



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 27 of 1995²

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

Dated 18 July 1995.

JEFFREY MILES
Chief Justice

J F GALLOP
Judge

T J HIGGINS
Judge

A G TOWILL
Registrar

Commencement

1. These Rules commence on the day on which they are notified in the *Gazette*.

Principal Rules

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

Time for appearance

3. Rule 6 of Order 3 of the Principal Rules is amended by omitting “*Service and Execution of Process Act 1901*” and substituting “*Service and Execution of Process Act 1992*”.

Substitution

4. Rule 27 of Order 39 of the Principal Rules is repealed and the following rule substituted:

Conduct money

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

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

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

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

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

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

Costs of complying with subpoena

5. Rule 29 of Order 39 of the Principal Rules is amended—

- (a) by inserting in subrule (1) “in excess of that provided for by rule 27” after “subpoena” (second occurring);
- (b) by omitting from subrule (2) “fix” and “fixed” and substituting “determine” and “determined” respectively; and
- (c) by omitting subrule (3) and substituting the following subrules:

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

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

Taking of affidavit

6. Rule 5 of Order 40 of the Principal Rules is amended by omitting from subrule (2) “date when and the”.

Repeal

7. Rule 1 of Order 51 of the Principal Rules is repealed and the following rule substituted:

Consolidation of actions

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

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

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

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

Authority of Master

8. Rule 1 of Order 61A of the Principal Rules is amended by inserting after paragraph (t) the following paragraph:

- “(ta) in the hearing and determination of applications for interlocutory orders in connection with appeals from any tribunal or other body (other than the Magistrates Court) established by or under a law of the Territory;”.

Substitution

9. Rule 5 of Order 80 of the Principal Rules is repealed and the following rule substituted:

Conduct money

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

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

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

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

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

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

“(6) Order 65 shall be deemed to apply *mutatis mutandis* in relation to any determination for the purpose of subrule (3).”.

Costs of complying with subpoena

10. Rule 7 of Order 80 of the Principal Rules is amended by omitting subrules (3) and (4) and substituting the following subrules:

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

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

“(5) Order 65 shall be deemed to apply *mutatis mutandis* in relation to any determination for the purpose of subrule (2).”.

Insertion

11. After Part 11 of the Principal Rules the following Parts are inserted:

**“PART 11A—REGISTRATION OF ORDERS UNDER THE
MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987 OF
THE COMMONWEALTH**

“ORDER 80A

Interpretation

“1. In this Order—

‘foreign order’ means a foreign forfeiture order, a foreign pecuniary penalty order or a foreign restraining order within the meaning of the Act;

‘register’ means the register kept pursuant to rule 2;

‘the Act’ means the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth.

Register

“2. A register of foreign orders shall be kept in the Registrar’s office.

Registration

“3. A copy of a foreign order, or a copy of an amendment of a foreign order, referred to in subsection 34 (9) of the Act is registered when it is included in the register.

Proceedings for registration

“4. (1) An application for the registration of a foreign order or of an amendment of a foreign order shall be by motion on notice joining the person against whom the foreign order was made as the respondent.

“(2) The applicant shall file with the notice of motion an affidavit setting out such particulars as are necessary to enable the Court to comply with subsection 23A (2) of the *Proceeds of Crime Act 1987* of the Commonwealth.

“(3) The applicant may, unless the Court otherwise orders, proceed without serving a copy of the notice of motion on the respondent.

“(4) Where the applicant includes in the notice of motion a request that the application be granted under this subrule, the Court may make an order for the registration of the foreign order or of the amendment of the foreign order in camera and without any appearance by or on behalf of the applicant.

“(5) Where an order is made for the registration of a foreign order or of an amendment of a foreign order, the applicant shall serve a copy of the order for registration and of the registered foreign order or registered amendment on the respondent.

“(6) The registration of a foreign order is cancelled when a note of its cancellation is endorsed on the copy of the order included in the register.

“PART 11B—REGISTRATION OF ORDERS UNDER THE PROCEEDS OF CRIME ACT 1991

“ORDER 80B

Interpretation

“1. In this Order—

‘interstate order’ means an interstate restraining order or an interstate forfeiture order within the meaning of the Act;

‘register’ means the register kept pursuant to rule 2;

‘the Act’ means the *Proceeds of Crime Act 1991*.

Register

“2. A register of interstate orders shall be kept in the Registrar’s office.

Registration

“3. A copy of an interstate order, or a copy of an amendment of an interstate order, referred to in section 78 or 84 of the Act is registered when it is included in the register.

Proceedings for registration

“4. (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.

Amendments, ancillary orders or directions

“5. For the purposes of subsections 81 (1) and 87 (1) of the Act, particulars of any amendments made to an interstate order or of any ancillary order or direction made by a court shall be communicated to the Court by filing a sealed copy of the amendment, order or direction.”.

First Schedule

12. The First Schedule to the Principal Rules is amended—

(a) by omitting from Form 45—

“but you need not attend on any day unless reasonable expenses have been paid or tendered to you.”;

(b) by inserting in Form 45, after the note, the following note:

“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”;

(c) by omitting from Form 46 subparagraph (c) (i);

(d) by inserting in Form 46, after the first note, the following note:

“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”;

(e) by omitting from Form 47 sub-subparagraph (a) (iii) (A);

(f) by inserting in Form 47, after the first note, the following note:

“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”;

(g) by omitting from Form 48 subparagraph (c) (i); and

(h) by inserting in Form 48, after the first note, the following note:

“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 39 subrule 27 (3) for a determination of the amount that is sufficient to compensate you for such expense or

loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”.

Eleventh Schedule

13. The Eleventh Schedule to the Principal Rules is amended—

- (a)** by omitting from Form 1 all the words from and including “If you consider” to and including “served on you.”;
- (b)** by inserting in Form 1, after the note, the following note:
“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”;
- (c)** by omitting from Form 2 subparagraph (c) (i);
- (d)** by inserting in Form 2, after the note, the following note:
“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”;
- (e)** by omitting from Form 3 sub-subparagraph (a) (iii) (A);
- (f)** by inserting in Form 3, after the note, the following note:
“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”;
- (g)** by omitting from Form 4 subparagraph (c) (i); and
- (h)** by inserting in Form 4, after the note, the following note:
“Note that if you have not been paid an amount that you consider adequate to compensate you for expense or loss reasonably incurred, or expected to be reasonably incurred, in complying with this subpoena, you must still comply with this subpoena and you may apply in writing to the Registrar under Order 80 subrule 5 (3) for a determination of the amount that is sufficient to compensate you for such expense or loss but, before so applying, you must give 7 days notice in writing of your intention to do so to the person who caused service of the subpoena.”.

NOTES

Principal Rules

1. Reprinted as at 19 February 1995. See also Subordinate Laws Nos. 11, 12, 13, 15 and 19, 1995.

Notification

2. Notified in the ACT Gazette on 3 August 1995.

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