



Australian Capital Territory

## Supreme Court Rules<sup>1</sup> (Amendment)

Subordinate Law No. 23 of 1993<sup>2</sup>

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

Dated 1 June 1993.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

A G TOWILL

Registrar

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### Principal Rules

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

**Substitution**

2. Rule 5 of Order 13 of the Principal Rules is repealed and the following rule substituted:

**Address for service of defendant appearing in person**

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

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

**Substitution**

3. Rule 2 of Order 15 of the Principal Rules is repealed and the following rule substituted:

**Application by motion on notice**

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

- (a) returnable not less than 2 days after service; and
- (b) accompanied by a copy of the relevant affidavit and of any exhibit referred to in the affidavit.”.

**Substitution**

4. Rule 2 of Order 16 of the Principal Rules is repealed and the following rule substituted:

**Application by motion on notice**

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

- (a) returnable not less than 2 days after service; and
- (b) accompanied by a copy of the relevant affidavit and of any exhibit referred to in the affidavit.”.

**Substitution**

5. Rules 19 and 20 of Order 34 of the Principal Rules are repealed and the following rules substituted:

**Appointment for inspection of documents**

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

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

- (a) a time and place at which the inspection may take place; and
- (b) any document specified in the notice to produce documents which the producing party objects to producing, and the grounds of any such objection.

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

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

- (a) the office of the producing party’s solicitor;
- (b) if the producing party is to appear in person—a place not more than 10 kilometres from the office of the Registrar; or
- (c) if banker’s books, books of account or books in constant use for the purposes of a trade or business are to be inspected—the books’ usual place of custody.

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

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

- (a) if all the documents specified in the notice to produce documents are specified in the producing party’s affidavit as to documents under rule 14, or in that party’s writ, pleadings or particulars—within 2 days after receiving the notice to produce documents; or
- (b) in any other case—within 4 days after receiving the notice to produce documents.

“(7) In this rule—

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

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

‘notice to produce documents’ means a notice under rule 18;

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

### **Court order for inspection of documents**

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

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

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

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

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

- (a) specifying the documents sought to be inspected;
- (b) stating that those documents are in the possession or power of the producing party; and
- (c) stating that the inspecting party is entitled to inspect those documents.

“(4) In this rule—

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

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

‘notice to produce documents’ means a notice under rule 18;

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

### **Substitution**

**6.** Rules 2, 3, 4 and 5 of Order 35 of the Principal Rules are repealed and the following rules substituted:

#### **Notice to admit documents**

“2. (1) A party may request another party in the same proceedings to admit any document by notice in accordance with Form 28 in the First Schedule.

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

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

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

- (a) a notice to admit documents in relation to the document is given to the party; or
- (b) if no such notice is given—the taxing officer considers that the omission to give such a notice is a saving of expense.

“(5) In this rule—

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

### **Notice to admit facts**

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

- (a) in accordance with Form 29 in the First Schedule; and
- (b) given to the other party no later than 14 days after the date fixed for determining the trial date.

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

- (a) in accordance with Form 30 in the First Schedule; and
- (b) given to the other party within 7 days after receiving the notice to admit facts, or within such further time as the Court allows.

“(3) If a party does not, by an admission of facts, admit a fact specified in a notice to admit facts given to that party, the costs of proving that fact shall be paid by that party irrespective of the outcome of the relevant proceedings.

“(4) Subrule (3) does not apply if—

- (a) the Court certifies that the failure to admit the fact was reasonable; or
- (b) the Court otherwise orders or directs at any time.

“(5) The Court may at any time allow a party to amend or withdraw any admission made under this rule, on just terms.

“(6) An admission of a fact under this rule operates only—

- (a) for the purposes of the proceedings in which the fact is admitted; and
- (b) in favour of the party giving the relevant notice to admit facts.

“(7) In this rule—  
‘admission of facts’ means an admission under subrule (2);  
‘notice to admit facts’ means a notice under subrule (1).”.

### **Substitution**

7. Rules 1 and 2 of Order 42A of the Principal Rules are repealed and the following rule is substituted:

### **Rates of interest**

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

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

### **Substitution**

8. Rule 22 of Order 75 of the Principal Rules is repealed and the following rule substituted:

### **Notice of intention to appear**

“22. (1) On the hearing of a petition, the Court shall not allow a person, other than a person served with the petition, to appear unless—

- (a) the person has given the petitioner, or the petitioner’s solicitor, a notice of intention to appear under subrule (2); or
- (b) the Court grants leave, and the person files an appearance forthwith.

- “(2) A notice of intention to appear shall—
- (a) be in accordance with Form No. 6;
  - (b) specify an address for service within 10 kilometres of the office of the Registrar; and
  - (c) be given to the petitioner, or the petitioner’s solicitor, not later than 1 p.m. on the last working day prior to the day the petition is to be heard.”.

### First Schedule

9. The First Schedule to the Principal Rules is amended—
- (a) by omitting from Form 28 “O. 35 r. 3” and substituting “O. 35 r. 2”;
  - (b) by omitting from Form 28 all the words from and including “Take notice” to and including “*which may be as follows:]*” and substituting:

“TO THE DEFENDANT [*or THE PLAINTIFF or insert name of party requested to admit documents*]

Take notice as follows:

1. The plaintiff [*or defendant or insert name of party requesting admissions*] proposes to adduce in evidence the documents specified below.
2. You, your solicitor or your agent may inspect those documents  
at [place]  
on [date]  
between the hours of and [hours].
3. You are requested, within 48 hours after the last-mentioned hour, to admit that—
  - (a) any of the documents which are specified as originals were written, signed or executed as they purport to have been;
  - (b) any of the documents which are specified as copies are true copies; and
  - (c) any of the documents which are stated to have been served, sent or delivered were served, sent or delivered as stated.

Dated:

Signed: (Plaintiff [*or Defendant or insert name of party requesting admissions*])

or

(Solicitor or agent for the plaintiff  
[*or defendant or insert name of party on whose behalf admissions are requested*])

### Documents to be admitted

[*Here describe the documents requested to be admitted, for example as follows:]*”;

- (c) by omitting from Form 29 “O. 35 r. 5” and substituting “O. 35 r. 3 (1) (a)”;
- (d) by omitting from Form 29 all the words from and including “Take notice” to and including “The facts, the admission of which is required, are—” and substituting:

“TO THE DEFENDANT [*or THE PLAINTIFF or insert name of party requested to admit facts*]

Take notice as follows:

1. The plaintiff [*or defendant or insert name of party requesting admissions*] proposes to adduce in evidence the facts specified below.
2. You are requested, within 7 days after the service of this notice, to admit those facts.
3. Your admission of those facts is requested for the purposes of these proceedings only, and will only be able to be relied upon by the plaintiff [*or defendant or insert name of party requesting admissions*].

Dated:

Signed:

(Plaintiff [*or Defendant or insert name of party requesting admissions*])

*or*

(Solicitor or agent for the plaintiff [*or defendant or insert name of party on whose behalf admissions are*

*requested*])

**Facts to be admitted**

[*Here set out the facts requested to be admitted, for example as follows:*”];

- (e) by omitting from Form 30 “O. 35 r. 5” and substituting “O. 35 r. 3 (2) (a)”;
- (f) by omitting from Form 30 all the words from and including “The defendant” (first occurring) to and including “[*or defendant*].” and substituting:

“TO THE PLAINTIFF [*or THE DEFENDANT or insert name of party requesting admissions*]

1. The defendant [*or plaintiff or insert name of party admitting facts*] admits the facts specified below, subject to any specified qualifications.
2. These admissions are subject to the admissibility of those facts in evidence.
3. These admissions are made for the purposes of these proceedings only, and shall not be used by any party to these proceedings other than the party to whom these admissions are given.

Dated:

Signed:

(Plaintiff [*or Defendant or insert name of party admitting facts*])



or

(Solicitor or agent for the plaintiff [or  
defendant or insert name of party on  
whose behalf facts are admitted])

**Facts admitted**

**Qualifications**

[Here set out the facts admitted and any qualifications to those admissions, for example  
as follows:]; and

- (g) by omitting from Form 30 “or Limitations, if any, subject to  
which they are admitted”.

**Seventh Schedule**

**10.** The Seventh Schedule to the Principal Rules is amended by  
omitting Form No. 6 and Form No. 7 and substituting the following Form:

No. 6 (RULE 22)

NOTICE OF INTENTION TO APPEAR ON PETITION

[Title]

TO THE PETITIONER:

Take notice as follows:

1. A. B., of [address], a creditor for \$ \_\_\_\_\_ of [or contributory holding (state number and  
class held) shares in] the above company intends to appear at the hearing of the petition  
advertised to be heard on [date].
2. A. B. intends to support [or oppose] the petition. [Note: this item need not be included in the  
notice.]

Dated:

Signed:

[insert name of party giving notice]

or

(Solicitor or agent for [insert name of  
party giving notice])

Address for service:

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**NOTES**

1. Reprinted as at 18 December 1992. See also Subordinate Laws Nos. 4, 11, 20 and 22,  
1993.
2. Notified in the ACT Gazette on 10 June 1993.

**NOTE ABOUT RULE HEADING**

On the day on which the Principal Rules are amended by these Rules, the heading to  
Rule 18 of Order 34 of the Principal Rules is amended by adding at the end “**documents  
for inspection**”.

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