



Australian Capital Territory

Supreme Court Amendment Rules 2004 (No 1)

Subordinate Law SL2004-7

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

Dated 24 February 2004.

T J HIGGINS
Chief Justice

K J CRISPIN
Judge

M F GRAY
Judge

T CONNOLLY
Judge



Australian Capital Territory

Supreme Court Amendment Rules 2004 (No 1)

Subordinate Law SL2004-7

made under the

Supreme Court Act 1933

Contents

		Page
1	Name of rules	1
2	Commencement	1
3	Legislation amended	1
4	Order 1 rule 4, new definitions of <i>electronic communication</i> and <i>email address</i>	1
5	Order 2 rule 4 (5) (c)	2
6	Order 2 rule 16, new note	2
7	Order 2 new rule 16A	2

2003 218S

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
8	Order 3 rule 3 (2)	3
9	Order 10 rule 1	3
10	Order 10 new rule 1 (2)	3
11	Order 10 rule 4 (1) (f)	3
12	Order 10 new rule 4 (1) (g)	4
13	Order 10 rule 4 (2) (b)	4
14	Order 10 new rule 16	4
15	Order 13 rule 2 (2) (c)	5
16	Order 23 rules 11 and 12	5
17	Order 26	6
18	Order 39 rule 31	15
19	Order 39 new rule 31A	16
20	Order 39 rule 32 (2)	16
21	Order 39 new rule 32 (5)	16
22	Order 42 new rule 6A	17
23	New order 42B	17
24	Order 54	18
25	Order 58 rule 33 (3) and (4)	24
26	Order 58 rule 35	25
27	Order 61 rule 3 (a)	25
28	Order 61A new rule 1 (ka)	25
29	Order 61A rule 1	25
30	Order 65 rule 7A	26
31	Order 66 rule 1, definition of <i>document</i>	27
32	Order 66 rule 2	27
33	Division 66.2	27
34	New division 66.2	28
35	Order 72 rule 3 (4)	29
36	Order 72 rule 19	29
37	Division 72.5	31
38	Order 72 rule 39 (2)	37
39	Order 72 rules 46 to 49	37
40	Order 72 rule 51	38
41	Order 72 rule 54	39

Contents

	Page	
42	Order 72 rule 58A	40
43	Order 80 rule 10	40
44	Order 80 rule 11 (2)	41
45	Order 80 new rule 11 (5)	41
46	Order 80 new rule 14	41
47	Order 86 new rule 60 (4)	42
48	Order 86 rule 60 (4)	42
49	Schedule 1, forms 1.2 and 1.7	43
50	Schedule 1, forms 1.18 to 1.20	43
51	Schedule 1, form 1.21	47
52	Schedule 1, new forms 1.67A and 1.67B	47
53	Schedule 1, forms 2.2 and 2.3	50
54	Schedule 1, forms 2.6 and 2.7	52
55	Schedule 1, forms 2.14 to 2.16	54
56	Further amendments, mentions of <i>order 54 (Motions and other applications)</i>	57

1 Name of rules

These rules are the *Supreme Court Amendment Rules 2004 (No 1)*.

2 Commencement

These rules commence on the 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 of *electronic communication* and *email address*

insert

electronic communication means a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both.

Examples

- 1 email
- 2 email attachment.

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).

email address means the mailing address to and from which an electronic communication may be sent and received using the internet, an intranet or other similar network.

5 Order 2 rule 4 (5) (c)

substitute

- (c) a fax number;
- (d) an email address.

6 Order 2 rule 16, new note

insert

Note The registrar may refuse to accept an originating application for filing under r 16A or o 66 r 10B (Refusal to accept documents—abuse of process etc).

7 Order 2 new rule 16A

insert

16A Rejection of certain originating applications

An originating application must not be accepted for filing without the court's leave if it appears to the registrar that the application—

- (a) is not substantially complete; or
- (b) does not substantially comply in form with these rules; or
- (c) is not properly signed or executed.

Note The registrar may also refuse to accept an originating application for filing under o 66 r 10B (Refusal to accept documents—abuse of process etc).

8 Order 3 rule 3 (2)

omit

(Costs and disbursements where amount recovered less than Magistrates Court limit)

substitute

(Costs if amount recovered less than Magistrates Court limit)

9 Order 10 rule 1

omit

This order

substitute

- (1) This order

10 Order 10 new rule 1 (2)

insert

- (2) This order applies to a document that is authorised or required under these rules to be served, whether the word ‘serve’, ‘give’, ‘notify’, ‘send’, ‘tell’ or any other word is used.

11 Order 10 rule 4 (1) (f)

omit

box.

substitute

box; or

12 Order 10 new rule 4 (1) (g)

insert

- (g) if the person's address for service includes a reference to an email address—by sending a copy by electronic communication to the email address.

13 Order 10 rule 4 (2) (b)

omit

subrule (1) (a), (e) or (f)

substitute

subrule (1) (a), (e), (f) or (g)

14 Order 10 new rule 16

insert

16 Email service—other matters

- (1) This rule applies if a document (the *emailed document*) is served by electronic communication under these rules.
- (2) The emailed document must be capable of being printed by the recipient with the content and in the form in which it was created.
- (3) If these rules require or allow the emailed document to be signed, it is sufficient compliance if the person who serves the emailed document—
 - (a) identifies himself or herself in the electronic communication by stating his or her name and business address; and
 - (b) certifies in the electronic communication that the original of the emailed document was signed and by whom.

-
- (4) If these rules require or allow service of a sealed or stamped copy of a document, it is sufficient compliance if the person who serves the emailed document certifies in the electronic communication that the original of the emailed document was sealed or stamped.
 - (5) If the emailed document is a copy of an affidavit, the original affidavit is taken to have been sworn if the person who serves the copy of the affidavit certifies in the email that the original was properly sworn.

15 Order 13 rule 2 (2) (c)

substitute

- (c) a fax number;
- (d) an email address.

16 Order 23 rules 11 and 12

substitute

11 Filing and service of pleadings etc and information in pleadings

- (1) A party to an action must lodge each pleading for filing, and serve it on each other party who has an address for service on the day the pleading is filed.
- (2) Every pleading served on a party must contain—
 - (a) the date it is served; and
 - (b) the number and title of the action; and
 - (c) a description of the pleading; and
 - (d) the name and address for service of the solicitor and agent (if any) serving the pleading, or the name and address for service of the party, if the party is not represented by a solicitor.

17 Order 26

substitute

Order 26 Payment into and out of court and tender

1 Payment into court—amount

- (1) In an action for a debt or damages (other than an action under the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death)), a defendant may at any time after appearance—
 - (a) pay an amount into court in satisfaction of—
 - (i) the claim; or
 - (ii) if there are 2 or more causes of action joined in a single action—1 or more of the claims; or
 - (b) in an action for defamation—pay an amount into court by way of compensation, satisfaction and amends.
- (2) If an action is brought under the *Civil Law (Wrongs) Act 2002*, part 3.1, a defendant may at any time after appearance pay an amount into court as compensation for the benefit of the people for whose benefit the action is brought, and who are entitled to compensation under the part, without stating the shares into which the amount is to be divided by the court.
- (3) The defendant must serve on the plaintiff a notice of payment into court under this rule in accordance with form 1.18 and, if there are 2 or more defendants, on each of the other defendants.
- (4) If there are 2 or more causes of action joined in a single action, and an amount is paid into court in satisfaction of 1 or more of the claims, the notice must state, unless the court otherwise orders—
 - (a) the claim or each claim for which payment is made; and

-
- (b) the part of the amount paid in satisfaction of each claim.
 - (5) The notice must state whether liability is admitted or denied.
 - (6) If a defence of tender before action is pleaded, the amount claimed to have been tendered must be paid into court.
 - (7) A defendant who has paid an amount into court in accordance with this rule may make further payments increasing the amount without the court's leave.

2 Payment into court—bond

- (1) Except under the defence of tender before action, a defendant may file a bond for payment of an amount to the registrar if the plaintiff accepts the amount in satisfaction of the claim under rule 6 (Plaintiff may accept payment etc) in accordance with form 1.19 given by—
 - (a) an authorised insurer, or the nominal defendant, under the *Road Transport (General) Act 1999*; or
 - (b) an approved insurer, or the nominal insurer, under the *Workers Compensation Act 1951*; or
 - (c) a corporation approved by the registrar; or
 - (d) the Territory, the Commonwealth, a State or another Territory.
- (2) The bond must be given by—
 - (a) a person mentioned in subrule (1) (an **approved person**); or
 - (b) a person who is authorised, in writing, to give the bond for the approved person (an **authorised person**).
- (3) The bond remains in effect unless the court otherwise orders.

Note The parties to the action may consent to the discharge of the bond under r 42 r 11 (Consent order or judgment signed by registrar).
- (4) The authority may be in accordance with form 1.20.

- (5) If the bond is given by an authorised person, a copy of his or her authority must be filed with the bond unless the authority has already been filed.
- (6) An authority given by or for an approved person that has been filed binds the approved person until notice of its revocation is filed.
- (7) If a bond is filed by a defendant in accordance with this rule, this order (including rule 1 (4) to (6)) applies as if the defendant had paid the amount of the bond into court under rule 1.

3 Payment into court—security

- (1) Instead of paying an amount into court under rule 1 (Payment into court—amount) or filing a bond under rule 2 (Payment into court—bond), a defendant may file a security securing payment of an amount to the registrar if the plaintiff accepts the amount in satisfaction of the claim under rule 6 (Plaintiff may accept payment etc).
- (2) The security may be accepted by the registrar.
- (3) If the registrar accepts the security, this order (including rule 1 (4) to (6)) applies as if the defendant had paid the amount of the security into court under rule 1.

4 Interest up to date of payment into court

For this order, the plaintiff's claim or cause of action for a debt or damages is taken to include a claim or cause of action for interest that might be included in the judgment under the Act, section 69 or otherwise, if judgment were given at the date of the payment into court.

5 Payment in by defendant who has counterclaimed

- (1) This rule applies if—
 - (a) a defendant makes by counterclaim a claim (the *defendant's claim*), or 2 or more claims (the *defendant's claims*), against the plaintiff for a debt or damages; and
 - (b) the defendant pays an amount into court under rule 1 (Payment into court—amount); and
 - (c) in making the payment the defendant has taken into account and intends to dispose of—
 - (i) the defendant's claim; or
 - (ii) if there are 2 or more claims made by the counterclaim—1 or more of the defendant's claims.
- (2) The notice of payment into court must state the relevant matters mentioned in subrule (1) (c).

6 Plaintiff may accept payment etc

- (1) If an amount is paid into court under this order by a defendant, the plaintiff may accept the amount—
 - (a) in satisfaction of—
 - (i) the claim; or
 - (ii) if there are 2 or more causes of action joined in a single action—the claim or each claim for which the payment is made; or
 - (b) if the action is an action for defamation—as compensation, satisfaction and amends.
- (2) The plaintiff may accept the amount by serving a notice of acceptance in accordance with form 1.21 on the defendant (or, if the payment was made by 1 of several defendants, each defendant)—

- (a) within 14 days after the day notice of payment into court is served on the plaintiff; or
 - (b) if 2 or more payments into court have been made—within 14 days after the day notice of the last payment into court is served on the plaintiff.
- (3) If the defendant paid the amount into court by bond or other security, the defendant must pay into court the amount of the bond or security within 14 days after the day the notice of acceptance is served on the defendant.
- (4) If the defendant does not comply with subrule (3), the defendant is not entitled to any advantage under the rules for the payment into court, and the plaintiff may—
- (a) withdraw the plaintiff’s acceptance by written notice; or
 - (b) if the payment was made under rule 1 (2) (which is about payment into court in an action under the *Civil Law (Wrongs) Act 2002*, part 3.1)—apply to the court by motion on notice for the registrar to assign the bond or security to the plaintiff so the plaintiff can enforce it; or
 - (c) if the payment was not made under rule 1 (2)—require the registrar to assign the bond or security to the plaintiff so the plaintiff can enforce it.
- (5) If the amount was paid into court under rule 1 (2), the amount may be paid out of court only under a court order.
- (6) If the amount was paid into court by 1 of several defendants, the amount may be paid out of court only under a court order dealing with all of the costs of the action or cause of action.
- (7) Unless the court otherwise orders, payment must be made—
- (a) to the plaintiff; or
 - (b) if the plaintiff has given written authority for payment to be made to the plaintiff’s solicitor—to the plaintiff’s solicitor.

-
- (8) If payment out of court is made in accordance with this rule, the claim or stated claim is stayed.
 - (9) If the action is an action for defamation, and the plaintiff accepts the amount paid into court, the plaintiff may by motion on notice apply to the court for leave to make in open court a statement in terms approved by the court.
 - (10) This rule does not apply to an action or cause of action to which a defence of tender before action is pleaded.

7 Plaintiff accepts payment—costs

- (1) This rule applies—
 - (a) if there is only 1 cause of action—if the plaintiff accepts in accordance with rule 6 an amount paid into court in satisfaction of the claim; or
 - (b) if there are 2 or more causes of action joined in a single action—if the plaintiff accepts an amount paid into court in satisfaction of all the claims or stated claims and states in the notice of acceptance that the other claims are abandoned.
- (2) Unless the court otherwise orders, the plaintiff may file a bill of costs for taxation after 4 days after the day the amount is paid out of court.
- (3) The bill of costs consists of the costs incurred to the day of payment into court and the costs reasonably incurred in accepting the payment.
- (4) The plaintiff may sign judgment for the amount of taxed costs 48 hours after taxation of the costs.

8 Plaintiff accepts payment—counterclaim

- (1) This rule applies if an amount is paid into court by a defendant who—
 - (a) made a counterclaim; and
 - (b) stated in the notice of payment into court that in making the payment the defendant had taken into account and intended to dispose of all the claims, or stated claims, for which the defendant counterclaimed.
- (2) If the plaintiff accepts the amount, the claims, or stated claims, are stayed against the plaintiff.

9 Payment out of amount remaining in court

- (1) If an amount paid into court is not taken out in accordance with rule 6 (Plaintiff may accept payment etc), the amount may be paid out only—
 - (a) with the consent of all parties to the action; or
 - (b) under a court order.
- (2) The order may be made at any time before, during or after the trial of the action.

10 Payment into court by defendant to counterclaim

The plaintiff or other person made defendant to a counterclaim may pay an amount into court in accordance with this order, and this order (other than rule 7 (4)) applies with the necessary changes.

11 Nondisclosure of payment into court etc

- (1) This rule does not apply in an action—
 - (a) to which a defence of tender before action is pleaded; or

-
- (b) in which a plea under the *Civil Law (Wrongs) Act 2002*, section 133 (Defence of apology and payment into court—defamation) has been filed.
- (2) Until all questions of liability or the amount of debt or damages have been decided in the action, the pleadings must not include a statement that an amount has been paid into court under this order, and the judge at the trial of the action must not be told about any payment into court.
- (3) When exercising a discretion about costs of the action (other than an interlocutory application for which a separate costs order is to be made), the judge must take into account—
- (a) the fact that an amount has been paid into court; and
 - (b) the amount of the payment.
- (4) Subrule (3) does not limit the matters that the judge may take into account.

12 Payment in under order

- (1) An amount paid into court under a court order may be paid out of court only under a court order.
- Note* A court order includes a consent order (see o 42 r 11).
- (2) If an amount is paid into court by the defendant under an order under order 15 (Summary judgment on statement of claim), the defendant may (unless the court otherwise orders), by the defendant's pleading or written notice, appropriate all or part of the amount, and any additional payment if necessary, to all or a stated part of the plaintiff's claim.
- (3) The amount appropriated is taken to be an amount paid into court under this order.

13 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 only be entered into, and an amount paid into court may only be accepted, with the court's approval.
- (2) This rule applies whether the person is suing alone or with another party.

14 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.

15 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 part of the amount to—
 - (i) the claimant or his or her litigation guardian for—
 - (A) expenses incurred by or paid for the claimant; or
 - (B) the maintenance or benefit of the claimant; or
 - (ii) the claimant's solicitor for costs; or
 - (b) the investment of all or part of the amount for the claimant in the way stated in the order; or

-
- (c) the investment of all or part of the interest received from an investment under this rule for the claimant in the way stated in the order; or
 - (d) the changing of an investment made for the claimant under this rule; or
 - (e) the sale of securities in which an amount is invested for the claimant under this rule at the time, and on the conditions, stated in the order; or
 - (f) the payment of all or part of the amount, or the transfer of a security or investment under this rule (including an account with an authorised deposit-taking institution), for the claimant.
- (3) In this rule:
amount includes an amount of damages.

18 Order 39 rule 31

substitute

31 Issue—form of subpoena

- (1) A party may ask the registrar for the issue of a subpoena to give evidence, a subpoena for production, or a subpoena for production and to give evidence, by lodging a copy of the subpoena for issuing and for filing.
- (2) A subpoena to give evidence must be in accordance with form 1.42.
- (3) A subpoena for production must be in accordance with form 1.43 or form 1.44.
- (4) A subpoena for production and to give evidence must be in accordance with form 1.45.
- (5) The registrar must issue the subpoena unless the court otherwise orders or the subpoena must not be issued under rule 31A, 32 or

order 66 rule 10B (Refusal to accept documents—abuse of process etc).

- (6) The subpoena must be issued under seal.

19 Order 39 new rule 31A

insert

31A Rejection of certain requests for subpoena

If a party asks for the issue of a subpoena under rule 31 (1), the subpoena must not be issued without the court's leave if it appears to the registrar that the subpoena—

- (a) is not substantially complete; or
(b) does not substantially comply in form with these rules.

Note The registrar may also refuse to accept a subpoena for filing under order 66 rule 10B (Refusal to accept documents—abuse of process etc).

20 Order 39 rule 32 (2)

substitute

- (2) If a party wants a document or thing that is in the custody of another court produced, the party may ask the registrar to act under subrule (3) by lodging a request.

21 Order 39 new rule 32 (5)

insert

- (5) Subrules (3) and (4) do not apply if order 66 rule 10B (Refusal to accept documents—abuse of process etc) applies.

22 Order 42 new rule 6A

insert

6A Order to contain date of making

- (1) An order that is drawn up must state the date it was made.
- (2) An order takes effect on the day it is made, unless the court otherwise directs.

23 New order 42B

insert

Order 42B Notices to sheriff**1 No order for return of writ etc necessary**

- (1) An order must not be issued for the return of a writ or to bring in the body of a person ordered to be attached or committed.
- (2) However, a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or from the person's solicitor, calling on the sheriff to return the writ, or to bring in the body within a stated time, if not complied with, entitles the person to apply for an order for the committal of the sheriff.

2 Notice to sheriff, out of office

- (1) This rule applies if the sheriff, before going out of office, arrests a defendant, and makes return of *sepi corpus*.
- (2) The sheriff may be called on by a notice mentioned in rule 1 to bring in the body within the time allowed by law, although the sheriff may be out of office before the notice is given.

24 Order 54

substitute

Order 54 Motions

Division 54.1 Preliminary

1 Meaning of *supporting material*

In this order:

supporting material, for a notice of motion, means an affidavit, schedule of correspondence or anything else properly filed in support of the motion.

2 Filing and service of notice of motion—supporting material

If a notice of motion is to be filed and served under this order, the supporting material (if any) for the notice must be filed and served with the notice unless the court otherwise orders.

Division 54.2 Interlocutory or other applications in proceedings already begun

3 Applications by motion

- (1) An interlocutory or other application in a proceeding that has already been begun in accordance with these rules must be made by motion.
- (2) The motion may be supported by—
 - (a) an affidavit setting out the facts relied on; or
 - (b) a schedule of correspondence; or
 - (c) anything else properly filed in support of the motion.

- (3) However, a motion for directions under order 33 must not be supported by affidavit except in accordance with that order.
- (4) If the court considers that the supporting material (if any) is insufficient to support the motion, the court may—
 - (a) adjourn the hearing of the motion; and
 - (b) make any other orders it considers appropriate, including an order that supporting material or further supporting material be prepared.
- (5) If the court orders that supporting material or further supporting material be prepared, the material must be filed and served at least 2 days before the day for hearing the motion unless the court otherwise orders.

4 Notice of motion

- (1) A person must not move the court for an order unless the person has filed a notice of motion in accordance with form 1.67A and has served a stamped copy of the notice on each interested party.
- (2) However, a party to the proceeding who has not entered an appearance need not be served with a stamped copy of the notice unless an order is sought requiring the party to do, or not to do, anything.
- (3) Also, a person may move the court without having filed or served a notice of motion if—
 - (a) the preparation of the notice, or the filing or service of a notice, would cause undue delay or other mischief to the applicant; or
 - (b) each interested party consents to the order; or
 - (c) under the rules the motion may be made without the prior filing or service of a notice; or
 - (d) the court orders that the person does not have to file or serve a notice.

- (4) A notice must—
 - (a) state the party moving the motion; and
 - (b) state the date and time when, and place where, the motion is to be made; and
 - (c) if the court makes an order under rule 9 (Service of notice of motion)—state the terms of the order; and
 - (d) state briefly the order (or orders) sought; and
 - (e) name each party affected by the order or each order sought; and
 - (f) for a notice to set aside, remit, or enforce an award, or for attachment—state the grounds of the application.
- (5) Costs need not be specifically claimed.
- (6) In this rule:

interested party, for a proceeding, means a party with an interest in the proceeding who has an address for service in the proceeding.

Division 54.3 Originating motions

5 Beginning actions by motion

- (1) This rule applies if, under a law or these rules, an action is not to be begun by an originating application under order 2, and no other procedure is provided.
- (2) The action must be begun by an originating notice of motion.
- (3) The motion must be supported by an affidavit setting out the facts relied on unless the court otherwise orders.

6 Originating notice of motion

- (1) The originating notice of motion must be in accordance with form 1.67B.

- (2) A notice must—
- (a) state the party moving the motion; and
 - (b) state the date and time when, and place where, the motion is to be made; and
 - (c) if the court makes an order under rule 9 (Service of notice of motion)—state the terms of the order; and
 - (d) state briefly the order (or orders) sought; and
 - (e) state the relief sought for each cause of action and each party affected by the relief; and
 - (f) state briefly, but specifically, the grounds relied on in support of the motion.

7 Filing and service of originating notice of motion

The applicant must file an originating notice of motion and serve a stamped copy of the notice on each other party to the motion.

Division 54.4 Motions—generally

8 Rule to show cause

A motion or application for a rule nisi, or order to show cause, must not be made—

- (a) in an action; or
- (b) to set aside, remit or enforce an award; or
- (c) for attachment; or
- (d) to answer the matters in an affidavit; or
- (e) against a sheriff to pay money levied under an execution.

9 Service of notice of motion

- (1) Unless the court otherwise orders, there must be—
 - (a) for a notice of motion under division 54.2—at least 2 clear days between the day of service of the notice and the day stated in the notice for hearing the motion; or
 - (b) for an originating notice of motion under division 54.3—at least 5 clear days between the day of service of the notice and the day stated in the notice for hearing the motion.
- (2) If a notice of motion is to be served on a person who has not entered an appearance, the notice must be served personally unless the court otherwise orders.
- (3) The court may order service of a notice of motion on any person it considers appropriate.

10 Absence of party

The court may hear and dispose of a motion in the absence of a party if—

- (a) service of the notice of motion on the absent party is not required under the rules or by an order of the court; or
- (b) the notice of motion has been served on the absent party in accordance with these rules.

11 Dismissal or adjournment if notice not given

- (1) This rule applies if—
 - (a) a person has not been given notice of a motion; and
 - (b) on the hearing of the motion, the court considers that the person should have been given notice of the motion.
- (2) The court may—
 - (a) dismiss the motion; or

- (b) adjourn the hearing of the motion so that notice may be given on the conditions (if any) the court considers appropriate.

12 Adjournment at request of parties

- (1) This rule applies if a motion is to be heard on a date and, before that date—
 - (a) a party files a request for an adjournment; and
 - (b) each other party has agreed to, and signed, the request.
- (2) The hearing of the motion is adjourned to the date stated in the notice or, if the court sets a later date, that date.
- (3) If the court sets a later date in the absence of the parties, the registrar must serve notice of the later date on each party.

13 Adjournment generally

The court may adjourn the hearing of a motion on the conditions (if any) it considers appropriate.

14 Further hearing

- (1) This rule applies if a notice of motion (the *original notice*) has been filed and served, and the motion is not dealt with on the date stated in the notice.
- (2) The court may deal with the motion on a later date set by the court.
- (3) A further notice of motion must be filed if the court orders it to be filed.
- (4) The further notice must be served on a party if—
 - (a) the court orders service on the party; or
 - (b) the party was not served with the original notice.

15 Formal order not required

- (1) This rule applies if an order has been made that—
 - (a) only increases the time for taking any proceeding or doing anything else; or
 - (b) only gives leave for—
 - (i) the issue of a writ, other than a writ of attachment; or
 - (ii) the amendment of a document or pleadings; or
 - (iii) the filing of a document; or
 - (iv) anything to be done by an officer of the court.
- (2) Also, this rule applies even if a direction is given that the costs of the order must be costs in any cause or matter.
- (3) It is not necessary to draw up the order unless the court otherwise orders.
- (4) A written record of the order signed by the judge, master or registrar who made the order, or signed by the associate to the judge, master or registrar, is sufficient authority for the increase of time or giving of leave.
- (5) The person (or the solicitor of the person) on whose application the order is made must give written notice of the order to anyone who would have been required to be served with the order if the order was drawn up.

25 Order 58 rule 33 (3) and (4)

omit

26 Order 58 rule 35

substitute

35 Service of notices on claimants

- (1) This rule applies to a notice mentioned in this order that must be served on claimants.
- (2) Unless the court otherwise orders, the notice is properly served if it is sent—
 - (a) if the claimant is represented by a solicitor—to the solicitor’s address for service; or
 - (b) if the claimant is not represented by a solicitor—to the claimant by prepaid post addressed to the claimant at the address stated in the claim.

27 Order 61 rule 3 (a)

omit

- order 26, except rules 2 (13), 8 and 10

substitute

- order 26, except rules 6 (9), 13 and 15

28 Order 61A new rule 1 (ka)

insert

- (ka) an appeal from a decision of the registrar under order 66 rule 10B (1) (Refusal to accept documents—abuse of process etc) or order 80 rule 14 (1) (Refusal to accept documents—abuse of process etc) to refuse to accept a document; and

29 Order 61A rule 1

renumber paragraphs when rules next republished under Legislation Act

30 Order 65 rule 7A

substitute

7A Costs and determined fees if amount recovered less than Magistrates Court limit

- (1) This rule applies to a suit that the Magistrates Court—
 - (a) would have had jurisdiction and power to hear and decide; or
 - (b) would, apart from the amount claimed, have had jurisdiction and power to hear and decide.
- (2) If the plaintiff is entitled to the costs of the suit, and recovers an amount (excluding costs) of not more than \$40 000, the plaintiff is entitled only to—
 - (a) the costs, at the appropriate scale, that the plaintiff would have been entitled to recover if the suit had been begun in the Magistrates Court; and
 - (b) the amount of any Magistrates Court determined fee that the plaintiff would have been entitled to recover if the suit had been begun in the Magistrates Court.
- (3) The costs (including the amount of any Magistrates Court determined fee) that the plaintiff is entitled to must be reduced by the additional costs (including the determined fee difference) properly incurred by the defendant because the suit was begun in the Supreme Court instead of the Magistrates Court, but the plaintiff is not required to pay the defendant any amount that the additional costs (including the determined fee difference) exceed the costs payable to the plaintiff.
- (4) This rule does not apply in relation to disbursements (other than for any determined fee).

-
- (5) The court may order that the plaintiff is entitled to a different amount for the costs (including the amount of any Magistrates Court determined fee).
- (6) This rule as in effect before the day this rule commences continues to apply in relation to a suit that is heard and decided before that day.
- (7) In this rule:

determined fee difference means the amount of the Supreme Court determined fee less the amount of the Magistrates Court determined fee.

Magistrates Court determined fee means the relevant determined fee under the *Magistrates Court Act 1930*, part 13A (Court and tribunal fees).

Supreme Court determined fee means the relevant fee or charge determined under the *Supreme Court Act 1933*, section 37 (Fees and charges—determination).

31 Order 66 rule 1, definition of *document*

substitute

document means a document prepared by a party to a proceeding for use by or in the court, and includes an originating application or any other document beginning an action.

32 Order 66 rule 2

omit

33 Division 66.2

renumber as division 66.3

34 New division 66.2

insert

Division 66.2 Refusal to accept documents for filing

10A Refusal to accept documents—non-compliance with div 66.1

- (1) The registrar may refuse to accept a document for filing that does not comply with division 66.1 (Style) to the extent that the nature of the document permits.
- (2) Costs incurred by a party in relation to a document refused acceptance under this rule may be disallowed on taxation of the party's costs.

10B Refusal to accept documents—abuse of process etc

- (1) If a document lodged for filing appears to the registrar on its face to be an abuse of the court's process or to be frivolous or vexatious, the registrar may refuse to accept the document or may seek the direction of a judge about how to deal with it.
- (2) If the registrar seeks the direction of a judge under subrule (1), the judge may direct the registrar—
 - (a) to accept the document; or
 - (b) to refuse to accept it; or
 - (c) to refuse to accept it without the court's leave.

Note If the registrar refuses to accept a document under r (1), the party filing the document may appeal to a judge (see the *Supreme Court Act 1933*, s 10 (2)) or the master (see o 61A r 1 (ka)).

- (3) Subrule (2) (c) does not apply if the court later gives leave.

-
- (4) This rule applies to a request under order 39 rule 32 (2) (Document or thing in custody of a court) as if it were a document lodged for filing.

35 Order 72 rule 3 (4)

substitute

- (4) A notice of intended application for letters of administration must—
- (a) ask creditors to send in their claims; and
 - (b) if the applicant wants to ask the registrar for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under rule 30A—state the proposed request.
- (5) An affidavit of the publication of the notice of intended application, and brief details of any responses from creditors, must be filed.

36 Order 72 rule 19

substitute

19 Registrar refusing to deal with application

- (1) This rule applies if an application for representation, or an application for the court to seal a probate or letters of administration, has been filed, and—
- (a) a caveat against the application is filed before the application has been granted; or
 - (b) the registrar doubts whether the application should be granted; or
 - (c) the application is made under the Act, part 4 (Small estates) and the registrar considers it appropriate that the court deal with the application or it is necessary to get the court's directions.

- (2) This rule also applies if—
 - (a) in an application for letters of administration, or by motion on notice under order 54 (Motions), in relation to an estate, there is a request—
 - (i) that the administration bond be dispensed with under rule 30A (Dispensing with administration bond); or
 - (ii) under rule 30 (4) (Administration bond) that the amount of the bond be less than the value of the estate; and
 - (b) 1 of the following applies:
 - (i) the registrar doubts whether the request should be granted;
 - (ii) a person interested in the estate or creditor has filed a written notice objecting to the request.
- (3) This rule also applies if—
 - (a) the court or registrar requires an administration bond under rule 30 for an estate to be given by a surety or sureties for a particular amount; and
 - (b) a person interested in the estate applies to the court under rule 32A (Administration bond—addition or reduction after required but before given) for the amount to be reduced; and
 - (c) 1 of the following applies:
 - (i) the registrar doubts whether the application should be granted;
 - (ii) a person interested in the estate or creditor has filed a written notice objecting to the application.
- (4) This rule also applies if—
 - (a) an administration bond is given under rule 30 for an estate, and a person interested in the estate does 1 of the following under

rule 32B (Administration bond—addition or reduction after given):

- (i) applies to the court for an order requiring the surety or sureties to give an additional administration bond;
 - (ii) applies to the court for an order reducing the liability of a surety under the bond; and
- (b) 1 of the following applies:
- (i) the registrar doubts whether the application should be granted;
 - (ii) a person interested in the estate or creditor has filed a written notice objecting to the application.
- (5) If this rule applies, the registrar must serve on the applicant a written notice stating that the registrar will not deal with the application and the registrar's reasons for not dealing with the application.
- (6) The applicant may then apply to the court by motion on notice under order 54 (Motions) for the court to decide the application mentioned in subrule (5).
- (7) However, the day stated in the notice of motion for hearing the motion must be at least 7 clear days after the day of service of the notice.

37 **Division 72.5**

substitute

Division 72.5 Administration bonds

30 Administration bond

- (1) As a condition of granting administration of a deceased person's estate to a person, the court or registrar may require 1 or more sureties acceptable to the court or registrar to guarantee by bond (an

administration bond) that they will make good, up to the required amount, any loss that anyone interested in the administration of the estate may have because of a breach by the administrator of the administrator's duties.

- (2) However, an administration bond must not be required if administration is granted to—
 - (a) a person on behalf of the Territory, the Commonwealth or a State; or
 - (b) the public trustee of the Territory or a State; or
 - (c) a trustee company.
- (3) An administration bond for an estate has effect for the benefit of everyone interested in the administration of the estate as if contained in a deed made by the surety or sureties with each interested person and, if there are 2 or more sureties, as if they had bound themselves jointly and severally.
- (4) The court may, on application or of its own initiative, decide that the required amount for an administration bond for an estate is less than the value of the estate.
- (5) The application may be made in the application for letters of administration or by motion on notice under order 54 (Motions).
- (6) In this rule:

required amount, for an administration bond for an estate, means—

 - (a) the value of the estate; or
 - (b) a lesser amount decided by the court under subrule (4); or
 - (c) if the value of the estate is less than \$10 000—a lesser amount decided by the registrar.

30A Dispensing with administration bond

- (1) This rule applies in relation to an estate if—
 - (a) all or any part of the estate passes to the person to whom administration is granted; or
 - (b) all or any part of the estate passes to beneficiaries who are of full legal capacity and the beneficiaries consent, in writing, to the administration bond for the estate being dispensed with.
- (2) The court or registrar may, on application or of its own initiative, dispense with the administration bond in relation to the estate or part of the estate.
- (3) The application may be made in the application for letters of administration or by motion on notice under order 54 (Motions).

31 Form of administration bond

An administration bond must be in accordance with form 2.14.

31A Affidavit of justification

- (1) A surety, other than an exempt surety, must justify by affidavit.
- (2) An affidavit of justification must be in accordance with form 2.15.
- (3) A surety that is a corporation must make an affidavit by a proper officer.
- (4) An affidavit by a surety for an administration bond must contain enough information about the surety's financial position to satisfy the registrar that the surety can meet any claim under the bond.
- (5) The registrar may accept an affidavit of justification from a corporation at least once every year instead of requiring an affidavit in every case that the corporation is a surety.

- (6) The registrar may require a surety for an administration bond who justifies by affidavit to give the registrar further information if there is not enough information in the affidavit for the registrar to be satisfied that the surety can meet any claim under the bond.
- (7) The further information must be given in the way the registrar requires, either—
 - (a) by another affidavit; or
 - (b) by the oral examination of the person who made the affidavit of justification on oath or affirmation before the registrar.
- (8) In this rule:
exempt surety means—
 - (a) an authorised deposit-taking institution; or
 - (b) an entity declared by the registrar under rule 32 to be an exempt surety.

Note **Authorised deposit-taking institution** is defined in the Legislation Act, dict, pt 1 as an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth).

32 Exempt surety

- (1) The registrar may, in writing, declare an entity to be an exempt surety.
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

32A Administration bond—addition or reduction after required but before given

- (1) This rule applies if the court or registrar requires an administration bond under rule 30 (Administration bond) for an estate to be given by a surety or sureties for a particular amount.

-
- (2) The court may, at any time before the bond has been given by the surety or sureties, on the application of anyone interested in the estate or of its own initiative on the registrar's report, order that the amount be reduced or increased.
 - (3) However, application may not be made if the court has made a decision about the amount under rule 30 (4).
 - (4) The application must be made by motion on notice under order 54 (Motions).
 - (5) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—
 - (a) the court makes an order under subrule (2) that the amount be increased; and
 - (b) the surety or sureties will not guarantee the increased amount; and
 - (c) the administrator does not produce another surety or other sureties to cover the increased amount.
 - (6) In this rule:
required amount—see rule 30 (6).

32B Administration bond—addition or reduction after given

- (1) If an administration bond is given under rule 30 (Administration bond) for an estate, the court may, at any time, on the application of anyone interested in the estate or of its own initiative on the registrar's report—
 - (a) require the surety or sureties to give an additional administration bond; or
 - (b) order that the liability of a surety under the bond be reduced by a stated amount.

- (2) The application must be made by motion on notice under order 54 (Motions).
- (3) The court may remove the administrator for the estate and appoint someone else in the administrator's place with power to sue or be sued on any contract made by the removed administrator if—
 - (a) the additional administration bond is not given by the surety or sureties; and
 - (b) the administrator does not produce another surety or other sureties to give the additional bond.
- (4) For these rules, an additional administration bond under this rule is taken to be an administration bond under rule 30.

33 Proceeding on an administration bond

- (1) A proceeding on an administration bond must not be begun without the court's leave.
- (2) An application for leave to sue on an administration bond must be made by motion on notice under order 54 (Motions).
- (3) The notice of motion must be served on the administrator and surety.

33A Application by surety

On application made by motion on notice under order 54 (Motions) by a surety to an administration bond, the court may grant the relief it considers appropriate if it appears to the court that the following applies:

- (a) the estate is being wasted, or is in danger of being wasted;
- (b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or omission of the person administering the estate.

38 Order 72 rule 39 (2)

substitute

- (2) If there is an administration bond for the estate, the administrator must also serve on the bond's sureties notice of the filing of the administrator's accounts and of the application to pass the accounts.

39 Order 72 rules 46 to 49

substitute

46 Application if registrar refuses accounts

- (1) This rule applies if accounts relating to an estate have been filed with the registrar under rule 38, and—
 - (a) a doubt or difficulty arises; or
 - (b) an interested person wants the matter referred to the court.
- (2) The registrar must give the accounting party a written notice that—
 - (a) tells the accounting party that the registrar will not pass the accounts; and
 - (b) gives reasons for not passing the accounts.
- (3) The accounting party may apply to the court to pass the accounts by motion on notice under order 54 (Motions) within 14 days after the day the notice under subrule (2) is given to the accounting party.

47 Time for beginning appeal

If a person has filed a notice under rule 45, the person must apply, by motion on notice under order 54 (Motions), within 21 days after the day the notice is filed, for the appeal to be decided.

48 Service of notice of motion under r 46 and r 47

Notice of motion under rule 46 or rule 47 must be served on the registrar and each beneficiary of the estate at least 7 days before the day for hearing the motion.

40 Order 72 rule 51

substitute

51 Filing of inventory may be dispensed with

- (1) This rule applies if an executor or administrator of an estate applies to the court or registrar for an order that the filing of an inventory and the filing and passing of the accounts mentioned in the Act, section 58 (Filing and passing accounts) for the estate be dispensed with, and—
 - (a) 1 of the following applies:
 - (i) the executor is the only person beneficially entitled under the will or the administrator is the only person beneficially entitled in the distribution of the estate;
 - (ii) everyone who is beneficially entitled under the will or in the distribution of the estate is of full legal capacity and consents, in writing, to the order being made; and
 - (b) if there is an administration bond—the bond’s sureties consent, in writing, to the order being made.
- (2) If this rule applies, the court or registrar may make the order.
- (3) However, if the court or registrar makes the order, the court may later order the executor or administrator to file the inventory and file and pass the accounts.

41 Order 72 rule 54*substitute***54 Particulars of objection**

- (1) Within 4 days after the day a direction is given under rule 53, unless the court otherwise orders, the caveator must serve on the party seeking representation—
 - (a) if the objection is to a will—the relevant particulars of objection mentioned in subrule (2); or
 - (b) if the objection is to the grant of administration of intestacy—the relevant particulars of objection mentioned in subrule (3).
- (2) The particulars of objection to a will are as follows:
 - (a) that there is a later will or the will has been revoked, and the date of the later will or revocation;
 - (b) that the will was not signed by the testator;
 - (c) that the will was not executed in accordance with the *Wills Act 1968*;
 - (d) that the testator lacked testamentary capacity—
 - (i) in the period shortly before and at the time of execution; or
 - (ii) before that period because of mental incapacity, and the date the symptoms first appeared;
 - (e) that a stated person exercised undue influence on the testator.
- (3) The particulars of objections to grant of administration of intestacy are as follows:
 - (a) that there is a will, and the date of the will;
 - (b) that the person applying does not have the capacity or relationship in which the person seeks administration; or

(c) that the caveator or someone else seeking administration has a better right to seek administration, and why;

(d) that the proposed administrator is disqualified, and why.

42 Order 72 rule 58A

in division 72.11, insert

58A Motion for revocation

At any time after probate of the will, or administration of the estate, of a deceased person has been granted, the court may revoke the probate or administration on the motion of a person who is interested in the estate.

43 Order 80 rule 10

substitute

10 Issue—form of subpoena

- (1) A party may ask the registrar for the issue of a subpoena to give evidence, a subpoena for production, or a subpoena for production and to give evidence, by lodging a copy of the subpoena for issuing and for filing.
- (2) A subpoena to give evidence must be in accordance with form 4.1.
- (3) A subpoena for production must be in accordance with form 4.2 or form 4.3
- (4) A subpoena for production and to give evidence must be in accordance with form 4.4.
- (5) The registrar must issue the subpoena unless the court otherwise orders or the subpoena must not be issued under rules 10A, 11 or 14.
- (6) The subpoena must be issued under seal.

10A Rejection of certain requests for subpoena

If a party asks for the issue of a subpoena under rule 10 (1), the subpoena must not be issued without the court's leave if it appears to the registrar that the subpoena—

- (a) is not substantially complete; or
- (b) does not substantially comply in form with these rules.

Note The registrar may also refuse to accept a subpoena for filing under o 80 r 14 (Refusal to accept documents—abuse of process etc).

44 Order 80 rule 11 (2)

substitute

- (2) If a party wants a document or thing that is in the custody of another court produced, the party may ask the registrar to act under subrule (3) by lodging a request.

45 Order 80 new rule 11 (5)

insert

- (5) Subrules (3) and (4) do not apply if rule 14 (Refusal to accept documents—abuse of process etc) applies.

46 Order 80 new rule 14

in division 80.3, insert

14 Refusal to accept documents—abuse of process etc

- (1) If a document lodged for filing appears to the registrar on its face to be an abuse of the court's process or to be frivolous or vexatious, the registrar may refuse to accept the document or may seek the direction of a judge about how to deal with it.
- (2) If the registrar seeks the direction of a judge under subrule (1), the judge may direct the registrar—

- (a) to accept the document; or
- (b) to refuse to accept it; or
- (c) to refuse to accept it without the court's leave.

Note If the registrar refuses to accept a document under r (1), the party filing the document may appeal to a judge (see the *Supreme Court Act 1933*, s 10 (2)) or the master (see o 61A r 1 (ka)).

- (3) Subrule (2) (c) does not apply if the court later gives leave.
- (4) This rule applies to a request under order 80 rule 11 (2) (Document or thing in custody of a court) as if it were a document lodged for filing.

47 Order 86 new rule 60 (4)

insert

- (4) If a document mentioned in subrule (3) is served by or on behalf of the registrar, the document may be served—
 - (a) by sending a copy by prepaid post to the place where the party is in custody, addressed to the person in charge of the place; or
 - (b) if the place has a postbox at a post office—by sending a copy by prepaid post to the postbox, addressed to the person in charge of the place; or
 - (c) if the place has a fax machine—by sending a copy by fax to the place, addressed to the person in charge of the place; or
 - (d) if the person in charge of the place has an email address—by sending a copy by electronic communication to the email address.

48 Order 86 rule 60 (4)

renumber as subrule (5)

49 Schedule 1, forms 1.2 and 1.7*after*

Fax*

insert

Email address*

50 Schedule 1, forms 1.18 to 1.20*substitute***Form 1.18 Notice of payment into court**

(see o 26 r 1)

*[Heading as in form 1.1]*The defendant [*name of defendant*]—(a) has paid \$ into court (***the amount***); and*[or]**[if the defendant filed a bond under o 26 r 2]*(a) has filed a bond for \$ (***the amount***); and*[or]**[if the defendant filed a security under o 26 r 3]*(a) has filed a security for \$ (***the amount***); and*[for an action other than an action under the Civil Law (Wrongs) Act 2002, part 3.1 (Wrongful act or omission causing death) or part 9.3 (Rules governing litigation of civil claims—defamation)]*(b) says that the amount is enough to satisfy the plaintiff's claim for [*state what the amount is said to satisfy*]; and*[or]*

(b) [*unless the Court otherwise orders, and if there are 2 or more causes of action joined in a single action, and an amount is paid into court in satisfaction of 1 or more of the claims*] says that part of the amount, \$ (state amount) is enough to satisfy the plaintiff's claim for [*state what that part is said to satisfy*] and the rest of the amount is enough to satisfy the plaintiff's claim for [*state what the rest is said to satisfy*]; and

[*or*]

[*for an action under the Civil Law (Wrongs) Act 2002, part 3.1*]

(b) says that the amount is sufficient compensation for the benefit of the people for whose benefit the action under the *Civil Law (Wrongs) Act 2002, part 3.1* (Wrongful act or omission causing death) is brought, and who are entitled to compensation under the part; and

[*or*]

(b) [*for an action under the Civil Law (Wrongs) Act 2002, part 9.3 (Rules governing litigation of civil claims—defamation)*] pays the amount by way of compensation, satisfaction and amends; and

(c) [*if the defendant makes a counterclaim, state the relevant matters mentioned in o 26 r 5 (1) (c)*]; and

(d) [**admits/denies*] liability.

Date:

Signature of *[defendant/defendant's solicitor]:

To the *[plaintiff/plaintiff's solicitor]:

**strike out if inapplicable*

Form 1.19 **Bond for payment into court**

(see o 26 r 2)

[Heading as in form 1.1]

- 1 *[Name of approved person]* agrees to pay the registrar \$ *[amount]* if—
 - (a) the plaintiff accepts the amount under order 26 rule 6 (Plaintiff may accept payment etc); and
 - (b) the defendant fails to pay into court the amount of the bond within 14 days after the day the notice of acceptance is served on the defendant.

- 2 This bond is a deed.

- 3 This bond remains in effect unless the Court otherwise orders (see o 26 r 2).

- 4 The parties to the action may consent to the discharge of the bond under order 42 rule 11 (Consent order or judgment signed by registrar).

Date:

Signature(s) of authorised person:

*[name and address of authorised person and position
with the approved person]*

Signed at

before me:

Signature of witness:

[name and address of witness]

Form 1.20 Authority to give bond

(see o 26 r 2)

[Heading as in form 1.1]

1 *[Name of approved person]* authorises *[name and address of authorised person and position with the approved person eg managing director]* to give a bond for payment into court in this matter.

2 This authority is a deed.

Date:

Signature(s) of appropriate person¹ :

Signed at

before me:

Signature of witness:

[name and address of witness]

Note 1 An appropriate person is the person who may, under a law, sign a document for or on behalf of the approved person eg the Corporations Act, s 127, provides how a corporation may sign a document.

51 Schedule 1, form 1.21*omit*

(see o 26 r 2, o 26 r 4)

substitute

(see o 26 r 6)

52 Schedule 1, new forms 1.67A and 1.67B*insert***Form 1.67A Notice of motion—interlocutory or other applications in proceedings already begun**

(see o 54 r 4)

In the Supreme Court of the Australian Capital Territory

ACTSC No of [year]

Between:

AB Plaintiff

and

CD Defendant**Notice of motion****Take notice** that the Court at Knowles Place, Canberra will be moved by [party] on [date] at 10 am (or as soon after that as this motion can be heard) for the following orders:

- 1 [set out briefly orders sought with all necessary or appropriate particulars and name each party affected by each order sought];
- 2 any other orders that the Court considers appropriate.

[for a notice to set aside, remit, or enforce an award, or for attachment, state the grounds of the application]

[if the Court made an order under o 54 r 9 (Service of notice of motion)]

On *[date]*, *[name of Judge]* ordered that this notice of motion be served *[on date, if applicable]*.

Date:

Signature of **[applicant/applicant's solicitor]*:

Address for service:

And to: *[each interested party]*

[each interested party's name and address]

**strike out if inapplicable*

Form 1.67B Originating notice of motion

(see o 54 r 6)

In the Supreme Court of the Australian Capital Territory

ACTSC No of *[year]*

*[*name of legislation]*

Between:

AB Plaintiff

and

CD Defendant

Notice of motion

Take notice that the Court at Knowles Place, Canberra will be moved by [party] on [date] at 10 am (or as soon after that as this motion can be heard) for the following orders:

- 1 [set out briefly relief sought for each cause of action with all necessary or appropriate particulars and name each party affected by the relief];
- 2 any other orders that the Court considers appropriate.

These orders are sought on the following grounds [set out briefly, but specifically, grounds relied on]:

[unless the Court has ordered that the motion need not be supported by an affidavit]

This application is supported by the affidavit (s) of [name] *[sworn/affirmed] on [date].

[if the Court made an order under o 54 r 9 (Service of notice of motion)]

On [date] [name of Judge] ordered that this notice of motion be served [on date, if applicable].

Date:

Signature of *[applicant/applicant's solicitor]:

Address for service:

And to: [each interested party]

[each interested party's name and address]

Entry of appearance

Before taking any further step in these proceedings, you must enter an appearance in the Registry.

If you do not attend, either in person or by your legal representative, the motion may be heard and orders made against you, in your absence.

**strike out if inapplicable*

53 Schedule 1, forms 2.2 and 2.3

substitute

Form 2.2 Notice of intended application for letters of administration with will annexed

(see o 72 r 3)

[Heading as in form 2.1]

In the estate of *[name]*, late of *[last address, occupation]*, deceased

Application will be made not earlier than 14 days after the day this notice is published for letters of administration with the will dated *[date]* *[*and codicil/s dated *[date/s]*]* annexed of the estate to be granted to *[name]* for the following reason: *[reason]*.

All notices may be served at the address below.

Creditors of the estate are required to send particulars of their claims to:

[name of applicant or applicant's solicitor]

[address]

[if the applicant wants to ask the registrar for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under o 72 r 30A]

Application will be made to the registrar **[for the amount of the administration bond to be less than the value of the estate/to dispense with the administration bond in relation to the **[estate/part of the estate]*]*.

**strike out if inapplicable*

Form 2.3 **Notice of intended application for letters of administration**

(see o 72 r 3)

[Heading as in form 2.1]

In the estate of *[name]*, late of *[last address, occupation]*, deceased

Application will be made not earlier than 14 days after the day this notice is published for letters of administration of the estate to be granted to *[name]*,
**[the [relationship] of the deceased]*.

All notices may be served at the address below.

Creditors of the estate are required to send particulars of their claims to:

[name of applicant or applicant's solicitor]

[address]

[if the applicant wants to ask the registrar for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under o 72 r 30A]

Application will be made to the registrar **[for the amount of the administration bond to be less than the value of the estate/to dispense with the administration bond in relation to the *[estate/part of the estate]]*.

**strike out if inapplicable*

54 Schedule 1, forms 2.6 and 2.7

substitute

Form 2.6 Application for letters of administration with will annexed

(see o 72 r 5)

[*Heading as in form 2.1*]

No P of [year]

In the estate of [name], late of [last address, occupation], deceased

To : The Registrar

I apply for letters of administration with the will dated [date] *[and codicil/s dated [date/s]] annexed of the estate to be granted to [name] for the following reason: [reason].

[*if the applicant wants to ask the registrar for the amount of the administration bond to be less than the value of the estate, or to dispense with the bond under o 72 r 30A*]

I apply *[for the amount of the administration bond to be less than the value of the estate/to dispense with the administration bond in relation to the *[estate/part of the estate]].

The address for service of all notices in this matter is [address].

Date:

[name of applicant or applicant's solicitor]

* *strike out if inapplicable*

Form 2.7 **Application for letters of
administration**

(see o 72 r 5)

[*Heading as in form 2.1*]

No P of [year]

In the estate of [name], late of [last address, occupation], deceased

To : The Registrar

I apply for letters of administration of the estate to be granted to [name], *[the
(relationship) of the deceased] for the following reason: [reason].

[*if the applicant wants to ask the registrar for the amount of the administration
bond to be less than the value of the estate, or to dispense with the bond under
o 72 r 30A*]

I apply *[for the amount of the administration bond to be less than the value of
the estate/to dispense with the administration bond in relation to the
*[estate/part of the estate]].

The address for service of all notices in this matter is [address].

Date:

[name of applicant or applicant's solicitor]

* *strike out if inapplicable*

55 Schedule 1, forms 2.14 to 2.16

substitute

Form 2.14 Administration bond

(see o 72 r 31)

[*Heading as in form 2.1*]

No P of [year]

In the estate of [name], late of [last address, occupation], deceased

*I/We [name(s) and address(es) of surety/sureties] guarantee that *[I/we] will make good, up to \$ [the required amount¹], any loss that anyone interested in the administration of the estate may have because of a breach by the administrator of the administrator's duties.

This bond is a deed.

Date:

Signature(s) of surety/sureties:

Signed at

before me:

Signature of witness:

[name and address of witness]

**strike out if inapplicable*

Note 1 The required amount is—

- (a) the value of the estate; or
- (b) a lesser amount decided by the court; or
- (c) if the value of the estate is less than \$10 000—a lesser amount decided by the registrar (see o 72 r 30).

Form 2.15 Affidavit of justification

(see o 72 r 31A)

[Heading as in form 2.1]

No P of *[year]*

In the estate of *[name]*, late of *[last address, occupation]*, deceased.

On *(date, eg 6 February 2004)*, I ¹ *[*say on oath/solemnly affirm]*—

- 1 **[My/(if the person making the affidavit is a proper officer of the surety corporation, state the corporation's name eg ABC Pty Ltd's) net worth (that is, total assets less total liabilities) is more than \$ [amount].*

[for an individual]

2 My assets are:

- (a) real estate, as follows: *[for real estate, give the property's value and details that identify the property eg street address and district, section and block]*; and
- (b) personal property², as follows: *[for personal property, give the property's value and details that identify the property]*

[Examples of personal property and identifying details

- *for shares, the name of the company and the number of shares*
- *for money on deposit or current account with a financial institution, the name of the financial institution, the name of the account holder, the account number and the amount*

- *for a life insurance policy, the name of the insurer, policy number, the number of years in force with surrender value, and age of surety at time of making this affidavit]*

3 My liabilities are: *[include details of liabilities and amounts, eg mortgage with XYZ Bank over 31 Emmy Street Blueacre for \$100 000]*

[or]

[for a corporation]

2 The *[corporation's name]* assets and liabilities are as set out in the following financial statements for the past 3 financial years, copies of which are annexed to this affidavit:

[list types of financial statements, dates of the statements and relevant annexure reference eg, balance sheet for 2002–2003 financial year, at annexure A]

3 **[I am/[if the person making the affidavit is a proper officer of the surety corporation, The (name of corporation) is] not surety in any other matter [or if a surety in any other matter, state the matter and amount].*

(signature of person making affidavit)

**[Sworn/Affirmed] at*

before me:

**strike out if inapplicable*

Note 1 If the surety is an individual, state name, address and occupation; if the surety is a corporation, state the name of the person making the affidavit, the person's position as a proper officer of the corporation and the corporation's name and ACN, eg managing director, ABC Pty Ltd ACN 123 456 789.

Note 2 For personal property, include only items of personal property that significantly contribute to your net worth.

56 Further amendments, mentions of order 54 (*Motions and other applications*)

omit

order 54 (Motions and other applications)

substitute

order 54 (Motions)

in

- order 86 rule 3
- order 86 rule 11
- order 86 rule 22 (1) (a) (i)
- order 86 rule 24 (3) (a)
- order 86 rule 25 (1)
- order 86 rule 46 (2)
- order 86 rule 47 (2)
- order 86 rule 55 (2)
- order 86 rule 88 (2)
- order 86 rule 89 (3)
- order 86 rule 90 (3)

Endnotes

1 Notification

Notified under the Legislation Act on 25 February 2004.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2004