



Australian Capital Territory

# Supreme Court Amendment Rules 2003 (No 5)

**Subordinate Law SL2003-49**

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

Dated 19 December 2003.

T J HIGGINS  
Chief Justice

K J CRISPIN  
Judge

T CONNOLLY  
Judge

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2002 090S

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*Supreme Court Act 1933*

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**1 Name of rules**

These rules are the *Supreme Court Amendment Rules 2003 (No 5)*.

**2 Commencement**

These rules commence on the 28th day after their notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

These rules amend the *Supreme Court Rules*.

**4 Order 1 rule 4, new definitions**

*insert*

*Commonwealth Evidence Act*, for order 34 (Discovery)—see order 34 rule 1.

*discoverable document*, for order 34 (Discovery)—see order 34 rule 1.

*document*, for order 34 (Discovery)—see order 34 rule 1.

*government*, for order 34 (Discovery)—see order 34 rule 1.

*investigatory film*, for order 34 (Discovery)—see order 34 rule 1.

*list of documents*, for order 34 (Discovery)—see order 34 rule 1.

*privileged from production*, for order 34 (Discovery)—see order 34 rule 2.

**5 Order 34**

*substitute*

**Order 34 Discovery**

**Division 34.1 Definitions for order 34**

**1 Definitions for o 34**

In this order:

*Commonwealth Evidence Act* means the *Evidence Act 1995* (Cwlth).

*discoverable document* means a document that is discoverable under rule 3.

*document*—see the Commonwealth Evidence Act, dictionary, part 1, definition of *document* and part 2, clause 8.

*Note* *Document* is defined in the Commonwealth Evidence Act, dict, pt 1 as any record of information, and includes:

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

The Commonwealth Evidence Act, dict, pt 2, cl 8 extends the meaning of document as follows:

A reference in this Act to a document includes a reference to:

- (a) any part of the document; or
- (b) any copy, reproduction or duplicate of the document or of any part of the document; or
- (c) any part of such a copy, reproduction or duplicate.

**government** means—

- (a) the Commonwealth, a State or Territory; or
- (b) a Minister, department or agency of the Commonwealth, a State or Territory; or
- (c) the government of a foreign country.

**investigatory film**, of a person, means any of the following made (otherwise than for medical or therapeutic purposes) to show physical movement or capacity of the person:

- (a) developed or undeveloped film of the person;
- (b) videotape of the person;
- (c) any other visual recording of the person.

**list of documents** means a list under rule 6 (List of documents).

## **2 Meaning of *privileged from production* for o 34**

For this order, a document is ***privileged from production*** only if—

- (a) it is a document of which evidence could not be adduced, or could not be adduced over the objection of a person, because of the Commonwealth Evidence Act, part 3.10 (Privileges), other than section 128 or section 130; or

*Note* Section 128 deals with privilege against self-incrimination and s 130 deals with exclusion of evidence of matters of state.

- (b) the party who would otherwise give discovery is an individual and the contents of the document 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 within the meaning of the Commonwealth Evidence Act; or

- (ii) is liable to a civil penalty within the meaning of the Commonwealth Evidence Act; or
- (c) it is a document that relates to matters of state within the meaning of the Commonwealth Evidence Act, unless the court decides that the document has stopped being privileged from production.

*Note 1* The Commonwealth Evidence Act, dict, pt 2 cl 9 deals with the meaning of references to laws, and dict, pt 1 defines *Australian law*.

*Note 2* The Commonwealth Evidence Act, dict, pt 2 cl 3 provides that a person is taken to be liable to a *civil penalty* if, in an Australian or overseas proceeding (other than a criminal proceeding), the person would be liable to a penalty arising under an Australian law or a law of a foreign country.

*Note 3* For the meaning of *matters of state*, see the Commonwealth Evidence Act, s 130 (4).

## **Division 34.2 Disclosure of documents**

### **3 Discoverable documents**

- (1) A document that is, or has at any time been, in the possession or power of a party to an action is discoverable by the party if it—
  - (a) relates, directly or indirectly, to a matter in issue in the action; or
  - (b) is mentioned, expressly or by necessary implication, in a pleading or notice filed in the action.
- (2) However, a document is not discoverable by a party if it—
  - (a) is filed in court in the action; or
  - (b) relates to only 1 or more items of special damage; or
  - (c) is mentioned in a pleading or notice filed in the action by another party, unless it is discoverable on another ground; or



- (d) is a written communication in relation to the action between a solicitor for the party and a solicitor for another party to the action; or
  - (e) is a note of oral communications (whether made in person or by telephone) in relation to the action between a solicitor for the party and a solicitor for another party to the action; or
  - (f) is the party's brief to the party's counsel; or
  - (g) is an advice to the party from the party's counsel.
- (3) This rule applies unless the court otherwise orders.
- (4) For this rule, a matter is *in issue* until it is—
- (a) admitted or taken to be admitted; or
  - (b) withdrawn, struck out or otherwise disposed of.

#### **4 Notice to disclose discoverable documents**

- (1) A party to an action may serve on another party a written notice requiring the other party to disclose discoverable documents for the action.
- (2) Unless the court gives leave, the party must not serve a notice—
- (a) before the close of pleadings; or
  - (b) after filing a certificate of readiness.
- (3) The party who is served with the notice must—
- (a) file the party's list of documents verified by affidavit within 28 days after the day the party receives the notice; and
  - (b) serve a copy of the list of documents on the other parties unless the court otherwise orders.

## **5 Orders about disclosure**

- (1) The court may make the following orders:
  - (a) an order that limits a party's duty of disclosure;
  - (b) an order for a party to disclose discoverable documents;
  - (c) if the court considers that a party has not, or may not have, adequately disclosed discoverable documents—an order for a party to make further and better disclosure;
  - (d) an order for the lists of documents of the parties, or the list of documents of a party, to be served in a stated electronic form;
  - (e) an order for disclosure of discoverable documents by the parties, or a party, to be made in stages or in a stated way;
  - (f) an order for disclosure, or nondisclosure, by a party of any discoverable document in the party's possession or power;
  - (g) any other order about disclosure, or nondisclosure, of documents that the court considers appropriate.

### **Example for par (e) and par (g)**

The court may make an order permitting disclosure by bundle.

*Note* An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Before making an order under subrule (1), the court must have regard to the following matters:
  - (a) the principle that disclosure of documents in an action should be limited to disclosure that is reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs;
  - (b) the likely relevance and significance, in relation to the action, of the documents, or particular documents, that may be discovered;

- (c) the likely time, cost and inconvenience of disclosing documents or particular documents.
- (3) Subrule (2) does not limit the matters to which the court may have regard.
- (4) The court may inspect any document in a party's possession or power to decide whether it ought to be disclosed by the party.
- (5) An affidavit must not be used for an application under this rule unless the court otherwise orders.

## **6 List of documents**

- (1) Unless the court otherwise orders, a party's list of documents verified by affidavit must—
  - (a) set out, in a convenient order, each document discoverable by the party; and
  - (b) describe clearly and briefly each document set out in the list; and
  - (c) for each document not in the party's possession or power, state—
    - (i) when and how it stopped being in the party's possession or power; and
    - (ii) to the best of the party's knowledge, information and belief, who now has possession of or power over the document or, failing that, what has become of the document; and
  - (d) for each document that the party claims to be privileged from production—
    - (i) state that the privilege is claimed; and
    - (ii) set out clearly and briefly the circumstances giving rise to the privilege.

- (2) For subrule (1), if any documents discoverable by the party come within a group of documents of the same kind, the list of documents must deal with the documents as a group, unless the court otherwise orders.
- (3) The verifying affidavit of a party who files a list of documents must be in accordance with form 1.23 unless subrule (4) applies.
- (4) The verifying affidavit must be in accordance with form 1.24 if the list of documents is filed by or on behalf of—
  - (a) a government, corporation or unincorporated body; or
  - (b) a party represented by a litigation guardian; or
  - (c) a party for whom someone else swears the affidavit.

*Note* Rule 20 (Answers by governments, corporations etc) sets out who may swear the affidavit.

## **7 Continuing disclosure**

- (1) This rule applies to a discoverable document if, after disclosing documents under this order—
  - (a) a party to an action becomes aware that the document was wrongly omitted from the party's list of documents; or
  - (b) the document comes into the party's possession or power.
- (2) Unless the court otherwise orders, the party must disclose the document to each party to whom the party has been required to give discovery—
  - (a) within 3 business days after the day the party—
    - (i) becomes aware of the omission; or
    - (ii) receives possession of, or power over, the document; or
  - (b) if the hearing of the action is to begin within the 3 days, or has begun—immediately.

- (3) However, this rule does not require the party to disclose a document if, apart from this rule, the party is not required to disclose it.

## **Division 34.3                      Production and inspection**

### **8                      Claims for privilege for documents**

- (1) A claim for privilege from production for a document mentioned in a list of documents served by a party is taken to be waived by the party if the list of documents does not comply with rule 6 (1) (d) in relation to the document, unless the court otherwise orders.
- (2) The court may decide a dispute about whether a document is privileged.

*Note*        For privilege, see the Commonwealth Evidence Act, pt 3.10.

### **9                      Production of documents for inspection**

- (1) This rule applies if a party to an action (the *inspecting party*) gives written notice to another party (the *producing party*) to produce for inspection:
  - (a) a document mentioned in the producing party's list of documents; or
  - (b) a document mentioned in any originating application, pleading, particular or affidavit filed by the producing party in the action.
- (2) The producing party must, in accordance with this rule, produce the document for inspection by the inspecting party.
- (3) However, the producing party does not have to produce—
  - (a) a document not required to be disclosed under this order; or
  - (b) a document for which the producing party has, in the party's list of documents, claimed privilege from production; or
  - (c) a document not required by the inspecting party to be produced; or

- (d) a document not in the producing party's possession or power;  
or
- (e) a document relating only to a claim in the action that does not affect the producing party; or
- (f) investigatory film of the party.

**Example for par (e)**

A plaintiff would not ordinarily be affected by a third-party claim under order 20.

- (4) Production of documents by the producing party must take place on the day, and at the time and place, stated by the producing party in a written notice given to the inspecting party, unless the producing party and the inspecting party agree on alternative arrangements.
- (5) The notice must—
  - (a) be given by the producing party to the inspecting party within 7 days after the day the producing party is given the notice under subrule (1); and
  - (b) state—
    - (i) a day that is a business day and is not earlier than 7 days, nor later than 21 days, after the day the notice under subsection (4) is given to the inspecting party; and
    - (ii) a time between 9 am and 3 pm; and
  - (c) state as the place for production—
    - (i) the address for service of the producing party; or
    - (ii) if it is not practicable to produce the documents at that address—some other reasonable place in the ACT.
- (6) The inspecting party may copy a document produced for inspection and make notes of, or take extracts from, it.

- (7) If the producing party makes a copy of a document for, and at the request of, the inspecting party, the producing party is entitled to payment for the copy under schedule 3.
- (8) If the producing party discloses a document to the inspecting party after inspection by the inspecting party, the producing party must allow the inspecting party to inspect the document as soon as practicable, either at the place where the inspection took place or another place agreed by the parties.
- (9) However, subrule (8) does not require the producing party to produce a document if, apart from the subrule, the party is not required to produce it.
- (10) This rule applies unless the court otherwise orders.

## **10 Orders about production of documents for inspection**

- (1) This rule applies to the production of documents by a party to an action for inspection by another party to the action.
- (2) The court may do any of the following:
  - (a) make an order for production of documents by 1 or more parties to be made in stages or in a stated way;
  - (b) inspect a document to decide whether it ought to be produced;
  - (c) give a direction about whether a document has to be produced by a party (either generally, at a particular time or to a particular party);
  - (d) make an order for a document stored on a computer to be produced in a stated way or form;
  - (e) make any other order about production of documents that the court considers appropriate.

- (3) Before making an order under subrule (2), the court must have regard to the following matters:
  - (a) the principle that production of documents in an action should be limited to production that is reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs;
  - (b) the likely relevance and significance, in relation to the action, of the documents, or particular documents, that may be produced;
  - (c) the likely time, cost and inconvenience of producing documents or particular documents.
- (4) Subrule (3) does not limit the matters to which the court may have regard.

## **11 Effect of inspection of documents disclosed by another party**

- (1) A party who inspects a document (the *inspecting party*) that was disclosed by another party (the *producing party*) is taken to admit—
  - (a) if the document is described in the list of documents as an original document—that the document is an original document and was printed, written or signed as it purports to have been; and
  - (b) if the document is described in the list of documents as a copy—that the document is a true copy; and
  - (c) if the document is described in the list of documents as a copy of a document that was served—that the original was served as described.
- (2) However, subrule (1) does not apply if—
  - (a) the document is not admissible in evidence; or



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- (b) the inspecting party has in the party's pleadings denied its authenticity or that the original was served as described; or
  - (c) the inspecting party serves on the producing party, within 14 days after the day the inspecting party inspected the document, a notice stating that the inspecting party disputes its authenticity or that the original was served as described; or
  - (d) the court orders that it does not apply.
- (3) In this rule:  
*serve* includes deliver, give, notify and send.

## **12 Production of documents at hearing of action**

A document disclosed under this order must be produced at the hearing of the action if—

- (a) notice to produce it has been given with reasonable particularity to a party by another party to the action; and
- (b) its production is asked for by the other party at the hearing.

## **Division 34.4 Interrogatories**

### **13 Service of interrogatories**

- (1) A party to an action has the right to serve interrogatories on another party to the action.
- (2) The interrogatories may be set out in a letter.
- (3) However, the court may order that interrogatories not be served in the action, or not be served by or on a particular party to the action, except to the extent (if any) stated in the order.
- (4) Also, unless the court gives leave, a party must not serve interrogatories in the action on another party—
  - (a) before the close of pleadings; or

- (b) if the party has previously served interrogatories on the other party; or
  - (c) after the filing of a certificate of readiness.
- (5) A set of interrogatories that is to be answered by 2 or more people must contain a note stating which of the interrogatories each of them is required to answer.
- (6) A party who is served with interrogatories must, within 28 days after the day the party receives the interrogatories—
- (a) file an affidavit setting out and verifying (except to the extent that the party objects under rule 14 to answering) the party's answers to the interrogatories; and
  - (b) serve a copy of the affidavit on the party serving the interrogatories.
- (7) Subrule (6) applies unless the court otherwise orders.

*Note* For the power to make an order about interrogatories, see r 15 (Orders about interrogatories).

#### **14 Objections to answer**

- (1) An objection by a party to answer an interrogatory must be on 1 or more of the following grounds:
- (a) the interrogatory is unnecessary;
  - (b) the interrogatory is oppressive, scandalous, vexatious or otherwise improper;
  - (c) the interrogatory is unnecessarily long, wordy or uncertain;
  - (d) the interrogatory is irrelevant, is of a 'fishing' nature or inquires into a matter of evidence;
  - (e) the party is privileged under the Commonwealth Evidence Act, part 3.10 (Privileges) from answering the interrogatory;

- (f) the answer would disclose (completely or partly) the contents of a document privileged from production by the party;
  - (g) it is contrary to the public interest to disclose a matter that the answer would disclose;
  - (h) a ground arising under a provision of Territory or Commonwealth law, if the ground, the law and the provision are stated in the objection.
- (2) An objection to answer on the ground that the interrogatory is unnecessary (subrule (1) (a)) operates as an objection that the interrogatory is not reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs.

## **15 Orders about interrogatories**

- (1) The court may, on the application of a party or on its own initiative—
- (a) set aside interrogatories, or any interrogatory, on a ground mentioned in rule 14 (1); or
  - (b) set aside, or order to be removed from the court file, on a ground mentioned in rule 14 (1), any answers to interrogatories that have been filed; or
  - (c) order a party to answer, or to give a further and better answer to, an interrogatory that the party has—
    - (i) failed to answer (sufficiently or at all); or
    - (ii) made an objection to answering that the court disallows;  
or
  - (d) make any other order about the service or answering of interrogatories (including an order about costs) that the court considers appropriate.

- (2) Before making an order under subrule (1), the court must have regard to the following matters:
  - (a) the principle that interrogatories in an action should be limited to interrogatories that are reasonably necessary for fairly disposing of the action, or part of the action, or for saving costs;
  - (b) the likely relevance and significance, in relation to the action, of interrogatories, or particular interrogatories, and the answers;
  - (c) the likely time, cost and inconvenience of answering interrogatories or particular interrogatories.
- (3) Subrule (2) does not limit the matters to which the court may have regard.
- (4) An order under subrule (1) (c) may include, for a party who has failed to answer an interrogatory (sufficiently or at all), an order for the oral examination of—
  - (a) if the party is an entity mentioned in rule 20 (1) (Answers by governments, corporations etc)—a person, or the holder of a position, stated by the court; or
  - (b) in any other case—the party.
- (5) Unless the court otherwise orders, the questions asked, and answers given, on an examination under subrule (4)—
  - (a) must be taken down in writing and certified by an officer of the court; and
  - (b) as certified, are taken for this division to be interrogatories and answers to interrogatories.
- (6) An affidavit must not be used for an application under this rule unless the court otherwise orders.

## **16 Answers to interrogatories**

- (1) A party who is served with interrogatories must answer an interrogatory that the party is required to answer under this order—
  - (a) from the party's own knowledge of the fact or matter raised by the interrogatory; or
  - (b) if the party does not have the knowledge—from any belief the party has about the fact or matter.
- (2) This rule and rule 17 apply to a party that is a government, corporation or unincorporated body as if—
  - (a) a reference to the party were a reference to the person who answers the interrogatories on behalf of the government, corporation or body; and
  - (b) a reference to an employee or agent of the party were a reference to an employee or agent of the government, corporation or body; and
  - (c) any other necessary changes were made.

*Note* Rule 20 (Answers by governments, corporations etc) sets out who may swear an affidavit verifying answers to interrogatories.

## **17 Answers to interrogatories—belief**

- (1) This rule applies if a party mentioned in rule 16 does not have knowledge of the fact or matter raised by an interrogatory and must answer the interrogatory from any belief the party has about the fact or matter.
- (2) The party is taken not to have a belief about the fact or matter—
  - (a) if the party does not have information relating to the fact or matter on which to form a belief; or
  - (b) if the party has the information, but the party has reasonable grounds for not believing that the information is true.

- (3) The party must answer from any belief the party has about the fact or matter irrespective of the source of the information on which the belief is formed.
- (4) However, the party is not required to answer from the party's belief about the fact or matter if the belief is formed on information that was given to the party in a communication or document that is privileged under the Commonwealth Evidence Act, part 3.10 (Privileges).
- (5) To help the party form a belief about the fact or matter, the party must make all reasonable inquiries to find out—
  - (a) whether a person who is or has been the party's employee or agent has knowledge of the fact or matter that was acquired by the person as the party's employee or agent; and
  - (b) if a person has the knowledge—what the knowledge is.
- (6) To remove any doubt, the party must make the inquiries mentioned in subrule (5) even if at the time the party is required to answer the interrogatory a person having the relevant knowledge has stopped being the party's employee or agent.

## **18 Affidavits verifying answers**

- (1) An affidavit verifying answers to interrogatories must be in accordance with form 1.25.
- (2) However, the affidavit must be in accordance with form 1.26 if the answers to interrogatories are filed by or on behalf of—
  - (a) a government, corporation or unincorporated body; or
  - (b) a party represented by a litigation guardian; or
  - (c) a party for whom someone else, for an adequate reason or by order of the court, answers the interrogatories.

*Note* Rule 20 (Answers by governments, corporations etc) sets out who may swear the affidavit.

**19 Tendering of answers to interrogatories in evidence**

- (1) A party to an action who has served interrogatories on another party may tender the answers, or some of the answers, in evidence against the other party on the hearing of the action.
- (2) However, the court must not allow an answer to be tendered in evidence without another answer if the court considers that, in the interests of justice, the other answer should also be tendered in evidence.
- (3) For subrule (2), the court may inspect all of the answers to the interrogatories.
- (4) Subrule (1) does not make an answer admissible in evidence if, apart from the subrule, it is not admissible in evidence.

**Division 34.5 Who may verify list of documents or answers to interrogatories?**

**20 Answers by governments, corporations etc**

- (1) This rule applies if any of the following is a party who has to verify a list of documents, or answer interrogatories:
  - (a) a government;
  - (b) a corporation;
  - (c) the holder of a position (including, for example, the sheriff);
  - (d) an unincorporated body;
  - (e) a person represented by a litigation guardian.

*Note* An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The affidavit verifying the party's list of documents, or answers to the interrogatories, must be sworn as follows:
  - (a) for a government—by a Minister, or an authorised officer, employee or agent, of the government;
  - (b) for a corporation—by a director, the secretary, or an authorised officer or employee, of the corporation;
  - (c) for the holder of a position—by the holder of the position or an authorised officer, employee or agent of the holder;
  - (d) for an unincorporated body—by the members, or 1 or more authorised members, or an authorised employee or agent, of the body;
  - (e) for a person represented by a litigation guardian—by the litigation guardian.
- (3) However, the court may make an order for a party's list of documents or answers to interrogatories to be verified by the affidavit of a person not mentioned in subrule (2).

## **21 Party who cannot answer personally**

If the court is satisfied that a party cannot, for adequate reason, swear an affidavit verifying the party's list of documents or answers to interrogatories, the court may authorise a suitable person to swear the affidavit.

## **Division 34.6 Penalty provisions**

### **22 Contravention of order of the court**

- (1) A person who, without reasonable excuse, contravenes a court order made under this order may be dealt with for contempt of court.
- (2) This rule does not limit any other power of the court in relation to the contravention.



### **23 Solicitor to notify party of certain matters**

- (1) This rule applies if a solicitor who acts for a party to an action receives in relation to the action—
  - (a) a notice under rule 4 (1) (Notice to disclose discoverable documents) or 9 (1) (Production of documents for inspection); or
  - (b) interrogatories under rule 13 (1) (Service of interrogatories); or
  - (c) a court order made under this order that imposes an obligation (however expressed) on the party.
- (2) The solicitor must, without unnecessary delay, take all reasonable steps to tell the party fully about the party's obligation in relation to the notice, interrogatories or order.
- (3) If the solicitor fails, without reasonable excuse, to comply with subrule (2), the solicitor may be dealt with for contempt of court.
- (4) This rule does not limit any other power of the court in relation to the failure.

### **24 Improper use of disclosed document**

- (1) This rule applies to someone if the person—
  - (a) receives a document produced to the person under this order or division 39.8 (Disclosure of experts' reports and hospital reports) in relation to an action; or
  - (b) receives a document, directly or indirectly, from someone else and the document has, to the person's knowledge, been produced under this order or division 39.8 to the other person.
- (2) The person must not, without leave of the court or other lawful authority, make use of the document otherwise than for the proper purposes of the action.

- (3) If the person, without reasonable excuse, contravenes subrule (2), the person may be dealt with for contempt of court.
- (4) The fact that a document has been filed, received in evidence or read out in court does not affect the application of this rule to the document, but the court may take that fact into account in deciding the penalty (if any) that should be imposed.
- (5) This rule does not limit any other power of the court in relation to the contravention.

## **25 Noncompliance with order**

- (1) If a party fails, without reasonable excuse, to comply with a court order made under this order, the court may—
  - (a) if the party is a plaintiff or other claimant—order that all, or a stated part, of the action, claim or counterclaim of the party be struck out, dismissed or stayed; or
  - (b) if the party is a defendant or respondent—order that the party not be allowed to defend all, or a stated part, of the action or claim against the party.
- (2) This rule does not limit any other power of the court in relation to the noncompliance.

## **26 Failure to disclose document**

- (1) This rule applies if a party fails, without reasonable excuse, to disclose to another party a document that the party is required to disclose under this order, including under a court order made under this order.
- (2) The party must not tender the document in evidence against the other party on the hearing of the action, or tender evidence of its contents, without the leave of the court.

- (3) In deciding whether to give leave under subrule (2), the court must act in accordance with the Commonwealth Evidence Act, part 3.11 (Discretions to exclude evidence).
- (4) The party must also pay any costs incurred by another party because of the failure.
- (5) This rule does not limit any other power of the court in relation to the failure.

## **Division 34.7            Practice directions**

### **27    Practice directions about discovery by electronic means**

- (1) The registrar may, with the judges' approval, issue practice directions about the discovery of documents by electronic means.
- (2) A practice direction is a notifiable instrument.  
*Note*    A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) A practice direction must be complied with despite anything to the contrary in these rules.
- (4) This division expires on 1 January 2006.

## Schedule 1 Other amendments—forms

(see r 3)

### [1.1] Forms 1.23 to 1.26

*substitute*

#### Form 1.23 Affidavit by party verifying list of documents

(see o 34 r 6)

[*Heading as in form 1.1*]

On (*date, eg 6 February 2003*), I (*name, address and occupation*) [\*say on oath/solemnly affirm]—

- 1 I am the [\**(name of party, eg plaintiff)*]/1 of the (*name of parties, eg plaintiffs*) in this action.
- 2 The list of documents [\*set out below/ set out in annexure (*appropriate letter, ie 'A' for the 1st annexure, 'B' for the 2nd annexure etc*)/ now produced by me and marked (*initials of person and identifying number, eg ABC I*)] is my list of documents in this action.
- 3 I have made all appropriate searches and inquiries.
- 4 To the best of my knowledge, information and belief, the list of documents sets out all documents or groups of documents that I am required to disclose in this action.
- 5 To the extent that the list of documents claims privilege from production for a document or documents, I believe that the claim is properly made. (*omit this paragraph if no claim of privilege is made*)
- 6 For each document stated to be no longer in my possession or power, the list of documents states to the best of my knowledge, information

and belief who now has possession of, or power over, the document or what has become of the document.

*(signature of person making affidavit)*

[\*Sworn/Affirmed] at

before me:

*\*Select appropriate words*

**Form 1.24**                      **Affidavit by non-party verifying list of documents**

(see o 34 r 6)

[*Heading as in form 1.1*]

On (*date, eg 6 February 2003*), I (*name, address and occupation*) [\*say on oath/solemnly affirm]—

- 1 I make this affidavit on behalf of (*name*), who is the [*\*(name of party, eg plaintiff)/1 of the (name of parties, eg plaintiffs)*] in this action in my capacity as (*state capacity*).
- 2 I am authorised by the party to make this affidavit for the party.  

*(if this statement does not apply, eg if the party is a person with a legal disability, state instead, as concisely as possible, the basis on which the person making the affidavit makes the affidavit)*
- 3 The list of documents [\*set out below/ set out in annexure (*appropriate letter ie 'A' for the 1st annexure, 'B' for the 2nd annexure etc*)/ now produced by me and marked (*initials of person and identifying number, eg ABC 1*)] is the list of documents of the party to this action.
- 4 To the best of my knowledge, information and belief, all appropriate searches and inquiries have been made by or on behalf of the party.
- 5 To the best of my knowledge, information and belief, the list of documents sets out all documents or groups of documents that the party is required to disclose in this action.
- 6 To the extent that the list of documents claims privilege from production for a document or documents, I believe that the claim is properly made. (*omit this paragraph if no claim of privilege is made*)
- 7 For each document stated to be no longer in the party's possession or power, the list of documents states to the best of my knowledge,

information and belief who now has possession of, or power over, the document or what has become of the document.

*(signature of person making affidavit)*

[\*Sworn/Affirmed] at

before me:

*\*Select appropriate words*

**Form 1.25**                      **Affidavit by party verifying  
answers to interrogatories**

(see o 34 r 18)

[*Heading as in form 1.1*]

On (*date, eg 6 February 2003*), I (*name, address and occupation*) [\*say on oath/solemnly affirm]—

- 1 The interrogatories served on me in this action by [*state the party serving the interrogatories*], and my answers to the interrogatories, are as set out below.
- 2 To the best of my knowledge, information and belief, the answers are true.

*(set out each interrogatory and answer (or objection))*

*(signature of person making affidavit)*

[\*Sworn/Affirmed] at

before me:

*\*Select appropriate words*



**Form 1.26****Affidavit by a non-party verifying answers to interrogatories**

(see o 34 r 18)

[[*Heading as in form 1.1*]]

On (*date, eg 6 February 2003*), I (*name, address and occupation*) [\*say on oath/solemnly affirm]—

- 1 The interrogatories served on (*state the party on whom the interrogatories were served*) in this action by (*state the party serving the interrogatories*), and the answers of (*state the party on whom the interrogatories were served*) to the interrogatories, are as set out below.
- 2 To the best of my knowledge, information and belief, the answers are true.
- 3 I verify these answers on behalf of (*name*), who is the [\*(*name of party, eg plaintiff*)/1 of the (*name of parties, eg plaintiffs*)] in this action in my capacity as (*state capacity*).
- 4 I am authorised by the party to verify these answers.

*(if this statement does not apply, eg if the party is a person with a legal disability, state instead, as concisely as possible, the basis on which the person making the affidavit makes the affidavit)*

*(set out each interrogatory and answer (or objection))*

*(signature of person making affidavit)*

[\*Sworn/Affirmed] at

**Schedule 1**      Other amendments—forms

Amendment [1.1]

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before me:

*\*Select appropriate words*

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**Endnotes**

**1      Notification**

Notified under the Legislation Act on 22 December 2003.

**2      Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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