



Australian Capital Territory

Supreme Court Rules Amendment

Subordinate Law 2000 No 46

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

Dated 6 November 2000.

JEFFREY MILES
Chief Justice

T. J. HIGGINS
Judge

K. J. CRISPIN
Judge

M. F. GRAY
Judge

A. G. TOWILL
Registrar



Australian Capital Territory

Supreme Court Rules Amendment

Subordinate Law 2000 No 46

made under the

Supreme Court Act 1933

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**SCHEDULE 1
MINOR AMENDMENTS**

1 Commencement

These rules commence 28 days after they are notified in the Gazette.

2 Rules amended

These rules amend the *Supreme Court Rules*.

Note Schedule 1 also contains amendments to the *Supreme Court Rules*.

3 Interpretation

Order 1 rule 4 is amended by inserting in subrule (1) the following definitions:

“*defend*, for Division 19.2—see order 19 rule 16.

person with a legal disability means—

- (a) a child; or
- (b) a person with a mental disability.

sue, for Division 19.2—see order 19 rule 16.”.

4 Right of proceeding in court

Order 8 subrule 1 (2) is omitted and the following subrule substituted:

“(2) A person with a legal disability may only proceed by a solicitor.”.

5 Substitution

Order 10 rule 8 is repealed and the following rule substituted:

“8 Service on defendants with a mental disability

“(1) This rule applies to a defendant in a proceeding who is a person with a mental disability and an adult.

“(2) Unless the court otherwise orders, a document in the proceeding (including a document for which personal service is necessary) may be served on the defendant by serving it on—

- (a) a person responsible for the defendant’s care; or
- (b) a person with whom the defendant lives.

“(3) A document may be served on the defendant only if the court so orders, whether before or after the document is served on the person.”.

6 Substitution

Order 14 rule 3 is repealed and the following rule substituted:

“3 Default by defendant with a legal disability

“(1) This rule applies if no appearance is entered to an originating application for a defendant with a legal disability.

“(2) The plaintiff may proceed with the application only if the court assigns a litigation guardian by whom the defendant may appear and defend the action.

“(3) On application by the plaintiff (the *guardianship application*), the court may appoint a litigation guardian for a defendant if—

- (a) the originating application was served under order 10 rule 7 or 8; and
- (b) notice of the guardianship application has been served under order 10 rule 7 or 8—
 - (i) after the time for the entry of an appearance to the originating application has ended; and
 - (ii) at least 6 days before the hearing date for the guardianship application.

“(4) The court may dispense with the requirement under paragraph (3) (b) at the hearing of the guardianship application.”.

7 Claims for debt and liquidated demands—final judgment

Order 14 subrule 4 (6) is amended by omitting paragraph (b) of the definition of *qualified person* and substituting the following paragraph:

“(b) if the plaintiff is a person with a legal disability—the person’s litigation guardian;”.

8 Substitution

Order 19 rule 12 is repealed and the following rule substituted:

“12 Amendment on misjoinder or nonjoinder of parties

“(1) A cause or matter is not defeated because of the misjoinder or nonjoinder of parties, and the court may in every cause or matter deal with the matter in controversy in relation to the rights and interests of the parties before it.

“(2) The court may order—

- (a) that a person who is a party be struck out if the person has been improperly joined; or
- (b) that a person be added as a party if—
 - (i) the person ought to have been joined; or
 - (ii) the addition of the person as a party is necessary to allow the court effectively and completely to decide all the questions involved in the cause or matter.

“(3) An order may be made under subrule (2)—

- (a) at any stage of the proceeding; and
- (b) on the application of a party or on its own initiative; and
- (c) on the terms the court considers just; and
- (d) whether the person to be struck out or added is, or should be, a plaintiff or defendant.

“(4) However, a person may not be added as a plaintiff suing without a litigation guardian, or as a litigation guardian of a plaintiff who is a person with a legal disability, without his or her written consent.”.

9 Substitution

Order 19 rules 14 and 15 are repealed and the following rules substituted:

“14 Change of parties—amendment of application and service etc

“(1) Unless the court otherwise orders, if a person is added or substituted as defendant, the plaintiff must—

- (a) file an amended copy of the originating application; and
- (b) serve the person with a sealed copy of the amended originating application in the same way as an original defendant is served.

“(2) Unless the court otherwise orders, if the person is added as defendant, the proceeding against the person is taken to have begun only when the order adding the person is made.

“15 Probate actions

In a probate action—

- (a) a person who is named as defendant by the originating process, or on whom notice of the action is served by the court’s direction, may enter an appearance in the action; and

- (b) a person not named as a defendant may apply to the court for leave to intervene in the action; and
- (c) application for leave to intervene in the action must be made by motion supported by an affidavit showing the interest of the applicant in the deceased person's estate; and
- (d) a person with leave to intervene is not entitled to be heard in the action until the person enters an appearance; and
- (e) a person with leave to intervene becomes a defendant on filing an appearance and the proceeding continues as if—
 - (i) the person had been named as a defendant by the originating process; and
 - (ii) the person had been served with the originating process when the process was issued; and
- (f) if the court gives leave to intervene, it may give the directions it considers appropriate for filing and service of pleadings, the filing of an affidavit of testamentary scripts or other matters.”.

10 Substitution

Order 19 Division 2 is repealed and the following Division substituted:

“Division 19.2—People with legal disability

“16 Meaning of *sue* and *defend*

In this Division, to *sue* and to *defend* include to be a party to a cause or matter.

“17 Children

A child may sue as plaintiff in any action, and defend any action, by his or her litigation guardian.

“18 People with a mental disability

A person with a mental disability may sue as plaintiff in any action, and defend any action, by his or her litigation guardian.

“19 Appearance of people with a legal disability

A person with a legal disability may only enter an appearance by his or her litigation guardian.

“20 Appointment of litigation guardian

“(1) A litigation guardian may be appointed without an order of the court for the appointment.

“(2) However, a solicitor applying to enter an appearance as a litigation guardian must make and file an affidavit in accordance with form 11 in Schedule 1.

“21 Written authority of litigation guardian or relator

“(1) A person’s name may be used in an action as litigation guardian of a person with a legal disability, or as relator, only if the person has signed a written authority to the solicitor for the person’s name to be used that way.

“(2) An authority must be filed by the solicitor.

“22 Consent on behalf of person with a legal disability

“(1) This rule applies to a consent about the taking of evidence or any other procedure that is given in a cause or matter by the litigation guardian of a party who is a person with a legal disability.

“(2) If the consent is given with the court’s approval, the consent has effect as if—

- (a) it had been given by the party; and
- (b) the party were not a person with a legal disability.”.

11 Substitution

Order 19 rule 49 is repealed and the following rule substituted:

“49 Service of notice on person with a legal disability

Notice of a judgment or order must be served on a person with a legal disability in the same way as an originating application may be served on a defendant under order 10 rules 7 and 8.”.

12 Substitution

Order 21 is repealed and the following order substituted:

“ORDER 21

CHANGE OF PARTIES BY DEVOLUTION OR TRANSFER

“1 Effect of death or bankruptcy

If a party to a proceeding dies or becomes bankrupt but the cause of action survives, the proceeding is not suspended or ended by the death or bankruptcy.

“2 Change of party—new party

“(1) This rule applies if, at any stage during a proceeding, the interest or liability of a party (the *initial party*) is transferred to, or devolves on, someone else (the *new party*).

“(2) The court may order that the new party be substituted for the initial party if the substitution of the new party is necessary to allow the court effectively and completely to decide all the questions involved in the proceeding.

“(3) An application for an order under this rule may be made in the absence of any other party.

“(4) Unless the court otherwise orders, a sealed copy of an order made under this rule must be served on each party, including the new party and the initial party.

“(5) However, if the order is made on application, a sealed copy of the order need not be served on the applicant.

“(6) The court may give directions to give effect to subrule (4), including directions about who is to serve the documents required to be served on a party under the subrule.

“(7) Unless the court otherwise orders, if the new party is a defendant, the plaintiff must—

- (a) file an amended copy of the originating application; and
- (b) serve the new party with a sealed copy of the amended originating application in the same way as an original defendant is served.

“(8) Unless the court otherwise orders, if the new party is a defendant, the proceeding against the new party is taken to have begun only when the order adding the new party is made.

“3 Change of party—new side or capacity

“(1) The court may make an order under rule 2 for someone (the *new party*) to be made a party even if the person is already a party.

“(2) If the new party is already a party on the other side of the proceeding, the court must, in the order, direct that the new party cease to be a party on the other side.

“(3) If the new party is already a party on the same side of the proceeding but in a different capacity, the court may, in the order, direct that the person cease to be a party in the different capacity.

“4 Variation or discharge of order for new party etc

“(1) A person made a party under rule 2 may apply to have the order varied or discharged within 14 days after—

- (a) if the person is a person with a legal disability who does not have a litigation guardian—the appointment of a litigation guardian; or
- (b) in any other case—service of a sealed copy of the order on the person.

“(2) If a copy of an order under rule 2 is served on a person with a legal disability who does not have a litigation guardian, the order does not have effect in relation to the person while the person may apply to the court under subrule (1) for variation or discharge of the order.

“5 Notation of order in cause book

If an order is made under rule 2, the registrar must ensure that the order is noted in the cause book.

“6 Death and no continuation

“(1) This rule applies if a party to a proceeding dies but the cause of action survives.

“(2) If the party is the plaintiff and the person entitled to proceed delays prosecution of the proceeding without due cause, the defendant may apply for an order that the plaintiff’s proceeding be dismissed, and the defendant have judgment on any counterclaim, unless the person proceeds within a stated time.

“(3) If the party is the defendant and the person entitled to proceed delays prosecution of the proceeding without due cause, the plaintiff may apply for an order that the plaintiff have judgment on the plaintiff’s claim,

and any counterclaim be dismissed, unless the person proceeds within a stated time.”.

13 Substitution

Order 23 rule 13 is repealed and the following rule substituted:

“13 Allegations not denied are admitted except against person with a legal disability

An allegation of fact in a pleading, other than a petition or summons, is taken to be admitted unless—

- (a) it is denied specifically or by necessary implication in the pleading of the opposite party; or
- (b) it is stated to be not admitted in the pleading of the opposite party; or
- (c) the opposite party is a person with a legal disability.”.

14 Substitution

Order 26 rules 8 and 9 are repealed and the following rules substituted:

“8 Approval of settlement of action by person with a legal disability

“(1) In an action in which there is a claim for an amount (including an amount of damages) by or on behalf of a person with a legal disability, a settlement or compromise may not be entered into, and an amount paid into court may not be accepted, without the court’s approval.

“(2) This rule applies whether the person is suing alone or with another party.

“9 Amount recovered by person with legal disability to be paid into court

An amount (including an amount of damages) recovered, awarded or agreed to be paid in an action in relation to the claim of a person with a legal disability must be paid into court.

“10 Court orders about recovered etc amounts

“(1) The court may make an order directing how an amount recovered, awarded or agreed to be paid in an action in relation to the claim of a person with a legal disability (the *claimant*) must be dealt with.

- “(2) Without limiting subrule (1), the court may, by order, direct—
- (a) the payment of all or a part of the amount to—
 - (i) the claimant or his or her litigation guardian for—
 - (A) expenses incurred by or paid for, or on behalf of, the claimant; or
 - (B) the maintenance or benefit of the claimant; or
 - (ii) the claimant’s solicitor in relation to costs; or
 - (b) the investment of all or a part of the amount on behalf of the claimant in the way stated in the order; or
 - (c) the investment of all or a part of the interest received from an investment under this rule on behalf of the claimant in the way stated in the order; or
 - (d) the changing of an investment made on behalf of the claimant under this rule; or
 - (e) the sale of securities in which an amount is invested on behalf of the claimant under this rule at the time, and on the conditions, stated in the order; or
 - (f) the payment of all or a part of the amount, or the transfer of a security or investment under this rule (including an account with an authorised deposit-taking institution), on behalf of the claimant.

“(3) In this rule:
amount includes an amount of damages.”.

15 Application for final judgment—debt or liquidated amount

Order 31 subrule 9A (3) is amended by omitting paragraph (b) of the definition of *qualified person* and substituting the following paragraph:

- “(b) if the plaintiff is a person with a legal disability—the plaintiff’s litigation guardian;”.

16 Privileged documents

Order 34 rule 1A is repealed.

17 Substitution

Order 34 rule 23 is repealed and the following rule substituted:

“23 Failure to comply with order

“(1) If a party (the *failing party*) fails to comply with an order to answer interrogatories, or for discovery or inspection of documents, the party interrogating may apply to the court for an order under this rule.

“(2) The court may, by order, do the following under this rule in relation to the failing party:

- (a) find the party (or, for a party with a legal disability, the party’s litigation guardian) to be in contempt of court and deal with the party accordingly;
- (b) if the party is a plaintiff—dismiss the party’s action;
- (c) if the party is a defendant—strike out the party’s defence (if any), and place the party in the same position as if the party had not defended.”.

18 Repeal

Order 34 rule 28 is repealed.

19 Substitution

Order 37 rule 5 is repealed and the following rule substituted:

“5 Person with a legal disability

“(1) If a person with a legal disability is a party to a special case in a cause or matter, the special case must not be set down for argument without the court’s leave.

“(2) The application for leave must be supported by sufficient evidence that the statements contained in the special case are true, as far as they affect the interests of the person with a legal disability.”.

20 Substitution

Order 38 rule 18 is repealed and the following rule substituted:

“18 Order of evidence and addresses

“(1) The court may give directions about the order of evidence and addresses and the conduct of the trial generally.

“(2) Subject to any contrary direction—

- (a) if the plaintiff has the burden of proof on any question—the plaintiff presents his or her case first; and

- (b) if the defendant has the burden of proof on every question—the defendant presents his or her case first.

“(3) Subject to any contrary direction—

- (a) if the only parties in a trial are a single plaintiff and a single defendant and there is no counterclaim—the order of evidence and address is to be in accordance with subrules (4) to (8); and
- (b) in any other case—the order of evidence and addresses is to be in accordance with those subrules as far as is practicable.

“(4) The party who presents his or her case first (the *first party*) may make an address opening the party’s case and may then bring evidence in support of the case.

“(5) If, during the presentation of the first party’s case, no document or thing is admitted in evidence or by tender by the other party, then, after the first party has brought evidence in support of his or her case, the other party must decide whether or not to present evidence.

“(6) If the other party elects not to present evidence, the first party may make a closing address and the other party may then make a closing address.

“(7) If the other party elects to present evidence—

- (a) the other party may first make an opening address and, after presenting any evidence in support of it, may make a closing address; and
- (b) after the party has made a closing address, the first party may make a closing address.

“(8) If, during the presentation of the first party’s case, a document or thing is admitted in evidence or by tender by the other party and, after that case is brought—

- (a) the other party presents evidence—
 - (i) the other party may first make an opening address and, after presenting any evidence in support of it, may make a closing address; and
 - (ii) after the party has made a closing address, the first party may make a closing address; or

- (b) the other party does not present evidence—the other party may make a closing address and the first party may then make a closing address.”.

21 Substitution

Order 52 Division 3 is repealed and the following Division substituted:

“Division 52.3—Accounts

“25 Accounts of liquidators, guardians etc

This order applies to the accounts of a liquidator, or of a guardian, manager or litigation guardian of a person with a legal disability, in the same way (but subject to any necessary modifications) as it applies to the accounts of a receiver.”.

22 Applications for relief without administration

Order 58 rule 1 is amended by omitting “returnable in Chambers” and substituting “and a notice of motion”.

23 Accounts, merchants etc

Order 58 rule 13 is amended by omitting “The Judge in Chambers” and substituting “A judge in a proceeding to which this order applies”.

24 Substitution

Order 58 Division 3 is repealed and the following Division substituted:

“Division 58.3—Proceedings relating to people with a legal disability

“14 Evidence on application to appoint guardian etc

On application for the appointment of a guardian of a child and allowance for maintenance, the evidence must show—

- (a) the age of the child; and
- (b) the nature and amount of the child’s assets and income; and
- (c) what relatives the child has.

“15 Appointment of litigation guardian may be required

At any time during a proceeding, a judge may require a litigation guardian to be appointed for a person with a legal disability.”.

25 Substitution

Order 65 rule 9 is repealed and the following rule substituted:

“9 Solicitor appointed litigation guardian

“(1) If the court appoints a solicitor as litigation guardian of a person with a legal disability, the court may direct that the costs incurred exercising the functions of litigation guardian must be paid either—

- (a) by the parties, or 1 or more of the parties, to the cause or matter in which the appointment is made; or
- (b) out of a fund in court (if any) in which the person is interested.

“(2) The court may give directions for the repayment or allowance of costs mentioned in subrule (1).”.

26 Substitution

Order 72 Division 3 is repealed and the following Division substituted:

“Division 72.3—Administration during minority

“20 Grants of administration during minority

“(1) A grant of administration during minority may be made to the guardian of a child.

“(2) A grant is subject to the limitations or conditions the court orders.

“21 Election and assignment of guardians

“(1) A child 7 years or older may elect a guardian.

“(2) The court may assign a guardian for a child when a guardian has not been, or may not be, elected.

“(3) In a family with a child 7 years or older and a child under 7 years old, an elected guardian may act for all the children without special assignment.

“(4) If the guardian of a child makes an application for administration, the guardian must produce evidence of his or her election or assignment.”.

27 Application as to time and mode of sale etc of real estate

Order 72 subrule 36 (1) is amended by omitting “in case 1 party is an infant or is of unsound mind, and no guardian or committee of his or her

person or estate has been appointed” and substituting “if a party is a person with a legal disability and does not have a litigation guardian”.

28 Commencement of proceedings

Order 83 rule 3 is amended by omitting “summons” and substituting “application”.

29 Insertion

After order 83 rule 6 the following rules are inserted:

“6A Payment into and out of court

“(1) A party to an arbitration agreement (the *respondent*) may at any time pay into court an amount in satisfaction of a claim to which the agreement applies.

“(2) However, if a defence setting up tender before the commencement of the arbitration is claimed in the arbitration, the amount claimed to have been tendered must be paid into the court.

“(3) The respondent may, without leave, make additional payments increasing any amount paid in.

“(4) The respondent must give notice of the payment to the other parties to the arbitration agreement in accordance with form 83 in Schedule 1 and must state in the notice—

- (a) the claim the amount is intended to satisfy; and
- (b) whether liability is admitted or denied.

“(5) Each party receiving notice of payment must, within 3 days after receiving it, give a written acknowledgment of its receipt to the party who gave the notice.

“6B Acceptance of amount paid into court

“(1) This rule applies if an amount is paid into court under rule 6A by a party to an arbitration agreement (the *respondent*) in satisfaction of a claim of another party to the agreement (the *claimant*).

“(2) However, this rule does not apply if a defence setting up tender before the commencement of the arbitration is claimed in the arbitration.

“(3) Within 14 days after receiving notice of payment or, if more than 1 payment has been made, within 14 days after receiving notice of the last payment, the claimant may accept the amount in satisfaction of the claim

by giving the respondent and the registrar notice in accordance with form 84 in Schedule 1.

“(4) If the parties consent, or the registrar is satisfied by affidavit that the amount paid into court has been accepted under subrule (2), the amount must be paid to the claimant or, on the claimant’s written authority, to his or her solicitor, and all further proceedings on the claimant’s claim are stayed.

“(5) If the claimant accepts the amount paid into court, the claimant may file a bill of costs for taxation unless the arbitrator or umpire otherwise directs.

“(6) The bill of costs may be filed not earlier than 4 days after payment of the amount out of court.

“(7) The bill of costs may cover—

- (a) the claimant’s costs up to the date of payment of the amount into court; and
- (b) the claimant’s reasonable costs in accepting the amount.

“(8) The claimant may sign judgment for the taxed costs.

“(9) Judgment may be signed not earlier than 48 hours after taxation.

“(10) If the respondent had made a counterclaim and the notice of payment into court stated that in making the payment the respondent had taken into account and intended to dispose of the counterclaim, all further proceedings on the counterclaim against the claimant are stayed if the claimant accepts the payment.

“6C Amount remaining in court

If an amount paid into court in relation to an arbitration agreement is not accepted under rule 6B, the amount may only be paid out—

- (a) with the agreement of the parties to the agreement; or
- (b) in accordance with a certificate of the arbitrator or umpire or an order of the court.

“6D Nondisclosure of amount paid into court

No statement of the fact that an amount has been paid into court under rule 6A may be included in a pleading in the arbitration, and no communication of that fact may be made to the arbitrator or umpire on the

hearing of the arbitration, until all questions of liability and amount of debt or damages have been decided.”.

30 Insertion

After order 83 Division 1 insert the following Division:

“Division 83.2—Subpoenas issued under the Arbitration Act

Note The court has wide powers to issue subpoenas under the Arbitration Act, s 17. This Division applies to those subpoenas (see the definition of *subpoena* in rule 11A).

“11A Definitions for div 83.2

In this Division:

arbitrator, in relation to a subpoena, means the arbitrator for the arbitration in relation to which the subpoena was issued.

proceeding, except in Division 83.2, means an arbitration proceeding.

subpoena means a subpoena issued under the Arbitration Act.

umpire, in relation to a subpoena, means the umpire for the arbitration in relation to which the subpoena was issued.

“11B Issue—forms 85 to 88

“(1) Unless the court otherwise orders, the registrar may issue a subpoena at the request of a party to a proceeding.

“(2) A subpoena is to be issued under seal.

“(3) A party requesting the issue of a subpoena must file a copy of the subpoena, but need not file a praecipe for subpoena.

“(4) Subpoenas are to be in the forms numbered 85 to 88 in Schedule 1.

“11C Return date for subpoena for production

Unless the court otherwise orders, a subpoena for production must not require a person to produce a document earlier than 14 days after the service of the subpoena.

“11D Conduct money

“(1) If a party serves a subpoena requiring the person named to attend or to produce a document or thing, or both, the party must, at the time of service, tender to the person—

- (a) an amount sufficient to allow 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 mentioned in subrule (1) may be tendered to anyone on whom the subpoena may be served.

“(3) If a person named in a subpoena has not received an amount that the person 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 served the subpoena at least 7 days notice of his or her intention to do so, apply in writing to the arbitrator or umpire to decide the amount that is sufficient to compensate for the expense or loss.

“(4) A decision under subrule (3) is taken to be a judgment of the court for the amount decided against the party who served the subpoena and may be enforced accordingly.

“11E Production by non-party

“(1) This rule applies to a subpoena for production of a document or thing in relation to a proceeding that requires attendance before the arbitrator or umpire.

“(2) Unless the court otherwise orders, if the person named in the subpoena is not a party, the subpoena must allow the person to produce the document or thing to the arbitrator or umpire, at the address nominated by the arbitrator or umpire and included in the subpoena, not later than the day before the first day the person’s attendance is required, instead of attending and producing the document or thing as required by the subpoena.

“(3) If a document or thing is produced to the arbitrator or umpire under subrule (2), the arbitrator or umpire must give a receipt to the person producing the document or thing.

“(4) This rule does not apply to a part of the subpoena that requires the person named to attend to give evidence in the proceeding.

“11F Costs of complying with subpoena

“(1) This rule applies if a person named in a subpoena for production of a document or thing—

(a) is not a party; and

- (b) incurs substantial expense or loss in complying with the subpoena that is in excess of the amount provided under rule 11D (Conduct money).

“(2) The arbitrator or umpire may order the party who served the subpoena to pay the person an amount, decided by the arbitrator or umpire, sufficient to compensate the person for the expense or loss reasonably incurred in complying with the subpoena.

“(3) An amount under subrule (2) is in addition to any amount the person served with the subpoena is entitled to be paid under rule 11D, or because of order 65 rule 7 (Scales of costs) and Schedule 4 (Costs).

“(4) An order under subrule (2) is taken to be an award of the umpire or arbitrator against the party who served the subpoena and may be enforced accordingly.

“11G Banker’s books

“(1) This rule applies if—

- (a) the person named in the subpoena is an officer of a bank; and
- (b) the bank is not a party; and
- (c) the subpoena requires the person to produce a banker’s book; and
- (d) the contents of the banker’s book can be proved under a law in force in the Territory in a way other than the production of the book.

“(2) Unless the court otherwise orders, the subpoena must expressly allow the person to produce proof of the relevant entries in accordance with that law, instead of producing the banker’s book.

“(3) The registrar is not required to work out whether this rule applies to a subpoena when issuing it, but the court may set aside as irregular a subpoena which does not comply with subrule (2).

“11H Subpoenas to produce document

“(1) A subpoena to produce a document must have written on it or annexed to it a written statement commencing with the words ‘Order 83 rules 11M and 11N of the Rules of Court are as follows—’ and followed by the text of rules 11M and 11N.

“(2) Subrule (1) does not apply to a subpoena if it is intended that the procedure provided for in rules 11M and 11N is not to be followed.

“11I Service of subpoenas

“(1) A subpoena in a proceeding must be served personally.

“(2) However, if the person named in the subpoena is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor’s consent, be served on the person by leaving it at the solicitor’s address for service.

“(3) A subpoena is taken to be served personally on a medical expert if, at the place where the expert’s practice is carried on—

- (a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 16 years old; or
- (b) if a person mentioned in paragraph (a) refuses to accept the subpoena—the subpoena is put down in the person’s presence and the person is told of the nature of the subpoena.

“(4) If a subpoena requires a medical expert to attend to give evidence, it may be served later than 6 weeks before the day fixed for the hearing of the proceeding only if—

- (a) the subpoena is a subpoena served in accordance with leave given under subrule (5); or
- (b) the court otherwise orders.

“(5) If a medical expert to whom a notice has been delivered in accordance with rule 11J fails to attend the court on the day and at the time stated in the notice, the court may give leave for the service of a subpoena on the medical expert requiring the attendance of the medical expert.

“11J Notice instead of subpoena to medical expert

“(1) In a proceeding, instead of a subpoena, a notice may be delivered to a medical expert stating the date and time fixed for the hearing of the proceeding and requesting the expert’s attendance.

“(2) A notice under subrule (1)—

- (a) may be delivered in the same way as a subpoena may be served on a medical expert under subrule 11I (1) or (3); and
- (b) must not be delivered later than 6 weeks before the date fixed for the hearing of the proceeding.

“11K No shortening of time for service

The parties may not, by consent, shorten the time prescribed under this Division for service of a subpoena on, or delivery of a notice under subrule 11J (1) to, a medical expert.

“11L Setting aside

“(1) The court may, on motion by the person named in a subpoena, set aside the subpoena entirely or in part.

“(2) Notice of a motion under subrule (1) must be filed and served on the party who served the subpoena.

“11M Delivery of documents to the arbitrator or umpire—no objection

“(1) This rule applies if a party serves a subpoena on a person (the *served person*) to produce a document and the served person does not object to producing the document to the arbitrator or umpire or to its being made available by the arbitrator or umpire for inspection by a party.

“(2) The party serving the subpoena may arrange with the served person that the document be sent or delivered to the arbitrator or umpire.

“(3) If an arrangement is made under subrule (2), the served person must—

- (a) post the document and related material to the arbitrator or umpire so as to reach the arbitrator or umpire before the day stated in the subpoena; or
- (b) deliver the document and related material to the arbitrator or umpire before that day.

“(4) On receiving a document produced in accordance with this rule, the arbitrator or umpire must notify the party that served the subpoena or the party’s solicitor that the arbitrator or umpire has received the document from the served person.

“(5) The arbitrator or umpire may allow a party or, if requested by a party, someone else to inspect a document produced under this rule.

“(6) If the served person produces documents to the arbitrator or umpire in accordance with this rule and with an arrangement with the party who served the subpoena, the served person has answered the subpoena and is taken to have complied with it.

“(7) In this rule:

related material, for a document required to be produced under subpoena, means—

- (a) the subpoena or a copy of the subpoena; or
- (b) a schedule giving brief particulars of the document and containing an adequate reference to the proceeding in which the subpoena was issued and the name and address of the person producing the document.

“11N Delivery of documents to the arbitrator or umpire—objection

“(1) This rule applies if a party serves a subpoena on a person (the *served person*) to produce a document and the served person objects to producing the document to the arbitrator or umpire or to its being made available by the arbitrator or umpire for inspection by a party.

“(2) The served person is not required to produce the document to the arbitrator or umpire, but must answer the subpoena by attending before the arbitrator or umpire at the time and place mentioned in the subpoena and make his or her objection to the arbitrator or umpire.”.

31 Schedule 1 forms 11 and 12

Schedule 1 forms 11 and 12 are omitted and the following forms substituted:

“FORM 11

(See o 19 r 21)

AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN

[Heading as in form 1]

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

1 *AB*, of _____ is an appropriate person to act as litigation guardian of the defendant, and has no interest in the matters in question in this action [matter] adverse to that of the defendant.

2 The consent of *AB* to act as litigation guardian of the defendant is annexed.

Sworn etc.

[The consent of the person to act as litigation guardian must be annexed.]”.

“FORM 12

(See o 19 r 48)

MEMORANDUM ON NOTICE OF JUDGMENT

[Heading as in form 1]

To XY, of

Take notice:

1 From the service of this notice you [*or, as the case may be*, the person with a legal disability] will be bound by proceedings in this cause in the same way as if you [*or the person with a legal disability*] had been originally made a party.

2 You [*or the person with a legal disability*] may, on entering an appearance at the Registrar’s office, attend proceedings under this judgment [*or order*].

3 You [*or the person with a legal disability*] may within 1 month after the service of this notice apply to the Court to discharge, vary or add to the judgment [*or order*].”.

32 Insertion of forms

Schedule 1 is amended by inserting after form 82 the following forms:

“FORM 83

(See o 83 r 6A)

**NOTICE OF PAYMENT INTO COURT
IN ARBITRATION**

IN THE SUPREME
COURT OF
THE AUSTRALIAN
CAPITAL
TERRITORY

SC No of 2000

In the matter of an
arbitration agreement
dated

And in the matter of the
arbitration under that
agreement

BETWEEN AB
Claimant

AND CD

Respondent

CD has paid into court \$, and says that [*that amount or \$, part of that amount,*]
[*is enough to satisfy the claimant's claim or is enough to satisfy the claimant's claim for and*
\$ (the other part of that amount) is enough to satisfy the claimant's claim for] [*and admits liability or but denies liability*].
Dated , 20 .

PQ,

Solicitor for the respondent.

To *XY*, the claimant's solicitor.

“FORM 84

(See o 83 rr 6B and 6D)

**ACCEPTANCE OF AMOUNT PAID INTO COURT
IN ARBITRATION**

IN THE SUPREME
COURT OF
THE AUSTRALIAN
CAPITAL
TERRITORY

In the matter of an
arbitration agreement
dated

And in the matter of the
arbitration under that
agreement

BETWEEN AB
Claimant

AND CD

Respondent

Supreme Court Rules No 46, 2000

XY accepts the amount of \$ paid by CD into court in satisfaction of the claim in relation to which it was paid in (and abandons his or her other claims in the arbitration).

Dated , 20 .

XY,
Solicitor for the claimant

To PQ, solicitor for
CD, and to RS,
solicitor for EF

“FORM 85

(See o 83 r 11B)

SUBPOENA TO GIVE EVIDENCE

(Heading as in form 1)

To *(name)*
(address)

THE COURT ORDERS that you must attend to give evidence—

- (a) before *(arbitrator or umpire)*;
- (b) at *(address nominated by the arbitrator or umpire)*;
- (c) on *(insert date)* at *(insert time)* and until you are excused from further attending.

Dated , 20 .

By *(arbitrator or umpire)*
(Signature and description
of officer of the Court)

Note 1 Failure to comply with this subpoena may be contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside completely or in part.

Note 2 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 the subpoena and you may apply in writing to *(arbitrator or umpire)* under order 83 subrule 11D (3) of the Supreme Court Rules for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you

Supreme Court Rules No 46, 2000

must give 7 days written notice of your intention to do so to the person who had the subpoena served.

Note 3 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 or (*arbitrator or umpire*).

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

“FORM 86

(See o 83 r 11B)

(*Subpoena to an individual*)

SUBPOENA TO PRODUCE

(*Heading as in form 1*)

To (*name*)
(*address*)

THE COURT ORDERS that you must attend and produce this subpoena and the documents and things described in the Schedule for the purposes of evidence—

- (a) before (*arbitrator or umpire*);
- (b) at (*address nominated by the arbitrator or umpire*);
- (c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but—
 - (i) instead of so attending you may produce this subpoena and the documents and things described in the schedule to (*arbitrator or umpire*) at the address above not later than the day before the 1st day on which you are required to attend; and
 - (ii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book, the bank is not a party and section 48 of the *Evidence Act 1995* (Cwlth) applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

SCHEDULE

(*Description of documents and things*)

Dated , 20 .

By the Court
(*Signature and description of officer of the Court*)

Supreme Court Rules No 46, 2000

Note 1 Failure to comply with this subpoena may be contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside completely or in part.

Note 2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under order 83 subrule 11D (3) of the Supreme Court Rules for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

Note 3 Original documents (where available) are to be produced to (*arbitrator or umpire*) in compliance with this subpoena unless otherwise indicated below:

photocopies of documents are acceptable.

(the party who requested the issue of the subpoena, or that party's solicitor, should tick box if applicable)

If photocopies of documents are indicated as being acceptable (see above) and are produced to (*arbitrator or umpire*) in compliance with this subpoena, you may elect to have the photocopies returned to you or destroyed by (*arbitrator or umpire*) on completion of the proceeding:

the photocopies should be returned

the photocopies should be destroyed.

(please tick appropriate box if applicable)

Note 4 Documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena. However, you may in writing on or attached to this subpoena ask that they be posted to you at another address given by you or that you be told when they are available for collection.

Note 5 Any questions about 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 or (*arbitrator or umpire*).

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

“FORM 87

(See o 83 r 11B)

(Subpoena to a corporation for production and for its proper officer to answer questions etc about possession etc of documents)

SUBPOENA TO PRODUCE AND TO ANSWER QUESTIONS

(Heading as in form 1)

To *(name of corporation)*
(address)

THE COURT ORDERS that—

- (a) you must produce this subpoena and the documents and things described in the schedule for the purposes of evidence by causing your proper officer to attend and produce them—
 - (i) before *(arbitrator or umpire)*;
 - (ii) at *(address nominated by the arbitrator or umpire)*;
 - (iii) on (insert date) or, if notice of a later date is given to you, that later date *(or state the beginning and concluding dates of sittings of the arbitrator or umpire and that notice would be given of a date during those sittings when the subpoena and documents and things are to be produced)* at (insert time) and until the officer is excused from further attending, but—
 - (A) instead of so attending you may produce this subpoena and the documents and things described in the schedule to *(arbitrator or umpire)* at the above place by hand or post in either case so that he or she receives them not later than the day before the 1st day on which your officer is required to attend; and
 - (B) if you are a bank, you are required by this subpoena to produce a banker's book, you are not a party to these proceedings and section 48 of the *Evidence Act 1995* (Cwlth) applies, you need not cause your officer to produce it if you cause the officer to produce proof of the relevant entries in it in accordance with that Act; and
- (b) the officer who is to attend must make inquiries for the purpose of answering, and, on attending, must answer, the questions *(arbitrator or umpire)* requires the officer to answer about possession or custody of those documents and things.

SCHEDULE

Supreme Court Rules No 46, 2000

(Description of documents and things)

Dated , 20 .

By the Court

(Signature and description of officer of the Court)

Note 1 Failure to comply with this subpoena may be contempt of court and may result in the sequestration of your property or arrest of 1 or more of your officers, or both. If you think the subpoena is oppressive, you may apply to the Court to have it set aside completely or in part.

Note 2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under order 83 subrule 11D (3) of the Supreme Court Rules for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

Note 3 Original documents (where available) are to be produced to (*arbitrator or umpire*) in compliance with this subpoena unless otherwise indicated below:

photocopies of documents are acceptable.

(the party who requested the issue of the subpoena, or that party's solicitor, should tick box if applicable)

If photocopies of documents are indicated as being acceptable (see above) and are produced to (*arbitrator or umpire*) in compliance with this subpoena, you may elect to have the photocopies returned to you or destroyed by (*arbitrator or umpire*) on completion of the proceeding:

the photocopies should be returned

the photocopies should be destroyed.

(please tick appropriate box if applicable)

Note 4 Documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena. However, you may in writing on or attached to this subpoena ask that they be posted to you at another address given by you or that you be told when they are available for collection.

Supreme Court Rules No 46, 2000

Note 5 Any questions about 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 or (*arbitrator or umpire*).

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*).

“FORM 88 (See o 83 r 11B)
SUBPOENA TO PRODUCE AND TO GIVE EVIDENCE
(*Heading as in form 1*)

To (*name*)
(*address*)

THE COURT ORDERS that you must attend and produce this subpoena and the documents and things described in the schedule for the purposes of evidence and that you must attend for the purposes of giving evidence—

- (a) before (*arbitrator or umpire*);
- (b) at (*address nominated by the arbitrator or umpire*);
- (c) on (*insert date*) at (*insert time*) and until you are excused from further attending, but—
 - (i) instead of producing the documents and things described in the schedule when so attending, you may produce this subpoena and the documents and things described in the schedule to (*arbitrator or umpire*) at the place mentioned above not later than the day before the 1st day on which you are required to attend; and
 - (ii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book, the bank is not a party and section 48 of the *Evidence Act 1995* (Cwlth) applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Act.

SCHEDULE
(*Description of documents and things*)

Dated , 20 .

By the Court
(*Signature and description of officer of the Court*)

Supreme Court Rules No 46, 2000

Note 1 Failure to comply with this subpoena may be contempt of court and may result in your arrest. If you think the subpoena is oppressive, you may apply to the Court to have it set aside completely or in part.

Note 2 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 the subpoena and you may apply in writing to (*arbitrator or umpire*) under order 83 subrule 11D (3) of the Supreme Court Rules for a decision about the amount that is sufficient to compensate you for the expense or loss. Before applying, you must give 7 days written notice of your intention to do so to the person who had the subpoena served.

Note 3 Original documents (where available) are to be produced to (*arbitrator or umpire*) in compliance with this subpoena unless otherwise indicated below:

photocopies of documents are acceptable.

(the party who requested the issue of the subpoena, or that party's solicitor, should tick box if applicable)

If photocopies of documents are indicated as being acceptable (see above) and are produced to (*arbitrator or umpire*) in compliance with this subpoena, you may elect to have the photocopies returned to you or destroyed by (*arbitrator or umpire*) on completion of the proceeding:

the photocopies should be returned

the photocopies should be destroyed.

(please tick appropriate box if applicable)

Note 4 If you produce the documents and things to (*arbitrator or umpire*), you are still required to attend to give evidence.

Issued at the request of (*name*), the applicant's solicitor (*or as the case may be*)."

33 Amendment of Subordinate Law 1995 No 15

Subordinate Law 1995 No 15 is amended by omitting from order 14A subrule 8 (2) as inserted by rule 12 "who is under a disability" and substituting "with a legal disability".

SCHEDULE 1

(See r 2)

MINOR AMENDMENTS

[1.1] Words before Part 1—

Omit.

[1.2] Order 1 rule 4—

Omit the heading, substitute the following heading:

“4 Definitions for rules”.

[1.3] Order 1 subrule 4 (1)—

Omit “(1) In these Rules, unless the contrary intention appears—”, substitute “In these Rules:”.

[1.4] Order 1 subrule 4 (1), definitions of *Registrar’s office*, *Registry or office of the Registrar*, *writ of execution and issuing execution against any party*—

Omit the definitions.

[1.5] Order 1 subrule 4 (1)—

Insert the following definitions:

“issue execution against a person means issue a writ of execution in relation to the person.

office, of the registrar, means the offices of the court.

registry means the offices of the court.

writ of execution includes a writ of fieri facias, capias, sequestration or attachment and a writ issued to give effect to a writ of execution.”.

[1.6] Order 1 subrule 4 (2)—

Omit the subrule.

[1.7] Order 2 Division 1—

Renumber as Division 2.1.

[1.8] Order 2 subrule 2 (1)—

Omit “Division 3”, substitute “Division 2.3”.

SCHEDULE 1—continued

- [1.9] **Order 2 Divisions 2 and 3—**
Renumber as Divisions 2.2 and 2.3.
- [1.10] **Order 2 paragraph 28 (1) (a)—**
Omit “Division 2”, substitute “Division 2.2”.
- [1.11] **Order 2 paragraphs 29 (1) (a) and (3) (a)—**
Omit “Division 2”, substitute “Division 2.2”.
- [1.12] **Order 2 Division 4—**
Renumber as Division 2.4.
- [1.13] **Order 12 subrule 10 (2), 2nd sentence—**
Renumber as subrule 10 (2A).
- [1.14] **Order 19 Division 1—**
Renumber as Division 19.1.
- [1.15] **Order 19 Division 4—**
Renumber as Division 19.3.
- [1.16] **Order 19 subrule 37 (1)—**
Omit “(1)”.
- [1.17] **Order 19 subrule 37 (2)—**
Renumber as rule 37A.
- [1.18] **Order 19 rule 52, 1st sentence—**
Renumber as subrule 52 (1).
- [1.19] **Order 19 rule 52, 2nd sentence—**
Renumber as subrule 52 (2).
- [1.20] **Order 20 subrule 12 (1)—**
Omit “shall apply *mutatis mutandis*”, substitute “applies with necessary changes”.
- [1.21] **Order 23 rule 4, 1st sentence—**
Renumber as subrule 4 (1).

SCHEDULE 1—continued

- [1.22] **Order 23 rule 4, 2nd sentence—**
Renumber as subrule 4 (2).
- [1.23] **Order 23 rule 4A—**
Omit “Mr (or as the case may be)”.
- [1.24] **Order 23 rule 8, 1st sentence—**
Renumber as subrule 8 (1).
- [1.25] **Order 23 rule 8, 2nd sentence—**
Renumber as subrule 8 (2).
- [1.26] **Order 23 rule 8, 3rd sentence—**
Renumber as subrule 8 (3).
- [1.27] **Order 23 rule 9, 1st sentence—**
Renumber as subrule 9 (1).
- [1.28] **Order 23 rule 9, 2nd sentence—**
Renumber as subrule 9 (2).
- [1.29] **Order 23 rule 19, 1st sentence—**
Renumber as subrule 19 (1).
- [1.30] **Order 23 rule 19, 2nd sentence—**
Renumber as subrule 19 (2).
- [1.31] **Order 23 rule 19, 3rd sentence—**
Renumber as subrule 19 (3).
- [1.32] **Order 23 rule 24, 1st sentence—**
Renumber as subrule 24 (1).
- [1.33] **Order 23 rule 24, 2nd sentence—**
Renumber as subrule 24 (2).
- [1.34] **Order 24 rule 4, 1st sentence—**
Renumber as subrule 4 (1).

SCHEDULE 1—continued

- [1.35] **Order 24 rule 4, 2nd sentence**—
Renumber as subrule 4 (2).
- [1.36] **Order 24 rule 5, 1st sentence**—
Renumber as subrule 5 (1).
- [1.37] **Order 24 rule 5, 2nd sentence**—
Renumber as subrule 5 (2).
- [1.38] **Order 26 subrule 1 (4), 2nd sentence**—
Renumber as subrule 1 (4AA).
- [1.39] **Order 26 subrule 1 (4), 3rd sentence**—
Renumber as subrule 1 (4AB).
- [1.40] **Order 26 subrule 1 (6)**—
Renumber as rule 1AA.
- [1.41] **Order 26 subrule 2 (1A), 2nd sentence**—
Renumber as subrule 2 (1B).
- [1.42] **Order 26 rule 6, 1st sentence**—
Renumber as subrule 6 (1).
- [1.43] **Order 26 rule 6, 2nd sentence**—
Renumber as subrule 6 (2).
- [1.44] **Order 28 subrule 1 (1), 2nd sentence**—
Renumber as subrule 1 (1A).
- [1.45] **Order 28 subrule 3 (2)**—
Omit “shall apply *mutatis mutandis*”, substitute “applies with necessary changes”.
- [1.46] **Order 30 subrule 1 (1), 2nd sentence**—
Renumber as subrule 1 (1A).
- [1.47] **Order 30 subrule 1 (3)**—
Renumber as rule 1A.

SCHEDULE 1—continued

- [1.48] **Order 32 subrule 1 (1)**—
Omit “of its own motion”, substitute “on its own initiative”.
- [1.49] **Order 32 rule 14**—
Omit “of its own motion”, substitute “on its own initiative”.
- [1.50] **Order 34 subrule 13 (1), 2nd sentence**—
Re-number as subrule 13 (1A).
- [1.51] **Order 34 subrule 21 (2)**—
Re-number as rule 21A.
- [1.52] **Order 34 subrule 21 (3), 1st sentence**—
Re-number as subrule 21B (1).
- [1.53] **Order 34 subrule 21 (3), 2nd sentence**—
Re-number as subrule 21B (2).
- [1.54] **Order 34 rule 23, 1st sentence**—
Re-number as subrule 23 (1).
- [1.55] **Order 34 rule 23, 2nd sentence**—
Re-number as subrule 23 (2).
- [1.56] **Order 36 rule 5, 1st sentence**—
Re-number as subrule 5 (1).
- [1.57] **Order 36 rule 5, 2nd sentence**—
Re-number as subrule 5 (2).
- [1.58] **Order 36A rule 2**—
Repeal the rule, substitute the following rule:
- “2 Definitions for o 36A**
In this order:
defendant includes a plaintiff against whom a counterclaim is made.

SCHEDULE 1—continued

earnings means gross earnings per week or another appropriate period and net earnings after taxation per week or another appropriate period.

plaintiff includes a defendant counterclaiming for personal injury.”.

[1.59] Order 37 subrule 1A (1), def of party having carriage of the proceeding, par (b)—

Omit “of its own motion”, substitute “on its own initiative”.

[1.60] Order 37A rule 1, 1st sentence—

Renumber as subrule 1 (1).

[1.61] Order 37A rule 1, 2nd sentence—

Renumber as subrule 1 (2).

[1.62] Order 37A rule 1, 3rd sentence—

Renumber as subrule 1 (3).

[1.63] Order 38 rule 13, 1st sentence—

Renumber as subrule 13 (1).

[1.64] Order 38 rule 13, 2nd sentence—

Renumber as subrule 13 (2).

[1.65] Order 38 rule 24, 1st sentence—

Renumber as subrule 24 (1).

[1.66] Order 38 rule 24, 2nd sentence—

Renumber as subrule 24 (2).

[1.67] Order 39 Divisions 1 to 8—

Renumber as Divisions 39.1 to 39.8.

[1.68] Order 39 paragraph 45 (b)—

Omit “of its own motion”, substitute “on its own initiative”.

[1.69] Order 39 rule 46—

Insert the following heading:

SCHEDULE 1—continued

“46 Service of experts’ reports and hospital reports”.

[1.70] Order 39 rule 47—

Insert the following heading:

“47 Evidence of expert to be covered by expert’s report”.

[1.71] Order 39 rule 49—

Insert the following heading:

“49 Attendance of experts and tender of experts’ reports”.

[1.72] Order 39 Division 8A—

Renumber as Division 39.8.

[1.73] Order 39 Division 9—

Renumber as Division 39.9.

[1.74] Order 40—

Omit the heading, substitute the following heading:

“ORDER 40—AFFIDAVITS”.

[1.75] Order 40 Division I, heading—

Omit the heading, substitute the following heading:

“Division 40.1—Affidavits generally”.

[1.76] Order 40 subrule 4 (4), 2nd sentence—

Renumber as subrule 4 (5).

[1.77] Order 40 Division 3—

Renumber as Division 40.2.

[1.78] Order 40 rule 24—

Omit “affidavit:”, substitute “affidavit.”.

[1.79] Order 40 rule 24, proviso—

Omit the proviso, substitute the following subrule:

SCHEDULE 1—continued

“(2) Despite the agreement, at the trial the court may order that all or part of the evidence be taken orally.”.

[1.80] Order 40 rule 28, 1st sentence—

Renumber as subrule 28 (1).

[1.81] Order 40 rule 28, 2nd sentence—

Renumber as subrule 28 (2).

[1.82] Order 40 rule 28, 3rd sentence—

Renumber as subrule 28 (3).

[1.83] Order 41 rule 2, 1st sentence—

Renumber as subrule 2 (1).

[1.84] Order 41 rule 2, 2nd sentence—

Renumber as subrule 2 (2).

[1.85] Order 41 rule 3, 1st sentence—

Renumber as subrule 3 (1).

[1.86] Order 41 rule 3, 2nd sentence—

Renumber as subrule 3 (2).

[1.87] Order 43 rule 10, 1st sentence—

Renumber as subrule 10 (1).

[1.88] Order 43 rule 10, 2nd sentence—

Renumber as subrule 10 (2).

[1.89] Order 43 subrule 14 (1)—

Omit “(1)”.

[1.90] Order 43 subrule 14 (2)—

Renumber as rule 14A.

[1.91] Order 43 subrule 31 (4), 2nd sentence—

Renumber as subrule 31 (4A).

SCHEDULE 1—continued

[1.92] Order 44 rule 4, 1st sentence—

Renumber as subrule 4 (1).

[1.93] Order 44 rule 4, 2nd sentence—

Renumber as subrule 4 (2).

[1.94] Order 46 subrule 1 (1), 2nd sentence—

Renumber as subrule 1 (1A).

[1.95] Order 47 rule 3, 1st sentence—

Renumber as subrule 3 (1).

[1.96] Order 47 rule 3, 2nd sentence—

Renumber as subrule 3 (2).

[1.97] Order 51 rule 1—

Omit “of its own motion”, substitute “on its own initiative”.

[1.98] Order 52—

Omit the heading, substitute the following heading:

“ORDER 52—INTERLOCUTORY ORDERS, RECEIVERS AND ACCOUNTS”.

[1.99] Order 52 Division 1—

Renumber as Division 52.1.

[1.100] Order 52 rule 6, 1st sentence—

Renumber as subrule 6 (1).

[1.101] Order 52 rule 6, 2nd sentence—

Renumber as subrule 6 (2).

[1.102] Order 52 rule 11, 1st sentence—

Renumber as subrule 11 (1).

[1.103] Order 52 rule 11, 2nd sentence—

Renumber as subrule 11 (2).

SCHEDULE 1—continued

- [1.104] Order 52 Division 2—**
Renumber as Division 52.2.
- [1.105] Order 54 rule 21, 1st sentence—**
Renumber as subrule 21 (1).
- [1.106] Order 54 rule 21, 2nd sentence—**
Renumber as subrule 21 (2).
- [1.107] Order 54 rule 22, 1st sentence—**
Renumber as subrule 22 (1).
- [1.108] Order 54 rule 22, 2nd sentence—**
Renumber as subrule 22 (2).
- [1.109] Order 55 Division 1—**
Renumber as Division 55.1.
- [1.110] Order 55 subrule 1 (1), 2nd sentence—**
Renumber as subrule 1 (1A).
- [1.111] Order 55 subrule 4 (2), 2nd sentence—**
Renumber as subrule 4 (3).
- [1.112] Order 55 Division 2—**
Renumber as Division 55.2.
- [1.113] Order 55 rule 13, 1st sentence—**
Renumber as subrule 13 (1).
- [1.114] Order 55 rule 13, 2nd sentence—**
Renumber as subrule 13 (2).
- [1.115] Order 55 Division 3—**
Renumber as Division 55.3.
- [1.116] Order 55 rule 17, 1st sentence—**
Renumber as subrule 17 (1).

SCHEDULE 1—continued

[1.117] Order 55 rule 17, 2nd sentence—

Renumber as subrule 17 (2).

[1.118] Order 55 Division 4—

Renumber as Division 55.4.

[1.119] Order 55 rule 33, 1st sentence—

Renumber as subrule 33 (1).

[1.120] Order 55 rule 33, 2nd sentence—

Renumber as subrule 33 (2).

[1.121] Order 55 Division 5—

Renumber as Division 55.5.

[1.122] Order 55 rule 34, 1st sentence—

Renumber as subrule 34 (1).

[1.123] Order 55 rule 34, 2nd sentence—

Renumber as subrule 34 (2).

[1.124] Order 55 rule 38, 1st sentence—

Renumber as subrule 38 (1).

[1.125] Order 55 rule 38, 2nd sentence—

Renumber as subrule 38 (2).

[1.126] Order 55 rule 41, 1st sentence—

Renumber as subrule 41 (1).

[1.127] Order 55 rule 41, 2nd sentence—

Renumber as subrule 41 (2).

[1.128] Order 55 rule 41, 3rd sentence—

Renumber as subrule 41 (3).

[1.129] Order 55 Division 7—

Renumber as Division 55.6.

SCHEDULE 1—continued

[1.130] Order 55 rule 43, 1st sentence—

Renumber as subrule 43 (1).

[1.131] Order 55 rule 43, 2nd sentence—

Renumber as subrule 43 (2).

[1.132] Order 55 rule 44, 1st sentence—

Renumber as subrule 44 (1).

[1.133] Order 55 rule 44, 2nd sentence—

Renumber as subrule 44 (2).

[1.134] Order 55 rule 45, 1st sentence—

Renumber as subrule 45 (1).

[1.135] Order 55 rule 45, 2nd sentence—

Renumber as subrule 45 (2).

[1.136] Order 55 rule 45, 3rd sentence—

Renumber as subrule 45 (3).

[1.137] Order 55 rule 45, 4th sentence—

Renumber as subrule 45 (4).

[1.138] Order 55 rule 46, 1st sentence—

Renumber as subrule 46 (1).

[1.139] Order 55 rule 46, 2nd sentence—

Renumber as subrule 46 (2).

[1.140] Order 58—

Omit the heading, substitute the following heading:

“ORDER 58—EQUITY PROCEEDINGS”.

[1.141] Order 58 Division 1—

Renumber as Division 58.1.

SCHEDULE 1—continued

- [1.142] **Order 58 rule 3, paragraphs A and B—**
Renumber as paragraphs (a) and (b).
- [1.143] **Order 58 rule 3, paragraph A, subparagraphs (a) to (h)—**
Renumber as subparagraphs (i) to (viii).
- [1.144] **Order 58 Divisions 2 to 5—**
Renumber as Divisions 58.2 to 58.5.
- [1.145] **Order 58 rule 26, 1st sentence—**
Renumber as subrule 26 (1).
- [1.146] **Order 58 rule 26, 2nd sentence—**
Renumber as subrule 26 (2).
- [1.147] **Order 58 rule 26, 3rd sentence—**
Renumber as subrule 26 (3).
- [1.148] **Order 58 Divisions 6 and 7—**
Renumber as Divisions 58.6 and 58.7.
- [1.149] **Order 58 rule 32, 1st sentence—**
Renumber as subrule 32 (1).
- [1.150] **Order 58 rule 32, 2nd sentence—**
Renumber as subrule 32 (2).
- [1.151] **Order 58 rule 33, 1st sentence—**
Renumber as subrule 33 (1).
- [1.152] **Order 58 rule 33, 2nd sentence—**
Renumber as subrule 33 (2).
- [1.153] **Order 58 rule 33, 3rd sentence—**
Renumber as subrule 33 (3).
- [1.154] **Order 58 rule 33, 4th sentence—**
Renumber as subrule 33 (4).

SCHEDULE 1—continued

[1.155] Order 58 rule 34, 1st sentence—

Renumber as subrule 34 (1).

[1.156] Order 58 rule 34, 2nd sentence—

Renumber as subrule 34 (2).

[1.157] Order 58 Divisions 8 to 11—

Renumber as Divisions 58.8 to 58.11.

[1.158] Order 58 rule 53, 1st sentence—

Renumber as subrule 53 (1).

[1.159] Order 58 rule 53, 2nd sentence—

Renumber as subrule 53 (2).

[1.160] Order 58 rule 53, 3rd sentence—

Renumber as subrule 53 (3).

[1.161] Order 58 Division 12—

Renumber as Division 58.12.

[1.162] Order 58 subrule 57 (1), 2nd sentence—

Renumber as subrule 57 (1A).

[1.163] Order 58 Division 13—

Renumber as Division 58.13.

[1.164] Order 59 rule 11, 1st sentence—

Renumber as subrule 11 (1).

[1.165] Order 59 rule 11, 2nd sentence—

Renumber as subrule 11 (2).

[1.166] Order 59 rule 16, 1st sentence—

Renumber as subrule 16 (1).

[1.167] Order 59 rule 16, 2nd sentence—

Renumber as subrule 16 (2).

SCHEDULE 1—continued

[1.168] Order 61A rule 1, paragraph (l)—

Omit the paragraph, substitute the following paragraph:

“(l) in dealing with applications under the *Foreign Judgments Act 1991* (Cwlth), sections 6 (Application for, and effect of, registration of foreign judgments), 7 (Setting aside a registered judgment), 8 (Stay of enforcement of a registered judgment) and 9 (Re-registration of certain registered judgments which have been set aside); and”.

[1.169] Order 61A rule 3—

Insert the following heading:

“3 Exception for damages suits involving liability as employer”.

[1.170] Order 61A rule 4—

Insert the following heading:

“4 Exercise of court’s inherent jurisdiction by master”.

[1.171] Order 62 rule 13, 1st sentence—

Renumber as subrule 13 (1).

[1.172] Order 62 rule 13, 2nd sentence—

Renumber as subrule 13 (2).

[1.173] Order 65—

Omit the heading, substitute the following heading:

“ORDERS 65—COSTS”.

[1.174] Order 65 Division 1, heading—

Omit the heading, substitute the following heading:

“Division 65.1—Costs generally”.

[1.175] Order 65 subrule 1 (1)—

Omit “(1)”.

SCHEDULE 1—continued

- [1.176] Order 65 subrule 1 (2)—**
Renumber as rule 1A.
- [1.177] Order 65 subrule 1 (3)—**
Renumber as rule 1B.
- [1.178] Order 65 rule 8, 1st sentence—**
Renumber as subrule 8 (1).
- [1.179] Order 65 rule 8, 2nd sentence—**
Renumber as subrule 8 (2).
- [1.180] Order 65 rule 8, 3rd sentence—**
Renumber as subrule 8 (3).
- [1.181] Order 65 rule 10, 1st sentence—**
Renumber as subrule 10 (1).
- [1.182] Order 65 rule 10, 2nd sentence—**
Renumber as subrule 10 (2).
- [1.183] Order 65 subrule 18 (1)—**
Omit “(1)”.
- [1.184] Order 65 subrule 18 (2)—**
Renumber as rule 18A.
- [1.185] Order 65 Division 2—**
Renumber as Division 65.2
- [1.186] Order 65 rule 42, 1st sentence—**
Renumber as subrule 42 (1).
- [1.187] Order 65 rule 42, 2nd sentence—**
Renumber as subrule 42 (2).
- [1.188] Order 65 rule 42, 3rd sentence—**
Renumber as subrule 42 (3).

SCHEDULE 1—continued

[1.189] Order 65 rule 47, 1st sentence—

Renumber as subrule 47 (1).

[1.190] Order 65 rule 47, 2nd sentence—

Renumber as subrule 47 (2).

[1.191] Order 65 rule 47, 3rd sentence—

Renumber as subrule 47 (3).

[1.192] Order 65 rule 64, 1st sentence—

Renumber as subrule 64 (1).

[1.193] Order 65 rule 64, 2nd sentence—

Renumber as subrule 64 (2).

[1.194] Order 65 rule 82, 1st sentence—

Renumber as subrule 82 (1).

[1.195] Order 65 rule 82, 2nd sentence—

Renumber as subrule 82 (2).

[1.196] Order 65 subrule 83 (2), 2nd sentence—

Renumber as subrule 83 (3).

[1.197] Order 66 Divisions 1 and 2—

Renumber as Divisions 66.1 and 66.2.

[1.198] Order 68 rule 6—

Omit “section 93 of the *Bankruptcy Act 1924* of the Commonwealth”, substitute “sections 119 (Duties of sheriff after receiving notice of presentation of petition etc) and 119A (Duties of sheriff after receiving notice of bankruptcy etc) of the *Bankruptcy Act 1966* (Cwlth)”.

[1.199] Order 68 rule 8, 1st sentence—

Renumber as subrule 8 (1).

[1.200] Order 68 rule 8, 2nd sentence—

Renumber as subrule 8 (2).

SCHEDULE 1—continued

[1.201] Order 72—

Omit the heading, substitute the following heading:

“ORDER 72—ADMINISTRATION AND PROBATE”.

[1.202] Order 72 Division 1—

Re-number as Division 72.1.

[1.203] Order 72 rule 1—

Repeal the rule, substitute the following rules:

“1 Definitions for o 72

In this Part:

office, of the registrar, means the office of the registrar of probates.

the Act means the *Administration and Probate Act 1929*.

“1A Expressions have same meaning as in Administration and Probate Act

An expression used in this Part has the same meaning as in the Act.

“1B References to forms

A reference in this Part to a form by number is a reference to the form in Schedule 3 with that number.”.

[1.204] Order 72 Division 2—

Re-number as Division 72.2.

[1.205] Order 72 rule 19, paragraphs (1) and (2)—

Re-number as paragraphs (a) and (b).

[1.206] Order 72 rule 19, subparagraphs (1) (a) to (c)—

Re-number as subparagraphs (i) to (iii).

[1.207] Order 72 rule 19, subparagraphs (2) (a) and (b)—

Re-number as subparagraphs (i) and (ii).

[1.208] Order 72 Divisions 4 to 12—

Re-number as Divisions 72.4 to 72.12.

SCHEDULE 1—continued

[1.209] Order 72, heading before rule 67—

Omit the heading.

[1.210] Order 72 rule 67—

Omit the rule.

[1.211] Order 72, heading before rule 69—

Omit the heading, substitute the following heading:

“Division 72.13—Miscellaneous”.

[1.212] Part 5—

Repeal the Part.

[1.213] Order 74A rule 1—

Repeal the rule, substitute the following rules:

“1 Meaning of *the Act* in o 74A

In this order:

the Act means the *Foreign Judgments Act 1991* (Cwlth).

“1A Expressions have the same meaning as in the Foreign Judgments Act

An expression used in this order has the same meaning as in the Act.”.

[1.214] Part 7, heading—

Omit the heading, substitute the following heading:

“PART 7—ADOPTION JURISDICTION”.

[1.215] Order 76—

Omit the heading, substitute the following heading:

“ORDER 76—ADOPTION”.

[1.216] Order 76 Divisions 1 to 7—

Renumber as Divisions 76.1 to 76.7.

SCHEDULE 1—continued

[1.217] Order 78 paragraph 8 (3) (b)—

Omit “of its own motion”, substitute “on its own initiative”.

[1.218] Order 79—

Omit the heading, substitute the following heading:

“ORDER 79—ELECTORAL MATTERS”.

[1.219] Order 79 Division 1—

Re-number as Division 79.1.

[1.220] Order 79 rule 1—

Repeal the rule, substitute the following rule:

“1 Definitions for o 79

In this order:

application—see the Act, section 250 (Interpretation).

court—see the Act, section 250.

election—see the Act, section 250.

file—see the Act, section 250.

MLA means a member of the Legislative Assembly.

proceeding—see the Act, section 250.

respondent means the person taken to be the respondent under subsection 262 (2) (Parties to an application) of the Act.

the Act means the *Electoral Act 1992*.”.

[1.221] Order 79 Divisions 2 to 4—

Re-number as Divisions 79.2 to 79.4.

[1.222] Order 80—

Omit the heading, substitute the following heading:

“ORDER 80—CRIMINAL PROCEEDINGS”.

[1.223] Order 80 Divisions 1 to 3—

Re-number as Divisions 80.1 to 80.3.

SCHEDULE 1—continued

[1.224] Order 80 subrule 5 (6)—

Omit “shall be deemed to apply *mutatis mutandis*”, substitute “is taken to apply with necessary changes”.

[1.225] Order 80 subrule 7 (5)—

Omit “shall be deemed to apply *mutatis mutandis*”, substitute “is taken to apply with necessary changes”.

[1.226] Order 80 Division 4—

Re-number as Division 80.4.

[1.227] Order 80C rule 1—

Repeal the rule, substitute the following rules:

“1 Meaning of *the Act* in pt 11C

In this Part:

the Act means the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth).

“1A Expressions have the same meaning as in Evidence and Procedure (New Zealand) Act

An expression used in this Part has the same meaning as in the Act.

“1B References to forms

A reference in this Part to a form by number is a reference to the form in Schedule 13B with that number.”.

[1.228] Order 80E subrule 1 (1)—

Omit “of the Court’s own motion”, substitute “on the court’s own initiative”.

[1.229] Order 81 subrule 8 (2)—

Omit “Form 2 in Schedule 2”, substitute “Schedule 14, form 2”.

[1.230] Order 81 paragraph 20 (a)—

Omit “on the motion of the Registrar”, substitute “on the registrar’s own initiative”.

SCHEDULE 1—continued

[1.231] Order 81A rule 6—

Omit “Form 3 in Schedule 2”, substitute “Schedule 14, form 3”.

[1.232] Part 14, heading—

Omit the heading, substitute the following heading:

“PART 14—COMMERCIAL ARBITRATION JURISDICTION”.

[1.233] Order 83—

Omit the heading, substitute the following heading:

“ORDER 83—COMMERCIAL ARBITRATION”.

[1.234] Order 83 Division 1—

Re-number as Division 83.1.

[1.235] Order 83 Division 2—

Re-number as Division 83.3.

[1.236] Order 83 paragraph 13 (1) (b)—

Omit “of its own motion”, substitute “on its own initiative”.

[1.237] Order 83 subrule 14 (1)—

Omit “of its own motion”, substitute “on its own initiative”.

[1.238] Order 83 paragraph 18 (1) (b)—

Omit “of its own motion”, substitute “on its own initiative”.

[1.239] Order 83 Division 3—

Re-number as Division 83.4.

[1.240] Schedule 1, heading—

Omit the heading, substitute the following headings:

“SCHEDULE 1

CIVIL PROCEEDINGS FORMS”.

[1.241] Schedule 1, forms 51, 52 and 53—

Omit “for the Seat of Government”.

SCHEDULE 1—continued

[1.242] Schedule 1, form 54—

Omit “GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India”, substitute “Elizabeth the Second, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth”.

[1.243] Schedule 1, form 54—

Omit “for the Seat of Government”.

[1.244] Schedule 1, form 55—

Omit “GEORGE THE SIXTH”, substitute “Elizabeth the Second”.

[1.245] Schedule 1, form 55—

Omit “for the Seat of Government”.

[1.246] Schedule 1, form 56—

Omit “GEORGE THE SIXTH”, substitute “Elizabeth the Second”.

[1.247] Schedule 1, form 56—

Omit “for the Seat of Government”.

[1.248] Schedule 1, form 59—

Omit “GEORGE THE SIXTH, by the Grace of God etc.”, substitute “Elizabeth the Second, by the Grace of God etc [as in form 54].”.

[1.249] Schedule 1, form 59—

Omit “for the Seat of Government”.

[1.250] Schedule 1, forms 63, 64 and 65—

Omit “GEORGE THE SIXTH, by the Grace of God etc.”, substitute “Elizabeth the Second, by the Grace of God etc [as in form 54].”.

[1.251] Schedule 1, forms 69 and 70—

Omit “for the Seat of Government”.

[1.252] Schedule 3, heading—

Omit the heading, substitute the following headings:

SCHEDULE 1—continued

“SCHEDULE 3

(See o 72 r 1 (3))

ADMINISTRATION AND PROBATE FORMS”.

[1.253] Schedule 3, form 6—

Omit “for the Seat of Government”.

[1.254] Schedule 8—

Omit the heading, substitute the following headings:

“SCHEDULE 8

(See o 76 r 1B)

ADOPTION FORMS”.

[1.255] Schedule 11, heading—

Omit the heading, substitute the following headings:

“SCHEDULE 11

(See o 80 r 10 (4))

CRIMINAL PROCEEDINGS FORMS”.

[1.256] Schedule 13B, heading—

Omit the heading, substitute the following headings:

“SCHEDULE 13B

(See o 80C r 1 (3))

**EVIDENCE AND PROCEDURE (NEW ZEALAND) ACT 1994
(CWLTH) FORMS”.**

[1.257] Schedule 14—

Omit the heading, substitute the following headings:

“SCHEDULE 14

APPEAL FORMS”.

SCHEDULE 1—continued

Endnotes

Rules amended

- 1 Republished as in force on 1 February 1999. See also SL 1999 No 26; 2000 Nos 17, 23, 24 and 44.

Notification

- 2 Notified in Gazette 2000 No 46 on 16 November 2000.