



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 22 of 1996²

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

Dated 24 September 1996.

JEFFREY MILES
Chief Justice

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.

Insertion

3. Before rule 1 of Order 34 of the Principal Rules the following rule is inserted in that Order:

Privileged documents

“1A. For the purposes of this Order, a document is privileged from production only if it is—

- (a) a document of which evidence could not be adduced, or could not be adduced over the objection of any person, by reason of the operation of Part 3.10 (other than sections 128 and 130) of the *Evidence Act 1995* of the Commonwealth;
- (b) if the party who would otherwise give discovery is a natural person—a document the contents of which 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; or
 - (ii) is liable to a civil penalty;within the meaning of subsection 128 (1) of that Act; or
- (c) a document that relates to matters of state within the meaning of section 130 of that Act unless the court decides that it has ceased to be privileged from production.”.

Substitution

4. Rule 75 of Order 65 of the Principal Rules is repealed and the following rule substituted:

Counsel’s fees

“75. 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.”.

Insertion

5. After rule 14 of Order 72 of the Principal Rules the following rule is inserted:

Application for reseal of foreign grant—supporting affidavits

“14A. An application for the reseal of a foreign grant of representation shall be accompanied by affidavits in accordance with Forms 3GA and 3H.”.

First Schedule

6. The First Schedule to the Principal Rules is amended—
- (a) by inserting in the second note in Form 45 “of the Supreme Court Rules” after “Order 39 subrule 27 (3)”;
 - (b) by inserting in Form 45, after the second note, the following note:
“Note that any questions relating to the requirements of this subpoena should be addressed to *(name of party who requested the issue of the subpoena, or that party’s solicitor)* and not to the Court.”;
 - (c) by omitting from the heading to Form 46 “FOR PRODUCTION” and substituting “TO PRODUCE”;
 - (d) by omitting from subparagraph (c) (ii) of Form 46 “if you are not a party to these proceedings.”;
 - (e) by omitting from subparagraph (c) (iii) of Form 46 “the following legislation, namely *(insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker’s books)*” and “that legislation” and substituting “section 48 of the *Evidence Act 1995* of the Commonwealth” and “that Act” respectively;
 - (f) by omitting from the first note in Form 46 “or in the case of a corporation an order of sequestration may be made”;
 - (g) by inserting in the second note in Form 46 “of the Supreme Court Rules” after “Order 39 subrule 27 (3)”;
 - (h) by inserting in Form 46, after the third note, the following notes:
“Note that documents and things produced by you in accordance with this subpoena may be returned by post to you at the above address but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you or that you be informed when they are available for collection.
“Note that any questions relating to the requirements of this subpoena should be addressed to *(name of party who requested the issue of the subpoena, or that party’s solicitor)* and not to the Court.”;
 - (i) by omitting from the heading to Form 47 “FOR PRODUCTION” and substituting “TO PRODUCE”;
 - (j) by omitting from subparagraph (iii) (C) of Form 47 “the following legislation, namely *(insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker’s books)*” and “that legislation” and

substituting “section 48 of the *Evidence Act 1995* of the Commonwealth” and “that Act” respectively;

- (k) by omitting from paragraph (3) of the first note in Form 47 all the words after “subpoena should be” and substituting “addressed to (*name of party who requested the issue of the subpoena, or that party’s solicitor*) and not to the Court”;
- (l) by inserting in the second note in Form 47 “of the Supreme Court Rules” after “Order 39 subrule 27 (3)”;
- (m) by omitting from the heading to Form 48 “FOR PRODUCTION” and substituting “TO PRODUCE”;
- (n) by omitting from subparagraph (c) (ii) of Form 48 “if you are not a party to the proceedings,”;
- (o) by omitting from subparagraph (c) (iii) of Form 48 “(*insert reference to the legislation in force in the Territory enabling alternative mode of proof of entries in banker’s books*)” and “that legislation” and substituting “section 48 of the *Evidence Act 1995* of the Commonwealth” and “that Act” respectively;
- (p) by inserting in the second note in Form 48 “of the Supreme Court Rules” after “Order 39 subrule 27 (3)”;
- (q) by inserting in Form 48, after the third note, the following note:
“Note that if you produce the documents and things to the Registrar you are still required to attend for the purpose of giving evidence.”.

Third Schedule

7. The Third Schedule to the Principal Rules is amended by omitting Form 3H and substituting the forms set out in the Schedule to these Rules.

SCHEDULE

Rule 7

FORM 3GA

O. 72 r. 14A

AFFIDAVIT OF APPLICANT FOR RESEAL OF FOREIGN GRANT

[Heading as in Form 1]

No. P of 19 .

In the Estate of (name), late of (last address, occupation), deceased

On (date) I, (name) of (address) say on oath:

- 1 *[Probate of the will/ letters of administration of the estate/ order to collect and administer the estate] of the abovenamed deceased was granted by (name of court) to *[me/ (name)] on (date). The grant has not been revoked. A true copy of the grant is annexed and marked "A".
- 2 *[I am *[the/a] person to whom *[probate was/ letters of administration were/ the order to collect and administer was] granted.]
- 3 *[I am authorised, under a power of attorney, by the *[executor of the will/ administrator of the estate] of the abovenamed deceased to make this application. I have not received any notice of revocation of the power of attorney. A true copy of the power of attorney is annexed and marked "B".]
- 4 The deceased *[left/did not leave] property within the Australian Capital Territory.
- 5 An inventory of all property of the estate in the Australian Capital Territory of which I am presently aware is annexed and marked "C". I will disclose to the Court any other property of the estate in the Australian Capital Territory which comes to my notice.
- 6 The estate has a gross value of \$ (amount).
- 7 If this application is granted I will administer the estate according to law and if required I will give a true account of my administration of the estate to the Registrar.
- 8 Notice of intention to make this application was published on (date) in the (name) which is a daily newspaper published and circulating within the Australian Capital Territory. A copy of the notice as published is annexed and marked "D".

SWORN at)
Before me)

*(Delete if, or whichever is, inapplicable)

ANNEXURE "C"

INVENTORY OF PROPERTY IN THE AUSTRALIAN CAPITAL TERRITORY

of the estate of (name) of (last address, occupation), deceased

<u>Description</u>	<u>Estimated or known value</u>
(description sufficient to identify property)	\$ (amount) (total)

FORM 3H

O. 72 r. 6, 12, 14 and 14A

SCHEDULE—continued

AFFIDAVIT OF SEARCH

[Heading as in Form 1]

No. P _____ of 19 ____ .

In the Estate of (*name*), late of (*last address*,
occupation), deceased

On (*date*) I, (*name*) of (*address*) say on oath:

I have searched in the Office of the Registrar of this Court today and find as follows:

- 1 No caveat against the application for the *[grant of probate of the will of/ grant of administration of the estate of/ reseal of a foreign grant of administration of the estate of] the abovenamed deceased has been lodged.
- 2 No application for the *[grant of probate of the will of/ grant of administration of the estate of/ reseal of a foreign grant of administration of the estate of] the abovenamed deceased has been made to the Court or the Registrar of Probates.
- 3 *[[Probate of the will of/ Administration of the estate of] the abovenamed deceased has not been granted by the Court or the Registrar of Probates.]
- 4 *[A foreign grant of representation of the estate of the abovenamed deceased has not been sealed with the seal of the Court.]

SWORN at _____)

Before me _____)

*(Delete if, or whichever is, inapplicable)

NOTES

Principal Rules

1. Reprinted as at 31 January 1996. See also Subordinate Laws Nos. 4, 10 and 11, 1996.

Notification

2. Notified in the ACT Gazette on 2 October 1996.