



AUSTRALIAN CAPITAL TERRITORY

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 16 of 1992²

We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 31 August 1992.

JEFFREY MILES
Chief Justice

J F GALLOP
Judge

T F HIGGINS
Judge

A G TOWILL
Registrar

Principal Rules

1. In these Rules, “Principal Rules” means the Supreme Court Rules.

Citation

2. Rule 1 of Order 1 of the Principal Rules is amended by omitting “Rules of the Supreme Court of the Australian Capital Territory” and substituting “Supreme Court Rules”.

Insertion

3. After Order 33 of the Principal Rules the following Orders are inserted:

“ORDER 33A**FAILURE TO CONDUCT PROCEEDINGS****Power to stay or dismiss**

“1. If the claimant for relief in any proceedings—
(a) fails to comply with an order or direction of the Court or a Judge as to the conduct of the proceedings; or
(b) delays prosecution of the proceedings without due cause;
the Court may stay or dismiss the proceedings.

“ORDER 33B**SECURITY FOR COSTS****Interpretation**

“1. In this Order—
‘defendant’ means a person against whom a claim for relief is made in any proceeding;
‘plaintiff’ means a person who makes a claim for relief in any proceeding.

Application procedure

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

“(2) An application shall be by motion—
(a) on notice; and
(b) supported by an affidavit stating the material facts and the grounds on which the order is sought.

Circumstances in which order may be made

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

- (a) the plaintiff is ordinarily resident outside Australia;
- (b) for the purpose of avoiding obligations that could arise from the proceeding, the plaintiff’s address is not stated, or is mis-stated, in the originating process;
- (c) for the purpose of avoiding obligations that could arise from the proceeding, the plaintiff has changed address after instituting the proceeding;
- (d) the plaintiff—
 - (i) has made the claim on behalf of a person other than the plaintiff; and
 - (ii) will not be able to pay the defendant’s costs if ordered to do so; or
- (e) the interests of justice so require.

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

Value and mode of security

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

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

as the Court directs.”.

Authority of Master

4. Rule 1 of Order 61A of the Principal Rules is amended—

- (a) by inserting in paragraph 1.01 (e) “in” before “any”;

- (b) by omitting from paragraph 1.01 (i)—
“Orders 55, 57, 58, 59, 60 and 61”
and substituting—
“Orders 55, 57, 58 and 59
Divisions 2 and 3 of Order 60
Order 61”;
- (c) by omitting from paragraph 1.01 (l) “and” (last occurring);
- (d) by omitting from paragraph 1.01 (m) “and”; and
- (e) by adding at the end of subrule 1.01 the following paragraphs:
- “(o) in the hearing and determination of applications for a final order under subsection 11A (9F) of the *City Area Leases Act 1936* as in force immediately before 2 April 1992;
 - (p) in the hearing and determination of applications for an order under section 8 or 9A of the *Family Provision Act 1969* and in the exercise of associated powers and functions of the Court;
 - (q) in the hearing and determination of interlocutory applications for further time for institution of an appeal under subsection 209 (1) of the *Magistrates Court Act 1930*;
 - (r) in the hearing and determination of interlocutory applications for an order regarding service of notice under section 210 of the *Magistrates Court Act 1930*;
 - (s) in the hearing and determination of applications under Part XIX of the *Magistrates Court (Civil Jurisdiction) Act 1982* regarding the transfer of proceedings;
 - (t) in the hearing and determination of interlocutory applications under Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* in connection with appeals;
 - (u) in the hearing and determination of applications for an order under section 28 of the *Partnership Act 1963*;
 - (v) in the hearing and determination of applications under the *Public Trustee Act 1985* in respect of the following matters:
 - (i) a direction under section 24;
 - (ii) an order under subsection 25 (2), (3) or (4) or paragraph 25 (5) (a) or a direction under paragraph 25 (5) (b);

- (iii) a direction under subsection 26 (2);
- (iv) an order under subsection 31 (2);
- (v) an extension of time under subsection 33 (3) to institute proceedings;
- (vi) an order under subsection 34 (1);
- (vii) an order under subsection 45 (2);
- (w) in the hearing and determination of applications for an order under subsection 103 (1) or section 106 of the *Real Property Act 1925*; and
- (x) in the hearing and determination of applications under the Trustee Act, 1925 of the State of New South Wales in its application in the Territory in respect of the following matters:
 - (i) an opinion, advice or direction under subsection 63 (1) or 63 (10);
 - (ii) an order under subsection 70 (1);
 - (iii) a vesting order under section 71;
 - (iv) an order under paragraph 75 (1) (a) or (b);
 - (v) an order under paragraph 75 (1) (a) or a direction under paragraph 75 (1) (b);
 - (vi) an order under subsection 95 (2) or (3);
 - (vii) an order under subsection 98 (4).”.

Repeal

5. Rules 4, 5 and 6 of Order 65 of the Principal Rules are repealed.

Further amendments

6. The provisions of the Principal Rules specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

Rule 6

Order 1, subrule 4 (1) (definition of “administration and probate jurisdiction”)—

Omit “-1937”.

Order 26, subparagraph 1 (4) (ii)—

Omit “*Workmen’s*”, substitute “*Workers*”.

Order 60, paragraph 1 (e)—

Omit “*Workmen’s Compensation Act 1951-1973*”, substitute “*Workers’ Compensation Act 1951*”.

Order 60, rule 13—

Omit “Clerk”, substitute “Registrar”.

Order 61, rule 3—

Omit “(c)” (last occurring), substitute “(d)”.

Schedule 12, Form 89—

Omit “(other than (specify any such association) and”, substitute “(other than (specify any such association)) and”.

Schedule 13, Item No. 96, Column 4—

Omit “convenants”, substitute “covenants”.

NOTES

1. Reprinted by the Commonwealth as at 2 October 1991. See also Commonwealth Statutory Rules 1991, Nos. 416 and 472; 1992 Nos. 79 and 82.
2. Notified in the ACT Gazette on 1 September 1992.

NOTE ABOUT HEADINGS

On the day on which the Supreme Court Rules are amended by these Rules, in addition to any alteration of headings indicated in the text of these Rules, the heading to subrule 4 (2) of Order 1 is omitted.