



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 38 of 1997²

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

Dated 3 December 1997.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

K J CRISPIN

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. After Order 34A of the Principal Rules the following Order is inserted:

“ORDER 34B

NON-PARTY PRODUCTION

Interpretation

“1. 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.

Notice for non-party production

“2. 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.

Form of notice

“3. A notice for non-party production shall be in accordance with Form 27A in the First Schedule.

Service of notice

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

“(2) Within 2 days after a notice for non-party production is served on the respondent to the notice, a copy of the notice shall be served on each other party to the action who has an address for service by leaving it at that address.

Inspection by other parties

“5. For the purpose of deciding whether to make a claim referred to in paragraph 7 (1) (a), any party to an action on whom a copy of a notice for non-party production is served pursuant to subrule 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.

Application to set aside or vary

“6. (1) The respondent to a notice for non-party production or any other party to the action may, within 14 days after its service 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.

Privilege or objection

“7. (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.

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

Copying produced documents

“8. (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.

Costs

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

“(4) A determination for the purpose of 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 pursuant to that subrule) are to be paid by any other party to the action.”.

Repeal

4. Division 2 of Order 39 of the Principal Rules is repealed.

First Schedule

5. The First Schedule to the Principal Rules is amended by inserting after Form 27 the following form:

FORM 27A
NOTICE FOR NON-PARTY PRODUCTION
[Heading as in Form 1]

O. 34B r. 3

To (name) of (address)

Take notice that you are required to produce to the *[plaintiff/ defendant] in this action for inspection the document/s specified in the Schedule in your possession or control relating to a matter in question in the action that you could be required to produce at the trial of the action.

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The document/s must be produced at your, or your solicitor's, place of business during ordinary business hours, or at another time and place agreed between the *[plaintiff/ plaintiff's solicitor/ defendant/ defendant's solicitor] and you, within *[14 days/ (period longer than 14 days)] after service of this notice on you.

If you fail to produce *[the/ a] specified document, the *[plaintiff/ defendant] may apply to the Court for a determination in relation to the failure.

The *[plaintiff/ defendant] or the solicitor is entitled to copy the document/s produced unless you object. If you do object, the *[plaintiff/ defendant] may apply to the Court for a determination in relation to the objection.

You may, within 14 days after service of this notice on you, apply to the Court to have it set aside or varied.

If you claim that *[the/ a] specified document is privileged from production or otherwise object to its production, you need not produce the document and you may apply to the Court for a determination in relation to the claim or objection.

Any expenses reasonably incurred by you in complying with this notice, including costs of facilitating the copying of any document/s, shall be borne by the *[plaintiff/ defendant]. If you have not received an amount that you consider adequate to compensate you for expenses reasonably incurred, or expected to be reasonably incurred, in complying with this notice, you must still comply with this notice and you may apply in writing to the Registrar under Order 34B subrule 9 (2) of the Supreme Court Rules for a determination of the amount that is sufficient to compensate you for those expenses but, before so applying, you must give 7 days notice in writing of your intention to do so to the applicant for this notice.

You must notify the *[plaintiff/ plaintiff's solicitor/ defendant/ defendant's solicitor] of the place and time at which the document/s will be available for inspection. The *[name of the *[plaintiff's/ defendant's] solicitor is (name) and the] relevant address and telephone number is (address and telephone number).

SCHEDULE

(description of document/s)

(If a copy of the notice is to be served on another party pursuant to Order 34B subrule 4 (2) of the Supreme Court Rules)

*[To (name of other party) of (address)

You may, within 14 days after service of this notice on the respondent to the notice, apply to the Court to have it set aside or varied.

If you claim that *[the/ a] specified document is privileged from production or otherwise object to its production, you may apply to the Court for a determination in relation to the claim or objection.]

Dated:

By the Court

Registrar

*(Delete if, or whichever is, inapplicable)

NOTES

Principal Rules

1. Reprinted as at 31 January 1997. See also Subordinate Laws Nos. 8, 9, 20, 30, 31 and 33, 1997.

Notification

2. Notified in the ACT Gazette on 10 December 1997.