.8A

r 43 am 1938 No 99 r 1
om 1993 No 20 r 9
ins SL2004-15 r 5
def ***appointed expert*** ins SL2004-15 r 5
def ***expert*** ins SL2004-15 r 5
def ***expert medical evidence*** ins SL2004-15 r 5
def ***Wrongs Act*** ins SL2004-15 r 5

Application for appointment of expert—Wrongs Act, s 86

r 44 am 1938 No 99 r 1
sub 1983 No 27 r 7
om 1993 No 20 r 9
ins SL2004-15 r 5

Supporting affidavit for appointment of expert

r 45 orig r 45 renum as r 38
ins SL2004-15 r 5

Service on other parties

r 46 orig r 46 renum as r 39
ins SL2004-15 r 5

Response by other parties

r 47 orig r 47 renum as r 40
ins SL2004-15 r 5

Selection of expert etc by court

r 48 orig r 48 renum as r 41
ins SL2004-15 r 5

Appointed experts to be briefed etc

r 49 orig r 49 renum as r 42
ins SL2004-15 r 5

Request by appointed expert for directions

r 49A orig r 49A renum as r 49F
ins SL2004-15 r 5

Expert to report

r 49B orig r 49B renum as r 49G
ins SL2004-15 r 5

Expert witness code of conduct

r 49C ins SL2004-15 r 5

Expert report to be admitted in evidence

r 49D ins SL2004-15 r 5

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Attendance of expert
r 49E ins SL2004-15 r 5

Evidence of expert witnesses
div 39.9 hdg (prev o 39 div 8A hdg) ins 1999 No 26 r 15
renum 2000 No 46 amdt 1.72

Application of div 39.9
r 49F (prev r 49A) ins 1999 No 26 r 15
renum R24 LA

Court may direct manner that experts give evidence
r 49G (prev r 49B) ins 1999 No 26 r 15
renum R24 LA

Matters arising under the Evidence Act 1995 (Cwlth)
div 39.10 hdg (prev o 39 div 9 hdg) ins 1996 No 27 r 3
renum 2000 No 46 amdt 1.73
om SL2004-53 r 17

Evidence of previous representation
r 50 ins 1996 No 27 r 3
am 1999 No 26 sch
om SL2004-53 r 17

Objection to hearsay evidence
r 51 ins 1996 No 27 r 3
am 1999 No 26 sch
om SL2004-53 r 17

Tendency evidence
r 52 ins 1996 No 27 r 3
am 1999 No 26 sch
om SL2004-53 r 17

Coincidence evidence
r 53 ins 1996 No 27 r 3
am 1999 No 26 sch
om SL2004-53 r 17

Exhibits, documents and things
o 39A hdg ins 2000 No 44 r 3
sub SL2004-54 r 19

Meaning of *subpoena document or thing* for o 39A
r 1 ins 2000 No 44 r 3
sub SL2004-54 r 20

The clerk at the proceeding
r 2 ins 2000 No 44 r 3

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Record

r 3	ins 2000 No 44 r 3 am SL2004-54 r 21, r 22

Custody of exhibits after proceedings

r 4	ins 2000 No 44 r 3 am 2002 No 27 amdt 2.1, amdt 2.2

Duty of parties to claim exhibits

r 5	ins 2000 No 44 r 3 am SL2004-54 rr 23-25

Return of subpoena document or thing

r 6	ins 2000 No 44 r 3 sub SL2004-54 r 26

Requirement to give or send exhibit

r 7	ins 2000 No 44 r 3 am SL2004-54 r 27

Power to allow removal of documents and things

r 8	ins 2000 No 44 r 3 sub SL2004-54 r 28

Affidavits

o 40 hdg	sub 2000 No 46 amdt 1.74

Affidavits generally

div 40.1 hdg	(prev o 40 div 1 hdg) sub 1969 No 221 r 4 renum 2000 No 46 amdt 1.75

Title of affidavit

r 1	sub 1969 No 221 r 4

Form of affidavits generally

r 2	sub 1969 No 221 r 4 am 1992 No 79 r 3 sub 2002 No 24 r 5

Contents of affidavit

r 3	sub 1969 No 221 r 4

Dates and figures to be expressed in figures and not words

r 3A	ins 1969 No 66 r 11 om 1969 No 221 r 4

Annexures and exhibits

r 4	sub 1969 No 221 r 4 am 2000 No 46 amdt 1.76; 2002 No 24 r 6, r 7; sr renum R15 LA (see 2002 No 24 r 8)

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Taking of affidavit

r 5	am 1968 No 13 r 8 sub 1969 No 221 r 4 am 1995 No 27 r 6; 2002 No 24 r 9

When affidavit may be taken

r 6	sub 1969 No 221 r 4

Affidavit by 2 or more deponents

r 7	sub 1969 No 221 r 4 am 2002 No 24 r 10

Affidavit by illiterate or blind person

r 8	sub 1969 No 221 r 4

Affidavit by person unable to understand English

r 9	sub 1969 No 221 r 4 am 2002 No 24 rr 10-12

Alterations in affidavits

r 10	sub 1969 No 221 r 4

Filing of affidavits

r 11	sub 1969 No 221 r 4

Copies of affidavits to be served

r 12	sub 1969 No 221 r 4; 2002 No 16 r 6

Use of defective affidavit

r 13	sub 1969 No 221 r 4

Scandalous etc matter

r 14	sub 1969 No 221 r 4

Cross-examination

r 15	sub 1969 No 221 r 4 am 2002 No 16 r 7; rr renum R12 LA (see 2002 No 16 r 8)

Before whom sworn

r 16	om 1969 No 221 r 4

Before clerk when insufficient

r 17	om 1969 No 221 r 4

Filing after time

r 18	om 1969 No 221 r 4

On ex parte order

r 19	om 1969 No 221 r 4

Affidavits and evidence in chambers

o 40 div 2 hdg	om 1969 No 221 r 4

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Notice of intention to use affidavit
r 20 om 1969 No 221 r 4

Affidavits used in court may be used in chambers
r 21 om 1969 No 221 r 4

Alterations in accounts
r 22 om 1969 No 221 r 4

Exhibits
r 23 om 1969 No 221 r 4

Trial on affidavit
div 40.2 hdg (prev o 40 div 3 hdg) renum 2000 No 46 amdt 1.77
sub 2002 No 16 r 9

Evidence on affidavit by consent—Act, s 54
r 24 am 1999 No 26 sch; 2000 No 46 amdt 1.78, amdt 1.79
sub 2002 No 16 r 9

Affidavits of plaintiff
r 25 om 2002 No 16 r 9

Of defendant
r 26 om 2002 No 16 r 9

Of plaintiff in reply
r 27 om 2002 No 16 r 9

Cross-examination of deponent
r 28 am 2000 No 46 amdts 1.80-1.82
om 2002 No 16 r 9

Compelling attendance of deponent
r 29 om 2002 No 16 r 9

Motion where no judgment directed
o 41 r 2 am 2000 No 46 amdt 1.83, amdt 1.84

Judgment after issues tried
r 3 am 2000 No 46 amdt 1.85, amdt 1.86

Judgment book
o 42 r 1 sub 1997 No 8 r 8

Preparation of judgments and orders
r 2 sub 1984 No 281 r 6
am 1998 No 35 r 5; 1999 No 26 sch; 2001 No 10 amdt 1.4; 2001 No 48 amdt 1.36, amdt 1.37

Order to contain date of making
r 6A ins SL2004-7 r 22

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Judgment by consent
r 10 sub 2001 No 48 amdt 1.38

Consent order or judgment signed by registrar
r 11 ins 1978 No 173 r 9
am 2001 No 48 r 7; 2002 No 16 r 10

Consent judgment in chambers
r 12 ins 1978 No 173 r 9

Copy of order of Federal Court may be filed
r 13 ins 1983 No 228 r 19
om 2002 No 27 amdt 2.3

Copies
r 14 ins 1990 No 458 r 8
am 1992 No 35 r 3; 1999 No 26 sch

Interest up to and on judgments
o 42A hdg ins 1977 No 152 r 12
sub 1986 No 86 r 2; 1990 No 129 r 9; A2004-60 amdt 1.664

Interest up to judgment
r 1 ins 1977 No 152 r 12
sub 1986 No 86 r 2; 1990 No 129 r 9
am 1991 No 472 r 3; 1992 No 34 sch
sub 1993 No 23 r 7
am 2001 No 10 r 3
table renum R22 LA
om (except table) A2004-60 amdt 1.665
reloc from Supreme Court Act 1933 r 69 by A2004-60 amdt 1.653

Interest on judgments
r 2 ins 1977 No 152 r 12
sub 1986 No 86 r 2; 1990 No 129 r 9; 1991 No 472 r 4
om 1993 No 23 r 7
ins A2004-60 amdt 1.665

Notices to sheriff
o 42B hdg ins SL2004-7 r 23

No order for return of writ etc necessary
r 1 ins SL2004-7 r 23

Notice to sheriff, out of office
r 2 ins SL2004-7 r 23

Praecipe
o 43 r 10 am 1999 No 26 sch; 2000 No 46 amdt 1.87, amdt 1.88

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Form of writ of execution
r 12 am 1999 No 26 sch

Additional fees and expenses
r 14 am 1981 No 104 r 2; 1994 No 21 r 4; 2000 No 46 amdt 1.89, amdt 1.90

Direction to sheriff to levy
r 14A (prev r 14 (2)) renum 2000 No 46 amdt 1.90

Amount to be indorsed on writ of execution
r 15 am 1980 No 214 sch; 1987 No 67 sch; 1990 No 129 r 10

Form of indorsement on writ of fieri-facias
r 16 am 1939 No 61 r 1; 1980 No 214 sch; 1981 No 104 r 3; 1987 No 67 sch; 1990 No 129 r 11

Examination of judgment debtors
r 31 sub 1969 No 221 r 5
am 1999 No 26 sch; 2000 No 46 amdt 1.91; R10 LA (see 2001 No 48 amdt 1.39)

In cases of difficulty, party may apply
r 32 sub 1969 No 221 r 5

Costs
r 33 sub 1969 No 221 r 5

Leave for issue of writs in aid
o 44 r 3A ins 1997 No 20 r 3
am SL2004-54 r 29

Against estate of disobedient person
r 4 am 2000 No 46 amdt 1.92, amdt 1.93

Service of judgment or order to be enforced by attachment
o 45 r 3 ins 1999 No 26 r 16

Order for attachment of debts
o 46 r 1 am 1968 No 13 r 9; 1999 No 26 sch; 2000 No 46 amdt 1.94; 2001 No 10 amdt 1.5; R10 LA (see 2001 No 48 amdt 1.40)

Order charging stock or shares
o 47 r 1 am A2004-60 amdt 1.666

Charge on partnership property
r 2 am 1968 No 13 r 10

Application by partner of judgment debtor
r 3 am 2000 No 46 amdt 1.95, amdt 1.96

Filing and service of affidavit and notice as to stock
r 5 am 1999 No 26 sch

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Changing of address for notices
r 7 sub 1999 No 26 r 17

Service by post
r 8 sub 1999 No 26 r 17

Form—execution for damages and costs
o 49 r 2 am 1999 No 26 sch

Disclosure of partners' names
o 50 r 2 am 1997 No 8 sch 3

Service
r 3 am 1997 No 8 sch 3
om 1999 No 26 sch

Notice in what capacity served
r 4 am 1997 No 8 sch 3
om 1999 No 26 sch

No appearance except by partners
r 6 am 1997 No 8 sch 3; 1999 No 26 sch

Appearance under protest of person served as partner
r 7 am 1999 No 26 sch
sub SL2003-48 r 8

Execution of judgment against a firm
r 8 am 1997 No 8 sch 3

Attachment of debts owing from a firm
r 9 am 1968 No 13 r 11

Consolidation of actions
o 51 r 1 sub 1995 No 27 r 7
am 2000 No 46 amdt 1.97

Interlocutory orders, receivers and accounts
o 52 hdg sub 2000 No 46 amdt 1.98

Interlocutory orders as to mandamus, injunctions, interim preservation of property etc
div 52.1 hdg (prev o 52 div 1 hdg) sub 1991 No 294 r 3
renum 2000 No 46 amdt 1.99

Application for order
r 6 am 1992 No 34 sch; 1997 No 8 sch 3; 2000 No 46 amdt 1.100, amdt 1.101

Writ of injunction abolished
r 11 am 2000 No 46 amdt 1.102, amdt 1.103

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Receivers

div 52.2 hdg	(prev o 52 div 2 hdg) sub 1991 No 294 r 3 renum 2000 No 46 amdt 1.104

Meaning of *court* in div 52.2

r 16	sub 1991 No 294 r 3

Application for order

r 17	sub 1991 No 294 r 3

Address for service

r 18	am 1980 No 214 sch sub 1991 No 294 r 3

Security

r 19	sub 1991 No 294 r 3 am 1999 No 26 sch

Powers

r 20	am 1980 No 214 sch; 1990 No 458 r 9 sub 1991 No 294 r 3 am 2001 No 10 amdt 1.6

Remuneration

r 21	sub 1991 No 294 r 3

Accounts

r 22	sub 1991 No 294 r 3 am SL2003-48 r 9

Default

r 23	sub 1991 No 294 r 3 am 1992 No 34 sch; A2004-60 amdt 1.667

Account on death

r 24	sub 1991 No 294 r 3

Accounts

div 52.3 hdg	(prev o 52 div 3 hdg) sub 1991 No 294 r 3; 2000 No 46 r 21

Accounts of liquidators, guardians etc

r 25	sub 2000 No 46 r 21

Sale under order

o 53 r 4	am 1992 No 34 sch

Motions

o 54 hdg	sub SL2004-7 r 24

Preliminary

div 54.1 hdg	ins SL2004-7 r 24

Meaning of *supporting material*

r 1	sub SL2004-7 r 24

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Filing and service of notice of motion—supporting material
r 2 sub SL2004-7 r 24

Interlocutory or other applications in proceedings already begun
div 54.2 hdg ins SL2004-7 r 24

Applications by motion
r 3 sub SL2004-7 r 24

Notice of motion
r 4 sub SL2004-7 r 24

Originating motions
div 54.3 hdg ins SL2004-7 r 24

Beginning actions by motion
r 5 om 2002 No 16 r 11
ins SL2004-7 r 24

Originating notice of motion
r 6 sub SL2004-7 r 24

Filing and service of originating notice of motion
r 7 sub SL2004-7 r 24

Motions—generally
div 54.4 hdg ins SL2004-7 r 24

Rule to show cause
r 8 sub 1983 No 228 r 20
am 1997 No 8 sch 3
sub 2002 No 16 r 12; SL2004-7 r 24

Service of notice of motion
r 9 om 1983 No 228 r 20
ins SL2004-7 r 24

Absence of party
r 10 sub SL2004-7 r 24

Dismissal or adjournment if notice not given
r 11 sub SL2004-7 r 24

Adjournment at request of parties
r 12 sub SL2004-7 r 24

Adjournment generally
r 13 am 1997 No 8 sch 3
sub SL2004-7 r 24

Further hearing
r 14 sub SL2004-7 r 24

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Formal order not required
r 15 sub SL2004-7 r 24

Affidavit of claim to purchase money paid into court
r 16 om SL2004-7 r 24

Title and form of petition etc for advice
r 17 am 1968 No 13 r 12
om SL2004-7 r 24

Proceeding on summons for advice
r 18 om SL2004-7 r 24

Time for service
r 19 om SL2004-7 r 24

Opinion to be entered
r 20 om SL2004-7 r 24

Account by solicitor
r 21 am 2000 No 46 amdt 1.105, amdt 1.106
om SL2004-7 r 24

Interim certificate
r 22 am 2000 No 46 amdt 1.107, amdt 1.108
om SL2004-7 r 24

General
o 55 div 55.1 hdg (prev o 55 div 1 hdg) renum 2000 No 46 amdt 1.109

Application, how made
r 1 am 2000 No 46 amdt 1.110; R10 LA (see 2001 No 48 amdt 1.41)

Title of proceedings
r 4 am 2000 No 46 amdt 1.111

Time of notice
r 7 om 1969 No 221 r 6

Certiorari
div 55.2 hdg (prev o 55 div 2 hdg) renum 2000 No 46 amdt 1.112

Service
r 10 am 1986 No 8 sch; 1999 No 26 sch

Security for costs
r 11 am 1980 No 214 sch

When no cause shown
r 13 am 2000 No 46 amdt 1.113, amdt 1.114

Form of writ of certiorari
r 14 am 1999 No 26 sch

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Mandamus
div 55.3 hdg (prev o 55 div 3 hdg) renum 2000 No 46 amdt 1.115

Form of writ
r 17 am 1999 No 26 sch; 2000 No 46 amdt 1.116, amdt 1.117

Time for return of writ
r 18 am 1997 No 8 sch 3

Service
r 19 am 1997 No 8 sch 3

Service on corporations etc
r 20 hdg sub 2001 No 10 amdt 1.7

Prohibition
div 55.4 hdg (prev o 55 div 4 hdg) renum 2000 No 46 amdt 1.118

Direction to proceed
r 32 am 1999 No 26 sch

Prohibition by order
r 33 am 1999 No 26 sch; 2000 No 46 amdt 1.119, amdt 1.120

Quo warranto
div 55.5 hdg (prev o 55 div 5 hdg) renum 2000 No 46 amdt 1.121

Relator to be named
r 34 am 2000 No 46 amdt 1.122, amdt 1.123

Security for costs
r 36 am 1980 No 214 sch

Signature of service of information
r 38 am 2000 No 46 amdt 1.124, amdt 1.125

Disclaimer
r 41 am 1980 No 214 sch; 2000 No 46 amdts 1.126-1.128

Habeas corpus
div 55.6 hdg (prev o 55 div 7 hdg) renum 2000 No 46 amdt 1.129

How applied for
r 43 am 2000 No 46 amdt 1.130, amdt 1.131

How granted
r 44 am 2000 No 46 amdt 1.132, amdt 1.133

Service
r 45 am 1999 No 26 sch; 2000 No 46 amdts 1.134-1.137

Return to writs of habeas corpus
r 46 am 2000 No 46 amdt 1.138, amdt 1.139

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Applications and proceedings at chambers
o 56 hdg om 1997 No 8 sch 3

Summons
r 1 om 1997 No 8 sch 3

Forms of originating summons
r 2 om 1997 No 8 sch 3

Time for attendance
r 3 om 1997 No 8 sch 3

Appearances to be entered
r 4 om 1997 No 8 sch 3

Time for service of original summons
r 5 om 1997 No 8 sch 3

Time of service of summons
r 6 om 1997 No 8 sch 3

Proceeding ex parte in case of party summoned failing to attend
r 7 om 1997 No 8 sch 3

Reconsideration of ex parte proceedings
r 8 am 1984 No 281 r 7
om 1997 No 8 sch 3

Non-attendance
r 9 om 1997 No 8 sch 3

Further attendance on summons
r 10 om 1997 No 8 sch 3

Summons may include all matters
r 11 om 1997 No 8 sch 3

Form of summons
r 12 om 1997 No 8 sch 3

Issue of summons
r 13 am 1977 No 152 r 13
om 1997 No 8 sch 3

Hour of return
r 14 om 1997 No 8 sch 3

Form of order
r 15 am 1977 No 152 r 14
om 1997 No 8 sch 3

Consent orders in interlocutory proceedings
o 56A hdg ins 1981 No 296 r 10

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Interlocutory order by consent
r 1 ins 1981 No 296 r 10

Adjournment by consent
r 2 ins 1981 No 296 r 10

Adjournment without attendance
r 3 ins 1981 No 296 r 10

Declarations
o 57 hdg sub 1997 No 8 sch 3

Construction of instruments
r 1 am 1997 No 8 sch 3

Construction of legislation
r 2 am 1997 No 8 sch 3; 2001 No 48 amdt 1.42

Service
r 3 sub 1997 No 8 sch 3

Evidence
r 4 am 1997 No 8 sch 3

Direction of court
r 5 om 1997 No 8 sch 3

Equity proceedings
o 58 hdg sub 2000 No 46 amdt 1.140

Administration and trusts
div 58.1 hdg (prev o 58 div 1 hdg) renum 2000 No 46 amdt 1.141

Applications for relief without administration
r 1 am 1997 No 8 sch 3; 1999 No 26 sch; 2000 No 46 r 22

Service—applications for administration
r 3 am 1997 No 8 sch 3; 1999 No 26 sch; 2000 No 46 amdt 1.142, amdt 1.143

Applications for foreclosure or redemption
r 4 am 1968 No 13 r 13; 1997 No 8 sch 3

Service—applications for foreclosure or redemption
r 5 am 1997 No 8 sch 3

Service on other persons
r 6 am 1997 No 8 sch 3

Evidence and directions as to trial
r 7 am 1997 No 8 sch 3

Judgment
r 8 am 1997 No 8 sch 3

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Decision without judgment for administration
r 10 am 1997 No 8 sch 3

Not to effect power of trustees
r 12 am 1997 No 8 sch 3

Assistance of experts
div 58.2 hdg (prev o 58 div 2 hdg) renum 2000 No 46 amdt 1.144

Accountants, merchants etc
r 13 am 2000 No 46 r 23

Proceedings relating to people with a legal disability
div 58.3 hdg (prev o 58 div 3 hdg) sub 2000 No 46 r 24
renum 2000 No 46 amdt 1.144

Evidence on application to appoint guardian etc
r 14 am 1968 No 13 r 14
sub 2000 No 46 r 24

Appointment of litigation guardian may be required
r 15 sub 2000 No 46 r 24

Documents to be left at chambers
div 58.4 hdg (prev o 58 div 4 hdg) renum 2000 No 46 amdt 1.144

Summonses to proceed
div 58.5 hdg (prev o 58 div 5 hdg) renum 2000 No 46 amdt 1.144

Dispensing with service of notice of judgment or order
r 23 am 1999 No 26 r 18

Course of proceeding
r 26 am 2000 No 46 amdts 1.145-1.147

Attendances
div 58.6 hdg (prev o 58 div 6 hdg) renum 2000 No 46 amdt 1.148

Claims of creditors and other claimants
div 58.7 hdg (prev o 58 div 7 hdg) renum 2000 No 46 amdt 1.148

By whom prepared and signed
r 32 am 2000 No 46 amdt 1.149, amdt 1.150

Substance and form of advertisements
r 33 am 2000 No 46 amdts 1.151-1.154; SL2004-7 r 25

Claimants not sending particulars of claims excluded
r 34 am 2000 No 46 amdt 1.155, amdt 1.156

Service of notices on claimants
r 35 sub SL2004-7 r 26

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Claims of creditors
div 58.8 hdg (prev o 58 div 8 hdg) renum 2000 No 46 amdt 1.157

Claims of persons other than creditors
div 58.9 hdg (prev o 58 div 7 hdg) renum 2000 No 46 amdt 1.157

Interest
div 58.10 hdg (prev o 58 div 10 hdg) renum 2000 No 46 amdt 1.157

Rate of interest on debts
r 47 am 1980 No 214 sch; 1987 No 67 sch

Interest payable out of surplus assets
r 48 am 1980 No 214 sch; 1987 No 67 sch

Interest on legacies
r 49 am 1980 No 214 sch; 1987 No 67 sch

Certificates of registrar
div 58.11 hdg (prev o 58 div 11 hdg) renum 2000 No 46 amdt 1.157

Where accounts are directed
r 53 am 2000 No 46 amdts 1.158-1.160

Further consideration
div 58.12 hdg (prev o 58 div 12 hdg) renum 2000 No 46 1.161

Further consideration
r 57 am 2000 No 46 amdt 1.162; R10 LA (see 2001 No 48 amdt 1.43)

Registering and drawing up of orders in chambers
div 58.13 hdg (prev o 58 div 13 hdg) renum 2000 No 46 amdt 1.163

Time defendant may apply
o 59 r 4 am 1997 No 8 sch 3

Order on summons
r 7 am 1980 No 214 sch

Question of law
r 9 am 1980 No 214 sch; 2002 No 16 r 13

Issue to be filed
r 11 am 2000 No 46 amdt 1.164, amdt 1.165

Sheriff's costs
r 16 am 1999 No 26 sch; 2000 No 46 amdt 1.166, amdt 1.167

Appeals from the Magistrates Court
o 60 hdg am 1986 No 8 sch
om 1997 No 31 r 12

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Appeals other than appeals by way of order to review

o 60 div 1 hdg	ins 1974 No 197 r 2
	sub 1992 No 21 r 4
	om 1997 No 31 r 12

Procedure

r 1	sub 1974 No 197 r 2
	am 1986 No 8 sch; 1992 No 16 sch
	sub 1992 No 21 r 4
	om 1997 No 31 r 12

Parties

r 2	sub 1974 No 197 r 2
	am 1986 No 8 sch
	sub 1992 No 21 r 4
	om 1997 No 31 r 12

Cross-appeal

r 3	sub 1974 No 197 r 2; 1981 No 296 r 11
	am 1986 No 8 sch
	sub 1992 No 21 r 4
	om 1997 No 31 r 12

Discontinuance

r 4	sub 1974 No 197 r 2
	om 1981 No 296 r 11
	ins 1992 No 21 r 4
	am 1994 No 34 r 3
	om 1997 No 31 r 12

Proceedings not stayed by appeal

r 5	am 1938 No 99 r 2
	sub 1974 No 197 r 2; 1992 No 21 r 4
	om 1997 No 31 r 12

Appearance

r 6	am 1938 No 99 r 3
	sub 1974 No 197 r 2
	am 1986 No 8 sch
	om 1992 No 21 r 4
	ins 1993 No 4 r 4
	om 1997 No 31 r 12

Respondent may seek variation of decision under appeal

r 7	sub 1974 No 197 r 2
	om 1992 No 21 r 4

Appeals under pt 3 of Small Claims Ordinance

r 8	sub 1974 No 197 r 2
	om 1992 No 21 r 4

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Appeals by way of order to review

o 60 div 2 hdg	ins 1974 No 197 r 2 om 1997 No 31 r 12

Application for order nisi

r 9	sub 1974 No 197 r 2 am 1981 No 296 r 12 om 1997 No 31 r 12

Time for making application

r 10	am 1938 No 99 r 4 sub 1974 No 197 r 2 om 1997 No 31 r 12

Affidavits

r 11	sub 1974 No 197 r 2 am 1986 No 8 sch om 1997 No 31 r 12

Form of order nisi

r 12	am 1938 No 99 r 5 sub 1974 No 197 r 2 om 1997 No 31 r 12

Service of order nisi etc

r 13	ins 1974 No 197 r 2 am 1986 No 8 sch; 1992 No 16 sch om 1997 No 31 r 12

Application to revoke order nisi

r 14	ins 1974 No 197 r 2 om 1997 No 31 r 12

Rule applicable to all appeals

o 60 div 3 hdg	ins 1974 No 197 r 2 om 1997 No 31 r 12

Transcripts and records of proceedings

r 15	ins 1974 No 197 r 2 am 1986 No 8 sch; 1994 No 21 r 5; 1997 No 30 r 4 om 1997 No 31 r 12

Registrar

o 61 hdg	sub 1997 No 31 r 13

Authority of registrar

r 3	ins 1981 No 296 r 13 am 1983 No 26 [r 1]; 1984 No 110 [r 1]; 1984 No 281 r 8; 1988 No 257 r 3; 1991 No 251 r 5; 1992 No 16 sch; 1992 No 34 sch; 1993 No 28 r 3; 1993 No 35 r 4; 1993 No 46 r 3; 1997 No 8 sch 3;1999 No 26 sch; 2000 No 17 r 10; 2001 No 23

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rr 3-5; 2002 No 16 amdt 1.5; SL2003-6 amdt 1.9; SL2003-41 r 4; SL2004-7 r 27; SL2004-15 rr 6-8; SL2004-54 r 30

Jurisdiction of registrar—subpoenas
r 3AA ins SL2004-54 r 31

Jurisdiction to be exercised by judge
r 3A ins 1990 No 458 r 10

Reference of application to judge
r 4 ins 1981 No 296 r 13

Appeals from decisions etc of registrar in relation to corporations
r 4A ins 2001 No 23 r 6
am SL2003-41 r 4

Appeals from registrar's orders
r 5 ins 1981 No 296 r 13
am 1990 No 129 r 12; 1992 No 34 sch; 1997 No 31 r 14; 1999 No 26 sch; R10 LA (see 2001 No 48 amdt 1.44)

Master
o 61A hdg ins 1988 No 257 r 4

Authority of master
r 1 ins 1988 No 257 r 4
am 1990 No 129 r 13; 1991 No 251 r 6; 1992 No 16 r 4; 1992 No 23 sch 2, sch 3; 1992 No 34 sch; 1993 No 20 r 11; 1993 No 28 r 4; 1993 No 35 r 4; 1993 No 46 r 4; 1995 No 11 r 12; 1995 No 27 r 8; 1997 No 8 sch 3; 1998 No 35 r 6; 2000 No 17 r 11; 2000 No 46 amdt 1.168; 2000 No 50 r 3; 2001 No 10 amdt 1.8; 2001 No 23 rr 7-9; R10 LA (see 2001 No 48 amdt 1.45) ; 2002 No 16 amdt 1.6; SL2003-41 r 5; SL2004-7 r 28; pars renum R22 LA (see SL2004-7 r 29); SL2004-15 r 9, r 10; A2004-60 amdt 1.668-1.670

Interpretation
r 2 ins 1988 No 257 r 4
am 1992 No 23 sch 2, sch 3; 1994 No 21 r 6
om 1997 No 8 sch 3

Exception for damages suits involving liability as employer
r 3 hdg ins 2000 No 46 amdt 1.169
r 3 ins 1988 No 257 r 4
am 1992 No 23 sch 2, sch 3
om 2001 No 48 r 8

Exercise of court's inherent jurisdiction by master
r 4 hdg ins 2000 No 46 amdt 1.170
r 4 ins 1988 No 257 r 4
am 1992 No 23 sch 2

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Appeals from decisions etc of master in relation to corporations
r 4A ins 2001 No 23 r 10
am SL2003-41 r5

Reference by master
r 4B ins 2001 No 23 r 10

Appeals from interlocutory judgments of the master
r 5 ins 1988 No 257 r 4
am 1990 No 129 r 14; 1992 No 23 sch 2; 1992 No 34 sch; 1997 No 31 r 15; 1999 No 26 sch; 2001 No 23 r 11; R10 LA (see 2001 No 48 amdt 1.46)

Procedure in appeals other than from interlocutory judgments
r 6 ins 1988 No 257 r 4
am 1992 No 23 sch 2, sch 3; 1992 No 34 sch
om 1997 No 31 r 16

Parties to appeal
r 7 ins 1988 No 257 r 4
am 1992 No 23 sch 2, sch 3
om 1997 No 31 r 16

Cross-appeal
r 8 ins 1988 No 257 r 4
am 1992 No 23 sch 2, sch 3; 1992 No 34 sch
om 1997 No 31 r 16

Discontinuance of appeal
r 9 ins 1988 No 257 r 4
am 1992 No 23 sch 1, sch 2; 1997 No 31 r 17

Stay of proceedings
r 10 ins 1988 No 257 r 4
am 1992 No 23 sch 2; 1992 No 34 sch; 1997 No 31 r 18

Application of other orders
r 11 ins 1988 No 257 r 4
am 1992 No 23 sch 2
am 1997 No 31 r 19

Sealing of documents issued from the court
o 62 r 1 sub 1977 No 152 r 15

Stamping
r 1A ins 2002 No 16 r 14

Office copies etc
r 2 am 1977 No 152 r 16

Impounded documents
r 13 am 2000 No 46 amdt 1.171, amdt 1.172

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Offices of the court
o 63 hdg sub 1972 No 189 r 3

Office hours
r 1 sub 1972 No 189 r 3
am 1993 No 4 r 5

Postponement of sittings in Judge's absence
r 1A ins 1939 No 48 [r 1]
om 1972 No 189 r 3

Office hours
r 2 sub 1972 No 189 r 3
am 1991 No 294 r 4; 1993 No 4 r 6; 1993 No 22 r 2

Office hours
r 3 sub 1969 No 66 r 12
om 1972 No 189 r 3

Time not reckoned
o 64 r 3 sub 1969 No 66 r 13

Time for service
r 7 om 1999 No 26 r 19

Reckoning of time
r 8 sub 1969 No 66 r 14

Month means calendar month
r 12 ins 1969 No 66 r 15
om 2001 No 48 amdt 1.47

Costs
o 65 hdg sub 2000 No 46 amdt 1.173

Costs generally
div 65.1 hdg (prev o 65 div 1 hdg) sub and renum 2000 No 46 amdt 1.174

Costs, with certain exceptions, to be in discretion of court
r 1 am 2000 No 46 amdt 1.175

Trustees etc
r 1A (prev r 1 (2)) renum 2000 No 46 amdt 1.176

Costs where trial with jury to follow event
r 1B (prev r 1 (3)) renum 2000 No 46 amdt 1.177

Security for costs
r 4 om 1992 No 16 r 5

Security by plaintiff temporarily within jurisdiction
r 5 om 1992 No 16 r 5

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Security for costs where given by bond

r 6	om 1992 No 16 r 5

Scales of costs

r 7	am 1950 No 22 r 1; 1956 No 135 r 6; 1969 No 57 r 2; 1974 No 197 r 3; 1976 No 190 r 2; 1977 No 152 r 17; 1978 No 86 r 3; 1981 No 196 r 3; 1982 No 202 r 3; 1982 No 316 r 1
	sub 1984 No 285 r 4 (as am by 1984 No 313 [r 1])
	am 1986 No 26 r 4; 1986 No 349 r 4; 1987 No 93 r 4; 1987 No 219 r 4
	sub 1988 No 24 r 4
	am 1988 No 221 r 3; 1988 No 331 r 2; 1989 No 18 r 4; 1990 No 372 r 4; 1992 No 82 r 4; 1993 No 11 r 4; 1994 No 17 r 5; 1994 No 21 r 7; 1995 No 12 r 4
	sub 1997 No 43 r 5

Costs and determined fees if amount recovered less than Magistrates Court limit

r 7A	ins 1969 No 57 r 3
	am 1982 No 202 r 4; 1986 No 8 sch
	sub 1988 No 331 r 3
	am 1997 No 8 sch 3
	sub SL2004-7 r 30
	am A2004-60 amdt 1.671

Costs improperly incurred etc

r 8	am 1968 No 13 r 15; 2000 No 46 amdts 1.178-1.180

Solicitor appointed litigation guardian

r 9	sub 2000 No 46 r 25

Set-off notwithstanding lien for costs

r 10	am 2000 No 46 amdt 1.181, amdt 1.182

Notice to tax

r 16	om 1991 No 108 r 6

Order to tax to be left with taxing officer

r 18	am 2000 No 46 amdt 1.183

Bill of costs

r 18A	(prev r 18 (2)) renum 2000 No 46 amdt 1.184

Special allowances and general regulations

div 65.2 hdg	(prev o 65 div 2 hdg) renum 2000 No 46 amdt 1.185

Application of div 65.2

r 21 hdg	sub 2001 No 10 amdt 1.9
r 21	am 2001 No 10 amdt 1.10

Allowance for work in preparation of documents

r 22	am 1968 No 13 r 16

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In special circumstances higher remuneration may be allowed for attendance at chambers
r 34 sub 1956 No 135 r 7

Attendance by solicitors or clerk in court or in chambers to instruct counsel
r 35A ins 1973 No 95 r 1

Counsel attending chambers
r 38 om 1981 No 296 r 14

Rate of payment for copies of documents
r 41 am 1956 No 135 r 8; 1980 No 214 sch; 1988 No 24 r 5; 1992 No 82 r 5; 1993 No 11 r 5; 1994 No 17 r 6; 1995 No 12 r 5; 1997 No 43 r 6

Tender of costs for perusing petition where notice that appearance not required
r 42 am 1956 No 135 r 9; 1980 No 214 sch; 1997 No 43 r 7; 2000 No 46 amdts 1.186-1.188

Court may disallow costs of pleading or matter improper or unnecessary
r 43 am 1997 No 8 sch 3

Extension of time
r 47 am 1968 No 13 r 17; 2000 No 46 amdts 1.189-1.191

Costs incidental to negotiations
r 53A ins 1983 No 27 r 8

Where parties differ
r 58 sub 1991 No 108 r 7
am 1992 No 23 sch 2, sch 3; 1996 No 4 r 2; 1999 No 26 sch; R10 LA (see 2001 No 48 amdt 1.48)

Power to taxing officer to assess costs at a gross sum
r 62 am 2001 No 48 amdt 1.49

Party dissatisfied with taxation may object
r 64 am 2000 No 46 amdt 1.192, amdt 1.193

Refreshers
r 71 am 1956 No 135 r 10

Clerk's fees
r 74 om 1956 No 135 r 11

Counsel's fees
r 75 sub 1996 No 22 r 4

Office copy of affidavit
r 76 om 1969 No 221 r 7

Appeal to judge
r 82 am 2000 No 46 amdt 1.194, amdt 1.195

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Fees to barristers and solicitors

r 83	am 2000 No 46 amdt 1.196

Documents

o 66 hdg	sub 1991 No 251 r 7; 1992 No 79 r 4

Style

div 66.1 hdg	(prev o 66 div 1 hdg) ins 1992 No 79 r 4 renum 2000 No 46 amdt 1.197

Meaning of *document* in o 66

r 1	am 1980 No 214 sch sub 1991 No 251 r 7 am 1992 No 23 sch 2; SL2004-7 r 31

General heading style—civil proceedings forms

r 2 hdg	sub A2004-60 amdt 1.672
r 2	sub 1991 No 251 r 7 am 1992 No 23 sch 2 om SL2004-7 r 32 ins SL2004-11 r 5 am SL2004-54 r 32; A2004-60 amdt 1.673

Paper to be used

r 3	sub 1991 No 251 r 7 am 1992 No 23 sch 2

Writing requirements

r 4	sub 1991 No 251 r 7 am 1992 No 23 sch 2; 1994 No 21 r 8; R10 LA (see 2001 No 48 amdt 1.50)

Page margins

r 5	sub 1991 No 251 r 7 am 1992 No 23 sch 2

Use of numerals

r 6	sub 1991 No 251 r 7 am 1992 No 23 sch 2

Pagination

r 7	sub 1991 No 251 r 7 am 1992 No 23 sch 2

Backing sheet

r 8	sub 1991 No 251 r 7 am 1992 No 23 sch 2

Identification

r 9	sub 1991 No 251 r 7 am 1992 No 23 sch 2; 2001 No 10 amdt 1.11

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Signature on behalf of solicitor

r 10	om 1991 No 251 r 7 ins 1992 No 79 r 4 am 1992 No 23 sch 2

Refusal to accept documents for filing

div 66.2 hdg	ins SL2004-7 r 34

Refusal to accept documents—non-compliance with div 66.1

r 10A	ins SL2004-7 r 34

Refusal to accept documents—abuse of process etc

r 10B	ins SL2004-7 r 34 am SL2004-54 r 33

Inspection

div 66.3 hdg	orig o 66 div 2 hdg ins 1992 No 79 r 4 renum 2000 No 46 amdt 1.197 (prev div 66.2 hdg) renum SL2004-7 r 33

Inspection of registry files

r 11	ins 1991 No 108 r 8 om 1991 No 251 r 7 ins 1992 No 79 r 4 am 1992 No 23 sch 2; 1993 No 20 r 12 sub 2001 No 48 r 9 am SL2004-54 rr 34-36; rr renum R25 LA (see SL2004-54 r 37); A2004-60 amdt 1.674

Restriction on inspection of registry files

r 12	ins 1991 No 108 r 8 om 1991 No 251 r 7

Service of orders etc

o 67 hdg	om 1999 No 26 r 20

Service of judgments and orders

r 1	om 1999 No 26 r 20

Where service not required to be personal

r 2	sub 1991 No 108 r 9 am 1992 No 23 sch 2, sch 3 om 1999 No 26 r 20

Notices from office of court by post

r 3	om 1991 No 108 r 10

Where no appearance or address, service by filing

r 4	am 1991 No 108 r 11 om 1999 No 26 r 20

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Personal service
r 5 om 1978 No 173 r 11

Substituted service
r 6 om 1978 No 173 r 11

On solicitor after appearance in person
r 7 om 1999 No 26 r 20

On solicitor appearing for person not party
r 8 om 1999 No 26 r 20

Affidavit of service
r 9 om 1999 No 26 r 20

Under $100—time of sale
o 68 r 3 am 1980 No 214 sch

How sheriff to pay moneys received in certain cases
r 6 am 2000 No 46 amdt 1.198

Suspension of execution
r 8 am 2000 No 46 amdt 1.199, amdt 1.200

Poundage
r 11 sub 1980 No 214 r 5

Objections of irregularity
o 69 r 3 am 1993 No 4 r 7

Costs
r 4 om 1993 No 4 r 8

Forms
r 5 om 1993 No 4 r 8

Applications to transfer proceedings—Magistrates Court Act, part 4.4
o 69A hdg ins 1982 No 202 r 5
am 1986 No 8 sch; 1999 No 26 sch
sub A2004-60 amdt 1.675

Applications by motion
r 1 ins 1982 No 202 r 5
am 1986 No 8 sch
sub 2001 No 48 amdt 1.51; A2004-60 amdt 1.675

Mode of commencement of applications
r 2 ins 1982 No 202 r 5
am 1995 No 19 r 3
om A2004-60 amdt 1.675

Fees
o 70 hdg om 1974 No 60 r 1

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Order to apply to criminal proceedings

r 1	am 1956 No 135 r 12
	om 1974 No 60 r 1
	ins 1978 No 173 r 10
	om 1997 No 43 r 8

Manner of taking oath

r 2	om 1974 No 60 r 1
	ins 1978 No 173 r 10
	om 1995 No 44 r 3

Forms of oath

r 3	om 1974 No 60 r 1
	ins 1978 No 173 r 10
	om 1995 No 44 r 3

Juror's oath

r 4	ins 1956 No 135 r 13
	om 1974 No 60 r 1
	ins 1978 No 173 r 10
	sub 1981 No 328 r 2
	om 1997 No 43 r 8

Oath by juror on issue of fitness to plead

r 5	ins 1978 No 173 r 10
	sub 1981 No 328 r 2
	om 1995 No 44 r 3

Oath by person in charge of jury

r 6	ins 1978 No 173 r 10
	sub 1981 No 328 r 2
	om 1997 No 43 r 8

Oath by person in charge of jurors on a view

r 7	ins 1981 No 328 r 2
	om 1997 No 43 r 8

Oath by person appointed to conduct a view

r 8	ins 1981 No 328 r 2
	om 1997 No 43 r 8

Affidavits—form of oath

r 9	ins 1981 No 328 r 2
	om 1997 No 43 r 8

Court may permit other forms of oaths

r 10	ins 1981 No 328 r 2
	om 1997 No 43 r 8

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Affirmations

r 11	ins 1981 No 328 r 2 am 1995 No 44 r 4 om 1997 No 43 r 8

Preliminary

o 71 div 1 hdg	om 1978 No 173 r 10

Definitions

r 1	om 1978 No 173 r 10 def ***cause*** om 1978 No 173 r 10 def ***respondent*** om 1978 No 173 r 10 def ***the Act*** om 1978 No 173 r 10

Petitions

o 71 div 2 hdg	om 1978 No 173 r 10

Petition

r 2	om 1978 No 173 r 10

Affidavit in support

r 3	om 1978 No 173 r 10

Collusion and connivance to be denied

r 4	om 1978 No 173 r 10

Affidavit must show demand for cohabitation in cases of restitution of conjugal rights

r 5	om 1978 No 173 r 10

Affidavits to be filed with petition

r 6	om 1978 No 173 r 10

Co-respondents

o 71 div 3 hdg	om 1978 No 173 r 10

Adulterers to be made co-respondents

r 7	om 1978 No 173 r 10

Application to be excused from making adulterers co-respondents

r 8	om 1978 No 173 r 10

Amendment on discovering adulterer's name

r 9	om 1978 No 173 r 10

Citation and service of petition

o 71 div 4 hdg	om 1978 No 173 r 10

Petitions for service to be certified and sealed

r 10	om 1978 No 173 r 10

Citation to be dated and tested

r 10A	ins 1958 No 64 r 2 om 1978 No 173 r 10

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Address of petitioner to be indorsed
r 11 om 1978 No 173 r 10

Citation to be in force for limited time
r 12 om 1978 No 173 r 10

Time for appearance
r 13 om 1978 No 173 r 10

Service of petition
r 14 om 1978 No 173 r 10

Motion for substituted service or to dispense with service
r 15 om 1978 No 173 r 10

Affidavit of service
r 16 om 1978 No 173 r 10

Before petitioner can proceed affidavits must be filed
r 17 om 1978 No 173 r 10

Service of further proceedings not required where no appearance entered
r 18 om 1978 No 173 r 10

Entering appearance
o 71 div 5 hdg om 1978 No 173 r 10

Entry of appearance
r 19 om 1978 No 173 r 10

Appearance entered at any time
r 20 om 1978 No 173 r 10

Address for service to be given
r 21 om 1978 No 173 r 10

Questions of jurisdiction
r 22 om 1978 No 173 r 10

Appearance under protest
r 23 om 1978 No 173 r 10

Judge to direct how questions to be tried
r 24 om 1978 No 173 r 10

Appeal from judge on questions of jurisdiction
r 25 om 1978 No 173 r 10

No objection to jurisdiction allowed after absolute appearance
r 26 om 1978 No 173 r 10

Infants
o 71 div 6 hdg om 1978 No 173 r 10

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Infant co-respondent need not have a guardian
r 27 om 1978 No 173 r 10

Answer
o 71 div 7 hdg om 1978 No 173 r 10

Time for answering
r 28 om 1978 No 173 r 10

Extension of time for answering
r 29 om 1978 No 173 r 10

Copy of answer to be served
r 30 om 1978 No 173 r 10

Answer to be accompanied by affidavit in certain cases
r 31 om 1978 No 173 r 10

Further pleadings
o 71 div 8 hdg om 1978 No 173 r 10

Time for replying
r 32 om 1978 No 173 r 10

Time for rejoining
r 33 om 1978 No 173 r 10

Copies of pleadings to be served
r 34 om 1978 No 173 r 10

Affidavit required in certain cases
r 35 om 1978 No 173 r 10

General rules as to pleadings
o 71 div 9 hdg om 1978 No 173 r 10

Amendment of pleadings may be allowed
r 36 om 1978 No 173 r 10

Service of amended pleadings
r 37 om 1978 No 173 r 10

Time for service of amended pleadings where no order made fixing time
r 38 om 1978 No 173 r 10

Consequential amendments to pleadings may be made
r 39 om 1978 No 173 r 10

Filing pleadings out of time by leave
r 40 om 1978 No 173 r 10

Application for particulars
r 41 om 1978 No 173 r 10

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In default of pleading facts deemed to be in issue
r 42 om 1978 No 173 r 10

Demurrers
o 71 div 10 hdg om 1978 No 173 r 10

Demurrers to be set down as causes
r 43 om 1978 No 173 r 10

Issues and trial
o 71 div 11 hdg om 1978 No 173 r 10

Petitioner to settle issues
r 44 om 1978 No 173 r 10

In default, respondent may apply to settle issues
r 45 om 1978 No 173 r 10

Issues to be lodged with registrar
r 46 om 1978 No 173 r 10

Copy issues to be served
r 47 om 1978 No 173 r 10

Issues to be engrossed and filed
r 48 om 1978 No 173 r 10

Issues may be amended
r 49 om 1978 No 173 r 10

Trial by jury
r 50 om 1978 No 173 r 10

Registrar to fix time of trial in other cases
r 51 om 1978 No 173 r 10

Notice of trial to be given
r 52 om 1978 No 173 r 10

In default of notice by petitioner any party may give same
r 53 om 1978 No 173 r 10

Judge may direct longer or shorter notice
r 54 om 1978 No 173 r 10

Findings to be filed as of record
r 55 om 1978 No 173 r 10

Parties may be heard as to costs etc
r 56 om 1978 No 173 r 10

No affidavits to be issued touching matters in principal cause
r 57 om 1978 No 173 r 10

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Evidence on affidavit
o 71 div 12 hdg om 1978 No 173 r 10

Filing of affidavits in defended cases
r 58 om 1978 No 173 r 10

Filing of affidavits in undefended cases
r 59 om 1978 No 173 r 10

Counter affidavits
r 60 om 1978 No 173 r 10

Copies to be served
r 61 om 1978 No 173 r 10

Application for viva voce examination of deponent
r 62 om 1978 No 173 r 10

Interveners
o 71 div 13 hdg om 1978 No 173 r 10

Leave to intervene
r 63 om 1978 No 173 r 10

Intervener to join in proceedings at stage reached
r 64 om 1978 No 173 r 10

Showing cause against a decree
o 71 div 14 hdg om 1978 No 173 r 10

Appearance must be entered
r 65 om 1978 No 173 r 10

Affidavits must be filed and served
r 66 om 1978 No 173 r 10

Affidavits in answer
r 67 om 1978 No 173 r 10

Affidavits in reply
r 68 om 1978 No 173 r 10

Motion to direct form of judgment
r 69 om 1978 No 173 r 10

Intervention etc by the crown solicitor
o 71 div 15 hdg om 1978 No 173 10

Intervention by the crown solicitor
r 70 om 1978 No 173 r 10

Crown solicitor to appear and plead
r 71 om 1978 No 173 r 10

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Subsequent pleadings and proceedings
r 72 om 1978 No 173 r 10

Crown solicitor showing cause against a decree nisi
r 73 om 1978 No 173 r 10

Decree nisi
o 71 div 16 hdg om 1978 No 173 r 10

Decree nisi to be served on crown solicitor
r 74 om 1978 No 173 r 10

Endorsement on decree nisi
r 75 om 1978 No 173 r 10

Decree absolute
o 71 div 17 hdg om 1978 No 173 r 10

Nullity decree may be made absolute
r 76 om 1978 No 173 r 10

Dismissal of petition
o 71 div 18 hdg om 1978 No 173 r 10

Registrar's certificate to be obtained
r 77 om 1978 No 173 r 10

Reversal of decree for judicial separation
o 71 div 19 hdg om 1978 No 173 r 10

Petition may be presented for reversal of a decree of judicial separation
r 78 om 1978 No 173 r 10

Appearance must first be entered
r 79 om 1978 No 173 r 10

Petition to be served—answer may be filed
r 80 om 1978 No 173 r 10

Subsequent proceedings as in original petitions
r 81 om 1978 No 173 r 10

Alimony pendente lite
o 71 div 20 hdg om 1978 No 173 r 10

Application to be by notice of motion
r 82 om 1978 No 173 r 10

Time for notice of motion
r 83 om 1978 No 173 r 10

Notice of motion and affidavits to be served
r 84 om 1978 No 173 r 10

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Husband need not enter appearance
r 85 om 1978 No 173 r 10

Insufficient answer to petition
r 86 om 1978 No 173 r 10

Wife's separate property
r 87 om 1978 No 173 r 10

Affidavits to be served
r 88 om 1978 No 173 r 10

Matter to be heard on motion
r 89 om 1978 No 173 r 10

Examination of witnesses
r 90 om 1978 No 173 r 10

Permanent alimony, maintenance and settlements
o 71 div 21 hdg om 1978 No 173 r 10

Application for permanent alimony
r 91 om 1978 No 173 r 10

Notice of motion for permanent alimony
r 92 om 1978 No 173 r 10

Increase or decrease of alimony
r 93 om 1978 No 173 r 10

Commencement of permanent alimony
r 94 om 1978 No 173 r 10

Alimony to be paid into court
r 95 om 1978 No 173 r 10

Registrar may take evidence
r 96 om 1978 No 173 r 10

Practise as to maintenance
r 97 om 1978 No 173 r 10

When notice of motion may be filed
r 98 om 1978 No 173 r 10

Notice of motion to be served on all persons interested
r 99 om 1978 No 173 r 10

Answer may be filed
r 100 om 1978 No 173 r 10

Reply may be filed
r 101 om 1978 No 173 r 10

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Service
r 102 om 1978 No 173 r 10

Notice of hearing
r 103 om 1978 No 173 r 10

Witnesses may be subpoenaed
r 104 om 1978 No 173 r 10

Wife's costs
r 105 om 1978 No 173 r 10

Applications under ss 8, 9 and 10
r 106 om 1978 No 173 r 10

Custody, maintenance and education of children
o 71 div 22 hdg om 1978 No 173 r 10

Application to be by petition on affidavit
r 107 om 1978 No 173 r 10

Appearance to be entered before answer filed
r 108 om 1978 No 173 r 10

Transactions with intent to defeat petitioners
o 71 div 23 hdg om 1978 No 173 r 10

Applications under s 58 to be by motion
r 109 om 1978 No 173 r 10

Application for directions may be made
r 110 om 1978 No 173 r 10

Applications under s 59 to be by motion
r 111 om 1978 No 173 r 10

Order may be made ex parte
r 112 om 1978 No 173 r 10

Court may direct notice to be given
r 113 om 1978 No 173 r 10

Persons served with notice to enter appearance
r 114 om 1978 No 173 r 10

Questions of fact may be tried on oral evidence
r 115 om 1978 No 173 r 10

Costs
o 71 div 24 hdg om 1978 No 173 r 10

Application for money for wife's costs
r 116 om 1978 No 173 r 10

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Taxation de die in diem by leave of court
r 117 om 1978 No 173 r 10

Wife losing to receive only costs allowed by the judge
r 118 om 1978 No 173 r 10

Costs to be paid into court
r 119 om 1978 No 173 r 10

Judge may order how costs are to be paid
r 120 om 1978 No 173 r 10

Taxation of costs
r 121 om 1978 No 173 r 10

Execution
o 71 div 25 hdg om 1978 No 173 r 10

Execution for unpaid money or costs
r 122 om 1978 No 173 r 10

Fieri facias may issue for unpaid costs
r 123 om 1978 No 173 r 10

Affidavit of service to be filed
r 124 om 1978 No 173 r 10

Interlocutory applications
o 71 div 26 hdg om 1978 No 173 r 10

Applications to be by motion
r 125 om 1978 No 173 r 10

Two clear days' notice of motion to be given
r 126 om 1978 No 173 r 10

Notices of motion to be filed
r 127 om 1978 No 173 r 10

Taking out decrees etc
o 71 div 27 hdg om 1978 No 173 r 10

Decrees to be taken out within fourteen days
r 128 om 1978 No 173 r 10

Other parties may have carriage
r 129 om 1978 No 173 r 10

Miscellaneous
o 71 div 28 hdg om 1978 No 173 r 10

Orders obtained ex parte may be set aside
r 130 om 1978 No 173 r 10

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Administration and probate jurisdiction

pt 3 hdg — orig pt 3 hdg sub 1978 No 173 r 10
om 1997 No 43 r 8
(prev pt 4 hdg) renum as pt 3 hdg R13 LA (see 2002 No 16 amdt 1.39)

Administration and probate

o 72 hdg — sub 2000 No 46 amdt 1.201

Preliminary

div 72.1 hdg — (prev o 72 div 1 hdg) renum 2000 No 46 amdt 1.202

Definitions for o 72

r 1 — am 1956 No 135 r 14; 1996 No 11 r 3; 1999 No 26 sch; 2002 No 16 amdt 1.7
sub 2000 No 46 amdt 1.203
def ***Act*** ins 2001 No 48 amdt 1.52
def ***office*** ins 2000 No 46 amdt 1.203
def ***Office of the Registrar*** or ***Registrar's office*** am 1996 No 11 r 3
om 2000 No 48 amdt 1.203
def ***the Act*** am 1996 No 11 r 3
sub 2000 No 46 amdt 1.203
om 2001 No 48 amdt 1.53

Words and expressions used in Administration and Probate Act

r 1A — ins 2000 No 46 amdt 1.203
sub 2002 No 16 amdt 1.8
am A2004-60 amdt 1.676

References to forms

r 1B — ins 2000 No 46 amdt 1.203
om 2002 No 16 amdt 1.9

Application for representation

div 72.2 hdg — (prev o 72 div 2 hdg) renum 2000 No 46 amdt 1.204

Notice of intended application for representation

r 3 — am 1996 No 11 r 4; R10 LA (see 2001 No 48 amdt 1.54); SL2004-7 r 35

Notice of intended application for reseal of foreign grant

r 4 — sub 1996 No 11 r 5

Form of application

r 5 — sub 1996 No 11 r 5

Application for probate—supporting affidavits

r 6 — am 1956 No 135 r 15; 1969 No 66 r 16; 1980 No 214 sch; 1984 No 405 r 1; 1992 No 79 r 5
sub 1996 No 11 r 5

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Proof of execution of will and attestation
r 7 sub 1984 No 405 r 2

Proof of execution of will and blindness of testator etc
r 8 sub 1984 No 405 r 2

Further evidence of due execution etc
r 9 sub 1984 No 405 r 2

Application for administration with will annexed—supporting affidavits
r 12 sub 1996 No 11 r 6

Application for administration—supporting affidavits
r 14 am 1956 No 135 r 16; 1980 No 214 sch; 1981 No 296 r 15
sub 1996 No 11 r 7

Application for reseal of foreign grant—supporting affidavits
r 14A ins 1996 No 22 r 5

Application by creditors
r 15 am 2001 No 10 amdts 1.12-1.14 (om 2001 No 48 r 15)

Applications where public trustee has obtained order to collect
r 16 am 1995 No 11 r 13

Registrar refusing to deal with application
r 19 am 2000 No 46 amdts 1.205-1.207
sub SL2004-7 r 36

Administration during minority
div 72.3 hdg (prev o 72 div 3 hdg) sub 2000 No 46 r 26

Grants of administration during minority
r 20 sub 2000 No 46 r 26

Election and assignment of guardians
r 21 sub 2000 No 46 r 26

Where there are infants both above and under age of 7 years
r 22 am 1938 No 99 r 6
om 2000 No 46 r 26

Small estates
div 72.4 hdg (prev o 72 div 4 hdg) renum 2000 No 46 amdt 1.208

Fees
r 24 om 1980 No 214 r 6

Administration bonds
div 72.5 hdg (prev o 72 div 5 hdg) renum 2000 No 46 amdt 1.208
sub SL2004-7 r 37

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Administration bond
r 30 am 1996 No 11 r 10
sub SL2004-7 r 37

Dispensing with administration bond
r 30A ins SL2004-7 r 37

Form of administration bond
r 31 am 1996 No 11 r 10
sub SL2004-7 r 37

Affidavit of justification
r 31A ins SL2004-7 r 37

Exempt surety
r 32 sub SL2004-7 r 37

Administration bond—addition or reduction after required but before given
r 32A ins SL2004-7 r 37

Administration bond—addition or reduction after given
r 32B ins SL2004-7 r 37

Proceeding on an administration bond
r 33 sub SL2004-7 r 37

Application by surety
r 33A ins SL2004-7 r 37

Delay in application
div 72.6 hdg (prev o 72 div 6 hdg) renum 2000 No 46 amdt 1.208

Citations
div 72.7 hdg (prev o 72 div 7 hdg) renum 2000 No 46 amdt 1.208

Citations
r 35 am 1999 No 26 r 21

Sale and management of real estate
div 72.8 hdg (prev o 72 div 8 hdg) renum 2000 No 46 amdt 1.208

Application as to time and mode of sale etc of real estate
r 36 am 2000 No 46 r 27

Inventory and accounts
div 72.9 hdg (prev o 72 div 9 hdg) renum 2000 No 46 amdt 1.208

Filing etc of accounts
r 38 sub 1992 No 79 r 6

Notice of filing accounts
r 39 am 1996 No 11 r 10; SL2004-7 r 38

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Application if registrar refuses accounts
r 46 sub SL2004-7 r 39

Time for beginning appeal
r 47 sub SL2004-7 r 39

Service of notice of motion under r 46 and r 47
r 48 sub SL2004-7 r 39

Service of summons
r 49 om SL2004-7 r 39

Filing of inventory may be dispensed with
r 51 sub SL2004-7 r 40

Inquiry as to outstanding estate
r 51A ins 1998 No 35 r 7

Directions to be numbered
r 51B ins 1998 No 35 r 7
am 1999 No 26 sch

Caveats
div 72.10 hdg (prev o 72 div 10 hdg) renum 2000 No 46 amdt 1.208

Caveats
r 52 am 1996 No 11 r 10

Particulars of objection
r 54 am 2001 No 10 amdt 1.15
sub SL2004-7 r 41

Revocation of representation
div 72.11 hdg (prev o 72 div 11 hdg) renum 2000 No 46 amdt 1.208

Motion for revocation
r 58A ins SL2004-7 r 42

Administration by public trustee
div 72.12 hdg (prev o 72 div 12 hdg) am 1995 No 11 r 13
renum 2000 No 46 amdt 1.208

Application to collect and administer
r 60 am 1956 No 135 r 17; 1995 No 11 r 13; 1996 No 11 r 10; R10 LA (see 2001 No 48 amdt 1.55)

Renunciation of probate in favour of public trustee
r 61 am 1995 No 11 r 13; 1996 No 11 r 10

Persons declining to apply for administration
r 62 am 1995 No 11 r 13; 1996 No 11 r 10

Notice of intended application for probate etc
r 63 am 1995 No 11 r 13; 1996 No 11 r 10

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Petitions etc to be filed in office of public trustee
r 64 am 1995 No 11 r 13

Notification by public trustee
r 65 am 1995 No 11 r 13

Bills of costs
r 66 am 1995 No 11 r 13

Maintenance of widows and young children
r 67 hdg om 2000 No 46 amdt 1.209
r 67 om 2000 No 46 amdt 1.210

Substituted service
r 68 om 1999 No 26 r 22

Miscellaneous
div 72.13 hdg sub 2000 No 46 amdt 1.211

Form of acknowledgment under Act, s 56
r 69 am 1996 No 11 r 10

Grants of representation
r 70 ins 1996 No 11 r 8

Registration of foreign judgments
o 73 hdg ins 1956 No 135 r 18
om 2000 No 46 amdt 1.212

Definition
r 1 ins 1956 No 135 r 18
om 2000 No 46 amdt 1.212
def ***the Ordinance*** ins 1956 No 135 r 18
om 2000 No 46 amdt 1.212

Application for registration
r 2 ins 1956 No 135 r 18
am 1992 No 34 sch
om 2000 No 46 amdt 1.212

Evidence in support of application
r 3 ins 1956 No 135 r 18
om 2000 No 46 amdt 1.212

Security for costs
r 4 ins 1956 No 135 r 18
om 2000 No 46 amdt 1.212

Title of affidavit and summons
r 5 ins 1956 No 135 r 18
om 2000 No 46 amdt 1.212

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Order on application for registration

r 6	ins 1956 No 135 r 18 am 1992 No 34 sch om 2000 No 46 amdt 1.212

Register of judgments

r 7	ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212

Notice of registration

r 8	ins 1956 No 135 r 18 am 1997 No 8 sch 3 om 2000 No 46 amdt 1.212

Endorsement of service

r 9	ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212

Application to set aside registration

r 10	ins 1956 No 135 r 18 am 1992 No 34 sch om 2000 No 46 amdt 1.212

Issue of execution

r 11	ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212

Form of writ of execution

r 12	ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212

Determination of certain questions

r 13	ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212

Certified copies of judgments

o 74 hdg	ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212

Application for certified copy of judgment of the Supreme Court

r 1	ins 1956 No 135 r 18 am 1997 No 8 sch 3 om 2000 No 46 amdt 1.212

Issue of certified copies

r 2	ins 1956 No 135 r 18 am 1997 No 8 sch 3 om 2000 No 46 amdt 1.212

Foreign judgments

pt 4 hdg	(prev pt 5A hdg) ins 1992 No 35 r 4 renum R13 LA (see 2002 No 16 amdt 1.39)

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Reciprocal enforcement of judgments under the Foreign Judgments Act 1991 (Cwlth)

o 74A hdg	ins 1992 No 35 r 4

Meaning of *Act* in o 74A

r 1	ins 1992 No 35 r 4 sub 2000 No 46 amdt 1.213; 2001 No 48 amdt 1.56 def ***Act*** ins 2001 No 48 amdt 1.56 def ***the Act*** ins 1992 No 35 r 4 sub 2000 No 46 amdt 1.213 om 2001 No 48 amdt 1.56

Expressions have the same meaning as in the Foreign Judgments Act

r 1A	ins 2000 No 46 amdt 1.213

Application of o 74A

r 2	ins 1992 No 35 r 4

Application for an order for registration

r 3	ins 1992 No 35 r 4

Supporting affidavits

r 4	ins 1992 No 35 r 4

Registration

r 5	ins 1992 No 35 r 4

Notice of registration

r 6	ins 1992 No 35 r 4

Affidavit of service to be filed

r 7	ins 1992 No 35 r 4

Time limit

r 8	ins 1992 No 35 r 4

Court may give directions

r 9	ins 1992 No 35 r 4

Security for costs

r 10	ins 1992 No 35 r 4

Record of registered judgment

r 11	ins 1992 No 35 r 4

Preliminary

o 75 div 1 hdg	ins 1956 No 135 r 18 sub 1969 No 222 r 6 om 1993 No 35 r 3

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Interpretation

r 1	ins 1956 No 135 r 18 sub 1969 No 222 r 6 om 1993 No 35 r 3 def ***liquidator*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***party*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***prescribed newspaper*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***proceedings*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***registrar*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***registrar of companies*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***the Companies Act*** ins 1956 No 135 r 18 om 1962 No 47 r 2 def ***the Companies Rules, 1945*** ins 1956 No 135 r 18 om 1993 No 35 r 3 def ***the company*** ins 1969 No 222 r 6 om 1993 No 35 r 3 def ***the ordinance*** ins 1956 No 135 r 18 sub 1962 No 47 r 2; 1969 No 222 r 6 om 1993 No 35 r 3 def ***the state*** ins 1956 No 135 r 18 om 1993 No 35 r 3

Application

r 1A	ins 1984 No 281 r 9 om 1993 No 35 r 3

Procedure on applications by petition and summons

o 75 div 2 hdg	ins 1956 No 135 r 18 sub 1969 No 222 r 6 om 1993 No 35 r 3

Filing documents

r 2	ins 1956 No 135 r 18 am 1962 No 47 r 3 sub 1969 No 222 r 6 om 1993 No 35 r 3

Title of proceedings

r 3	ins 1956 No 135 r 18 am 1962 No 47 r 4 sub 1969 No 222 r 6 om 1993 No 35 r 3

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Investigation of affairs of a company

o 75 div 3 hdg	ins 1956 No 135 r 18
	om 1962 No 47 r 5

Service of petition or summons

r 4	ins 1956 No 135 r 18
	om 1962 No 47 r 5
	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Mode of service of petition or summons on companies

r 5	ins 1956 No 135 r 18
	om 1962 No 47 r 5
	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Mode of service of petition or summons on persons except companies

r 6	ins 1956 No 135 r 18
	om 1962 No 47 r 5
	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Inspection of exhibits

r 7	ins 1956 No 135 r 18
	om 1962 No 47 r 5
	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Appearance

r 8	ins 1956 No 135 r 18
	om 1962 No 47 r 5
	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Forms

r 9	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Inquiry

r 10	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Taking out orders

r 11	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Carriage of orders

r 12	ins 1969 No 222 r 6
	om 1993 No 35 r 3

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Interrogatories, discovery and inspection of documents

r 13	ins 1969 No 222 r 6 om 1993 No 35 r 3

Admissions

r 14	ins 1969 No 222 r 6 om 1993 No 35 r 3

Particulars

r 15	ins 1969 No 222 r 6 om 1993 No 35 r 3

Default

r 16	ins 1969 No 222 r 6 om 1993 No 35 r 3

Orders and directions

r 17	ins 1969 No 222 r 6 om 1993 No 35 r 3

Applications by petition

o 75 div 3 hdg	ins 1969 No 222 r 6 om 1993 No 35 r 3

Petitions

r 18	ins 1969 No 222 r 6 om 1993 No 35 r 3

Presentation of petition

r 19	ins 1969 No 222 r 6 om 1993 No 35 r 3

Form of petition

r 20	ins 1969 No 222 r 6 om 1993 No 35 r 3

Copy of petition for contributory or creditor

r 21	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice of intention to appear

r 22	ins 1969 No 222 r 6 am 1980 No 214 sch sub 1993 No 23 r 8 om 1993 No 35 r 3

Statement of persons appearing

r 23	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Advertisement

r 24	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Reduction of capital—directions

r 25	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Settlement of list of creditors and inquiries

r 26	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Date for hearing petition after inquiry by registrar

r 27	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Applications by summons

o 75 div 4 hdg	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Applications to be made by summons

r 28	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Issue and form of summons

r 29	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Appeals

o 75 div 5 hdg	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Application

r 30	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Issue of summons

r 31	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Time for appealing

r 32	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Extension of time for appealing and amending grounds of appeal

r 33	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Stay of proceedings

r 34	ins 1969 No 222 r 6
	om 1993 No 35 r 3

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Appeals as rehearing

r 35	ins 1969 No 222 r 6 om 1993 No 35 r 3

Winding-up and petitions under s 186

o 75 div 6 hdg	ins 1969 No 222 r 6 om 1993 No 35 r 3

Application of Rules

r 36	ins 1969 No 222 r 6 om 1993 No 35 r 3

Numbering proceedings

r 37	ins 1969 No 222 r 6 om 1993 No 35 r 3

Inspection of documents

r 38	ins 1969 No 222 r 6 om 1993 No 35 r 3

Form of petition for winding-up a company by the court

r 39	ins 1969 No 222 r 6 om 1993 No 35 r 3

Form of petition under s 184

r 40	ins 1969 No 222 r 6 om 1993 No 35 r 3

Verification of petition for winding-up a company by the court and under s 186

r 41	ins 1969 No 222 r 6 om 1993 No 35 r 3

Advertisement of petition for winding-up of a company by the court and under s 186

r 42	ins 1969 No 222 r 6 om 1993 No 35 r 3

Appointment of provisional liquidator in a winding-up by the court

r 43	ins 1969 No 222 r 6 om 1993 No 35 r 3

Accounting by provisional liquidator in a winding-up by the court

r 44	ins 1969 No 222 r 6 om 1993 No 35 r 3

Substitution of creditor or contributory for petitioner in a winding-up by the court

r 45	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Notice to registrar that winding-up order has been made in a winding-up by the court

r 46	ins 1969 No 222 r 6 sub 1980 No 210 r 2 om 1993 No 35 r 3

Service of order in a winding-up by the court

r 47	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice to liquidator of his appointment in a winding-up by the court

r 48	ins 1969 No 222 r 6 om 1993 No 35 r 3

Settlement of orders

r 49	ins 1969 No 222 r 6 om 1993 No 35 r 3

Advertisement of winding-up order and appointment of liquidator in a winding-up by the court

r 50	ins 1969 No 222 r 6 am 1980 No 210 r 3 om 1993 No 35 r 3

Contents of winding-up order in a winding-up by the court

r 51	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice to sheriff

r 52	ins 1969 No 222 r 6 om 1993 No 35 r 3

Appointment of special manager

r 53	ins 1969 No 222 r 6 om 1993 No 35 r 3

Accounting by special manager

r 54	ins 1969 No 222 r 6 om 1993 No 35 r 3

Security by special manager

r 55	ins 1969 No 222 r 6 om 1993 No 35 r 3

Failure to give or keep up security

r 56	ins 1969 No 222 r 6 om 1993 No 35 r 3

Preparation of statement of affairs

r 57	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Extension of time for submitting statement of affairs

r 58	ins 1969 No 222 r 6 om 1993 No 35 r 3

Information subsequent to statement of affairs

r 59	ins 1969 No 222 r 6 om 1993 No 35 r 3

Default

r 60	ins 1969 No 222 r 6 om 1993 No 35 r 3

Expenses of statement of affairs

r 61	ins 1969 No 222 r 6 om 1993 No 35 r 3

Summary of statement of affairs

r 62	ins 1969 No 222 r 6 om 1993 No 35 r 3

Reports

r 63	ins 1969 No 222 r 6 om 1993 No 35 r 3

Liquidator's reports in a winding-up by the court

r 64	ins 1969 No 222 r 6 om 1993 No 35 r 3

Appointment of committee of inspection in a winding-up by the court

r 65	ins 1969 No 222 r 6 om 1993 No 35 r 3

Summoning of meetings of committee

r 66	ins 1969 No 222 r 6 om 1993 No 35 r 3

Costs of calling meetings

r 67	ins 1969 No 222 r 6 om 1993 No 35 r 3

Chairman of meeting

r 68	ins 1969 No 222 r 6 om 1993 No 35 r 3

Copy of resolution to be filed in a winding-up by the court

r 69	ins 1969 No 222 r 6 om 1993 No 35 r 3

Non-receipt of notice by a member of the committee

r 70	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Adjournments

r 71	ins 1969 No 222 r 6 om 1993 No 35 r 3

Minutes of meetings

r 72	ins 1969 No 222 r 6 om 1993 No 35 r 3

Remuneration of liquidator in winding-up by the court

r 73	ins 1969 No 222 r 6 om 1993 No 35 r 3

Limit of remuneration

r 74	ins 1969 No 222 r 6 om 1993 No 35 r 3

Dealing with assets

r 75	ins 1969 No 222 r 6 om 1993 No 35 r 3

Restriction on purchase of goods by liquidator

r 76	ins 1969 No 222 r 6 om 1993 No 35 r 3

Costs of obtaining sanction of court

r 77	ins 1969 No 222 r 6 om 1993 No 35 r 3

Sanction of payments to committee of inspection

r 78	ins 1969 No 222 r 6 om 1993 No 35 r 3

Discharge of costs before assets handed to liquidator in a winding-up by the court

r 79	ins 1969 No 222 r 6 om 1993 No 35 r 3

Resignation of liquidator

r 80	ins 1969 No 222 r 6 am 1980 No 210 r 4 om 1993 No 35 r 3

Office of liquidator vacated by his insolvency

r 81	ins 1969 No 222 r 6 am 1980 No 210 r 5 om 1993 No 35 r 3

Death of liquidator

r 82	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Application of rules as to meetings of creditors and contributories

r 83	ins 1969 No 222 r 6 om 1993 No 35 r 3

Summoning meeting

r 84	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice of meetings to officers of a company

r 85	ins 1969 No 222 r 6 om 1993 No 35 r 3

Proof of notice

r 86	ins 1969 No 222 r 6 om 1993 No 35 r 3

Place of meetings

r 87	ins 1969 No 222 r 6 om 1993 No 35 r 3

Costs of calling meeting

r 88	ins 1969 No 222 r 6 om 1993 No 35 r 3

Chairman of meeting

r 89	ins 1969 No 222 r 6 om 1993 No 35 r 3

Ordinary resolution of creditors and contributories

r 90	ins 1969 No 222 r 6 om 1993 No 35 r 3

Copy of resolution to be filed in a winding-up by the court

r 91	ins 1969 No 222 r 6 om 1993 No 35 r 3

Non-receipt of notice by a creditor

r 92	ins 1969 No 222 r 6 om 1993 No 35 r 3

Adjournments

r 93	ins 1969 No 222 r 6 om 1993 No 35 r 3

Quorum

r 94	ins 1969 No 222 r 6 om 1993 No 35 r 3

Creditors entitled to vote

r 95	ins 1969 No 222 r 6 sub 1980 No 210 r 6 om 1993 No 35 r 3

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Cases in which creditors may not vote

r 96	ins 1969 No 222 r 6 om 1993 No 35 r 3

Votes of secured creditors

r 97	ins 1969 No 222 r 6 om 1993 No 35 r 3

Creditors required to give up security

r 98	ins 1969 No 222 r 6 om 1993 No 35 r 3

Admission, or rejection, of proofs for purposes of voting

r 99	ins 1969 No 222 r 6 sub 1980 No 210 r 7 om 1993 No 35 r 3

Minutes of meeting

r 100	ins 1969 No 222 r 6 om 1993 No 35 r 3

Proxies

r 101	ins 1969 No 222 r 6 om 1993 No 35 r 3

Form of proxies

r 102	ins 1969 No 222 r 6 om 1993 No 35 r 3

Forms of proxy to be sent with notices

r 103	ins 1969 No 222 r 6 om 1993 No 35 r 3

Appointment of proxy

r 104	ins 1969 No 222 r 6 om 1993 No 35 r 3

Solicitation by liquidator to obtain proxies

r 105	ins 1969 No 222 r 6 om 1993 No 35 r 3

Holder of proxy not to vote on matter in which he is financially interested

r 106	ins 1969 No 222 r 6 om 1993 No 35 r 3

Time for lodging proxies and ineligibility of minors to hold

r 107	ins 1969 No 222 r 6 om 1993 No 35 r 3

Use of proxies by deputy

r 108	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Filling in where creditor or contributory blind or incapable

r 109	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Procedure consequent on order for public examination

r 110	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Notice of time and place for public examination

r 111	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Notice of public examination to creditors and contributories

r 112	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Notes of public examination to be filed

r 113	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Examinations under s 249

r 114	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Summons for examination under s 249

r 115	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Examination of witness under s 249

r 116	ins 1969 No 222 r 6
	am 1980 No 214 sch
	om 1993 No 35 r 3

Depositions

r 117	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Committal of contumacious witness

r 118	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Default in attending examination

r 119	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Disclaimer

r 120	ins 1969 No 222 r 6
	om 1993 No 35 r 3

Filing the disclaimer

r 121	ins 1969 No 222 r 6
	om 1993 No 35 r 3

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Claimants to property which the liquidator wishes to disclaim

r 122	ins 1969 No 222 r 6 om 1993 No 35 r 3

Vesting of disclaimed property

r 123	ins 1969 No 222 r 6 om 1993 No 35 r 3

Arrangements with creditors and contributories

r 124	ins 1969 No 222 r 6 om 1993 No 35 r 3

Collection and distribution of company's assets by the liquidator in a winding-up by the court

r 125	ins 1969 No 222 r 6 om 1993 No 35 r 3

Power of liquidator to require delivery of property in a winding-up by the court

r 126	ins 1969 No 222 r 6 om 1993 No 35 r 3

When list of contributories must be settled

r 127	ins 1969 No 222 r 6 om 1993 No 35 r 3

Liquidator to settle list of contributories

r 128	ins 1969 No 222 r 6 om 1993 No 35 r 3

Appointment of time and place for settlement of list

r 129	ins 1969 No 222 r 6 om 1993 No 35 r 3

Settlement of list of contributories

r 130	ins 1969 No 222 r 6 om 1993 No 35 r 3

Supplementary list

r 131	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice to contributories

r 132	ins 1969 No 222 r 6 om 1993 No 35 r 3

Application to the court to vary the list

r 133	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Calls by liquidator

r 134	ins 1969 No 222 r 6 om 1993 No 35 r 3

Committee of inspection to sanction calls

r 135	ins 1969 No 222 r 6 om 1993 No 35 r 3

Application to the court for leave to make a call

r 136	ins 1969 No 222 r 6 om 1993 No 35 r 3

Service of notice of a call

r 137	ins 1969 No 222 r 6 om 1993 No 35 r 3

Enforcement of call

r 138	ins 1969 No 222 r 6 om 1993 No 35 r 3

Form of order for payment of calls

r 139	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notices of claims

r 140	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice to send in claims

r 141	ins 1969 No 222 r 6 om 1993 No 35 r 3

Admission of debts or claims without formal proof

r 142	ins 1969 No 222 r 6 om 1993 No 35 r 3

Notice to creditors to prove

r 143	ins 1969 No 222 r 6 om 1993 No 35 r 3

Verification or proof

r 144	ins 1969 No 222 r 6 om 1993 No 35 r 3

Contents and form of proof

r 145	ins 1969 No 222 r 6 om 1993 No 35 r 3

Statement of security

r 146	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Costs of proof
r 147 ins 1969 No 222 r 6
om 1993 No 35 r 3

Notice of dividend
r 148 ins 1969 No 222 r 6
om 1993 No 35 r 3

Grounds of rejection and notice to creditor
r 149 ins 1969 No 222 r 6
om 1993 No 35 r 3

Appeal by creditor
r 150 ins 1969 No 222 r 6
om 1993 No 35 r 3

Expunging at instance of liquidator or creditor
r 151 ins 1969 No 222 r 6
om 1993 No 35 r 3

Withdrawal or variation of proof
r 152 ins 1969 No 222 r 6
om 1993 No 35 r 3

Oaths
r 153 ins 1969 No 222 r 6
om 1993 No 35 r 3

Procedure where creditor appeals in a winding-up by the court
r 154 ins 1969 No 222 r 6
om 1993 No 35 r 3

Time for dealing with proofs by liquidator
r 155 ins 1969 No 222 r 6
om 1993 No 35 r 3

Costs of appeals from decisions as to proofs
r 156 ins 1969 No 222 r 6
om 1993 No 35 r 3

Discount
r 157 ins 1969 No 222 r 6
om 1993 No 35 r 3

Periodical payments
r 158 ins 1969 No 222 r 6
om 1993 No 35 r 3

Proof of debt payable at a future time
r 159 ins 1969 No 222 r 6
om 1993 No 35 r 3

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Employees' wages
r 160 ins 1969 No 222 r 6
om 1993 No 35 r 3

Production of bills of exchange and promissory notes
r 161 ins 1969 No 222 r 6
om 1993 No 35 r 3

Transmission of claims and proofs to liquidator in a winding-up by the court
r 162 ins 1969 No 222 r 6
om 1993 No 35 r 3

Provisional liquidator's powers
r 163 ins 1969 No 222 r 6
om 1993 No 35 r 3

Certified list of proofs to be filed in a winding-up by the court
r 164 ins 1969 No 222 r 6
om 1993 No 35 r 3

Dividend confined to person on list
r 165 ins 1969 No 222 r 6
om 1993 No 35 r 3

Dividends to creditors
r 166 ins 1969 No 222 r 6
om 1993 No 35 r 3

Plan of distribution
r 167 ins 1969 No 222 r 6
om 1993 No 35 r 3

Return of capital to contributories in a winding-up by the court
r 168 ins 1969 No 222 r 6
om 1993 No 35 r 3

Payments into bank
r 169 ins 1969 No 222 r 6
om 1993 No 35 r 3

Consequences of liquidator not making payments into bank
r 170 ins 1969 No 222 r 6
om 1993 No 35 r 3

Deposit of bills, notes and securities
r 171 ins 1969 No 222 r 6
om 1993 No 35 r 3

Delivery of securities
r 172 ins 1969 No 222 r 6
om 1993 No 35 r 3

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Payment into court
r 173 ins 1969 No 222 r 6
om 1993 No 35 r 3

Special bank account
r 174 ins 1969 No 222 r 6
om 1993 No 35 r 3

Payments out of bank
r 175 ins 1969 No 222 r 6
om 1993 No 35 r 3

Books of accounts and records
r 176 ins 1969 No 222 r 6
om 1993 No 35 r 3

Inspection of books or documents
r 177 ins 1969 No 222 r 6
om 1993 No 35 r 3

Delivery of books by outgoing liquidator
r 178 ins 1969 No 222 r 6
om 1993 No 35 r 3

Accounts
r 179 ins 1969 No 222 r 6
om 1993 No 35 r 3

Filing of liquidator's accounts
r 180 ins 1969 No 222 r 6
om 1993 No 35 r 3

Taxation of costs payable by or to a liquidator or by the company in a winding-up by the court
r 181 ins 1969 No 222 r 6
om 1993 No 35 r 3

Application for costs
r 182 ins 1969 No 222 r 6
om 1993 No 35 r 3

Certificate of taxation in a winding-up by the court
r 183 ins 1969 No 222 r 6
om 1993 No 35 r 3

Certificate of employment in a winding-up by the court
r 184 ins 1969 No 222 r 6
om 1993 No 35 r 3

Refusal, neglect or failure to procure taxation
r 185 ins 1969 No 222 r 6
om 1993 No 35 r 3

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Sheriff's costs in a winding-up by the court
r 186 ins 1969 No 222 r 6
om 1993 No 35 r 3

Taxation of sheriff's costs after deduction in a winding-up by the court
r 187 ins 1969 No 222 r 6
om 1993 No 35 r 3

Liquidator's charges in a winding-up by the court
r 188 ins 1969 No 222 r 6
om 1993 No 35 r 3

Payments of undistributed and unclaimed moneys to the Treasurer in accordance with s 4 of the Companies (Unclaimed Assets and Moneys) Ordinance 1950-1966
r 189 ins 1969 No 222 r 6
om 1993 No 35 r 3

Application for payment out by person entitled
r 190 ins 1969 No 222 r 6
om 1993 No 35 r 3

Application for payment out by person entitled
r 191 ins 1969 No 222 r 6
om 1993 No 35 r 3

Registrar's certificate of completion of winding-up in a winding-up by the court
r 192 ins 1969 No 222 r 6
om 1993 No 35 r 3

Dissolution in a winding-up by the court
r 193 ins 1969 No 222 r 6
om 1993 No 35 r 3

Proceedings for release of liquidator
r 194 ins 1969 No 222 r 6
om 1993 No 35 r 3

Disposal of books and papers
r 195 ins 1969 No 222 r 6
om 1993 No 35 r 3

General
o 75 div 7 hdg ins 1969 No 222 r 6
om 1993 No 35 r 3

Publishing notices
r 196 ins 1969 No 222 r 6
om 1993 No 35 r 3

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Application under s 171 (4)

r 197	ins 1969 No 222 r 6 om 1993 No 35 r 3

Complaint under s 278 (1)

r 198	ins 1969 No 222 r 6 om 1993 No 35 r 3

Report under s 278 (2)

r 199	ins 1969 No 222 r 6 om 1993 No 35 r 3

Application under s 306

r 200	ins 1969 No 222 r 6 om 1993 No 35 r 3

Arrests and commitments

r 201	ins 1969 No 222 r 6 om 1993 No 35 r 3

Arrest and commitment under the ordinance or rules except under s 249 or 251 or r 118 or 119

r 202	ins 1969 No 222 r 6 om 1993 No 35 r 3

Arrest under s 249 or 251 of the ordinance or under r 118 or 119

r 203	ins 1969 No 222 r 6 om 1993 No 35 r 3

Release of official manager

r 204	ins 1969 No 222 r 6 om 1993 No 35 r 3

Service of documents on persons except companies

r 205	ins 1969 No 222 r 6 om 1993 No 35 r 3

Service of documents on companies

r 206	ins 1969 No 222 r 6 om 1993 No 35 r 3

Declaration of rights of parties

r 207	ins 1969 No 222 r 6 om 1993 No 35 r 3

Formal defects

r 208	ins 1969 No 222 r 6 om 1993 No 35 r 3

Enlargement or abridgment of time

r 209	ins 1969 No 222 r 6 om 1993 No 35 r 3

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Dispensing with notice

r 210	ins 1969 No 222 r 6 om 1993 No 35 r 3

Departure from rules

r 211	ins 1969 No 222 r 6 om 1993 No 35 r 3

Fees

r 212	ins 1969 No 222 r 6 om 1993 No 35 r 3

Declaration of solvency

r 213	ins 1980 No 210 r 8 om 1993 No 35 r 3

Notices of the summoning and holding of a creditors' meeting in case of insolvency

r 214	ins 1980 No 210 r 8 om 1993 No 35 r 3

Return of final meeting and dissolution

r 215	ins 1980 No 210 r 8 om 1993 No 35 r 3

Notice of appointment and address of liquidator

r 216	ins 1980 No 210 r 8 om 1993 No 35 r 3

Notice of change in situation of office of liquidator

r 217	ins 1980 No 210 r 8 om 1993 No 35 r 3

Liquidator's accounts

r 218	ins 1980 No 210 r 8 om 1993 No 35 r 3

Companies Act 1981

o 75A hdg	ins 1984 No 281 r 10 om 1993 No 35 r 3

Preliminary

o 75A div 1 hdg	ins 1984 No 281 r 10 om 1993 No 35 r 3

Interpretation

r 1	ins 1984 No 281 r 10 om 1993 No 35 r 3 def ***Commission*** ins 1984 No 281 r 10 om 1993 No 35 r 3 def ***Companies Act*** ins 1984 No 281 r 10 om 1993 No 35 r 3

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def ***company*** ins 1984 No 281 r 10
om 1993 No 35 r 3
def ***liquidator*** ins 1984 No 281 r 10
om 1993 No 35 r 3
def ***officer*** ins 1984 No 281 r 10
om 1993 No 35 r 3
def ***prescribed newspaper*** ins 1984 No 281 r 10
om 1993 No 35 r 3
def ***prescribed office*** ins 1984 No 281 r 10
am 1989 No 30 r 6
om 1993 No 35 r 3
def ***proceedings*** ins 1984 No 281 r 10
om 1993 No 35 r 3

Forms
r 2 ins 1984 No 281 r 10
om 1993 No 35 r 3

Application
r 3 ins 1984 No 281 r 10
om 1993 No 35 r 3

Bodies other than companies
r 4 ins 1984 No 281 r 10
om 1993 No 35 r 3

Proceedings under the Companies Act generally
o 75A div 2 hdg ins 1984 No 281 r 10
om 1993 No 35 r 3

Commencement of proceedings
r 5 ins 1984 No 281 r 10
om 1993 No 35 r 3

Interlocutory applications
r 6 ins 1984 No 281 r 10
om 1993 No 35 r 3

Heading of application
r 7 ins 1984 No 281 r 10
om 1993 No 35 r 3

Appearance
r 8 ins 1984 No 281 r 10
om 1993 No 35 r 3

Leave to creditor etc to be heard etc
r 9 ins 1984 No 281 r 10
om 1993 No 35 r 3

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Inquiry as to creditors

r 10	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Parts 3-11 of the Companies Act

o 75A div 3 hdg	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Applications under ss 73, 118, 122, 123, 125, 133, 175, 315 and 317

r 11	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Reduction of capital

r 12	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Registration of transfer of shares etc

r 13	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Compromise with creditors

r 14	ins 1984 No 281 r 10
	am 1989 No 30 r 7
	om 1993 No 35 r 3

Oppression or injustice

r 15	ins 1984 No 281 r 10
	am 1989 No 30 r 8
	om 1993 No 35 r 3

Release of official manager

r 16	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Part 12 of the Companies Act (winding-up)

o 75A div 4 hdg	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Application for a winding-up order

r 17	ins 1984 No 281 r 10
	om 1993 No 35 r 3

File number: winding-up

r 18	ins 1984 No 281 r 10
	om 1993 No 35 r 3

Inspection of documents

r 19	ins 1984 No 281 r 10
	om 1993 No 35 r 3

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Substituted applicant in winding-up application

r 20	ins 1984 No 281 r 10 om 1993 No 35 r 3

Discontinuance

r 21	ins 1984 No 281 r 10 om 1993 No 35 r 3

Form of winding-up order

r 22	ins 1984 No 281 r 10 om 1993 No 35 r 3

Stay of proceedings against company

r 23	ins 1984 No 281 r 10 om 1993 No 35 r 3

Proceedings against company after winding-up order

r 24	ins 1984 No 281 r 10 om 1993 No 35 r 3

Notice of appointment of provisional liquidator

r 25	ins 1984 No 281 r 10 om 1993 No 35 r 3

Notice to liquidator of appointment

r 26	ins 1984 No 281 r 10 om 1993 No 35 r 3

Notice of appointment of liquidator

r 27	ins 1984 No 281 r 10 om 1993 No 35 r 3

Provisional liquidator

r 28	ins 1984 No 281 r 10 om 1993 No 35 r 3

Vacancy in office of liquidator

r 29	ins 1984 No 281 r 10 om 1993 No 35 r 3

Statement of company's affairs

r 30	ins 1984 No 281 r 10 am 1989 No 30 r 9 om 1993 No 35 r 3

List of contributories

r 31	ins 1984 No 281 r 10 om 1993 No 35 r 3

Liquidator to file resolutions

r 32	ins 1984 No 281 r 10 om 1993 No 35 r 3

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Unclaimed monies

r 33	ins 1984 No 281 r 10 om 1993 No 35 r 3

Report by liquidator to court: stay of winding-up

r 34	ins 1984 No 281 r 10 om 1993 No 35 r 3

Special manager

r 35	ins 1984 No 281 r 10 om 1993 No 35 r 3

Accounting by special manager

r 36	ins 1984 No 281 r 10 om 1993 No 35 r 3

Default of special manager

r 37	ins 1984 No 281 r 10 om 1993 No 35 r 3

Powers of liquidator

r 38	ins 1984 No 281 r 10 om 1993 No 35 r 3

Requirement by liquidator to pay money etc

r 39	ins 1984 No 281 r 10 om 1993 No 35 r 3

Sanction of calls

r 40	ins 1984 No 281 r 10 om 1993 No 35 r 3

Applications relating to calls

r 41	ins 1984 No 281 r 10 om 1993 No 35 r 3

Filing notice of amount of call

r 42	ins 1984 No 281 r 10 om 1993 No 35 r 3

Call on contributories

r 43	ins 1984 No 281 r 10 om 1993 No 35 r 3

Application for order for payment of call

r 44	ins 1984 No 281 r 10 om 1993 No 35 r 3

Proceedings against company after voluntary winding-up

r 45	ins 1984 No 281 r 10 am 1989 No 30 r 10 om 1993 No 35 r 3

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

Complaint against liquidator

r 46	ins 1984 No 281 r 10 om 1993 No 35 r 3

Report concerning liquidator

r 47	ins 1984 No 281 r 10 om 1993 No 35 r 3

Liquidator's accounts

r 48	ins 1984 No 281 r 10 om 1993 No 35 r 3

Acceptance of liquidator's resignation

r 49	ins 1984 No 281 r 10 om 1993 No 35 r 3

Notice of liquidator's resignation

r 50	ins 1984 No 281 r 10 om 1993 No 35 r 3

Release of liquidator

r 51	ins 1984 No 281 r 10 om 1993 No 35 r 3

Resignation, release or removal of liquidator

r 52	ins 1984 No 281 r 10 om 1993 No 35 r 3

Death of liquidator

r 53	ins 1984 No 281 r 10 om 1993 No 35 r 3

Meetings ordered by the court

r 54	ins 1984 No 281 r 10 om 1993 No 35 r 3

Report to court: meeting of creditors etc

r 55	ins 1984 No 281 r 10 om 1993 No 35 r 3

Notice: meeting of creditors or contributories

r 56	ins 1984 No 281 r 10 om 1993 No 35 r 3

Committee of inspection

r 57	ins 1984 No 281 r 10 om 1993 No 35 r 3

Proof of debt

r 58	ins 1984 No 281 r 10 om 1993 No 35 r 3

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Disclaimer

r 59	ins 1984 No 281 r 10 om 1993 No 35 r 3

Application for reinstatement of deregistered company

r 59A	ins 1990 No 129 r 15 om 1993 No 35 r 3

Stay of proceedings: body other than a company

r 60	ins 1984 No 281 r 10 om 1993 No 35 r 3

Passing accounts or plan of distribution

r 61	ins 1984 No 281 r 10 om 1993 No 35 r 3

Taxation of costs

r 62	ins 1984 No 281 r 10 om 1993 No 35 r 3

Application for costs

r 63	ins 1984 No 281 r 10 om 1993 No 35 r 3

Sheriff's costs

r 64	ins 1984 No 281 r 10 om 1993 No 35 r 3

Part 14 of the Companies Act (Miscellaneous)

o 75A div 5 hdg	ins 1984 No 281 r 10 om 1993 No 35 r 3

Security for costs: plaintiff corporation

r 65	ins 1984 No 281 r 10 om 1993 No 35 r 3

Appeal; from decisions of receivers etc

r 66	ins 1984 No 281 r 10 om 1993 No 35 r 3

Examination of person concerned with corporation

r 67	ins 1984 No 281 r 10 om 1993 No 35 r 3

Default in relation to an examination

r 68	ins 1984 No 281 r 10 om 1993 No 35 r 3

Powers of registrar

r 69	ins 1984 No 281 r 10 am 1989 No 30 r 11; 1991 No 251 r 8 om 1993 No 35 r 3

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Corporations Law and Australian Securities Commission Law

o 75B hdg	ins 1990 No 458 r 11 om 2000 No 17 r 12

Preliminary

o 75B div 1 hdg	ins 1990 No 458 r 11 om 2000 No 17 r 12

Citation

r 1	ins 1990 No 458 r 11 om 2000 No 17 r 12

Interpretation

r 2	ins 1990 No 458 r 11 om 2000 No 17 r 12 def ***ASC Law*** ins 1990 No 458 r 11 om 1992 No 34 sch ins 1993 No 35 r 8 om 2000 No 17 r 12 def ***Australian Company Number*** ins 1990 No 458 r 11 om 2000 No 17 r 12 def ***body corporate*** ins 1990 No 458 r 11 om 1999 No 26 sch def ***Commission*** ins 1990 No 458 r 11 om 2000 No 17 r 12 def ***company*** ins 1990 No 458 r 11 om 1999 No 26 sch def ***contributory*** ins 1990 No 458 r 11 om 1999 No 26 sch def ***controller*** ins 1993 No 35 r 8 om 2000 No 17 r 12 def ***corporation*** ins 1990 No 458 r 11 om 1999 No 26 sch def ***Corporations Law*** ins 1990 No 458 r 11 om 1992 No 34 sch ins 1993 No 35 r 8 om 2000 No 17 r 12 def ***Corporations Regulations*** ins 1990 No 458 r 11 om 1992 No 34 sch ins 1993 No 35 r 8 om 2000 No 17 r 12 def ***Gazette*** ins 1990 No 458 r 11 om 2000 No 17 r 12 def ***liquidator*** ins 1990 No 458 r 11 om 1993 No 35 r 8 def ***office copy*** ins 1990 No 458 r 11 om 2000 No 17 r 12

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def ***officer*** ins 1990 No 458 r 11
om 1999 No 26 sch
def ***official liquidator*** ins 1990 No 458 r 11
om 1999 No 26 sch
def ***prescribed information*** ins 1990 No 458 r 11
am 1993 No 35 r 8
om 2000 No 17 r 12
def ***prescribed newspaper*** ins 1990 No 458 r 11
om 2000 No 17 r 12
def ***prescribed office*** ins 1990 No 458 r 11
om 2000 No 17 r 12

Application of this order and other orders to proceedings under the Corporations Law and under the ASC Law
r 3 ins 1990 No 458 r 11
om 2000 No 17 r 12

Application of order 2
r 3A ins 1997 No 8 sch 3
om 2000 No 17 r 12

Form of documents
r 4 ins 1990 No 458 r 11
am 1993 No 35 r 9
om 2000 No 17 r 12

Commencement of proceedings
r 5 ins 1990 No 458 r 11
om 2000 No 17 r 12

Commencement of proceedings by a person aggrieved—ss 350, 574, 777, 1082, 1140 and 1323
r 6 ins 1990 No 458 r 11
am 1993 No 35 r 10
om 2000 No 17 r 12

Powers of registrar and master
r 7 ins 1990 No 458 r 11
am 1991 No 251 r 9; 1991 No 294 r 5; 1993 No 35 r 11
om 2000 No 17 r 12

Reference of application to court
r 8 ins 1990 No 458 r 11
om 1991 No 294 r 6

Power to direct that notice be given
r 9 ins 1990 No 458 r 11
om 2000 No 17 r 12

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Leave to creditor, contributory or officer to be heard

r 10	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Inquiry as to creditors

r 11	ins 1990 No 458 r 11
	am 1991 No 251 r 10
	om 2000 No 17 r 12

Specified applications

o 75B div 2 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Applications under ss 167, 168, 172, 194, 197, 198, 199, 202 and 1074

r 12	ins 1990 No 458 r 11
	am 1993 No 35 r 12; 1997 No 8 sch 3
	om 2000 No 17 r 12

Issue of shares at a discount, reduction of capital, financial assistance, buy backs

o 75B div 3 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Order confirming the issue of shares at a discount—s 190 (3)

r 13	ins 1990 No 458 r 11
	am 1993 No 35 r 13; 1997 No 8 sch 3
	om 2000 No 17 r 12

Application for order confirming reduction of capital—s 195

r 14	ins 1990 No 458 r 11
	am 1993 No 35 r 14
	om 2000 No 17 r 12

Service and advertising of order confirming a reduction of capital

r 15	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Application opposing giving of financial assistance—s 205 (12)

r 16	ins 1990 No 458 r 11
	am 1993 No 35 r 15
	om 2000 No 17 r 12

Application by creditor in relation to a proposed buy-back scheme or buy-back—s 206LD

r 17	ins 1990 No 458 r 11
	am 1993 No 35 r 16
	om 2000 No 17 r 12

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Officers (pt 3.2), oppression proceedings (pt 3.4) and charges (pt 3.5)

o 75B div 4 hdg	ins 1990 No 458 r 11
	am 1993 No 35 r 17
	om 2000 No 17 r 12

Grant of leave to manage a corporation—s 229

r 18	ins 1990 No 458 r 11
	am 1993 No 35 r 18
	om 2000 No 17 r 12

Order prohibiting a person from managing a corporation—s 230

r 19	ins 1990 No 458 r 11
	am 1993 No 35 r 19
	om 2000 No 17 r 12

Order sanctioning non-compliance with pt 3.2A—s 243ZD

r 19A	ins 1993 No 35 r 20
	om 2000 No 17 r 12

Application for orders in cases of oppression or injustice—s 260

r 20	ins 1990 No 458 r 11
	am 1993 No 35 r 21; 1997 No 8 sch 3
	om 2000 No 17 r 12

Application for leave to enforce a charge—s 267 (3)

r 21	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Arrangements and reconstructions (pt 5.1)

o 75B div 5 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Applications relating to compromises with creditors or members—s 411 and s 413

r 22	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Service of order approving a compromise or arrangement

r 23	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Inquiry as to conduct of person administering a compromise or arrangement—s 411 (9)

r 24	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Application to restrain proceedings against pt 5.1 body—s 411 (16)

r 25	ins 1990 No 458 r 11
	om 2000 No 17 r 12

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Review of remuneration of person administering a compromise or arrangement

r 26	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Application for directions in relation to compromise or arrangement

r 27	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Receivers and managers (pt 5.2)

o 75B div 6 hdg	ins 1990 No 458 r 11
	sub 1993 No 35 r 22
	om 2000 No 17 r 12

Declaration as to validity of controller's appointment—s 418A

r 27A	ins 1993 No 35 r 23
	om 2000 No 17 r 12

Power to make order relieving a person from liability if not properly appointed as receiver—s 419 (3)

r 28	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Application for relief of controller from liability—s 419A (7)

r 28A	ins 1993 No 35 r 24
	om 2000 No 17 r 12

Court's power to authorise managing controller to dispose of property despite prior charge—s 420B

r 28B	ins 1993 No 35 r 24
	om 2000 No 17 r 12

Receiver's power to carry on a corporation's business during a winding-up—s 420C

r 28C	ins 1993 No 35 r 24
	om 2000 No 17 r 12

Inquiry as to conduct of a controller—s 423

r 29	ins 1990 No 458 r 11
	am 1993 No 35 r 25
	om 2000 No 17 r 12

Application by controller for directions—s 424

r 30	ins 1990 No 458 r 11
	am 1993 No 35 r 26
	om 2000 No 17 r 12

Court's power to fix receiver's remuneration—s 425

r 30A	ins 1993 No 35 r 27
	om 2000 No 17 r 12

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Court's power to remove controller for misconduct—s 434A

r 30B	ins 1993 No 35 r 27
	om 2000 No 17 r 12

Removal of redundant controller—s 434B

r 30C	ins 1993 No 35 r 27
	om 2000 No 17 r 12

Official management (pt 5.3)

o 75B div 7 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Stay of proceedings where company is under official management—s 444

r 31	ins 1990 No 458 r 11
	am 1992 No 23 sch 1; 1993 No 35 r 28
	om 2000 No 17 r 12

Inquiry as to conduct of official manager—s 452 (4)

r 32	ins 1990 No 458 r 11
	am 1993 No 35 r 29
	om 2000 No 17 r 12

Application for variation or cancellation of resolution to place company under official management—s 454

r 33	ins 1990 No 458 r 11
	am 1993 No 35 r 30
	om 2000 No 17 r 12

Release of official manager—s 456

r 34	ins 1990 No 458 r 11
	am 1993 No 35 r 31
	om 2000 No 17 r 12

Administration of a company's affairs (pt 5.3A)

o 75B div 7A hdg	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Applications under pt 5.3A

r 34A	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Court's power to limit rights of secured creditor or owner or lessor of property—s 444F (1)

r 34B	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Application to avoid or validate a deed of company arrangement—s 445G

r 34C	ins 1993 No 35 r 32
	om 2000 No 17 r 12

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Application by administrator for directions—s 447D

r 34D	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Supervision of administrator of company or deed of company arrangement—s 447E

r 34E	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Removal of administrator—s 449B

r 34F	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Vacancy in office of administrator of a company or of administrator of a deed of company arrangement—s 449C and s 449D

r 34G	ins 1993 No 35 r 32
	om 2000 No 17 r 12

Winding-up by the court (pt 5.4)

o 75B div 8 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Address for service in winding-up applications

r 35	ins 1990 No 458 r 11
	am 1993 No 35 r 33
	om 1994 No 34 r 4

Application for a winding-up order—s 462

r 36	ins 1990 No 458 r 11
	am 1992 No 23 sch 1
	sub 1993 No 35 r 34
	am 1997 No 8 sch 3
	om 2000 No 17 r 12

Form of affidavit in support of statutory demand—s 459E (3)

r 36A	ins 1993 No 35 r 34
	sub 1996 No 31 r 3
	om 2000 No 17 r 12

Application to set aside a statutory demand—s 459G

r 36B	ins 1993 No 35 r 34
	om 2000 No 17 r 12

Application for leave to bring a winding-up application under s 459P (2)

r 36C	ins 1993 No 35 r 34
	om 2000 No 17 r 12

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Winding-up of a company in insolvency under s 459P

r 37	ins 1990 No 458 r 11
	am 1991 No 251 r 11
	sub 1993 No 35 r 34
	am 1996 No 31 r 4; 1999 No 26 sch
	om 2000 No 17 r 12

Filing in court of documents in support of an application under s 459P or s 462

r 38	ins 1990 No 458 r 11
	am 1991 No 251 r 12
	sub 1993 No 35 r 34
	am 1994 No 34 r 5
	om 2000 No 17 r 12

Sealing of winding-up order and notice of appointment of liquidator

r 39	ins 1990 No 458 r 11
	am 1992 No 79 r 7; 1992 No 21 r 5
	om 2000 No 17 r 12

Court's power to extend time within which application for a company to be wound up in insolvency is to be determined—s 459R

r 39A	ins 1993 No 35 r 35
	om 2000 No 17 r 12

Proceedings after order for winding-up is made

r 40	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Substituted applicant in winding-up application—s 465B

r 41	ins 1990 No 458 r 11
	sub 1993 No 35 r 36
	am 1999 No 26 sch
	om 2000 No 17 r 12

Notice of appointment of liquidator

r 42	ins 1990 No 458 r 11
	am 1993 No 35 r 37
	om 2000 No 17 r 12

Service of winding-up order

r 43	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Stay of proceedings on winding-up application—s 467 (7)

r 44	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Validation of disposition of property—s 468

r 45	ins 1990 No 458 r 11
	om 2000 No 17 r 12

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Application for leave to commence or continue proceedings against a company—s 471 B

r 46	ins 1990 No 458 r 11
	sub 1993 No 35 r 38
	om 2000 No 17 r 12

Transitional provisions for winding-up applications

r 47	ins 1990 No 458 r 11
	sub 1993 No 35 r 38
	om 2000 No 17 r 12

Provisional liquidators

o 75B div 9 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Appointment of provisional liquidator—s 472

r 48	ins 1990 No 458 r 11
	am 1993 No 35 r 39
	om 2000 No 17 r 12

Notice of appointment of provisional liquidator

r 49	ins 1990 No 458 r 11
	am 1993 No 35 r 40
	om 2000 No 17 r 12

Service of order appointing a provisional liquidator

r 50	ins 1990 No 458 r 11
	am 1993 No 35 r 41
	om 2000 No 17 r 12

Power of provisional liquidator—s 472

r 51	ins 1990 No 458 r 11
	am 1993 No 35 r 42
	om 2000 No 17 r 12

Remuneration of provisional liquidator—s 473 (2)

r 52	ins 1990 No 458 r 11
	am 1993 No 35 r 43
	om 2000 No 17 r 12

Liquidators and special managers

o 75B div 10 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Resignation of liquidator or provisional liquidator appointed by the court—s 473 (1)

r 53	ins 1990 No 458 r 11
	om 2000 No 17 r 12

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Filling vacancy in office of liquidator—s 473 (7)

r 54	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Report as to company's affairs—s 475

r 55	ins 1990 No 458 r 11
	am 1993 No 35 r 44
	om 2000 No 17 r 12

Settlement of list of contributories—s 478

r 56	ins 1990 No 458 r 11
	om 1993 No 35 r 45

Resolutions of meetings of creditors or contributories

r 57	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Release of liquidator—s 480

r 58	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Report on accounts of liquidator—s 481

r 59	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Liquidator's power to require payment of money or transfer of property—s 483

r 60	ins 1990 No 458 r 11
	sub 1993 No 35 r 46
	om 2000 No 17 r 12

Calls upon contributories with the sanction of a committee of inspection—s 483 and s 488

r 61	ins 1990 No 458 r 11
	om 1993 No 35 r 47

Calls upon contributories by leave of the court—s 483 and s 488

r 62	ins 1990 No 458 r 11
	om 1993 No 35 r 47

Application for order for payment of call—s 483

r 63	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Powers delegated to liquidator by the court—s 488

r 64	ins 1990 No 458 r 11
	am 1992 No 23 sch 1; 1993 No 35 r 48
	om 2000 No 17 r 12

Distribution of surplus—s 488 (2)

r 64A	ins 1993 No 35 r 49
	om 2000 No 17 r 12

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Appointment of temporary joint liquidator

r 65	ins 1990 No 458 r 11 om 2000 No 17 r 12

Taxation of costs of agents of and persons who have provided services to a liquidator

r 66	ins 1990 No 458 r 11 sub 1991 No 251 r 13 om 2000 No 17 r 12

Appointment of a special manager—s 484

r 67	ins 1990 No 458 r 11 om 2000 No 17 r 12

Accounts of a special manager—s 484

r 68	ins 1990 No 458 r 11 om 2000 No 17 r 12

Default by a special manager

r 69	ins 1990 No 458 r 11 am 1992 No 23 sch 1 om 2000 No 17 r 12

Voluntary winding-up (pt 5.5)

o 75B div 11 hdg	ins 1990 No 458 r 11 om 2000 No 17 r 12

Proceedings against company after commencement of a creditors' voluntary winding-up—s 500

r 70	ins 1990 No 458 r 11 om 2000 No 17 r 12

Appointment or removal of liquidator in the course of a voluntary winding-up—s 502 and s 503

r 71	ins 1990 No 458 r 11 om 2000 No 17 r 12

Application to court to have question determined or power exercised—s 511

r 72	ins 1990 No 458 r 11 om 2000 No 17 r 12

Winding-up generally (pt 5.6)

O 75B div 12 hdg	ins 1990 No 457 r 11 om 2000 No 17 r 12

Supervision of liquidators by the court—s 536

r 73	ins 1990 No 458 r 11 am 1993 No 35 r 50 om 2000 No 17 r 12

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

Meetings of creditors or contributories—s 547

r 74	ins 1990 No 458 r 11 om 1993 No 35 r 51

Appointment of committee of inspection—s 548

r 75	ins 1990 No 458 r 11 om 2000 No 17 r 12

Application by liquidator for direction or permission if no committee of inspection is appointed—s 552

r 76	ins 1990 No 458 r 11 om 2000 No 17 r 12

Determination of value of debts and claims of uncertain value in liquidation—s 554A

r 76A	ins 1993 No 35 r 52 om 2000 No 17 r 12

Amendment of valuation of security in proof of debt by secured creditor—s 554G

r 76B	ins 1993 No 35 r 52 om 2000 No 17 r 12

Disclaimer of contract—s 568

r 77	ins 1990 No 458 r 11 sub 1993 No 35 r 52 om 2000 No 17 r 12

Application to set aside disclaimer before it takes effect—s 568B

r 77A	ins 1993 No 35 r 52 om 2000 No 17 r 12

Application to set aside disclaimer after it has taken effect—s 568E

r 77B	ins 1993 No 35 r 52 om 2000 No 17 r 12

Vesting of disclaimed property by court order—s 568F

r 77C	ins 1993 No 35 r 52 om 2000 No 17 r 12

Application to court to declare dissolution of company void—s 571

r 78	ins 1990 No 458 r 11 am 1997 No 8 sch 3 om 2000 No 17 r 12

Winding-up pt 5.7 bodies—s 583 and s 585

r 79	ins 1990 No 458 r 11 om 2000 No 17 r 12

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Application for leave to commence or continue proceedings against a contributory of a pt 5.7 body after a winding-up order—s 587

r 80	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Miscellaneous (pt 5.9)

o 75B div 13 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Issue of summons for examination—s 596A and s 596B

r 81	ins 1990 No 458 r 11
	sub 1993 No 35 r 53
	om 2000 No 17 r 12

Conduct of examination under pt 5.9 div 1

r 81A	ins 1993 No 35 r 53
	om 2000 No 17 r 12

Default in relation to examination under pt 5.9 div 1

r 82	ins 1990 No 458 r 11
	am 1993 No 35 r 54; 1994 No 21 r 9
	om 2000 No 17 r 12

Orders under s 598 or s 599

r 83	ins 1990 No 458 r 11
	am 1993 No 35 r 55
	om 2000 No 17 r 12

Ch 6 and ch 7 of the Corporations Law

o 75B div 14 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Proceedings under ch 6 or ch 7 of the Corporations Law

r 84	ins 1990 No 458 r 11
	am 1993 No 35 r 56
	om 2000 No 17 r 12

Orders in respect of agreement, payment or benefit—s 740

r 85	ins 1990 No 458 r 11
	am 1993 No 35 r 57
	om 2000 No 17 r 12

Orders in respect of contravention by substantial shareholder—s 741

r 86	ins 1990 No 458 r 11
	am 1993 No 35 r 58
	om 2000 No 17 r 12

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Application for order of court declaring that an act, document or matter is not invalid—s 743

r 87	ins 1990 No 458 r 11 am 1993 No 35 r 59 om 2000 No 17 r 12

Application for order varying an agreement with a non-licensee—s 799A

r 88	ins 1990 No 458 r 11 am 1993 No 35 r 60 om 2000 No 17 r 12

Orders and directions under s 877

r 89	ins 1990 No 458 r 11 om 2000 No 17 r 12

Proceedings against securities exchange to establish claim against fidelity fund—s 911

r 90	ins 1990 No 458 r 11 om 2000 No 17 r 12

Application for directions by trustee for debenture holders—s 1057

r 91	ins 1990 No 458 r 11 om 2000 No 17 r 12

Summons for appearance of a person—s 1092 (3)

r 92	ins 1990 No 458 r 11 om 2000 No 17 r 12

Orders relating to refusal to register transfer or transmission—s 1094

r 93	ins 1990 No 458 r 11 am 1993 No 35 r 61 om 2000 No 17 r 12

Chapter 8 of the Corporations Law

o 75B div 15 hdg	ins 1990 No 457 r 11 om 2000 No 17 r 12

Appeal against a decision of a futures exchange or futures association—s 1135

r 94	ins 1990 No 458 r 11 om 2000 No 17 r 12

Application for order varying agreement with a non-licensee—s 1165A

r 95	ins 1990 No 458 r 11 am 1993 No 35 r 62 om 2000 No 17 r 12

Application for an order under s 1224 or s 1226

r 96	ins 1990 No 458 r 11 om 2000 No 17 r 12

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Proceedings against futures organisation to establish claim against fidelity fund—s 1243

r 97	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Powers of the courts (pt 9.5)

o 75B div 16 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Appeals from the administrative appeals tribunal—s 1317B

r 98	ins 1990 No 458 r 11
	om 1994 No 34 r 6

Leave to manage a corporation where a person is subject to a civil penalty disqualification—s 1317EF

r 98A	ins 1993 No 35 r 63
	om 2000 No 17 r 12

Relief from liability for contravention of civil penalty provisions—s 1317JA

r 98B	ins 1993 No 35 r 63
	om 2000 No 17 r 12

Application for relief under s 1318 (2)

r 99	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Appeals from decisions of administrator, receiver, official manager, liquidator etc—s 1321

r 100	ins 1990 No 458 r 11
	am 1993 No 35 r 64
	om 2000 No 17 r 12

Irregularities—s 1322

r 101	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Intervention by commission in proceedings—s 1330

r 102	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Meetings ordered by the court

r 103	ins 1990 No 458 r 11
	am 1993 No 35 r 65
	om 2000 No 17 r 12

Publication requirements and proof of publication

r 104	ins 1990 No 458 r 11
	om 2000 No 17 r 12

Australian Securities Commission Law

o 75B div 17 hdg	ins 1990 No 458 r 11
	om 2000 No 17 r 12

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Reference of question of law arising at a hearing of the Australian Securities Commission to the court—s 61 of the ASC Law

r 105	ins 1990 No 458 r 11 om 2000 No 17 r 12

Proceedings under s 70 of the ASC Law

r 106	ins 1990 No 458 r 11 om 2000 No 17 r 12

Reference of question of law arising at a hearing of the corporations and securities panel to the court—s 196 of the ASC Law

r 107	ins 1990 No 458 r 11 om 2000 No 17 r 12

Proceedings under s 201 of the ASC Law

r 108	ins 1990 No 458 r 11 om 2000 No 17 r 12

Proceedings under s 219 of the ASC Law

r 109	ins 1990 No 458 r 11 om 2000 No 17 r 12

Transfer of proceedings

o 75B div 18 hdg	ins 1990 No 458 r 11 om 2000 No 17 r 12

Transfer of proceedings under the Corporations Law

r 110	ins 1990 No 458 r 11 om 2000 No 17 r 12

Adoption jurisdiction

pt 5 hdg	orig pt 5 hdg ins 1956 No 135 r 18 om 2000 No 46 amdt 1.212 (prev pt 7 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4; sub 2000 No 46 amdt 1.214 renum as pt 5 hdg R13 LA (see 2002 No 16 amdt 1.39)

Adoption

o 76 hdg	ins 1966 No 132 r 3 sub 1993 No 30 r 4; 2000 No 46 amdt 1.215

Preliminary

div 76.1 hdg	(prev o 76 div 1 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4 renum 2000 No 46 amdt 1.216

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Definitions for o 76

r 1 ins 1966 No 132 r 3
sub 1993 No 30 r 4
am 1999 No 26 sch
sub 2000 No 23 r 3
def ***Act*** ins 2000 No 23 r 3
def ***adoption order*** ins 1966 No 132 r 3
def ***chief executive*** ins 2000 No 23 r 3
def ***director*** ins 1993 No 30 r 4
def ***discharging order*** ins 1993 No 30 r4
sub 2000 No 23 r 3
def ***dispensing order*** ins 1993 No 30 r4
sub 2000 No 23 r 3
def ***order for access to identifying information*** ins 1993 No 30 r 4
sub 2000 No 23 r 3
def ***the ordinance*** ins 1966 No 132 r 3
def ***the register of births*** ins 1966 No 132 r 3
sub 1993 No 30 r 4
def ***variation order*** ins 1993 No 30 r 4
sub 2000 No 23 r 3

Words and expressions used in Adoption Act

r 1A ins 2000 No 23 r 3
sub 2002 No 16 amdt 1.10
am A2004-60 amdt 1.677

References to forms

r 1B ins 2000 No 23 r 3
om 2002 No 16 amdt 1.11

Adoption orders

div 76.2 hdg (prev o 76 div 2 hdg) ins 1966 No 132 r 3
sub 1993 No 30 r 4
renum 2000 No 46 amdt 1.216

References to applicants in div 76.2

r 2 ins 1966 No 132 r 3
sub 1993 No 30 r 4; 2000 No 23 r 4

Adoption orders—application

r 3 ins 1966 No 132 r 3
am 1969 No 66 r 17
sub 1993 No 30 r 4
am 1997 No 8 sch 3; 2000 No 23 r 5

Adoption orders—notice of application

r 4 ins 1966 No 132 r 3
sub 1993 No 30 r 4; 2000 No 23 r 6

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Adoption orders—affidavit in support of application

r 5	ins 1966 No 132 r 3 sub 1993 No 30 r 4 am R10 LA (see 2001 No 48 amdt 1.57)

Adoption orders—documents in support of application

r 6	ins 1966 No 132 r 3 am 1969 No 66 r 18 sub 1993 No 30 r 4 am 2000 No 23 r 7

Adoption orders—entry of appearance opposing application

r 7	ins 1966 No 132 r 3 sub 1993 No 30 r 4; 2000 No 23 r 8

Form of interim order

r 8	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Form of adoption order

r 9	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Orders for dispensing with consent to adoption

div 76.3 hdg	(prev o 76 div 3 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4 renum 2000 No 46 amdt 1.216

Dispensing orders—application

r 10	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Dispensing orders—notice of application

r 11	ins 1966 No 132 r 3 sub 1993 No 30 r 4 am 2000 No 23 r 9

Dispensing orders—entry of appearance opposing application

r 12	ins 1966 No 132 r 3 sub 1993 No 30 r 4; 2000 No 23 r 10

Form of dispensing order

r 13	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Variation of adoption orders

div 76.4 hdg	(prev o 76 div 4 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4 renum 2000 No 46 amdt 1.216

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Variation orders—application

r 14	ins 1966 No 132 r 3 sub 1993 No 30 r 4 am 2000 No 23 r 11

Variation orders—notice of application

r 15	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Variation orders—entry of appearance opposing application

r 16	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Discharge of interim orders and adoption orders

div 76.5 hdg	(prev o 76 div 5 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4 renum 2000 No 46 amdt 1.216

Discharging orders—application

r 17	ins 1966 No 132 r 3 sub 1993 No 30 r 4

Discharging orders—notice of application

r 18	ins 1966 No 132 r 3 om 1974 No 60 r 2 ins 1993 No 30 r 4

Discharging orders—entry of appearance opposing application

r 19	ins 1993 No 30 r 4

Access to identifying information

div 76.6 hdg	(prev o 76 div 6 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4 renum 2000 No 46 amdt 1.216

Access to identifying information—application

r 20	ins 1993 No 30 r 4

Access to identifying information—notice of application

r 21	ins 1993 No 30 r 4 sub 2000 No 23 r 12

Access to identifying information—entry of appearance opposing application

r 22	ins 1993 No 30 r 4

Form of order for access to identifying information

r 23	ins 1993 No 30 r 4

General procedures

div 76.7 hdg	(prev o 76 div 7 hdg) ins 1966 No 132 r 3 sub 1993 No 30 r 4 renum 2000 No 46 amdt 1.216

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Applications by motion without notice
r 24 ins 1993 No 30 r 4

Service of notice of applications
r 25 ins 1993 No 30 r 4
sub 1999 No 26 sch
am 2000 No 23 r 13

Chambers hearings
r 26 ins 1993 No 30 r 4

Evidence
r 27 ins 1993 No 30 r 4

Adjournments, extensions of time, directions
r 28 ins 1993 No 30 r 4

Proceedings under the Mental Health Ordinance 1983
pt 8 hdg ins 1985 No 27 r 1
om 1995 No 19 r 4

Preliminary
o 77 div 1 hdg ins 1985 No 27 r 1
om 1995 No 19 r 4

Interpretation
r 1 ins 1985 No 27 r 1
om 1995 No 19 r 4

Hearing in chambers
r 2 ins 1985 No 27 r 1
om 1995 No 19 r 4

Forms
r 3 ins 1985 No 27 r 1
om 1995 No 19 r 4

Treatment orders
o 77 div 2 hdg ins 1985 No 27 r 1
om 1995 No 19 r 4

Applications
r 4 ins 1985 No 27 r 1
om 1995 No 19 r 4

Form and service of summons
r 5 ins 1985 No 27 r 1
om 1995 No 19 r 4

Appearance
r 6 ins 1985 No 27 r 1
om 1995 No 19 r 4

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Form of treatment order

r 7	ins 1985 No 27 r 1 om 1995 No 19 r 4

Variation and discharge of treatment orders

o 77 div 3 hdg	ins 1985 No 27 r 1 om 1995 No 19 r 4

Applications

r 8	ins 1985 No 27 r 1 om 1995 No 19 r 4

Applicant not previously a party

r 9	ins 1985 No 27 r 1 om 1995 No 19 r 4

Form and service of notice

r 10	ins 1985 No 27 r 1 om 1995 No 19 r 4

Psychiatric surgery

o 77 div 4 hdg	ins 1985 No 27 r 1 om 1995 No 19 r 4

Application

r 11	ins 1985 No 27 r 1 om 1995 No 19 r 4

Appearance

r 12	ins 1985 No 27 r 1 om 1995 No 19 r 4

Service of summons

r 13	ins 1985 No 27 r 1 om 1995 No 19 r 4

Form of order

r 14	ins 1985 No 27 r 1 om 1995 No 19 r 4

Proceedings under the Jurisdiction Of Courts (Cross-vesting) Act 1993

pt 6 hdg	orig pt 6 hdg ins 1956 No 135 r 17 om 2000 No 17 r 12 (prev pt 9 hdg) ins 1988 No 145 [r 1] sub 2001 No 10 amdt 1.16 renum as pt 6 hdg R13 LA (see 2002 No 16 amdt 1.39)

Cross-vesting law proceedings

o 78 hdg	ins 2001 No 48 amdt 1.58

Application of o 78

r 1	ins 1988 No 145 [r 1]

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Definitions for o 78

r 2 ins 1988 No 145 [r 1]
am 2001 No 10 amdt 1.17
def ***Act*** om 2001 No 10 amdt 1.18
ins 2001 No 48 amdt 1.59
def ***cross-vesting law*** ins 1988 No 145 [r 1]
def ***special federal matter*** ins 1988 No 145 [r 1]
sub 2001 No 10 amdt 1.19
def ***the Act*** ins 1988 No 145 [r 1]
ins 2001 No 10 amdt 1.20
om 2001 No 48 amdt 1.60

Applications under the Act

r 3 ins 1988 No 145 [r 1]
am 1992 No 23 sch 2; am 2001 No 10 amdt 1.21

Applications for transfer of proceedings

r 4 ins 1988 No 145 [r 1]
am 1992 No 23 sch 2

Removal of proceedings

r 5 ins 1988 No 145 [r 1]
am 1992 No 23 sch 2

Proceedings in which jurisdiction under cross-vesting laws is or may be invoked

r 6 ins 1988 No 145 [r 1]
am 1992 No 23 sch 1, sch 2

Proceedings transferred under cross-vesting laws

r 7 ins 1988 No 145 [r 1]
am 1992 No 23 sch 2

Conduct of proceedings

r 8 ins 1988 No 145 [r 1]
am 1992 No 23 sch 2; 2000 No 46 amdt 1.217

Disputed elections and questions referred by the Legislative Assembly—Electoral Act 1992

pt 7 hdg (prev pt 10 hdg) ins 1989 No 30 r 12
sub 1994 No 42 r 2
renum R13 LA (see 2002 No 16 amdt 1.39)

Electoral matters

o 79 hdg ins 2000 No 46 amdt 1.218

Preliminary

div 79.1 hdg (prev o 79 div 1 hdg) ins 1994 No 42 r 2
renum 2000 No 46 amdt 1.219

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Definitions for o 79

r 1 ins 1989 No 30 r 12
sub 1994 No 42 r 2; 2000 No 46 amdt 1.220
def ***Act*** ins 1994 No 42 r 2
om 2000 No 46 amdt 1.220
ins 2001 No 48 amdt 1.61
def ***application*** ins 2000 No 46 amdt 1.220
def ***application***, ***court***, ***election*** and ***file*** ins 1994 No 42 r 2
om 2000 No 46 amdt 1.220
def ***court*** ins 2000 No 46 amdt 1.220
def ***election*** ins 2000 No 46 amdt 1.220
def ***file*** ins 2000 No 46 amdt 1.220
def ***MLA*** ins 1994 No 42 r 2
sub 2000 No 46 amdt 1.220
def ***proceeding*** ins 1994 No 42 r 2
sub 2000 No 46 amdt 1.220
def ***respondent*** ins 1994 No 42 r 2
sub 2000 No 46 amdt 1.220
def ***the Act*** ins 2000 No 46 amdt 1.220
om 2001 No 48 amdt 1.62

Application of rules

r 2 ins 1989 No 30 r 12
sub 1994 No 42 r 2; 1997 No 8 sch 3

Disputed elections

div 79.2 hdg (prev o 79 div 2 hdg) ins 1994 No 42 r 2
renum 2000 No 46 amdt 1.221

Deposit as security for costs

r 3 ins 1989 No 30 r 12
sub 1994 No 42 r 2

Public notice of application

r 4 ins 1989 No 30 r 12
sub 1994 No 42 r 2

Parties to proceeding

r 5 ins 1989 No 30 r 12
sub 1994 No 42 r 2

Particulars of contested ballot papers

r 6 ins 1989 No 30 r 12
sub 1994 No 42 r 2

Countercharges

r 7 ins 1989 No 30 r 12
sub 1994 No 42 r 2

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Evidence of voting in Antarctica

r 8	ins 1989 No 30 r 12 sub 1994 No 42 r 2

Trial

r 9	ins 1989 No 30 r 12 sub 1994 No 42 r 2

Substitution of applicant

r 10	ins 1989 No 30 r 12 sub 1994 No 42 r 2

Withdrawal and substitution of respondent

r 11	ins 1989 No 30 r 12 sub 1994 No 42 r 2

Inspection of list of applications

r 12	ins 1989 No 30 r 12 sub 1994 No 42 r 2

Questions referred by Legislative Assembly

div 79.3 hdg	(prev o 79 div 3 hdg) ins 1994 No 42 r 2 renum 2000 No 46 amdt 1.221

Parties to proceeding

r 13	ins 1994 No 42 r 2

Miscellaneous

div 79.4 hdg	(prev o 79 div 4 hdg) ins 1994 No 42 r 2 renum 2000 No 46 amdt 1.221

Further particulars

r 14	ins 1994 No 42 r 2

Criminal jurisdiction

pt 8 hdg	(prev pt 11 hdg) ins 1989 No 273 r 5 renum R13 LA (see 2002 No 16 amdt 1.39)

Criminal proceedings

o 80 hdg	ins 2000 No 46 amdt 1.222

Preliminary

div 80.1 hdg	(prev o 80 div 1 hdg) ins 1989 No 273 r 5 renum as div 80.1 hdg 2000 No 46 amdt 1.223 (prev div 80.1 hdg) om 2002 No 16 amdt 1.12 (prev o 80 div 2 hdg) ins 1989 No 273 r 5 renum as div 80.2 hdg 2000 No 46 amdt 1.223 (prev div 80.2 hdg) renum as div 80.1 hdg 2002 No 16 amdt 1.13 sub SL2004-53 r 18

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Definitions for o 80

r 1	ins 1989 No 273 r 5 am 1992 No 23 sch 2 om 2001 No 48 r 10 ins SL2004-53 r 18 def ***accused person*** ins SL2004-53 r 18 def ***appearance date*** ins SL2004-53 r 18 def ***case statement*** ins SL2004-53 r 18 def ***sentence*** ins SL2004-53 r 18

Dispensing with compliance—criminal proceedings

div 80.2 hdg	orig div 80.2 hdg renum as div 80.1 hdg (prev o 80 div 3 hdg) ins 1989 No 273 r 5 renum as div 80.3 hdg 2000 No 46 amdt 1.223 (prev div 80.3 hdg) renum as div 80.2 hdg 2002 No 16 amdt 1.13 om SL2004-54 r 38 ins SL2004-53 r 18

Dispensing with compliance with o 80

r 2	ins 1989 No 273 r 5 am 1992 No 23 sch 2; 1999 No 26 sch om 2002 No 16 amdt 1.12 ins SL2004-53 s 18

Application of pt 2 to criminal proceedings

div 80.3 hdg	orig div 80.3 hdg renum as div 80.2 hdg (prev o 80 div 4 hdg) ins 1989 No 273 r 5 renum as div 80.4 hdg 2000 No 46 amdt 1.226 (prev div 80.4 hdg) renum as div 80.3 hdg 2002 No 16 amdt 1.13 om SL2004-53 r 19 ins SL2004-53 r 18

Application of civil rules to criminal proceedings

r 3	ins 1989 No 273 r 5 am 1992 No 23 r 4, sch 2 sub SL2004-53 r 18 am SL2004-54 r 39

Service in criminal proceedings

div 80.4 hdg	ins SL2004-53 r 18

Meaning of *accused person* for div 80.4–bail

r 4	ins 1989 No 273 r 5 am 1992 No 23 sch 2 om SL2004-54 r 38 ins SL2004-53 r 18

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Application of o 10 to criminal proceedings

r 5	ins 1989 No 273 r 5 am 1992 No 23 sch 2 sub 1995 No 27 r 9 am 2000 No 46 amdt 1.224 om SL2004-54 r 38 ins SL2004-53 r 18

Service on accused person by filing if no address for service

r 6	ins 1989 No 273 r 5 am 1992 No 23 sch 2 om SL2004-54 r 38 ins SL2004-53 r 18

Service if no-one found at accused person's address for service

r 7	ins 1989 No 273 r 5 am 1992 No 23 sch 1, sch 2; 1995 No 27 r 10; 2000 No 46 amdt 1.225 om SL2004-54 r 38 ins SL2004-53 r 18

Service of documents when unrepresented accused person in custody

r 8	ins 1989 No 273 r 5 am 1992 No 23 sch 2 om SL2004-54 r 38 ins SL2004-53 r 18

Representation in criminal proceedings

div 80.5 hdg	ins SL2004-53 r 18

Definitions for div 80.5

r 9	ins 1989 No 273 r 5 am 1992 No 23 sch 1, sch 2; 2001 No 10 amdt 1.22 om SL2004-54 r 38 ins SL2004-53 r 18 def ***criminal proceeding*** ins SL2004-53 r 18 def ***solicitor*** ins SL2004-53 r 18

Notice of solicitor acting

r 10	ins 1989 No 273 r 5 am 1992 No 23 sch 2 sub SL2004-7 r 43 om SL2004-54 r 38 ins SL2004-53 r 18

Rejection of certain requests for subpoena

r 10A	ins SL2004-7 r 43 om SL2004-54 r 38

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Solicitor's instructions to act for accused person ended

r 11	ins 1989 No 273 r 5
	am 1992 No 23 sch 2; SL2004-7 r 44, r 45
	om SL2004-54 r 38
	ins SL2004-53 r 18

Withdrawal of solicitor

r 12	ins 1989 No 273 r 5
	am 1992 No 23 sch 2
	sub 1999 No 26 r 23
	om SL2004-54 r 38
	ins SL2004-53 r 18

Handing over depositions

r 13	ins 1989 No 273 r 5
	am 1992 No 23 sch 2
	om SL2004-54 r 38
	ins SL2004-53 r 18
	am A2005-20 amdt 3.405

Bail

div 80.6 hdg	ins SL2004-53 r 18

Meaning of *accused person* for div 80.6

r 14	ins 1989 No 273 r 5
	am 1992 No 23 sch 2
	om 1999 No 26 sch
	ins SL2004-7 r 46
	om SL2004-53 r 19
	ins SL2004-53 r 18

Application in relation to bail by accused person

r 15	ins 1989 No 273 r 5
	am 1992 No 23 sch 2
	om SL2004-53 r 19
	ins SL2004-53 r 18

Application in relation to bail by informant

r 16	ins 2001 No 48 r 11
	om SL2004-53 r 19
	ins SL2004-53 r 18

Pre-trial procedure

div 80.7 hdg	ins SL2004-53 r 18

Application of div 80.7

r 17	ins SL2004-53 r 18

Appearance of accused person

r 18	ins SL2004-53 r 18

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Appearance when committed for sentence
r 19 ins SL2004-53 r 18

Appearance when committed for trial
r 20 ins SL2004-53 r 18

Pre-trial questionnaire
r 21 ins SL2004-53 r 18

Pre-arraignment conference
r 22 ins SL2004-53 r 18

Arraignment
r 23 ins SL2004-53 r 18

Pre-trial directions hearing
r 24 ins SL2004-53 r 18

Pre-trial applications
div 80.8 hdg ins SL2004-53 r 18

Applications to set aside or stay proceedings
r 25 ins SL2004-53 r 18

Applications for separate trials
r 26 ins SL2004-53 r 18

Other pre-trial applications
r 27 ins SL2004-53 r 18

Applications under r 25, r 26 and r 27
r 28 ins SL2004-53 r 18

Criminal proceedings—other provisions
div 80.9 hdg ins SL2004-53 r 18

Arraignment dates
r 29 ins SL2004-53 r 18

Production of person in custody
r 30 ins SL2004-53 r 18

Defence response to prosecutor's opening address
r 31 ins SL2004-53 r 18

Execution of documents
r 32 ins SL2004-53 r 18

Inspection of registry files
r 33 ins SL2004-53 r 18
am SL2004-54 r 40, r 41; rr renum R25 LA (see SL2004-54 r 42)

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Certificate of conviction
r 34 ins SL2004-53 r 18

Preparation of judgments
r 35 ins SL2004-53 r 18

Registration of mutual assistance orders
o 80A hdg renum as o 81 hdg

Registration of interstate proceeds of crime orders
o 80B hdg renum as o 82 hdg

Preliminary
o 80C hdg ins 1995 No 44
om 2002 No 16 amdt 1.18

Service of subpoena in New Zealand
o 80D hdg ins 1995 No 44
om 2002 No 16 amdt 1.22

Registration of foreign forfeiture orders
pt 9 hdg (prev pt 11A hdg) ins 1995 No 27 r 11
renum R13 LA (see 2002 No 16 amdt 1.39)
sub SL2004-54 r 43

Procedure for registration of foreign forfeiture orders
o 81 hdg orig o 81 hdg renum as o 84 hdg
(prev o 80A hdg) ins 2001 No 48 amdt 1.63
renum as o 81 hdg 2002 No 16 amdt 1.14
sub SL2004-54 r 43

Definitions for o 81
r 1 hdg sub 2002 No 16 amdt 1.15
r 1 ins 1995 No 27 r 11
sub SL2004-54 r 43
def ***Act*** ins 2001 No 48 amdt 1.64
om SL2004-54 r 43
def ***foreign order*** ins 1995 No 27 r 11
sub SL2004-54 r 43
def ***register*** ins 1995 No 27 r 11
sub SL2004-54 r 43
def ***the Act*** ins 1995 No 27 r 11
om 2001 No 48 amdt 1.65

Register
r 2 ins 1995 No 27 r 11

Registration
r 3 ins 1995 No 27 r 11
am SL2004-54 r 44, r 45

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Proceedings for registration

r 4	ins 1995 No 27 r 11 am SL2004-54 r 46

Appeals from the land and planning appeals board

pt 12A hdg	ins 1994 No 20 r 2 om 1997 No 31 r 20

Order nisi to review

o 81A hdg	renum as o 85 hdg

Registration of interstate forfeiture orders

pt 10 hdg	(prev pt 11B) ins 1995 No 27 r 11 renum R13 LA (see 2002 No 16 amdt 1.39) sub SL2004-54 r 47

Procedure for registration of interstate forfeiture orders

o 82 hdg	orig o 82 hdg renum as o 87 hdg (prev o 80B hdg) ins 2001 No 48 amdt 1.66 renum 2002 No 16 amdt 1.16 sub SL2004-54 r 47

Definitions for o 82

r 1 hdg	sub 2002 No 16 amdt 1.17
r 1	ins 1995 No 27 r 11 sub SL2004-54 r 47 def ***Act*** ins 2001 No 48 amdt 1.67 sub SL2004-54 r 47 def ***interstate order*** ins 1995 No 27 r 11 sub SL2004-54 r 47 def ***register*** ins 1995 No 27 r 11 sub SL2004-54 r 47 def ***the Act*** ins 1995 No 27 r 11 om 2001 No 48 amdt 1.68

Register

r 2	ins 1995 No 27 r 11

Registration

r 3	ins 1995 No 27 r 11 am SL2004-54 r 48, r 49

Proceedings for registration

r 4	ins 1995 No 27 r 11

Filing of amendments to forfeiture orders

r 5	ins 1995 No 27 r 11 sub SL2004-54 r 50

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Registration of interstate orders under Proceeds of Crime Act 1991 (repealed)—transitional

r 6 ins SL2004-54 r 50
exp 31 December 2006 (r 6 (2))

Appeals from the guardianship and management of property tribunal

pt 13A hdg ins 1992 No 21 r 7
om 1997 No 31 r 21

Interpretation

o 82A r 1 ins 1992 No 21 r 7
om 1997 No 31 r 21
def ***decision*** ins 1992 No 21 r 7
om 1997 No 31 r 21
def ***Guardianship Act*** ins 1992 No 21 r 7
om 1997 No 31 r 21
def ***Registrar of the Tribunal*** ins 1992 No 21 r 7
om 1997 No 31 r 21
def ***Tribunal*** ins 1992 No 21 r 7
om 1997 No 31 r 21

Instituting an appeal

r 2 ins 1992 No 21 r 7
om 1997 No 31 r 21

Notice of appeal

r 3 ins 1992 No 21 r 7
om 1997 No 31 r 21

Appearance

r 4 ins 1992 No 21 r 7
om 1997 No 31 r 21

Other parties

r 5 ins 1992 No 21 r 7
am 1995 No 19 r 5
om 1997 No 31 r 21

Filing and service of notice of appeal

r 6 ins 1992 No 21 r 7
om 1997 No 31 r 21

Extension of time

r 7 ins 1992 No 21 r 7
om 1997 No 31 r 21

Documents to be forwarded

r 8 ins 1992 No 21 r 7
om 1997 No 31 r 21

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Discontinuance of appeal
r 9 ins 1992 No 21 r 7
om 1997 No 31 r 21

Amendment by supplementary notice
r 10 ins 1992 No 21 r 7
om 1997 No 31 r 21

Notice of cross appeal
r 11 ins 1992 No 21 r 7
om 1997 No 31 r 21

Date of directions hearing
r 12 ins 1992 No 21 r 7
om 1997 No 31 r 21

Directions hearing
r 13 ins 1992 No 21 r 7
om 1997 No 31 r 21

Preparation of appeal papers
r 14 ins 1992 No 21 r 7
om 1997 No 31 r 21

Setting down appeal
r 15 ins 1992 No 21 r 7
om 1997 No 31 r 21

Appeals from the tenancy tribunal
pt 13B hdg ins 1995 No 13 r 3
om 1997 No 31 r 21

Interpretation
o 82B r 1 ins 1995 No 13 r 3
om 1997 No 31 r 21
def ***Tribunal*** ins 1995 No 13 r 3
om 1997 No 31 r 21
def ***Tribunal Act*** ins 1995 No 13 r 3
om 1997 No 31 r 21

Instituting an appeal
r 2 ins 1995 No 13 r 3
om 1997 No 31 r 21

Notice of appeal
r 3 ins 1995 No 13 r 3
om 1997 No 31 r 21

Appearance
r 4 ins 1995 No 13 r 3
om 1997 No 31 r 21

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Other parties

r 5	ins 1995 No 13 r 3 om 1997 No 31 r 21

Filing and service of notice of appeal

r 6	ins 1995 No 13 r 3 om 1997 No 31 r 21

Extension of time

r 7	ins 1995 No 13 r 3 om 1997 No 31 r 21

Documents to be forwarded

r 8	ins 1995 No 13 r 3 om 1997 No 31 r 21

Discontinuance of appeal

r 9	ins 1995 No 13 r 3 om 1997 No 31 r 21

Amendment by supplementary notice

r 10	ins 1995 No 13 r 3 om 1997 No 31 r 21

Notice of cross-appeal

r 11	ins 1995 No 13 r 3 om 1997 No 31 r 21

Date for settling appeal papers

r 12	ins 1995 No 13 r 3 om 1997 No 31 r 21

Settling of appeal papers

r 13	ins 1995 No 13 r 3 om 1997 No 31 r 21

Preparation of appeal papers

r 14	ins 1995 No 13 r 3 om 1997 No 31 r 21

Setting down appeal

r 15	ins 1995 No 13 r 3 om 1997 No 31 r 21

Appeals from the mental health tribunal

pt 13C hdg	ins 1995 No 19 r 6 om 1997 No 31 r 21

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Interpretation

o 82C r 1 ins 1995 No 19 r 6
om 1997 No 31 r 21
def ***Mental Health Act*** ins 1995 No 19 r 6
om 1997 No 31 r 21
def ***Registrar*** ins 1995 No 19 r 6
om 1997 No 31 r 21
def ***Tribunal*** ins 1995 No 19 r 6
om 1997 No 31 r 21

Instituting an appeal

r 2 ins 1995 No 19 r 6
om 1997 No 31 r 21

Notice of appeal

r 3 ins 1995 No 19 r 6
om 1997 No 31 r 21

Appearance

r 4 ins 1995 No 19 r 6
om 1997 No 31 r 21

Other parties

r 5 ins 1995 No 19 r 6
om 1997 No 31 r 21

Filing and service of notice of appeal

r 6 ins 1995 No 19 r 6
om 1997 No 31 r 21

Extension of time

r 7 ins 1995 No 19 r 6
om 1997 No 31 r 21

Documents to be forwarded

r 8 ins 1995 No 19 r 6
om 1997 No 31 r 21

Discontinuance of appeal

r 9 ins 1995 No 19 r 6
om 1997 No 31 r 21

Amendment by supplementary appeal

r 10 ins 1995 No 19 r 6
om 1997 No 31 r 21

Notice of cross-appeal

r 11 ins 1995 No 19 r 6
om 1997 No 31 r 21

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Date for settling appeal papers

r 12	ins 1995 No 19 r 6 om 1997 No 31 r 21

Settling of appeal papers

r 13	ins 1995 No 19 r 6 om 1997 No 31 r 21

Preparation of appeal papers

r 14	ins 1995 No 19 r 6 om 1997 No 31 r 21

Setting down appeal

r 15	ins 1995 No 19 r 6 om 1997 No 31 r 21

Matters arising under the Evidence and Procedure (New Zealand) Act 1994 (Cwlth)

pt 11 hdg	(prev pt 11C hdg) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.39)

Evidence and Procedure (New Zealand) Act 1994 (Cwlth)

o 83 hdg	orig o 83 hdg renum as o 88 hdg (prev o 80C hdg) ins 1995 No 44 r 5 renum 2002 No 16 amdt 1.18

Preliminary

div 83.1 hdg	orig div 83.1 hdg renum as div 88.1 hdg ins 2002 No 16 amdt 1.18

Meaning of *Act* in o 83

r 1 hdg	sub 2002 No 16 amdt 1.19
r 1	ins 1995 No 44 r 5 sub 2000 No 46 amdt 1.227; 2001 No 48 amdt 1.69 def ***Act*** ins 2001 No 48 amdt 1.69 def ***the Act*** ins 1995 No 44 r 5 sub 2000 No 46 amdt 1.227 om 2001 No 48 amdt 1.69

Words and expressions used in Evidence and Procedure (New Zealand) Act

r 2	(prev r 1A) ins 2000 No 46 amdt 1.227 sub 2002 No 16 amdt 1.20 renum R13 LA (see 2002 No 16 amdt 1.27) am A2004-60 amdt 1.679

References to forms

r 1B	ins 2000 No 46 amdt 1.227 om 2002 No 16 amdt 1.21

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Service of subpoena in New Zealand

div 83.2 hdg — orig div 83.2 hdg renum as div 88.2 hdg
(prev o 80D hdg) ins 1995 No 44 r 5
renum as div 83.2 hdg 2002 No 16 amdt 1.22

Application for leave to serve

r 3 — (prev r 1) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Supporting affidavit

r 4 — (prev r 2) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Ex parte hearing

r 5 — (prev r 3) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Undertaking about expenses

r 6 — (prev r 4) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Leave to search etc

r 7 — (prev r 5) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Failure to comply with subpoena

div 83.3 hdg — orig 83.3 hdg renum as div 88.3 hdg
(prev o 80E hdg) ins 1995 No 44 r 5
renum as div 83.3 hdg 2002 No 16 amdt 1.23

Issue of certificate

r 8 — (prev r 1) ins 1995 No 44 r 5
am 2000 No 46 amdt 1.228
renum R13 LA (see 2002 No 16 amdt 1.27)

Application for issue of certificate

r 9 — (prev r 2) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Supporting affidavit

r 10 — (prev r 3) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

Setting aside subpoena

div 83.4 hdg — orig div 83.4 hdg renum as div 88.4 hdg
(prev o 80F hdg) ins 1995 No 44 r 5
renum as div 83.4 hdg 2002 No 16 amdt 1.24

Application to set aside

r 11 — (prev r 1) ins 1995 No 44 r 5
renum R13 LA (see 2002 No 16 amdt 1.27)

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Copy of affidavit to party

r 12	(prev r 2) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Determination of application

r 13	(prev r 3) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Objection to no hearing

r 14	(prev r 4) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Hearing by videolink or telephone

r 15	(prev r 5) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Evidence by videolink or telephone

div 83.5 hdg	(prev o 80G hdg) ins 1995 No 44 r 5 om 2002 No 16 amdt 1.25 renum as div 83.5 hdg 2002 No 16 amdt 1.25

Application for direction

r 16	(prev r 1) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Supporting affidavit

r 17	(prev r 2) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Relevant considerations

r 18	(prev r 3) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Directions

r 19	(prev r 4) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Fax copies

div 83.6 hdg	(prev o 80H hdg) ins 1995 No 44 r 5 renum as div 83.6 hdg 2002 No 16 amdt 1.26

Application of the Act, pt 6

r 20	(prev r 1) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Filed copy of fax

r 21	(prev r 2) ins 1995 No 44 r 5 renum R13 LA (see 2002 No 16 amdt 1.27)

Appeals

pt 12 hdg	ins 1991 No 252 r 3 sub 1997 No 31 r 20

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Service of foreign documents

pt 15 hdg — ins 1995 No 15 r 13 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

Appeals to Supreme Court other than to Court of Appeal

o 84 hdg — orig o 84 hdg ins 1995 No 15 r 13 (1995 No 15 never commenced and repealed by 2001 No 48 r 14)
(prev o 81 hdg) ins 1997 No 31 r 20
renum 2002 No 16 amdt 1.28
sub 2002 No 27 amdt 2.4

Definitions for o 84

r 1 hdg — sub 2002 No 16 amdt 1.29
r 1 — ins 1991 No 252 r 3
am 1992 No 23 sch 2
sub 1997 No 31 r 20; 2002 No 27 amdt 2.5
def ***appeal*** ins 1997 No 31 r 20
sub 2002 No 27 amdt 2.5
def ***Appeals Act*** ins 1991 No 252 r 3
am 1994 No 21 r 10
om 1997 No 31 r 20
def ***court*** ins 2002 No 27 amdt 2.5
def ***decision*** ins 1997 No 31 r 20
sub 2002 No 27 amdt 2.5
def ***registrar of the tribunal*** ins 1991 No 252 r 3
sub 1997 No 31 r 20
om 2002 No 27 amdt 2.5
def ***relevant Act*** ins 1997 No 31 r 20
sub 2002 No 27 amdt 2.5
def ***tribunal*** ins 1991 No 252 r 3
sub1997 No 31 r 20; sub 2002 No 27 amdt 2.5

Meaning of *registrar* for o 84

r 1A — ins 2002 No 27 amdt 2.6

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Application of o 84

r 2	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub 1997 No 31 r 20 am 1998 No 35 r 8; 1999 No 26 sch; R10 LA (see 2001 No 48 amdt 1.70) sub 2002 No 27 amdt 2.7 table items am and renum R25 LA am A2004-60 amdts 1.680-1.683

Non-publication order

r 2A	ins 2002 No 16 r 15

Institution of appeals

r 3	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub 1997 No 31 r 20

Notice of appeal

r 4	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub 1997 No 31 r 20 am 2002 No 27 amdt 2.8

Appearance

r 5	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub 1997 No 31 r 20

Other parties

r 6	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub 1997 No 31 r 20 am 2002 No 27 amdt 2.8

Lodgment of notice of appeal

r 7	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub 1997 No 31 r 20

Extension of time

r 8	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20 am 1999 No 26 sch; 2000 No 46 amdt 1.229

Date for settlement of appeal papers

r 9	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20; 2002 No 27 amdt 2.9

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Service of notice of appeal

r 10	ins 1991 No 252 r 3 am 1992 No 23 sch 1, sch 2 sub 1997 No 31 r 20

Security for costs

r 11	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20

Stay of decision

r 12	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20

Documents

r 13	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20

Discontinuance of appeal

r 14	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20

Amendment of notice of appeal

r 15	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20

Cross-appeals

r 16	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3 sub 1997 No 31 r 20 am 2002 No 27 amdt 2.10

Notice of contention

r 17	ins 1991 No 252 r 3 sub 1992 No 21 r 6; 1997 No 31 r 20

Settling of appeal papers

r 18	ins 1991 No 252 r 3 om 1992 No 21 r 6 ins 1997 No 31 r 20

Preparation of appeal papers

r 19	ins 1991 No 252 r 3 om 1992 No 21 r 6 ins 1997 No 31 r 20

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Setting down appeal for hearing

r 20	ins 1997 No 31 r 20 am 2000 No 46 amdt 1.230

Further evidence on appeal—*Magistrates Court Act 1930*, s 214

r 21	ins 2002 No 16 r 16

Written summary and list for appeal hearing

r 22	ins SL2004-54 r 51

Summaries of arguments

r 23	ins SL2004-54 r 51

List of authorities, legislation and texts

r 24	ins SL2004-54 r 51

Abandonment of ground of appeal

r 25	ins SL2004-54 r 51

Order nisi to review

o 85 hdg	orig o 85 hdg ins 1995 No 15 r 13 (1995 No 15 never commenced and repealed by 2001 No 48 r 14) (prev o 81A hdg) ins 1994 No 20 r 2 sub 1997 No 31 r 20 renum 2002 No 16 amdt 1.30

Definitions for o 85

r 1 hdg	sub 2002 No 16 amdt 1.31
r 1	ins 1994 No 20 r 2 sub 1997 No 31 r 20 def ***Appeals Board*** ins 1994 No 20 r 2 om 1997 No 31 r 20 def ***application*** ins 1997 No 31 r 20 def ***Land Act*** ins 1994 No 20 r 2 om 1997 No 31 r 20 def ***order nisi*** ins 1997 No 31 r 20

Application for order nisi

r 2	ins 1994 No 20 r 2 sub 1997 No 31 r 20; SL2005-13 r 11

Affidavits

r 3	ins 1997 No 31 r 20 am A2004-60 amdt 1.684

Service of applications

r 4	ins 1997 No 31 r 20

Parties

r 5	ins 1997 No 31 r 20

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Form of order nisi
r 6 ins 1997 No 31 r 20
am 1999 No 26 sch; 2000 No 46 amdt 1.231

Service of order nisi
r 7 ins 1997 No 31 r 20

Appearance to order nisi
r 8 ins 1997 No 31 r 20

Application to revoke order nisi
r 9 ins 1997 No 31 r 20

Appeals to Court of Appeal
o 86 hdg ins 2002 No 27 r 4

Interpretation for order 86
div 86.1 hdg ins 2002 No 27 r 4

Meaning of *court* in o 86
r 1 ins 2002 No 27 r 4

Leave to appeal from interlocutory judgments of court
div 86.2 hdg ins 2002 No 27 r 4

Application of div 86.2
r 2 ins 2002 No 27 r 4

Application for leave to appeal—interlocutory judgment
r 3 ins 2002 No 27 r 4
am SL2004-7 r 56

Requirements for notice of motion for leave to appeal—interlocutory judgment
r 4 ins 2002 No 27 r 4
am SL2005-13 r 12

Time for filing notice of motion for leave to appeal—interlocutory judgment
r 5 ins 2002 No 27 r 4
am SL2005-13 r 13

Service of notice of motion for leave to appeal—interlocutory judgment
r 6 ins 2002 No 27 r 4
am SL2005-13 r 13

Appearance to notice of motion for leave to appeal—interlocutory judgment
r 7 ins 2002 No 27 r 4

Time for filing and service of affidavits by respondents to notice of motion for leave to appeal—interlocutory judgment
r 8 ins 2002 No 27 r 4

Leave to appeal out of time from final judgments of court
div 86.3 hdg ins 2002 No 27 r 4

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Definitions for div 86.3

r 9	ins 2002 No 27 r 4
	def ***conviction*** ins 2002 No 27 r 4
	def ***final judgment*** ins 2002 No 27 r 4
	def ***out of time*** ins 2002 No 27 r 4
	def ***sentence*** ins 2002 No 27 r 4

Application of div 86.3

r 10	ins 2002 No 27 r 4

Application for leave to appeal out of time—final judgment

r 11	ins 2002 No 27 r 4
	am SL2004-7 r 56

Requirements for notice of motion for leave to appeal out of time—final judgment

r 12	ins 2002 No 27 r 4
	am SL2005-13 r 14

Filing and service of notice of motion for leave to appeal out of time—final judgment

r 13	ins 2002 No 27 r 4
	am SL2005-13 r 15

Appearance to notice of motion for leave to appeal out of time—final judgment

r 14	ins 2002 No 27 r 4

Time for filing and service of affidavits by respondents to notice of motion for leave to appeal out of time—final judgment

r 15	ins 2002 No 27 r 4

Appeals from court

div 86.4 hdg	ins 2002 No 27 r 4

Meaning of *appeal* in div 86.4

r 16	ins 2002 No 27 r 4

Application of div 86.4

r 17	ins 2002 No 27 r 4

Filing of notice of appeal

r 18	ins 2002 No 27 r 4

Requirements for notice of appeal

r 19	ins 2002 No 27 r 4

Parties to appeal

r 20	ins 2002 No 27 r 4

Appearance to appeal

r 21	ins 2002 No 27 r 4

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Time for filing and serving notice of appeal
r 22 ins 2002 No 27 r 4
am SL2004-7 r 56

Service of notice of appeal
r 23 ins 2002 No 27 r 4

Stay
r 24 ins 2002 No 27 r 4
am SL2004-7 r 56

Competency of appeal
r 25 ins 2002 No 27 r 4
am SL2004-7 r 56

Failure to apply for appeal to be struck out as incompetent—costs
r 26 ins 2002 No 27 r 4

Discontinuance of appeal
r 27 ins 2002 No 27 r 4

Security for costs
r 28 ins 2002 No 27 r 4

Amending notice of appeal
r 29 ins 2002 No 27 r 4

Cross-appeal
r 30 ins 2002 No 27 r 4

Application of certain rules to cross-appeals
r 31 ins 2002 No 27 r 4

Keeping exhibits
r 32 ins 2002 No 27 r 4
am SL2004-54 r 52

Date for settlement of appeal papers
r 33 ins 2002 No 27 r 4

Filing of things before settlement of appeal papers
r 34 ins 2002 No 27 r 4

Draft index of appeal papers
r 35 ins 2002 No 27 r 4

Content of appeal papers
r 36 ins 2002 No 27 r 4

Settlement of appeal papers
r 37 ins 2002 No 27 r 4

Presentation of appeal papers
r 38 ins 2002 No 27 r 4

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Filing and serving appeal papers
r 39 ins 2002 No 27 r 4

Setting down appeal for hearing
r 40 ins 2002 No 27 r 4

Power to change appeal hearing date
r 41 ins 2002 No 27 r 4

Written summary and list for appeal hearing
r 42 ins 2002 No 27 r 4
am SL2004-54 r 53

Summaries of arguments
r 43 ins 2002 No 27 r 4
am SL2004-54 r 54

List of authorities, legislation and texts
r 44 ins 2002 No 27 r 4
sub SL2004-54 r 55

Abandonment of ground of appeal
r 45 ins 2002 No 27 r 4
sub SL2004-54 r 55

Further evidence on appeal
r 46 ins 2002 No 27 r 4
am SL2004-7 r 56

Absence of party
r 47 ins 2002 No 27 r 4
am SL2004-7 r 56

Certain convictions and sentences
div 86.5 hdg ins 2002 No 27 r 4

Preliminary
subdiv 86.5.1 hdg ins 2002 No 27 r 4

Definitions for div 86.5
r 48 ins 2002 No 27 r 4
def ***appeal*** ins 2002 No 27 r 4
def ***convicted person*** ins 2002 No 27 r 4
om SL2004-53 r 21
def ***conviction*** ins 2002 No 27 r 4
def ***director of public prosecutions*** ins 2002 No 27 r 4
om SL2004-53 r 21
def ***out of time*** ins 2002 No 27 r 4
def ***sentence*** ins 2002 No 27 r 4

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Leave to appeal out of time against certain convictions and sentences—convicted person
subdiv 86.5.2 hdg ins 2002 No 27 r 4

Application of subdiv 86.5.2
r 49 ins 2002 No 27 r 4

Application for leave to appeal out of time—conviction or sentence
r 50 ins 2002 No 27 r 4

Requirements for application for leave to appeal out of time—conviction or sentence
r 51 ins 2002 No 27 r 4
am SL2005-13 r 16

Service of application for leave to appeal out of time—conviction or sentence
r 52 ins 2002 No 27 r 4
am SL2005-13 r 17

Response by director of public prosecutions to application for leave to appeal out of time—conviction or sentence
r 53 ins 2002 No 27 r 4
sub SL2004-54 r 56

Time for filing and service of affidavits by director of public prosecutions
r 54 ins 2002 No 27 r 4

Registrar's decision to give or refuse leave to appeal out of time—conviction or sentence
r 55 ins 2002 No 27 r 4
am SL2004-7 r 56; SL2004-54 r 57

Leave to appeal out of time against sentence—director of public prosecutions
subdiv 86.5.3 hdg ins 2002 No 27 r 4

Application of div 86.3 to certain appeals by DPP
r 56 ins 2002 No 27 r 4

Additional rules for appeals against certain convictions and sentences
subdiv 86.5.4 hdg ins 2002 No 27 r 4

Application may be treated as appeal
r 57 ins 2002 No 27 r 4

Grounds of appeal
r 58 ins 2002 No 27 r 4

Trial judge's report
r 59 ins 2002 No 27 r 4

Certain convictions and sentences—miscellaneous
subdiv 86.5.5 hdg ins 2002 No 27 r 4

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Service of documents when unrepresented party in custody
r 60 ins 2002 No 27 r 4
am SL2004-7 r 47, r 48

Convicted person is appellant—written case and presence
r 61 ins 2002 No 27 r 4

Order for production of prisoner
r 62 ins 2002 No 27 r 4
am SL2004-54 r 58

Fine paid to be kept pending appeal
r 63 ins 2002 No 27 r 4

Solicitor's instructions to act for convicted person ended
r 64 ins 2002 No 27 r 4
sub SL2004-54 r 59

Solicitor wants to withdraw from acting for convicted person
r 65 ins 2002 No 27 r 4
sub SL2004-54 r 59

Notification of result etc
r 66 ins 2002 No 27 r 4

Cases stated or questions reserved
div 86.6 hdg ins 2002 No 27 r 4

Form and contents
r 67 ins 2002 No 27 r 4
am SL2004-54 r 60

Preparation and settling of special case
r 68 ins 2002 No 27 r 4

Setting down special case for hearing
r 69 ins 2002 No 27 r 4

Court of Appeal can draw inferences for special case
r 70 ins 2002 No 27 r 4

Reference appeals following acquittals on indictment
div 86.7 hdg ins 2002 No 27 r 4

Definitions for div 86.7
r 71 ins 2002 No 27 r 4
def ***applicant*** ins 2002 No 27 r 4
def ***interested party*** ins 2002 No 27 r 4
def ***reference appeal*** ins 2002 No 27 r 4

Application for reference appeal
r 72 ins 2002 No 27 r 4
am SL2004-54 r 61

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Service of application or amended application for reference appeal
r 73 ins 2002 No 27 r 4

Appearance by interested party in reference appeal
r 74 ins 2002 No 27 r 4

Discontinuance of reference appeal
r 75 ins 2002 No 27 r 4

Application of certain rules to reference appeals
r 76 ins 2002 No 27 r 4

Written cases
div 86.8 hdg ins 2002 No 27 r 4

Definitions for div 86.8
r 77 ins 2002 No 27 r 4
def ***appeal*** ins 2002 No 27 r 4
def ***appellant*** ins 2002 No 27 r 4
def ***applicant*** ins 2002 No 27 r 4
def ***application*** ins 2002 No 27 r 4
def ***convicted person's application*** ins 2002 No 27 r 4
def ***interested party*** ins 2002 No 27 r 4
def ***judgment*** ins 2002 No 27 r 4
def ***reference appeal*** ins 2002 No 27 r 4
def ***respondent*** ins 2002 No 27 r 4

Application of div 86.8 to case stated etc
r 78 ins 2002 No 27 r 4

When are written cases used?
r 79 ins 2002 No 27 r 4

Appellant wants written case
r 80 ins 2002 No 27 r 4

Respondent wants written case
r 81 ins 2002 No 27 r 4

Filing and serving written case—applications
r 82 ins 2002 No 27 r 4

Filing and serving written case—appeal
r 83 ins 2002 No 27 r 4

Form of written case
r 84 ins 2002 No 27 r 4
am SL2004-54 r 62

Inspection of written cases
r 85 ins 2002 No 27 r 4

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Miscellaneous
div 86.9 hdg ins 2002 No 27 r 4

Service for o 86 generally
r 86 ins 2002 No 27 r 4

Power to amend proceedings in court below
r 87 ins 2002 No 27 r 4

Expediting appeals
r 88 ins 2002 No 27 r 4
am SL2004-7 r 56

Directions by Court of Appeal and registrar about appeal etc
r 89 ins 2002 No 27 r 4
am SL2004-7 r 56

Want of prosecution of appeal
r 90 ins 2002 No 27 r 4
am SL2004-7 r 56

Judgments—accidental slips or omissions
r 91 ins 2002 No 27 r 4

Practice directions about electronic documents and communications
r 92 ins 2002 No 27 r 4
exp 1 January 2005 (r 92 (4))

Applications under the Administrative Decisions (Judicial Review) Act 1989
pt 13 hdg ins 1991 No 252 r 3

o 87 hdg (prev o 82 hdg) ins 1991 No 252 r 3
renum 2002 No 16 amdt 1.32

Meaning of *review Act* in o 87
r 1 hdg sub 2002 No 16 amdt 1.33
r 1 ins 1991 No 252 r 3
am 1992 No 23 sch 2

Application of rules
r 2 ins 1991 No 252 r 3
am 1992 No 23 sch 2

Instituting a review—form 81
r 3 ins 1991 No 252 r 3
am 1992 No 23 sch 2; 1999 No 26 sch; 2002 No 16 r 17

Other parties—decision made by tribunal
r 3A ins 2002 No 16 r 18

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Documents to be filed

r 4	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3; 2002 No 16 r 19

Notice of objection to competency

r 5	ins 1991 No 252 r 3 am 1992 No 23 sch 2 sub SL2003-48 r 10 pars renum R22 LA

Directions

r 6	ins 1991 No 252 r 3 am 1992 No 23 sch 2

Staying or dismissing applications

r 7	ins 1991 No 252 r 3 am 1992 No 23 sch 2, sch 3

Arbitration and referees

pt 14 hdg	ins 1991 No 416 r 3 sub 2000 No 46 amdt 1.232; SL2004-54 r 63

Commercial arbitration

o 88 hdg	(prev o 83 hdg) ins 2000 No 46 amdt 1.233 renum as o 88 hdg 2002 No 16 amdt 1.34

Awards

div 88.1 hdg	(prev o 83 div 1 hdg) ins 1991 No 416 r 3 renum as div 83.1 hdg 2000 No 46 amdt 1.234 (prev div 83.1 hdg) renum as div 88.1 hdg 2002 No 16 amdt 1.38

Definitions for o 88

r 1 hdg	sub 2002 No 16 amdt 1.35
r 1	ins 1991 No 416 r 3 am 1992 No 23 sch 2 def ***Arbitration Act*** ins 1991 No 416 r 3 def ***proceeding*** ins 1991 No 416 r 3 sub 2001 No 48 amdt 1.71 am 2002 No 16 amdt 1.36 sub SL2004-54 r 64

Application of rules

r 2	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Commencement of proceedings

r 3	ins 1991 No 416 r 3 am 1992 No 23 sch 2; 2000 No 46 r 28

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Appeal under Arbitration Act, s 38 by leave

r 4	ins 1991 No 416 r 3 am 1992 No 23 sch 2; 1997 No 8 sch 3

Application under Arbitration Act, s 39

r 5	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Time for appeal or application

r 6	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Payment into and out of court

r 6A	ins 2000 No 46 r 29

Acceptance of amount paid into court

r 6B	ins 2000 No 46 r 29

Amount remaining in court

r 6C	ins 2000 No 46 r 29

Nondisclosure of amount paid into court

r 6D	ins 2000 No 46 r 29

Examination of witnesses

r 7	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Decision to refuse application for interlocutory order

r 8	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Application for leave to enforce award

r 9	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Evidence of award for purposes of enforcement

r 10	ins 1991 No 416 r 3 am 1992 No 23 sch 2

Indorsement and service of order for enforcement

r 11	ins 1991 No 416 r 3 am 1992 No 23 sch 2, sch 3

Powers of master

r 12	(prev o 88 r 21) ins 1991 No 416 r 3 am 1992 No 23 sch 2; R10 LA (see 2001 No 48 amdt 1.73) renum SL2004-54 r 81

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Master

div 88.2 hdg (prev o 83 div 2 hdg) ins 1991 No 416 r 3
renum as div 83.3 hdg 2000 No 46 amdt 1.235
(prev div 83.3 hdg) ins as div 83.2 hdg 2000 No 46 r 30
renum as div 88.2 hdg 2002 No 16 amdt 1.38
om SL2004-54 r 65
pres div 88.2 hdg (prev o 83 div 3 hdg) renum as div 83.4 hdg 2000 No 46 amdt 1.239
renum as div 88.4 hdg 2002 No 16 amdt 1.38
renum as div 88.2 hdg SL2004-54 r 80

Definitions for div 88.2

r 11A ins 2000 No 46 r 30
om SL2004-54 r 65
def ***arbitrator*** ins 2000 No 46 r 30
om SL2004-54 r 65
def ***proceeding*** ins 2000 No 46 r 30
om 2001 No 48 amdt 1.72
def ***subpoena*** ins 2000 No 46 r 30
om SL2004-54 r 65
def ***umpire*** ins 2000 No 46 r 30
om SL2004-54 r 65

Issue—forms 1.84 to 1.87

r 11B ins 2000 No 46 r 30
om SL2004-54 r 65

Return date for subpoena for production

r 11C ins 2000 No 46 r 30
om SL2004-54 r 65

Conduct money

r 11D ins 2000 No 46 r 30
om SL2004-54 r 65

Production by non-party

r 11E ins 2000 No 46 r 30
om SL2004-54 r 65

Costs of complying with subpoena

r 11F ins 2000 No 46 r 30
om SL2004-54 r 65

Banker's books

r 11G ins 2000 No 46 r 30
om SL2004-54 r 65

Subpoenas to produce document

r 11H ins 2000 No 46 r 30
am 2002 No 16 amdt 1.37
om SL2004-54 r 65

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Service of subpoenas

r 11I	ins 2000 No 46 r 30 om SL2004-54 r 65

Notice instead of subpoena to medical expert

r 11J	ins 2000 No 46 r 30 om SL2004-54 r 65

No shortening of time for service

r 11K	ins 2000 No 46 r 30 om SL2004-54 r 65

Setting aside

r 11L	ins 2000 No 46 r 30 om SL2004-54 r 65

Delivery of documents to the arbitrator or umpire—no objection

r 11M	ins 2000 No 46 r 30 om SL2004-54 r 65

Delivery of documents to the arbitrator or umpire—objection

r 11N	ins 2000 No 46 r 30 om SL2004-54 r 65

Court-appointed referees

div 88.3 hdg	(prev o 83 div 2 hdg) renum as div 83.3 hdg 2000 No 46 amdt 1.235 renum as div 88.3 hdg 2002 No 16 amdt 1.38 om SL2004-54 r 66

Meaning of *question* in div 88.3

r 12	ins 1991 No 416 r 3 am 1992 No 23 sch 2 om SL2004-54 r 66 (prev o 88 r 21) renum SL2004-54 r 81

Order referring

r 13	renum as o 89 r 2

Order referring may be varied or set aside

r 14	renum as o 89 r 3

Conduct of proceedings under a reference

r 15	renum as o 89 r 4

Interlocutory directions

r 16	renum as o 89 r 5

Report of referee

r 17	renum as o 89 r 6

Proceedings on report of referee

r 18	renum as o 89 r 7

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Remuneration of referee
r 19 renum as o 89 r 8

Court rooms etc
r 20 renum as o 89 r 9

Master
div 88.4 hdg renum as div 88.2 hdg

Powers of master
r 21 renum as o 89 r 12

Court-appointed referees
o 89 hdg ins SL2004-54 r 66

Meaning of *question* in o 89
r 1 ins SL2004-54 r 66

Order referring
r 2 (prev o 88 r 13) ins 1991 No 416 r 3
am 1992 No 23 sch 2; am 2000 No 46 amdt 1.236
renum SL2004-54 r 67

Order referring may be varied or set aside
r 3 (prev o 88 r 14) ins 1991 No 416 r 3
am 1992 No 23 sch 2, sch 3; 2000 No 46 amdt 1.237; SL2004-54 r 68
renum SL2004-54 r 69

Conduct of proceedings under a reference
r 4 (prev o 88 r 15) ins 1991 No 416 r 3
am 1992 No 23 sch 1-3; SL2004-54 rr 70-72
renum SL2004-54 r 73

Interlocutory directions
r 5 (prev o 88 r 16) ins 1991 No 416 r 3
am 1992 No 23 sch 2
renum SL2004-54 r 73

Report of referee
r 6 (prev o 88 r 17) ins 1991 No 416 r 3
am 1992 No 23 sch 2, sch 3; SL2004-54 r 74
renum SL2004-54 r 75

Proceedings on report of referee
r 7 (prev o 88 r 18) ins 1991 No 416 r 3
am 1992 No 23 sch 2, sch 3; 2000 No 46 amdt 1.238; SL2004-54 r 76
renum SL2004-54 r 77

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Remuneration of referee

r 8	(prev o 88 r 19) ins 1991 No 416 r 3; am 1992 No 23 sch 2, sch 3 renum SL2004-54 r 77

Court rooms etc

r 9	(prev o 88 r 20) ins 1991 No 416 r 3 am 1992 No 23 sch 2; SL2004-54 r 78 renum SL2004-54 r 79

The Schedules

hdg to sch	om 1999 No 26 sch

Forms

sch 1 hdg	sub 1999 No 26 sch; 2000 No 46 amdt 1.240
sch 1	am 1939 No 61 r 2; 1968 No 13 r 18; 1969 Nos 66 r 19 r 20, and 221 r 8; 1973 No 149 rr 2-4; 1974 No 25 r 5; 1974 No 197 r 4; 1977 No 152 r 18; 1980 No 214 r 7, sch; 1981 No 104 r 4; 1981 No 296 r 16; 1983 No 27 r 9; 1986 No 8 sch; 1987 No 67 sch; 1988 No 257 r 5; 1989 No 30 r 13; 1991 No 108 r 12; 1991 No 252 r 4; 1992 No 21 r 8; 1992 No 23 sch 3; 1992 No 35 r 5; 1993 No 20 r 13; 1993 No 23 r 9; 1994 No 21 r 11; 1994 No 34 r 7; 1995 No 13 r 4; 1995 No 19 r 7; 1995 No 27 r 12; 1996 No 10 r 8; 1996 No 22 r 6; 1996 No 27 r 4; 1997 No 8 sch 1-3; 1997 No 31 r 22; 1997 No 38 r 5; 1998 No 35 r 9 (as am by 1999 No 26 r 32); 1999 No 26 sch; 2000 No 17 r 13; 2000 No 46 r 31, r 32, amdts 1.241-1.251; 2001 No 48 r 12; 2002 No 16 amdt 1.40 om A2004-60 amdt 1.685

General forms

pt 1.1A hdg	ins SL2004-53 r 22 om A2004-60 amdt 1.685

Subpoena

form 1.1A	ins SL2004-54 amdt 1.1 om A2004-60 amdt 1.685

Notice of intention to adduce evidence of previous representation

form 1.1B	ins SL2004-53 r 22 om A2004-60 amdt 1.685

Notice of objection to tender of hearsay evidence

form 1.1C	ins SL2004-53 r 22 om A2004-60 amdt 1.685

Notice of intention to adduce tendency evidence

form 1.1D	ins SL2004-53 r 22 om A2004-60 amdt 1.685

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Notice of intention to adduce coincidence evidence

form 1.1E	ins SL2004-53 r 22 om A2004-60 amdt 1.685

Civil proceedings forms

pt 1.1 hdg	ins 2002 No 16 amdt 1.40 om A2004-60 amdt 1.685

General heading style

form 1.1	(prev form 1) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-11 r 6 om SL2004-54 amdt 1.2

Originating application

form 1.2	(prev form 2) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-7 r 49; SL2004-53 r 23; SL2004-54 amdt 1.3 om A2004-60 amdt 1.685

Claim for debt or liquidated demand statement to accompany originating application

form 1.3	(prev form 3) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-54 amdt 1.3 om A2004-60 amdt 1.685

Motor vehicle personal injury claim statement to accompany originating application

form 1.4	(prev form 4) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-54 amdt 1.3 om A2004-60 amdt 1.685

Employment personal injury claim statement to accompany originating application

form 1.5	(prev form 5) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-54 amdt 1.3 om A2004-60 amdt 1.685

Request for service of originating application outside Australia

form 1.6	(prev form 8) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-54 amdt 1.3 om A2004-60 amdt 1.685

Memorandum of appearance

form 1.7	(prev form 9) renum R13 LA (see 2002 No 16 amdt 1.44) am SL2004-7 r 49; SL2004-53 r 23 sub SL2004-54 amdt 1.4 om A2004-60 amdt 1.685

Memorandum of conditional appearance

form 1.7A	ins SL2003-48 r 11 sub SL2004-54 amdt 1.4 om A2004-60 amdt 1.685

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Affidavit in support of application for default judgment for debt

form 1.8 (prev form 10) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.5, amdt 1.6
om A2004-60 amdt 1.685

Default judgment

form 1.9 (prev form 10A) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.7
om A2004-60 amdt 1.685

Affidavit for entry of appearance as guardian

form 1.10 (prev form 11) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.8
om A2004-60 amdt 1.685

Memorandum on notice of judgment

form 1.11 (prev form 12) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.9
om A2004-60 amdt 1.685

Third party claiming indemnity or contribution or other relief or remedy

form 1.12 (prev form 13) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.10
om A2004-60 amdt 1.685

Third-party claim when question or issue to be determined

form 1.13 (prev form 14) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.10
om A2004-60 amdt 1.685

Statement of claim—general form

form 1.14 (prev form 15) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.11
om A2004-60 amdt 1.685

Defence—general form

form 1.15 (prev form 16) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.11
om A2004-60 amdt 1.685

Reply—general

form 1.16 (prev form 17) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.11
om A2004-60 amdt 1.685

Notice of counterclaim

form 1.17 (prev form 18) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.11
om A2004-60 amdt 1.685

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Notice of payment into court

form 1.18 (prev form 19) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-6 amdt 1.10; SL2004-7 r 50
am SL2004-54 amdt 1.12
om A2004-60 amdt 1.685

Bond for payment into court

form 1.19 (prev form 19A) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-7 r 50
am SL2004-54 amdt 1.12
om A2004-60 amdt 1.685

Authority to give bond

form 1.20 (prev form 19B) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-7 r 50
am SL2004-54 amdt 1.12
om A2004-60 amdt 1.685

Acceptance of amount paid into court

form 1.21 (prev form 20) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-6 amdt 1.11
am SL2004-7 r 51; SL2004-54 amdt 1.12
om A2004-60 amdt 1.685

Confession of defence

form 1.22 (prev form 22) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.13
om A2004-60 amdt 1.685

Affidavit by party verifying list of documents

form 1.23 (prev form 24) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-49 amdt 1.1
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Affidavit by non-party verifying list of documents

form 1.24 (prev form 25) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-49 amdt 1.1
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Affidavit by party verifying answers to interrogatories

form 1.25 (prev form 26) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-49 amdt 1.1
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Affidavit by a non-party verifying answers to interrogatories

form 1.26 (prev form 27) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-49 amdt 1.1
am SL2004-54 amdt 1.14

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om A2004-60 amdt 1.685

Notice for non-party production

form 1.27 (prev form 27A) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-26 r 7
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Notice to admit documents

form 1.28 (prev form 28) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Notice to admit facts

form 1.29 (prev form 29) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Admission of facts under notice

form 1.30 (prev form 30) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Notice to produce

form 1.31 (prev form 31) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Form of order, accounts and inquiries

form 1.32 (prev form 32) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Entry of special case

form 1.33 (prev form 33) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2003-48 r 12

Issue

form 1.34 (prev form 34) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2003-48 r 12

Certificate of associated or officer after trial

form 1.35 (prev form 37) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.14
om A2004-60 amdt 1.685

Order for examination within ACT

form 1.36 (prev form 38) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.15
om A2004-60 amdt 1.685

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Order for examination outside ACT
form 1.37 (prev form 39) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.15
om A2004-60 amdt 1.685

Order for issue of letter of request
form 1.38 (prev form 40) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.15
om A2004-60 amdt 1.685

Undertaking—letter of request
form 1.39 (prev form 41) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.16
om A2004-60 amdt 1.685

Order for examination under interstate or foreign letter of request
form 1.40 (prev form 42) renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.17
om A2004-60 amdt 1.685

Certificate of order and depositions—examination for interstate or foreign court or tribunal
form 1.41 (prev form 43) renum R13 LA (see 2002 No 16 amdt 1.44)
om A2004-60 amdt 1.685

Subpoena to give evidence
form 1.42 (prev form 45) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.18

Subpoena to produce for an individual
form 1.43 (prev form 46) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.18

Subpoena to produce and to answer questions for corporation and its proper officer
form 1.44 (prev form 47) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.18

Subpoena to produce and to give evidence
form 1.45 (prev form 48) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.18

Notice of intention to adduce evidence of previous representation
form 1.46 (prev form 49) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-53 r 24

Notice of objection to tender of hearsay evidence
form 1.47 (prev form 49A) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-53 r 24

Notice of intention to adduce tendency evidence
form 1.48 (prev form 49B) renum R13 LA (see 2002 No 16 amdt 1.44)

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om SL2004-53 r 24

Notice of intention to adduce coincidence evidence
form 1.49 (prev form 50) renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-53 r 24

Form of affidavit—general
form 1.49A ins 2002 No 24 amdt 1.1
sub SL2004-54 amdt 1.19
om A2004-60 amdt 1.685

Annexures to affidavit—information on first page
form 1.49B ins 2002 No 24 amdt 1.1
sub SL2004-54 amdt 1.19
om A2004-60 amdt 1.685

Certificate identifying exhibit
form 1.49C ins 2002 No 24 amdt 1.1
sub SL2004-54 amdt 1.19
om A2004-60 amdt 1.685

General form of judgment
form 1.50 (prev form 50AA) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

General form of order
form 1.51 (prev form 50AB) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Consent order
form 1.52 (prev form 50AC) sub 2002 No 16 amdt 2.1
renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Consent judgment
form 1.53 (prev form 50AD) ins 2002 No 16 amdt 2.1
renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Certificate of judgment
form 1.54 (prev form 50A) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Praecipe for writ of fieri-facias
form 1.55 (prev form 51) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20

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om A2004-60 amdt 1.685

Praecipe for writ of venditioni exponas

form 1.56 (prev form 52) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Praecipe for writ of possession

form 1.57 (prev form 53) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Writ of fieri-facias

form 1.58 (prev form 54) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.20
om A2004-60 amdt 1.685

Writ of venditioni exponas

form 1.59 (prev form 55) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.21, amdt 1.22
om A2004-60 amdt 1.685

Writ of possession

form 1.60 (prev form 56) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.23, amdt 1.24
om A2004-60 amdt 1.685

Order for examination of judgment debtor

form 1.61 (prev form 56A) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.25
om A2004-60 amdt 1.685

Affidavit about stock under order 47

form 1.62 (prev form 57) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdts 1.26-1.28
om A2004-60 amdt 1.685

Notice about stock under order 47

form 1.63 (prev form 58) renum R13 LA (see 2002 No 16 amdt 1.44)
om A2004-60 amdt 1.685

Writ of delivery

form 1.64 (prev form 59) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.29
om A2004-60 amdt 1.685

Receiver's security by undertaking

form 1.65 (prev form 60) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.30
om A2004-60 amdt 1.685

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Receiver's account

form 1.66 (prev form 61) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.30
om A2004-60 amdt 1.685

Affidavit verifying receiver's account

form 1.67 (prev form 62) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.31, amdt 1.32
om A2004-60 amdt 1.685

Notice of motion—interlocutory or other applications in proceedings already begun

form 1.67A ins SL2004-7 r 52
am SL2004-54 amdt 1.33
om A2004-60 amdt 1.685

Originating notice of motion

form 1.67B ins SL2004-7 r 52
am SL2004-54 amdt 1.34, amdt 1.35
om A2004-60 amdt 1.685

Writ of certiorari

form 1.68 (prev form 63) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.36, amdt 1.37
om A2004-60 amdt 1.685

Writ of mandamus

form 1.69 (prev form 64) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.38, amdt 1.39
om A2004-60 amdt 1.685

Writ of prohibition

form 1.70 (prev form 65) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.40, amdt 1.41
om A2004-60 amdt 1.685

Notice of claim to goods taken in execution

form 1.71 (prev form 69) renum R13 LA (see 2002 No 16 amdt 1.44)
om A2004-60 amdt 1.685

Notice by plaintiff of admission or dispute of title of claimant

form 1.72 (prev form 70) renum R13 LA (see 2002 No 16 amdt 1.44)
om A2004-60 amdt 1.685

Notice of appeal from interlocutory order of registrar

form 1.73 (prev form 76) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.42
om A2004-60 amdt 1.685

Notice of appeal from master—interlocutory judgment

form 1.74 (prev form 77) renum R13 LA (see 2002 No 16 amdt 1.44)

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sub SL2004-54 amdt 1.43
om A2004-60 amdt 1.685

Application for registration of judgment under Foreign Judgments Act 1991 (Cwlth)

form 1.75 (prev form 78A) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.44
om A2004-60 amdt 1.685

Order for registration of money judgment

form 1.76 (prev form 78B) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.45
om A2004-60 amdt 1.685

Order for registration of non-money judgment

form 1.77 (prev form 78C) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.45
om A2004-60 amdt 1.685

Notice of registration of money judgment

form 1.78 (prev form 78D) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.46
om A2004-60 amdt 1.685

Notice of registration of non-money judgment

form 1.79 (prev form 78E) renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.46
om A2004-60 amdt 1.685

Application for order of review

form 1.80 (prev form 81) sub 2002 No 16 amdt 2.2
renum R13 LA (see 2002 No 16 amdt 1.44)
am SL2004-54 amdt 1.47
om A2004-60 amdt 1.685

Notice of objection to competency

form 1.81 (prev form 82) am 2002 No 16 amdt 1.41
renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2003-48 r 14
am SL2004-54 amdt 1.48
om A2004-60 amdt 1.685

Notice of payment into court in arbitration

form 1.82 (prev form 83) am 2002 No 16 amdt 1.42
renum R13 LA (see 2002 No 16 amdt 1.44)
sub SL2004-54 amdt 1.49
om A2004-60 amdt 1.685

Acceptance of amount paid into court in arbitration

form 1.83 (prev form 84) am 2002 No 16 amdt 1.42
renum R13 LA (see 2002 No 16 amdt 1.44)

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sub SL2004-54 amdt 1.49
om A2004-60 amdt 1.685

Subpoena to give evidence
form 1.84 (prev form 85) am 2002 No 16 amdt 1.42; amdt 1.43
renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.50

Subpoena to produce for an individual
form 1.85 (prev form 86) am 2002 No 16 amdt 1.42; amdt 1.43
renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.50

Subpoena to produce and to answer questions for a corporation and its proper officer
form 1.86 (prev form 87) am 2002 No 16 amdt 1.42; amdt 1.43
renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.50

Subpoena to produce and to give evidence
form 1.87 (prev form 88) am 2002 No 16 amdt 1.42; amdt 1.43
renum R13 LA (see 2002 No 16 amdt 1.44)
om SL2004-54 amdt 1.50

Administration and probate forms
pt 1.2 hdg ins 2002 No 16 amdt 1.45
om A2004-60 amdt 1.685

Notice of intended application for probate
form 2.1 (prev sch 3 form 1) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
om A2004-60 amdt 1.685

Notice of intended application for letters of administration with will annexed
form 2.2 (prev sch 3 form 2) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-7 r 53
am SL2004-54 amdt 1.51
om A2004-60 amdt 1.685

Notice of intended application for letters of administration
form 2.3 (prev sch 3 form 2A) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-7 r 53
am SL2004-54 amdt 1.51
om A2004-60 amdt 1.685

Notice of intended application for reseal of foreign grant
form 2.4 (prev sch 3 form 3) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.52

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om A2004-60 amdt 1.685

Application for probate

form 2.5 (prev sch 3 form 3A) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.53
om A2004-60 amdt 1.685

Application for letters of administration with will annexed

form 2.6 (prev sch 3 form 3B) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-7 r 54
am SL2004-54 amdt 1.54
om A2004-60 amdt 1.685

Application for letters of administration

form 2.7 (prev sch 3 form 3C) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-7 r 54
am SL2004-54 amdt 1.54
om A2004-60 amdt 1.685

Application for reseal of foreign grant

form 2.8 (prev sch 3 form 3D) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.55
om A2004-60 amdt 1.685

Affidavit of applicant for probate

form 2.9 (prev sch 3 form 3E) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.56, amdt 1.57
om A2004-60 amdt 1.685

Affidavit of applicant for administration with will annexed

form 2.10 (prev sch 3 form 3F) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.58, amdt 1.59
om A2004-60 amdt 1.685

Affidavit of applicant for administration

form 2.11 (prev sch 3 form 3G) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.60, amdt 1.61
om A2004-60 amdt 1.685

Affidavit of applicant for reseal of foreign grant

form 2.12 (prev sch 3 form 3GA) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.62, amdt 1.63
om A2004-60 amdt 1.685

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Affidavit of search

form 2.13 (prev sch 3 form 3H) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.64, amdt 1.65
om A2004-60 amdt 1.685

Administration bond

form 2.14 (prev sch 3 form 4) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-7 r 55
am SL2004-54 amdt 1.66
om A2004-60 amdt 1.685

Affidavit of justification

form 2.15 (prev sch 3 form 5) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-7 r 55
am SL2004-54 amdt 1.67, amdt 1.68
om A2004-60 amdt 1.685

Affidavit of justification

form 2.16 (prev sch 3 form 6) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
om SL2004-7 r 55

Notice of filing accounts

form 2.17 (prev sch 3 form 7) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.69
om A2004-60 amdt 1.685

Caveat

form 2.18 (prev sch 3 form 8) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
om A2004-60 amdt 1.685

Affidavit in support of application by public trustee

form 2.19 (prev sch 3 form 9) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-54 amdt 1.70
om A2004-60 amdt 1.685

Affidavit in support of application by public trustee

form 2.20 (prev sch 3 form 10) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.71, amdt 1.72
om A2004-60 amdt 1.685

Renunciation of probate in favour of public trustee

form 2.21 (prev sch 3 form 12) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)

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am SL2004-54 amdt 1.73
om A2004-60 amdt 1.685

Renunciation of letters of administration in favour of public trustee
form 2.22 (prev sch 3 form 13) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.74
om A2004-60 amdt 1.685

Notice of application for representation to be given by public trustee
form 2.23 (prev sch 3 form 14) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.75
om A2004-60 amdt 1.685

Acknowledgment under Administration and Probate Act, section 56
form 2.24 (prev sch 3 form 15) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
om A2004-60 amdt 1.685

Grant of probate
form 2.25 (prev sch 3 form 16) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.76
om A2004-60 amdt 1.685

Grant of letters of administration with will annexed
form 2.26 (prev sch 3 form 17) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.77
om A2004-60 amdt 1.685

Grant of letters of administration
form 2.27 (prev sch 3 form 18) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.78
om A2004-60 amdt 1.685

Reseal of foreign grant
form 2.28 (prev sch 3 form 19) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
sub SL2004-54 amdt 1.79
om A2004-60 amdt 1.685

Form of order, accounts and inquiries
form 2.29 (prev sch 3 form 20) reloc and renum R13 LA (see 2002 No 16 amdt 1.46)
am SL2004-54 amdt 1.80
om A2004-60 amdt 1.685

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Adoption forms

pt 1.3 hdg ins 2002 No 16 amdt 1.45
om A2004-60 amdt 1.685

Application for adoption order

form 3.1 (prev sch 8 form 1) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.81
om A2004-60 amdt 1.685

Notice of application for adoption order

form 3.2 (prev sch 8 form 2) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.82
om A2004-60 amdt 1.685

Notice of appearance opposing application for adoption order

form 3.3 (prev sch 8 form 3) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.82
om A2004-60 amdt 1.685

Interim order

form 3.4 (prev sch 8 form 4) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.82
om A2004-60 amdt 1.685

Adoption order

form 3.5 (prev sch 8 form 5) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.83, amdt 1.84
om A2004-60 amdt 1.685

Application for dispensing with consent to adoption

form 3.6 (prev sch 8 form 6) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.85
om A2004-60 amdt 1.685

Notice of application for dispensing order

form 3.7 (prev sch 8 form 7) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.85
om A2004-60 amdt 1.685

Notice of appearance opposing application for dispensing order

form 3.8 (prev sch 8 form 8) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.85
om A2004-60 amdt 1.685

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Order for dispensing with consent to adoption

form 3.9 (prev sch 8 form 9) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.85
om A2004-60 amdt 1.685

Application for variation of adoption order

form 3.10 (prev sch 8 form 10) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Notice of application for variation order

form 3.11 (prev sch 8 form 11) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Notice of appearance opposing application for variation order

form 3.12 (prev sch 8 form 12) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Application for discharge of *interim order/adoption order

form 3.13 (prev sch 8 form 13) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Notice of application for discharge of *interim order/adoption order

form 3.14 (prev sch 8 form 14) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Notice of appearance opposing application for discharge of *interim order/adoption order

form 3.15 (prev sch 8 form 15) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Application for access to identifying information

form 3.16 (prev sch 8 form 16) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

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Notice of application for access to identifying information

form 3.17 (prev sch 8 form 17) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Notice of appearance opposing application for access to identifying information

form 3.18 (prev sch 8 form 18) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Order for access to identifying information

form 3.19 (prev sch 8 form 19) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Affidavit of personal service of notices of application

form 3.20 (prev sch 8 form 20) reloc and renum R13 LA (see 2002 No 16 amdt 1.48)
am SL2004-54 amdt 1.86
om A2004-60 amdt 1.685

Criminal proceedings forms

pt 1.4 hdg ins 2002 No 16 amdt 1.45
om A2004-60 amdt 1.685

Form of affidavit—criminal proceedings

form 4.1 (prev sch 11 form 1) reloc and renum as form 4.1 R13 LA (see 2002 No 16 amdt 1.49)
om SL2004-54 amdt 1.87
ins SL2004-53 r 25
om A2004-60 amdt 1.685

Annexures to affidavit—information on first page

form 4.2 (prev sch 11 form 2) reloc and renum as form 4.2 R13 LA (see 2002 No 16 amdt 1.49)
om SL2004-54 amdt 1.87
ins SL2004-53 r 25
om A2004-60 amdt 1.685

Certificate identifying exhibit

form 4.3 (prev sch 11 form 3) reloc and renum as form 4.3 R13 LA (see 2002 No 16 amdt 1.49)
om SL2004-54 amdt 1.87
ins SL2004-53 r 25
om A2004-60 amdt 1.685

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Notice of solicitor acting

form 4.4 (prev sch 11 form 4) reloc and renum as form 4.4 R13 LA (see 2002 No 16 amdt 1.49)
om SL2004-54 amdt 1.87
ins SL2004-53 r 25
om A2004-60 amdt 1.685

Notice of solicitor ceasing to act

form 4.5 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Notice of motion—bail application

form 4.6 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Form of affidavit—bail application by accused person

form 4.7 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Pre-trial questionnaire

form 4.8 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Notice of motion—criminal proceedings

form 4.9 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Order for production of person in custody

form 4.10 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Judgment

form 4.11 ins SL2004-53 r 25
om A2004-60 amdt 1.685

Evidence and Procedure (New Zealand) Act 1994 (Cwlth) forms

pt 1.5 hdg ins 2002 No 16 amdt 1.45
om A2004-60 amdt 1.685

Certificate of noncompliance with subpoena

form 5.1 (prev sch 13B form 1) reloc and renum R13 LA (see 2002 No 16 amdt 1.50)
am SL2004-54 amdt 1.88
om A2004-60 amdt 1.685

Objection to determination of application for subpoena to be set aside without hearing

form 5.2 (prev sch 13B form 2) reloc and renum R13 LA (see 2002 No 16 amdt 1.50)
am SL2004-54 amdt 1.89
om A2004-60 amdt 1.685

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Request for hearing by videolink or telephone

form 5.3 (prev sch 13B form 3) reloc and renum R13 LA (see 2002 No 16 amdt 1.50)
am SL2004-54 amdt 1.90
om A2004-60 amdt 1.685

Appeal forms

pt 1.6 hdg ins 2002 No 16 amdt 1.45
om A2004-60 amdt 1.685

Notice of appeal

form 6.1 (prev sch 14 form 1) am 2002 No 16 amdt 1.51
reloc and renum R13 LA (see 2002 No 16 amdt 1.52)
am 2002 No 27 amdt 2.11, amdt 2.12; SL2004-54 amdt 1.91
om A2004-60 amdt 1.685

Appeal extension of time

form 6.2 (prev sch 14 form 2) am 2002 No 16 amdt 1.51
reloc and renum R13 LA (see 2002 No 16 amdt 1.52)
am SL2004-54 amdt 1.92
om A2004-60 amdt 1.685

Order nisi to review decision of Magistrates Court

form 6.3 (prev sch 14 form 3) reloc and renum R13 LA (see 2002 No 16 amdt 1.52)
am SL2004-54 amdt 1.93
om A2004-60 amdt 1.685

Notice of motion for leave to appeal from interlocutory judgment of court

form 6.4 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.94
om A2004-60 amdt 1.685

Notice of motion for leave to appeal out of time from final judgment of court

form 6.5 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.95
om A2004-60 amdt 1.685

Notice of appeal

form 6.6 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.96
om A2004-60 amdt 1.685

Notice of motion for striking out appeal

form 6.7 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.97
om A2004-60 amdt 1.685

Notice of discontinuance

form 6.8 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.98

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om A2004-60 amdt 1.685

Certificate about appeal papers

form 6.9 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.99
om A2004-60 amdt 1.685

Application to registrar for leave to appeal out of time against conviction or sentence

form 6.10 ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.100
om A2004-60 amdt 1.685

Response by director of public prosecutions

form 6.11 orig form 6.11 renum as form 6.12
ins SL2004-54 amdt 1.101
om A2004-60 amdt 1.685

Notice of motion to have application for extension of time decided by Court of Appeal

form 6.12 orig form 6.12 renum as form 6.13
(prev form 6.11) ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.102
renum SL2004-54 amdt 1.103
om A2004-60 amdt 1.685

Order for production of prisoner

form 6.13 orig form 6.13 renum as form 6.15
(prev form 6.12) ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.104
renum SL2004-54 amdt 1.105
om A2004-60 amdt 1.685

Notice of solicitor ceasing to act—Court of Appeal

form 6.14 orig form 6.14 renum as form 6.16
ins SL2004-54 amdt 1.108
om A2004-60 amdt 1.685

Special case

form 6.15 (prev form 6.13) ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.106
renum SL2004-54 amdt 1.107
om A2004-60 amdt 1.685

Application for reference appeal

form 6.16 (prev form 6.14) ins 2002 No 27 amdt 1.1
am SL2004-54 amdt 1.109
renum SL2004-54 amdt 1.107
om A2004-60 amdt 1.685

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Legal practitioners—admission form

pt 1.7 hdg	ins SL2004-54 amdt 1.111 om A2004-60 amdt 1.685

Application for admission

form 7.1	ins SL2004-54 amdt 1.111 om A2004-60 amdt 1.685

Powers of court that may be exercised by master or registrar

sch 2	am 1958 No 64 rr 3-5 om 1978 No 173 r 11 ins 2001 No 23 r 12 sub SL2003-41 r 6

Costs

sch 3 hdg	orig sch 3 hdg sub 1999 No 26 sch; 2000 No 46 amdt 1.252
sch 3	orig sch 3 am 1956 No 135 r 19; 1980 No 214 sch; 1981 No 296 r 17; 1995 No 11 r 13; 1996 No 11 r 9; 1996 No 22 r 7; 1998 No 35 r 10; 2000 No 46 amdt 1.253 om 2000 No 46 r 2 sch 1 (prev sch 4) am 1950 No 22 r 2 sub 1956 No 135 r 20; 1962 No 76 r 2; 1969 No 57 r 4; 1973 No 95 r 2; 1982 No 316 r 2; 1984 No 285 r 5; 1988 No 24 r 6; 1992 No 82 r 6 am 1993 No 28 r 5 sub 1997 No 43 r 9 am 1999 No 26 sch sub 2001 No 48 r 13 am 2002 No 16 r 20, r 21 renum as sch 3 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1

Instructions

sch 3 pt 3.1	(prev sch 4 pt 4.1) renum as sch 3 pt 3.1 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1

Drawing

sch 3 pt 3.2	(prev sch 4 pt 4.2) renum as sch 3 pt 3.2 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1

Engrossing

sch 3 pt 3.3	(prev sch 4 pt 4.3) renum as sch 3 pt 3.3 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1

Copies

sch 3 pt 3.4	(prev sch 4 pt 4.4) renum as sch 3 pt 3.4 R13 LA (see 2002 No 16 amdt 1.47)

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	sub SL2004-54 amdt 2.1
Perusal	
sch 3 pt 3.5	(prev sch 4 pt 4.5) renum as sch 3 pt 3.5 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1
Attendances	
sch 3 pt 3.6	(prev sch 4 pt 4.6) renum as sch 3 pt 3.6 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1
Letters	
sch 3 pt 3.7	(prev sch 4 pt 4.7) renum as sch 3 pt 3.7 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1
Witness expenses	
sch 3 pt 3.8	(prev sch 4 pt 4.8) renum as sch 3 pt 3.8 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1
Disbursements	
sch 3 pt 3.9	(prev sch 4 pt 4.9) renum as sch 3 pt 3.9 R13 LA (see 2002 No 16 amdt 1.47) sub SL2004-54 amdt 2.1
Costs	
sch 4	renum as sch 3
Instructions	
sch 4 pt 4.1	renum as sch 3 pt 3.1
Drawing	
sch 4 pt 4.2	renum as sch 3 pt 3.2
Engrossing	
sch 4 pt 4.3	renum as sch 3 pt 3.3
Copies	
sch 4 pt 4.4	renum as sch 3 pt 3.4
Perusal	
sch 4 pt 4.5	renum as sch 3 pt 3.5
Attendances	
sch 4 pt 4.6	renum as sch 3 pt 3.6
Letters	
sch 4 pt 4.7	renum as sch 3 pt 3.7
Witness expenses	
sch 4 pt 4.8	renum as sch 3 pt 3.8

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Disbursements

sch 4 pt 4.9	renum as sch 3 pt 3.9

Scale of fees

sch 5	sub 1956 No 135 r 21
	om 1974 No 60 r 3

Scale of fees

sch 6	om 1980 No 214 r 8

Forms—companies

sch 7	ins 1956 No 135 r 22
	am 1962 No 47 r 6
	sub 1969 No 222 r 7
	am 1980 No 210 r 9; 1992 No 34 sch; 1993 No 23 r 10
	om 1993 No 35 r 3

Adoption forms

sch 8 hdg	ins 1966 No 132 r 4
	sub 1999 No 26 sch; 2000 No 46 1.254
sch 8	ins 1966 No 132 r 4
	am 1969 No 66 r 21, r 22; 1991 No 108 r 13
	sub 1993 No 30 r 5
	am 1998 No 35 r 11; 1999 No 26 sch; 2000 No 23 r 14
	forms reloc to sch 1 pt 1.3 R13 LA (see 2002 No 16 amdt 1.48)
	om 2002 No 16 amdt 1.53

Forms—companies

sch 9 hdg	ins 1984 No 281 r 11
sch 9	ins 1984 No 281 r 11
	am 1989 No 30 sch; 1991 No 108 r 14; 1992 No 34 sch
	om 1993 No 35 r 3

Forms—Mental Health Ordinance 1983

sch 10	ins 1985 No 27 r 2
	om 1995 No 19 r 8

Criminal proceedings forms

sch 11 hdg	ins 1989 No 273 r 6
	sub 1999 No 26 sch; 2000 No 46 amdt 1.255
sch 11	ins 1989 No 273 r 6
	am 1992 No 23 sch 3; 1995 No 27 r 13
	forms reloc to sch 1 pt 1.4 R13 LA (see 2002 No 16 amdt 1.49)
	om 2002 No 16 amdt 1.53

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Schedule 12

sch 12	ins 1990 No 458 r 12 am 1992 No 16 sch; 1993 No 35 sch 1; 1996 No 31 r 5; 1998 No 35 r 12; 1999 No 26 sch om 2000 No 17 r 14

Powers and functions of the court that may be exercised by the registrar

sch 13	ins 1990 No 458 r 12 am 1992 No 16 sch; 1993 No 35 sch 2; 1994 No 21 r 12 om 2000 No 17 r 14

Corporations Law—1993 transitional provisions under o 75B for winding-up proceedings

sch 13A	ins 1993 No 35 sch 3 am 1999 No 26 sch om 2000 No 17 r 14

Evidence and Procedure (New Zealand) Act 1994 (Cwlth) forms

sch 13B hdg	ins 1995 No 44 r 6 sub 2000 No 46 amdt 1.256
sch 13B	ins 1995 No 44 r 6 forms reloc to sch 1 pt 1.5 R13 LA (see 2002 No 16 amdt 1.50) om 2002 No 16 amdt 1.53

Appeal forms

sch 14 hdg	ins 1992 No 21 r 9 sub 2000 No 46 amdt 1.257
sch 14	ins 1992 No 21 r 9 sub 1997 No 31 r 23 am 2002 No 16 amdt 1.51 forms reloc to sch 1 pt 1.6 R13 LA (see 2002 No 16 amdt 1.52) om 2002 No 16 amdt 1.53

Forms—service of foreign process and service of process out of Australia

sch 15	ins 1995 No 15 r 14 (as am 1999 No 26 r 31) (1995 No 15 never commenced and repealed by 2001 No 48 r 14)

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	SL 1992 No 35	18 December 1992
2	SL 1993 No 46	31 December 1993
3	SL 1994 No 42	19 February 1995
4	SL 1995 No 44	31 January 1996
5	SL 1996 No 31	31 January 1997
6	SL 1997 No 43	2 February 1998
7	SL 1998 No 35	1 February 1999
8	SL 2000 No 50	16 February 2001
9	SL 2001 No 23	16 July 2001
10	SL 2001 No 48	21 January 2002
11*	SL 2001 No 48	1 February 2002
12	SL2002-16	1 July 2002
13	SL2002-16	17 July 2002
14	SL2002-16	18 September 2002
15	SL2002-24	19 September 2002
16	SL2002-27	14 October 2002
17*	SL2003-6	19 February 2003
18	SL2003-26	11 September 2003
19	SL2003-41	12 November 2003
20	SL2003-49	12 January 2004
21	SL2003-49	19 January 2004

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Republication No	Amendments to	Republication date
22*	SL2004-7	26 February 2004
23	SL2004-11	23 April 2004
24	SL2004-15	21 May 2004
25	SL2004-54	31 December 2004
26	SL2004-54	2 January 2005
27*	SL2004-54	10 January 2005
28	A2005-20	2 June 2005

6 Renumbered provisions

The rules in orders 61A, 65, 66, 67, 78, 80, 81, 82 and 83 were renumbered by SL 1992 No 23. The renumbering changed the rules previously numbered in a decimal format to current numbering format. For a table showing the renumbering, see R16.

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