



# Federal Court Rules

**Statutory Rules 1979 No. 140 as amended**

made under the

*Federal Court of Australia Act 1976*

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This compilation was prepared on 5 July 2010  
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The text of any of those amendments not in force  
on that date is appended in the Notes section

This document has been split into four volumes

**Volume 1** contains Orders 1 to 51,

Volume 2 contains Orders 51A to 82,

Volume 3 contains Schedules 1 to 4, and

Volume 4 contains the Notes

Each volume has its own Table of Contents

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## Order 1      Preliminary

### 1      **Short title** [see Note 1]

These Rules may be cited as the Federal Court Rules.

### 2      **Commencement**

These Rules shall come into operation on 1 August 1979.

### 3      **Repeal**

Upon the coming into operation of these Rules, the Federal Court of Australia Rules, being Statutory Rule No. 20 of 1977 and Statutory Rule No. 220 of 1977, are repealed.

### 4      **Interpretation**

In these Rules, unless the contrary intention appears:

*the Act* means the *Federal Court of Australia Act 1976*.

*arbitration* means arbitration conducted under an arbitration order.

*arbitration order* means an order referring a matter to an arbitrator as mentioned in Order 72, rule 1.

*arbitrator* means an arbitrator to whom a matter is referred under an arbitration order.

*Australia* or *the Commonwealth* means the Commonwealth of Australia and when used in a geographical sense includes external territories.

*Bankruptcy Rules* means the *Federal Court (Bankruptcy) Rules 2005*.

*committee* includes a person entrusted under a law of the Commonwealth, or of a State or Territory, with the care or management of the person or estate of a mentally disabled person.

**Rule 4**

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**Commonwealth** means the Commonwealth of Australia and includes a Territory.

**corporation** includes any artificial person other than an organisation.

**Corporations Rules** means the *Federal Court (Corporations) Rules 2000*.

**cross-claim** includes a counter-claim, cross-action, set-off, and third party claim.

**directions hearing** means:

- (a) a hearing appointed in an originating process; or
- (b) except for the purpose of computation of time within which acts must be done — any other hearing fixed for the purpose of giving, or at which the Court in fact gives, directions about the conduct of a proceeding.

**document** includes any record of information which is a document within the definition contained in the Dictionary in the *Evidence Act 1995* and any other material data or information stored or recorded by mechanical or electronic means.

**document exchange** means a facility or service through which a member of the facility or service may send a document to another member of the facility or service.

**document exchange box** means a box in a document exchange.

**electronic communication** means a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, including an email or an email attachment.

**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.

**examination** includes where relevant an examination held pursuant to an order made under Order 24, and, in proceedings under Division 1 of Part 2 of the *Foreign Evidence Act 1994*, includes any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by the Court under that Part.

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**Rule 4**

**examiner** includes an officer of the Court or any other person appointed under Order 24, or under paragraph 7 (1) (a) or (b) of the *Foreign Evidence Act 1994*, for the purpose of an examination before the examiner of any person.

**hearing** includes any hearing before the Court, whether final or interlocutory, and whether in open court or in chambers.

**image** means a picture that has been created, copied, stored or transmitted in electronic form.

**Judge** means a Judge of the Court (including the Chief Justice) and in the expression ‘the Court or a Judge’ means a Judge sitting in chambers.

**mediation** means mediation conducted under a mediation order.

**mediation or arbitration order** means a mediation order or an arbitration order.

**mediation order** means an order referring a matter to a mediator as mentioned in Order 72, rule 1.

**mediator** means a mediator to whom a matter is referred under a mediation order.

**mentally disabled person** means a person who, owing to mental illness, is incapable of managing his or her affairs in respect of the proceedings.

**oath** includes affirmation.

**organisation** has the meaning given by section 6 of the *Fair Work (Registered Organisations) Act 2009*.

**originating process** means a document, filed in the Court, that commences a proceeding in the Court’s original jurisdiction.

**person under disability** means an infant, minor or mentally disabled person.

**pleading** includes a statement of claim and a cross-claim to which Order 5 applies and subsequent pleadings, but does not include an application, notice of motion or affidavit.

**proper place** in relation to any proceeding:

- (a) where there has been no transfer means the place at which the proceeding was commenced;

**Rule 4A**

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- (b) where there has been a transfer means the place to which the proceeding was transferred.

**Registrar** means the Registrar or a District Registrar of the Court, and includes a Deputy Registrar or a Deputy District Registrar of the Court or other officer for the time being discharging the duties of any one of them, and when used in relation to any proceeding means the Registrar or District Registrar at the proper place.

**Registry** includes the Principal Registry and a District Registry.

**Rules** means Federal Court Rules.

**Sheriff** includes a Deputy Sheriff or any person for the time being discharging the duties of Sheriff or Deputy Sheriff.

**trial** includes any hearing other than an interlocutory hearing.

**tutor** means a next friend, guardian ad litem or committee of the person or estate of a person under disability.

**4A Exercise of Court's power**

Unless these Rules provide otherwise, the Court may exercise a power under these Rules in a proceeding:

- (a) on its own initiative; or
- (b) on the application of a party, or a person who has sufficient interest in the proceeding.

**5 Order on terms**

Unless the contrary intention appears, where under these Rules the Court has the power to make an order or do any other act or thing, it may make that order or do that other act or thing on terms.

**5A Filing and lodging documents**

- (1) A document that is required or permitted by these Rules to be filed or lodged may be:
  - (a) presented to a Registry when the Registry is open for business; or

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**Rule 5A**

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- (b) sent by post to a Registry with a written request for the processing required; or
  - (c) sent by document exchange by being left, addressed to the Federal Court of Australia, at its box at the Australian Document Exchange, with a written request for the processing required; or
  - (d) sent by facsimile transmission to a Registry in accordance with rule 5AB; or
  - (e) sent by electronic communication to a Registry in accordance with rule 5AC.
- (2) However, a document may not be sent:
- (a) by facsimile transmission if the document (including any annexure or attachment) is more than 20 pages long; or
  - (b) by electronic communication if the document (including any attachment) is more than 100 pages long; or
  - (c) by facsimile transmission or electronic communication if it is an affidavit referred to in paragraph 4.07 (b) of the Bankruptcy Rules.
- Note* Because of the Court's computer security firewall, the Court cannot accept an electronic communication that is more than 5 megabytes in size.
- (3) If a document is required to be signed or stamped, it must be accompanied by the number of copies required, unless it is sent by facsimile transmission or electronic communication.
- (4) If the fee for a document to be filed is not payable, the document must be accompanied by a statement of the reason it is not payable and any supporting evidence.
- (5) A document presented, or sent in accordance with paragraph (1) (b) or (c), to a Registry that is not the proper place for the proceeding, must be accompanied by a letter:
- (a) identifying the proper place; and
  - (b) requesting that the document be sent to the proper place.
- (6) A document is filed:
- (a) for a document in an existing proceeding — if it is accepted in the Registry that is the proper place for the

**Rule 5A**

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proceeding and stamped in accordance with Order 46, rule 4; or

- (b) otherwise — if it is accepted in a Registry and stamped in accordance with Order 46, rule 4.

(6A) If a document in an existing proceeding:

- (a) is presented to or sent in accordance with paragraph (1) (b) or (c) to a Registry that is not the proper place; and
  - (b) is sent by that Registry to the proper place; and
  - (c) is filed in accordance with paragraph (6) (a);
- the document is taken to have been filed on the day when it was received by the Registry that is not the proper place.

(7) However, a document sent by facsimile transmission or electronic communication is, if accepted, taken to have been filed:

- (a) if the whole document is received by 4.30 pm on a day when the Registry is open for business — on that day; and
- (b) otherwise — on the next day when the Registry is open for business.

*Note* Because of the Court's computer security firewall, there may be a delay between the time a document is sent by electronic communication and the time the document is received by the Court.

(8) A document must not be accepted, without leave of the Court, a Judge or a Registrar, if it appears to a Registrar that the document:

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

(9) A document must not be accepted if a Registrar, under Order 46 rule 7A:

- (a) refuses to accept or issue the document; or
- (b) is directed by a Judge to refuse to accept or issue the document; or
- (c) is directed by a Judge to refuse to accept or issue the document without first obtaining the leave of a Judge.

**Rule 5AB**

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- (10) If a document sent in accordance with paragraph (1) (b), (c), (d) or (e) is not accepted, the Registrar must notify the sender of the document:
  - (a) by telephone on the telephone number stated on the document, cover sheet or accompanying request; or
  - (b) in writing to the postal address or facsimile number stated on the document, cover sheet or accompanying request; or
  - (c) by electronic communication to the email address stated on the document, cover sheet or accompanying request.
- (11) If a document sent to a Registry by post or document exchange is required to be signed or stamped, and is accepted at the Registry, the Registrar must:
  - (a) if the sender requests that the document be held for collection — hold it for collection for 7 days; or
  - (b) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days — return the document in the same way it was sent.

*Note* See Part 2 of the *Federal Court of Australia Regulations 2004* in relation to fees for filing documents.

**5AB Filing and lodging by facsimile transmission**

- (1) The Registrar must approve at least one facsimile number for each Registry for the purpose of receiving documents.
- (2) A document sent to a Registry by facsimile transmission must be:
  - (a) sent to an approved facsimile number for the Registry; and
  - (b) accompanied by a cover sheet clearly stating:
    - (i) the sender's name, postal address, document exchange number (if any), telephone number and facsimile number; and
    - (ii) the number of pages transmitted; and
    - (iii) the processing of the document required.

**Rule 5AB**

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- (3) If the document is in an existing proceeding, it must be sent to an approved facsimile number for the Registry which is the proper place for the proceeding.
- (4) If the document is required to be signed or stamped, and is accepted at the Registry, the Registrar must:
  - (a) make one copy of the document; and
  - (b) if the sender requests that the document be held for collection — hold it for collection for 7 days; and
  - (c) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days — return the document by sending it:
    - (i) by facsimile transmission to the facsimile number stated on the cover sheet; or
    - (ii) if there is no facsimile number stated, to the postal address stated on the cover sheet.
- (5) If more than one copy is required for issue, the sender of the document must send, or ask the Registry to make, any additional copies required.
- (6) A person who sends a document to a Registry by facsimile transmission must:
  - (a) keep the original document and the transmission report evidencing successful transmission; and
  - (b) produce the original document or the transmission report as directed by the Court.
- (7) If the court directs that the original document be produced, the first page of the document must be endorsed with:
  - (a) a statement that the document is the original of a document sent by facsimile transmission; and
  - (b) the date that the document was sent by facsimile transmission.

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**Rule 5AC**

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**5AC Filing and lodging by electronic communication**

- (1) The Registrar:
  - (a) must approve the formats in which electronic versions of documents will be accepted by a Registry; and
  - (b) may approve at least one email address for any Registry for the purpose of receiving documents by electronic communication.
- (2) A document sent to a Registry by electronic communication must:
  - (a) be sent:
    - (i) by using the Court's Internet home page at <http://www.fedcourt.gov.au> or the Commonwealth Courts Portal at <https://www.comcourts.gov.au>; or
    - (ii) to an email address approved for the Registry; and
  - (b) be in an electronic format approved for the Registry; and
  - (c) to the extent practicable, be in a form that complies with rule 7; and
  - (d) be capable of being printed with the content and in the form in which it was created.
- (3) An affidavit may only be filed by electronic communication by sending an image of the affidavit in accordance with subrule (2).
- (4) If the document is in an existing proceeding, it must be sent to the Registry which is the proper place for the proceeding:
  - (a) by using the Court's Internet home page at <http://www.fedcourt.gov.au> or the Commonwealth Courts Portal at <https://www.comcourts.gov.au>; or
  - (b) by addressing it to an email address approved for that Registry.
- (5) Subject to subrule (5A), if the document is required to be signed or stamped, and is accepted at the Registry, the Registrar must:
  - (a) for a document that, under these Rules, must be endorsed with a date for hearing — insert a notice of filing and

**Rule 5AC**

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- hearing in accordance with Form 173 as the first page of the document; and
- (b) for any other document — insert a notice of filing in accordance with Form 174 as the first page of the document; and
  - (c) make one copy of the document (including the notice mentioned in paragraph (a) or (b) (whichever is applicable)); and
  - (d) if the sender requests that the document be held for collection — hold it for collection for 7 days; and
  - (e) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days — return the document by sending it:
    - (i) by electronic communication to the email address stated on the cover sheet; or
    - (ii) if there is no email address stated, to the postal address stated on the cover sheet.
- (7) A person who sends a document to a Registry by electronic communication must:
- (a) if the document is an image of an affidavit — produce the original of the affidavit as directed by the Court; or
  - (b) in any other case — produce a paper copy of the document as directed by the Court.
- (8) If the Court directs that an original affidavit or a paper copy of a document be produced, the person who sent the document must:
- (a) for an original affidavit — attach a statement that it is the original of the affidavit sent by electronic communication and the date that the affidavit was sent by electronic communication; or
  - (b) in any other case — endorse the first page with a statement that the paper copy is a true copy of the document sent by electronic communication and the date that the document was sent by electronic communication.

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**Rule 9****6 Serial number**

- (1) The first document filed in any proceeding shall have a serial number assigned to it for the Registry in which it is filed, and that and each other document in the proceeding shall bear that number preceded by a reference to the appropriate Registry together with a reference to the calendar year in which the first document is filed.
- (2) A new series of numbers shall be commenced at the beginning of each calendar year.

**7 Forms**

- (1) Subject to subrule (2), the forms in Schedule 1 shall be used where applicable notwithstanding the absence of any specific provision in the Rules in respect of the use of any particular form.
- (1A) A reference in a provision of the Rules to a Form by number is to be read as a reference to the Form so numbered in Schedule 1.
- (2) It shall be sufficient compliance with these Rules as to the form of any document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

**8 Relief from rules**

The Court may dispense with compliance with any of the requirements of the Rules, either before or after the occasion for compliance arises.

**9 Proceedings wanting or in doubt**

- (1) Where a person desires to commence a proceeding or take any step in a proceeding, and the manner or form of procedure is not prescribed by the Act or the Rules or by or under any other Act, or that person is in doubt as to the manner or form of procedure, the Court may give directions.

**Rule 9**

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- (2) A proceeding commenced in accordance with the directions of the Court shall be well commenced.
- (3) A step taken in accordance with the directions of the Court shall be regular and sufficient.

## Order 2      Sittings and vacation

### 1      **Sittings**

The sittings of the Full Court in the Court's appellate jurisdiction shall be held in each year at such times and places as the Chief Justice directs.

**Rule 1**

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## **Order 3                      Time**

### **1                      Month**

In any judgment or order and in any document in any proceeding, unless the context or subject matter otherwise indicates or requires, *month* means calendar month.

### **2                      Reckoning**

- (1) Any period of time fixed by rules or by any judgment or order or by any document in any proceeding, shall be reckoned in accordance with this rule.
- (2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.
- (3) Where, apart from this subrule, the period in question, being a period of 5 days or less, would include a day on which the Registry is closed, that day shall be excluded.
- (4) Where the last day for doing a thing is a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.
- (4A) In calculating the time fixed by these Rules or by any order fixing, extending or abridging time, the period from 24 December to 14 January next following is excluded, unless the Court otherwise orders.
- (5) Subsection 36 (2) of the *Acts Interpretation Act 1901* does not apply to these Rules.

### **3                      Extension and abridgment**

- (1) The Court or a Judge may by order extend or abridge any time fixed by the Rules or by any judgment or order.

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**Rule 6**

- (2) The time may be extended under this rule, or any other rule allowing for an extension of time (unless the rule provides otherwise):
  - (a) before or after the time expires; and
  - (b) whether or not an application for extension is made before the time expires.
- (3) The period within which a person is required by rules or by any order to serve, file or amend any pleading or other document may be extended by consent without an order for extension.

**4 Fixing times**

Where no time is fixed by the Rules or by any judgment or order of the Court or a Judge for the doing of any thing in or in connection with any proceeding, the Court may, by order, fix the time within which the thing is to be done.

**6 Registry hours**

- (1) The District Registries of New South Wales and Victoria shall be open to the public for business between 10 in the morning and 4 in the afternoon, except on Saturdays, Sundays and other holidays.
- (2) The Principal Registry and the District Registries of the States other than New South Wales and Victoria and of the Territories, shall be open to the public for business from 10 in the morning until 1 in the afternoon and from 2 until 4 in the afternoon, except on Saturdays, Sundays and other holidays.
- (3) A Registry may in the discretion of the Registrar, and shall on the direction of a Judge, be opened at other times for urgent business.

Rule 1

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## Order 4                      Commencement of proceedings

### 1                      Commencement by application — Form 5

- (1) Except as otherwise provided in these Rules all proceedings in the Court's original jurisdiction shall be commenced by filing an application.
- (2) An application shall be in or substantially in the form numbered 5 in Schedule 1.

### 1A                      Certification of merits of application commencing migration litigation

- (1) For the purposes of section 486I of the *Migration Act 1958*, a lawyer must not file an application commencing migration litigation unless the application includes, or is accompanied by, a certificate in accordance with Form 56B signed by the lawyer.
- (2) In this rule:  
*lawyer* has the meaning given by section 486K of the *Migration Act 1958*.  
*migration litigation* has the meaning given by section 486K of the *Migration Act 1958*.

### 2                      Parties

- (1) A party claiming relief shall be called an applicant.
- (2) A party against whom relief is claimed shall be called a respondent.

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**Rule 4****3 Relief claimed**

- (1) An application must specify:
  - (a) the relief claimed by the applicant; and
  - (b) if the relief depends on a provision of an Act — the Act and the provision.
- (2) Where the claim for relief includes a claim for the determination or direction of the Court on any question, the application shall state the question.
- (3) Costs need not be specifically claimed.
- (4) Exemplary damages shall be specifically claimed.

**4 Name, address etc**

- (1) An application shall contain:
  - (a) the name and address of the applicant;
  - (b) where a party sues or is sued in a representative capacity a statement of that fact;
  - (c) where the applicant sues by a solicitor, the name, address, telephone number, facsimile number and email address of the solicitor;
  - (d) where the applicant sues by a solicitor and that solicitor has another solicitor as agent for him in the proceeding, the name, address, telephone number, facsimile number and email address of the agent; and
  - (e) an address for service.
- (2) Where it appears from an application that the applicant sues by a solicitor:
  - (a) the solicitor shall, on request in writing by a respondent, declare in writing whether the application was filed by the solicitor; and
  - (b) if the solicitor declares in writing that the application was not filed by the solicitor, the Court may stay the proceeding.

**Rule 5**

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**5 Notice to appear**

Where there is a respondent, an application shall bear a note that:

- (a) if there is no attendance before the Court by the respondent or a lawyer representing the respondent at the time and place stated in the application, the proceeding may be heard and an order may be made or judgment given against the respondent; and
- (b) before any attendance at that time the respondent must enter an appearance in the Registry.

**6 Affidavit or statement of claim — Form 7**

- (1) The applicant shall file and serve with the application either an affidavit in accordance with Form 20, or a statement of claim in accordance with Form 7, whichever is appropriate.
- (1A) However, an applicant seeking to rely on an allegation of fraud, misrepresentation, breach of trust, wilful default or undue influence must file and serve a statement of claim.
- (2) The affidavit or statement of claim shall show:
  - (a) the nature of the applicant's claim; and
  - (b) the material facts on which it is based.

**7 Filing and copies**

- (1) Upon an application and affidavit or statement of claim being filed, the Registrar on the applicant's request shall sign, and affix the seal of the Court to, a sufficient number of copies of the application for service and proof of service.
- (2) The serial number of the proceeding shall be endorsed on each document.

**8 Date for hearing**

An application must state a date for a hearing at which the Court may hear the proceeding in whole or in part, or give directions for the further conduct of the proceeding.

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**Rule 13**

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**9 Claim for interlocutory relief**

- (1) Where by his application an applicant seeks interlocutory relief, he shall make a distinct claim for that relief.
- (2) The Court may hear and determine the claim for interlocutory relief on the hearing date specified in the application.
- (3) At the hearing of the claim for interlocutory relief the Court may give any directions it thinks fit.

**10 Endorsement of date**

- (1) The date for a hearing under rule 8 or rule 9 to be endorsed on the application shall be obtained from the Registry.
- (2) Where the Court has made an order abridging time, the application shall bear a note of the order made.

**11 Time for service**

An application and affidavit or statement of claim shall, unless the court otherwise orders, be served upon the respondent named in the application in accordance with Order 7, not less than five days before the date appointed for hearing pursuant to rule 8 or rule 9 of this Order.

**12 Alteration of hearing date**

If a date for hearing has been obtained or made, the Court may:

- (a) alter the date for hearing to a later date; and
- (b) authorise the lawyer for a party to make corresponding alterations in any copy for service of any application or notice.

**13 Alteration of date where service less than 5 days before hearing**

- (1) Where an application and affidavit or statement of claim have been served upon the respondent named in the application less than five days before the date for hearing endorsed on the application pursuant to Order 4, rule 8 or rule 9, the Court or

**Rule 14**

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Registrar may alter the date to a later date and may authorise the solicitor for a party to give notice to that respondent of that altered date for hearing by posting an altered copy of the application by registered post to the usual or last known place of business or abode of the respondent or to the place at which the application was served if appropriate.

- (2) The Registrar may give the authority by telephone or by some other means as the Registrar thinks fit.

**14 Suit in person**

- (1) Subject to subrule (2) and to Order 43 (which relates to disability), any person may proceed in the Court by a solicitor or in person.
- (2) Except as provided by or under any Act, a corporation may not, without the leave of the Court, commence or carry on any proceeding otherwise than by a solicitor.

**15 Application for the issue of a summons  
(Corporations Act s 596A, s 596B)**

An application for the issue of a summons under section 596A or 596B of the *Corporations Act 2001* may be made to:

- (a) the Court or a Judge; or
- (b) if the Court or a Judge has, under paragraph 35A (1) (h) of the Act, directed that a Registrar may exercise the power of the Court under section 596A or 596B of the *Corporations Act 2001* — a Registrar, including a Registrar sitting in chambers.

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## Order 5      Cross-claims and third party claims

<i>Note</i> Order 35A deals with the procedure on default.
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### 1      **Claim by respondent**

- (1) A respondent may cross-claim against an applicant for any relief to which the respondent would be entitled against the applicant if the applicant were a respondent in a separate proceeding commenced in the Court by the respondent for that purpose.
- (2) A respondent may cross-claim against any person whether another party or a third party for any relief which is related to or connected with the subject of the proceeding.
- (3) Without prejudice to the generality of subrule (2), a respondent may cross-claim for contribution or indemnity.

### 2      **Cross-claim**

- (1) A cross-claim shall be entitled in the proceeding with an addition showing the names of the parties to the cross-claim.
- (2) Order 4, rule 3 applies to a cross-claim whether the cross-claim is against an applicant or any other person.

### 3      **Title**

On a cross-claim being filed, a document afterwards filed or used in the proceeding shall be entitled in the manner in which the cross-claim is entitled.

**Rule 4**

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**4 Rules applicable where statement of claim**

Rules 5 and 6 of this Order apply where a proceeding is commenced by application supported by statement of claim, or where the Court has ordered that the proceeding continue on pleadings.

**5 Pleading — Forms 8, 9, 10**

- (1) A respondent may file a pleading by way of cross-claim within the time fixed for filing his defence or any extension thereof.
- (2) A cross-claim under subrule (1) shall be in or substantially in the forms numbered 8, 9 or 10 in Schedule 1.
- (3) Where a cross-claimant cross-claims solely against a party who claims in the proceeding against the cross-claimant, the cross-claimant may add the cross-claim to his defence.
- (4) Subject to Order 11, rule 16 (which relates to embarrassing proceedings and the like), a cross-claimant may in his cross-claim plead all or any of the facts on which he relies by reference to the prior pleadings in the proceeding.
- (5) A cross-claimant shall, in addition to pleading any other facts on which he relies, plead the facts showing that the cross-claim is one to which rule 1 of this Order applies.

**6 Service of prior pleadings — Form 11**

- (1) Where a respondent to a cross-claim is made a party to the proceeding by the filing of the cross-claim, he may, by notice in accordance with Form 11 filed and served on the cross-claimant, require the cross-claimant to serve on him all or any of the pleadings in the proceeding filed before the filing of the cross-claim.
- (2) A respondent to a cross-claim may add a notice under subrule (1) to his notice of appearance.

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**Rule 8**

- (3) Where a notice under subrule (1) is served on a cross-claimant then, unless the Court otherwise orders, he shall, within three days after service of the notice or such longer times as may be specified in the notice, serve on the respondent to the cross-claim giving the notice each pleading mentioned in the notice.

**7 Rules applicable where affidavit**

Rules 8 and 9 where a proceeding is commenced by application supported by affidavit and where:

- (a) a cross-claim is filed before the directions hearing; or
- (b) a cross-claim is filed after the directions hearing and the Court has not ordered that the proceedings continue on pleadings.

**8 Cross-claims by leave**

- (1) Subject to subrules 9 (1) and (2), a respondent may cross-claim against an applicant or any other party without the leave of the Court, but may not cross-claim against any other person not being a party without such leave.
- (2) Subject to subrule (4), a respondent shall not cross-claim against an applicant before he has filed an affidavit in reply to the applicant's claim.
- (3) A cross-claim shall be in or substantially in the forms numbered 8 or 9 in Schedule 1, and shall be accompanied by an affidavit stating:
  - (a) the nature of the cross-claim;
  - (b) the material facts on which the cross-claimant relies; and
  - (c) the facts showing that the cross-claim is one to which rule 1 of this Order applies.
- (4) A respondent who cross-claims against an applicant only may include the matters referred to in subrule (3) in his affidavit in reply to the applicant's claim, and need not file a separate affidavit in support of the cross-claim.

**Rule 9**

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**9 Cross-claim after directions hearing**

- (1) A respondent desiring to cross-claim after the directions hearing shall obtain all necessary directions at the directions hearing in relation to the cross-claim, including the time within which the cross-claim is to be filed.
- (2) A respondent who does not obtain directions pursuant to subrule (1) shall not cross-claim after the directions hearing without the leave of the Court.

**10 Service**

- (1) Where a respondent to a cross-claim has, on the date of filing the cross-claim, an address for service in the proceeding, the cross-claimant shall, on that date, serve the cross-claim on the respondent to the cross-claim.
- (2) Where a respondent to a cross-claim has an address for service in the proceeding, personal service of the cross-claim on him is not required.
- (3) Order 7, rule 11 (which relates to cases where filing operates as service) does not apply to the service of a cross-claim.

**11 Conduct of proceeding generally**

- (1) Subject to this Order and to Order 11, a proceeding on a cross-claim shall follow as nearly as may be the course of the proceeding on the originating process in respect of which the cross-claim is filed.
- (2) Subject to this Order and to Order 11, and without limiting the generality of subrule (1), these Rules apply to a cross-claim and the proceeding arising from it as they apply to the originating process in respect of which the cross-claim is filed and the proceeding arising from it.
- (3) Subrules (1) and (2) apply as if:
  - (a) the cross-claim were the originating process in respect of which the cross-claim is filed;
  - (b) the cross-claimant were an applicant; and

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**Rule 12**

- (c) the respondent to the cross-claim were a respondent.
- (4) An applicant in an originating process need not enter an appearance to a cross-claim in the same proceeding.
- (5) An appearance entered by a party to the proceeding shall, upon service of a cross-claim on him, operate as an appearance to the cross-claim.
- (6) A cross-respondent who has not previously entered an appearance in the original proceedings shall enter an appearance:
  - (a) where the cross-claim is served on him before the date appointed for a directions hearing in the application in the original proceeding — before that date; or
  - (b) in any other case — within 14 days after service of the cross-claim on him.
- (7) Subject to this Order, the trial or hearing and all other steps in the proceeding on the cross-claim shall as far as practicable be carried on together with the trial or hearing and similar steps in the proceeding on the originating process in respect of which the cross-claim is filed.

**12 Directions**

- (1) A party to the proceeding may, at any time after the filing of a cross-claim, move for directions.
- (2) On any directions hearing, or on the trial or hearing of the cross-claim, the Court may:
  - (a) make any order or direction it may make under Order 10 (which relates to directions hearings);
  - (b) order that any claim, question or issue in or arising on the cross-claim be tried in such manner as the Court may direct;
  - (c) give to a respondent to the cross-claim leave to defend the claim on the originating process or any other cross-claim in the proceeding, either alone or in addition to any other party;

**Rule 15**

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- (d) give to a respondent to the cross-claim leave to appear at the trial or hearing of the claim on the originating process or on any other cross-claim in the proceeding and to take such part in the trial or hearing as the Court thinks fit;
  - (e) dismiss the cross-claim;
  - (f) determine the extent to which the cross-claimant and a respondent to the cross-claim shall be bound as between themselves by a judgment (including a judgment by consent or by default) or decision (including a decision by consent) on the claim on the originating process or any other cross-claim in the proceeding;
  - (g) pronounce such judgment as the nature of the case may require;
  - (h) give such directions as the Court thinks fit for having the rights and liabilities of the parties determined and enforced, including any order or direction which may be made or given under this Order.
- (3) Order 10, rules 4 to 6 (directions hearing) apply to a motion for directions under this rule.

**15 Separate prosecution**

A cross-claim may proceed notwithstanding that judgment has been pronounced and an order made and entered on the originating process or any other cross-claim in the proceeding, or that the proceeding on the originating process or any other cross-claim is stayed, dismissed or discontinued.

**16 Contribution or indemnity**

Where a respondent makes a cross-claim for contribution or indemnity in respect of a claim against him in the proceeding:

- (a) an order on a judgment for the claimant on the cross-claim shall not be entered except by direction of the Court;
- (b) judgment for the claimant on the cross-claim shall not, unless the Court otherwise orders, be enforced by execution until satisfaction of any judgment in the proceeding against the cross-claimant.

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**Rule 17****17 Offer of contribution**

Where in any proceeding:

- (a) a party (in this rule called the first party) stands to be held liable to another party (in this rule called the second party) to contribute towards any debt or damages which may be recovered against the second party in the proceeding; and
- (b) the first party, at any time after he has entered an appearance, makes an offer to the second party to contribute to a specific extent to the debt or damages;

then, if the first party makes the offer without prejudice to his defence, the offer shall not be brought to the attention of the Court until all questions of liability or amount of debt or damages have been decided.

**Rule 1**

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## **Order 6                      Parties, causes of    action and interveners**

### **1                      Multiple claims**

Subject to rule 6 an applicant, whether claiming in the same or different capacities, may, in any proceeding, claim relief in respect of more than one cause of action.

### **2                      Joinder of parties generally**

Two or more persons may be joined as applicants or respondents in any proceeding:

- (a) where:
  - (i) if a separate proceeding were brought by or against each of them, as the case may be, some common question of law or of fact would arise in all the proceedings; and
  - (ii) all rights to relief claimed in the proceeding (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions; or
- (b) where the Court gives leave so to do.

### **3                      Joint right**

- (1) Where, in any proceeding, the applicant claims relief to which any other person is entitled jointly with him:
  - (a) all persons so entitled shall be parties to the proceeding; and
  - (b) any of them who does not consent to being joined as an applicant shall be made a respondent.

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**Rule 7**

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- (2) Subrule (1) applies subject to any Act and subject to section 62 of the *Bankruptcy Act 1966* and applies unless the Court gives leave to the contrary.

**4 Leave under rule 2 and subrule 3 (2)**

- (1) The Court may grant leave under rule 2 before or after the joinder and may grant leave under subrule 3 (2) before or after the non-joinder.
- (2) An applicant may apply for leave under rule 2 or subrule 3 (2) either before or after the filing of his originating process and may apply without serving notice of the motion on any person on whom the application has not been served.

**5 Common liability**

- (1) Where, in any proceeding, relief is claimed against a respondent who is jointly liable with some other person and also severally liable, that other person need not be made a respondent to the proceeding.
- (2) Where persons may be jointly, but not severally, liable and relief is claimed against some but not all of those persons in a proceeding, the Court may stay the proceeding until the other persons so liable are added as respondents.

**6 Inconvenient joinder**

Where any joinder of parties or of causes of action may complicate or delay trial of the proceeding or is otherwise inconvenient, the Court may order separate trials or make such other order as the Court thinks fit.

**7 Misjoinder and non-joinder of parties**

- (1) A proceeding shall not be defeated by reason of the misjoinder of a party or the non-joinder of any person as a party.
- (2) The Court may in any proceeding determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

**Rule 8**

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**8 Addition of parties**

- (1) Where a person who is not a party:
  - (a) ought to have been joined as a party; or
  - (b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined and adjudicated upon;  
the Court may order that the person be added as a party and make orders for the further conduct of the proceeding.
- (2) A person shall not be added as an applicant without the person's consent.

**9 Removal of parties**

If a person:

- (a) has been improperly or unnecessarily joined as a party to a proceeding; or
- (b) has ceased to be a proper or necessary party to a proceeding;

the Court may order that the person cease to be a party and make orders for the further conduct of the proceeding.

**10 Death, transmission etc**

- (1) Where a party dies or becomes bankrupt but a cause of action in the proceeding survives, the proceeding shall not abate by reason of the death or bankruptcy.
- (2) Where the interest or liability of a party passes by assignment, transmission, devolution or otherwise to another person, the Court may make orders for the addition, removal or re-arrangement of parties and may make orders for the further conduct of the proceeding.

**11 Further conduct of proceedings**

- (1) Without limiting the generality of the powers of the Court under rules 8, 9 and 10, orders under those rules for the further conduct of the proceeding may include orders relating to:

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**Rule 12**

- (a) service of the order and other documents in the proceeding;
  - (b) amendment;
  - (c) appearance of added parties; and
  - (d) substitution of one party for another party or former party.
- (2) Where the Court orders that a party be substituted for another party or a former party, all things done in the proceeding before the making of the order shall, unless the Court otherwise orders, have effect in relation to the new party as those things had effect in relation to the old, but entry of appearance by the old party shall not dispense with entry of appearance by the new.
- (3) Subject to subrule (2), where a party is added pursuant to an order under rule 8 or rule 10, the date of commencement of the proceeding so far as concerns him shall be the date of filing of the originating process amended so as to add him as a party or, where an amended originating process is not filed, the date of the amendment adding him as a party.

**12 Failure to proceed after death of party**

- (1) Where:
- (a) a party dies but a cause of action in the proceeding survives the party's death; and
  - (b) an order under rule 10 for the addition of a party in substitution for the deceased party is not made within three months after the death;
- the Court may order that, unless, within a specified time after service of the order in accordance with subrule (2), a party is added in substitution for the deceased party, the proceedings be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability thereon, as the case may be, survives on the death.
- (2) On making an order under subrule (1), the Court shall give such directions as it thinks fit for service of the order on the persons (whether parties or not) interested in continuing the proceeding.

**Rule 13**

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**13 Representation: concurrent interests**

- (1) Where numerous persons have the same interest in any proceeding the proceeding may be commenced, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.
- (2) At any stage of a proceeding pursuant to this rule the Court may appoint any one or more of the respondents or other persons (as representing whom the respondents are sued) to represent all, or all except one or more, of those persons in the proceeding.
- (3) Where, under subrule (2), the Court appoints a person who is not a respondent, the Court shall make an order under rule 8 adding him as a respondent.
- (4) A judgment pronounced or an order made in a proceeding pursuant to this rule shall be binding on all the persons as representing whom the applicants sue or, as the case may be, the respondents are sued but shall not be enforced against any person not a party to the proceeding except with the leave of the Court.
- (5) An application for leave under subrule (4) shall be made by motion, notice of which shall be served personally on the person against whom it is sought to enforce the judgment or order.
- (6) Notwithstanding that a judgment or order to which an application under subrule (5) relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from the liability.
- (7) This rule does not apply to a proceeding concerning property subject to a trust or included in a deceased estate.

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**Rule 16****14 Representation of beneficiaries by trustees**

- (1) A proceeding concerning property subject to a trust or included in a deceased estate may be brought by or against the trustees or personal representatives without joining a person having a beneficial interest in the trust or estate and unless the Court otherwise orders on the ground that the trustees or personal representatives could not or did not represent the interest of that person, an order granted or made in the proceedings is binding on that person.
- (2) Subrule (1) does not limit the power of the Court to order a person having an interest to be made a party.

**15 Deceased person**

- (1) Where in any proceeding it appears to the Court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceeding and that the deceased person has no personal representative, the Court may:
  - (a) order that the proceeding continue in the absence of a person representing the estate of the deceased person; or
  - (b) by order (with the consent of the person appointed) appoint a person to represent that estate for the purposes of the proceeding.
- (2) An order under subrule (1), and any judgment or order subsequently pronounced or made in the proceeding, shall bind the estate of the deceased person to the same extent as the estate would have been bound had a personal representative of the deceased person been a party to the proceeding.
- (3) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

**16 Conduct**

The Court may give the conduct of the whole or any part of any proceeding to such person as it thinks fit.

**Rule 17**

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**17 Interveners**

- (1) The Court, at any stage of a proceeding, may give leave to a person (the *intervener*) to intervene in the proceeding, on the terms and conditions, and with the rights, privileges and liabilities (including liabilities for costs), determined by the Court.
- (2) In deciding whether to give leave, the Court must have regard to:
  - (a) whether the intervener's contribution will be useful and different from the contribution of the parties to the proceeding; and
  - (b) whether the intervention might unreasonably interfere with the ability of the parties to conduct the proceeding as they wish; and
  - (c) any other matter that the Court considers relevant.
- (3) The role of the intervener is solely to assist the Court in its task of resolving the issues raised by the parties.
- (4) For subrule (3), assisting the Court includes suggesting witnesses to be called by the Court, but does not include filing pleadings, leading evidence or examining witnesses.
- (5) When giving leave, the Court must specify the form of assistance to be given by the intervener and the manner of participation of the intervener, and, in particular, must specify:
  - (a) the matters that the intervener may raise; and
  - (b) whether the intervener's submissions are to be oral, in writing, or both.

## Order 7      Service

### 1      **Originating process**

- (1) Subject to the provisions of this Order, originating process shall be served personally on each respondent.
- (2) The copy for service shall be signed and sealed as mentioned in Order 4, rule 7.
- (3) If a respondent to an originating process:
  - (a) enters an appearance; or
  - (b) files a defence; or
  - (c) appears before the Court in response to the process;the originating process is taken to have been served on the respondent personally when the earliest of those events occurred, unless personal service on an earlier day is established.

### 2      **Personal service: how effected**

- (1) Personal service of a document is effected on:
  - (a) an individual — by leaving a copy of the document with him;
  - (b) a corporation — by leaving a copy of the document with some person apparently an officer of or in the service of the corporation and apparently of or above the age of sixteen years:
    - (i) at the registered office of the corporation; or
    - (ii) if there is no registered office, at the principal place of business or the principal office of the corporation; and

**Rule 3**

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- (c) an unincorporated association — by leaving a copy of the document at the principal place of business or the principal office of the association with some person apparently an officer of or in the service of the association and apparently of or above the age of sixteen years; and
  - (d) an organisation — by leaving a copy of the document with a person apparently an officer of or in the service of the organisation and apparently of or above the age of 16 years at the office of the organisation shown in the records of the organisation lodged with Fair Work Australia under section 233 of the *Fair Work (Registered Organisations) Act 2009*.
- (2) If a person refuses to accept service of a document, personal service may be effected on him by putting the document down in his presence and telling him the nature of it.
  - (3) It shall not be necessary in order to effect personal service that the original document be shown.
  - (4) Despite subrule 2 (1), for the purposes of the Corporations Rules, personal service may be effected:
    - (a) on a company, as defined in section 9 of the *Corporations Act 2001* (the ***Corporations Act***), in any way permitted by section 109X of the Corporations Act; and
    - (b) on a liquidator of a company, in the way described in paragraph 109X (1) (c) of the Corporations Act; and
    - (c) on an administrator of a company, in the way described in paragraph 109X (1) (d) of the Corporations Act.

**3 Mode of service**

A document which is not an originating process and which is required or permitted to be served in any proceeding may be served personally, but unless personal service is expressly required, it need not be served personally.

**4 Ordinary service: how effected**

- (1) Where personal service of a document is not required, the document may be served:

**Rule 4**

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- (a) by leaving a copy of the document at the proper address of the person to be served between the hours of nine in the morning and five in the afternoon on any day on which the Registry in that State or Territory is open; or
  - (b) by sending a copy of the document by pre-paid post addressed to the person to be served at his or her proper address; or
  - (c) where any enactment of the Commonwealth or of the State or Territory in which service is to be effected provides for service of a document on a corporation or organisation by serving the document in accordance with such provision; or
  - (d) if a person to be served has filed a notice for service at an exchange box of a solicitor under paragraph 7 (1) (a) of this Order — by leaving a copy of the document, addressed to that solicitor, in that exchange box; or
  - (e) if a person to be served has filed a notice for service by facsimile transmission under paragraph 7 (1) (b) of this Order — by sending the document to the facsimile number specified in the notice; or
  - (f) if a person to be served has filed a notice for service by electronic communication under paragraph 7 (1) (c) of this Order — by sending the document to the email address specified in the notice.
- (2) For the purposes of subrule (1), the proper address of a person shall be the address for service of that person in the proceeding but if, at the time when the copy is left or posted pursuant to subrule (1), the person has no address for service in the proceeding, the person's usual or last known place of business or of abode shall be the person's proper address.
- (3) The time of service of any document for the purpose of any proceeding shall, where the copy of the document:
- (a) is sent by pre-paid post in accordance with paragraph (1) (b) — be seven days after the copy is so sent; or
  - (b) is left in an exchange box in accordance with paragraph (1) (d) — be two days after the copy is so left; or

**Rule 4A**

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- (c) is sent by facsimile transmission in accordance with paragraph (1) (e) — be one day after the copy is transmitted excluding Saturdays, Sundays and public holidays; or
  - (d) is sent by electronic communication in accordance with paragraph (1) (f) — be one day after the copy is sent.
- (4) For paragraphs (3) (b), (c) and (d), mention of a day or days does not include a Saturday, Sunday or a public holiday.

**4A Service on principal solicitor**

- (1) Where personal service of a document is not required and the person to be served has a solicitor acting for him or her which solicitor has another solicitor as agent whose address is that person's proper address the document may be served:
  - (a) by leaving a copy of the document at the address of the first-named solicitor; or
  - (b) by sending a copy of the document by pre-paid post addressed to the person to be served at the address of the first-named solicitor; or
  - (c) where an appropriate notice has been given under rule 7 of this Order by leaving a copy of the document addressed to the first-named solicitor at the exchange box of that solicitor; or
  - (d) by sending a copy of the document by facsimile transmission directed to the facsimile number operated at the premises of, or in connection with, the first-named solicitor; or
  - (e) by sending a copy of the document by electronic communication directed to the email address of the first-named solicitor.
- (2) The time of service of any document for the purpose of any proceedings shall, where the copy of the document:
  - (a) is sent by pre-paid post in accordance with paragraph (1) (b) — be 7 days after the copy is so sent; or
  - (b) is left in an exchange box in accordance with paragraph (1) (c) — be 2 days after the copy is so left; or

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**Rule 7**

- (c) is sent by facsimile transmission in accordance with paragraph (1) (d) — be one day after the copy is sent; or
  - (d) is sent by electronic communication in accordance with paragraph (1) (c) — be one day after the copy is sent.
- (3) For paragraphs (2) (b), (c) and (d), mention of a day or days does not include a Saturday, Sunday or a public holiday.

**5 Identity**

For the purposes of the proof of service, evidence of a statement by a person of his identity or that he holds some office is evidence of his identity or that he holds that office, as the case may be.

**6 Address for service**

- (1) Unless the Court or a Judge otherwise orders, an address for service for a person must be the address of a place within Australia at which documents in the proceeding may, during ordinary business hours, be left for the person and to which documents in the proceeding may be posted to the person.
- (2) If a person is represented by a solicitor, the address for service for the person must be the address of the solicitor or of the solicitor's agent.
- (3) A person may change his address for service by filing a notice of the change showing his new address for service.
- (4) A person who files a notice of a change of his address for service shall, on the date of filing, serve the notice on each party to the proceedings.

**7 Document exchange, facsimile number or email address — Form 12**

- (1) A person may, by filing a notice in accordance with Form 12, or by adding a notice to that effect to the person's originating process (other than a cross-claim) or notice of appearance, authorise that documents in the proceeding may be served on the person:

**Rule 8**

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- (a) if the person's address for service is the office of a solicitor who uses the facilities of a document exchange — at the solicitor's document exchange box specified in the notice; or
  - (b) by sending the documents to the facsimile number specified in the notice; or
  - (c) by sending the documents by electronic communication to the email address specified in the notice.
- (2) A person may:
- (a) change the particulars stated in the notice by filing a further notice showing the new particulars; or
  - (b) cancel the notice by filing a further notice to that effect.
- (3) A person who files a notice under subrule (1) (other than a notice added to an originating process or a notice of appearance), a notice of change or notice of cancellation must, on the date of filing, serve the notice on each party to the proceeding.
- (4) A change or cancellation of which notice is required to be served under this rule shall not be effective as between the person to be served and another party until the notice is filed and served on that other party.

**8 Acceptance by solicitor**

- (1) This rule applies to:
- (a) any originating process; and
  - (b) any document required or permitted to be served in any proceeding, but not required to be served personally.
- (2) Where a solicitor makes on a copy of a document to which this rule applies a note that he accepts service of the document on behalf of any person, the document shall, unless he is shown not to have had authority to act for such person, be taken to have been duly served on that person on the date on which the solicitor makes the note or on such earlier date of service as may be proved.

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**Rule 11**

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**9 Substituted service**

- (1) Where for any reason it is impractical to serve a document in the manner set out in the Rules, the Court may by motion in an existing proceeding made *ex parte* order that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served.
- (2) Where the Court makes an order under subrule (1), the Court may order that the document be taken to have been served on the happening of any specified event, or on the expiry of any specified time.

**10 Informal service: confirmation**

Where for any reason it is impractical to serve a document in the manner set out in the Rules, but steps have been taken to bring the document to the notice of the person to be served, the Court may order that the document be taken to have been served on that person on a date specified in the order.

**11 Service by filing**

- (1) Unless the Court otherwise orders, the filing of a document has effect as service of the document on a person, if personal service is not required and:
  - (a) the person to be served:
    - (i) is in default of appearance; or
    - (ii) has entered an appearance but has no address for service in the proceeding; or
  - (b) there is proof of non-delivery of the document, being a document sent by the Court to the person's proper address.
- (2) For paragraph (1) (b), the proper address of a person is:
  - (a) the address for service of the person in the proceeding; or
  - (b) if, when the document is left or posted the person has no address for service in the proceeding, the person's last known place of business or of abode.

**Rule 12**

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- (3) Unless the Court otherwise orders, the filing of a document in a proceeding has effect as service of the document on a party to the proceeding if:
- (a) personal service of the document is not required; and
  - (b) the party has not filed a new address for service in accordance with Order 45, rule 7A although:
    - (i) the party has changed the solicitor acting for the party in the proceeding; or
    - (ii) the principal solicitor acting for the party has changed the solicitor acting as the principal solicitor's agent; or
    - (iii) the party, having acted for him or herself in the proceeding, has appointed a solicitor to act for the party in the proceeding; or
    - (iv) the party has determined the authority of the party's solicitor to act for the party in the proceeding; or
    - (v) the party's solicitor has ceased to act for the party in the proceeding.

**12 Notice etc by the Court**

Where, under the Rules or under an order, any notice or other document is to be given to or served on any party by the Court or any officer of the Court, the notice or document shall, unless the Rules otherwise provide or the Court otherwise orders, be sufficiently given or served in any manner in which a document not requiring personal service may be served under this Order.

**13 Injunction: service**

Where the Court grants an interlocutory injunction, the party may serve notice of the injunction, if desired, by telegram or letter signed by or on behalf of the Registrar.

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**Rule 14****14 Service under contract**

Where a respondent in any proceeding has, before or after the commencement of the proceeding, agreed that originating process or any other document in the proceeding may be served on the respondent or on some other person on behalf of the respondent in a manner or at a place (whether in or outside the Commonwealth) specified in the agreement, service in accordance with the agreement shall be sufficient service on the respondent.

## **Order 8                      Service outside Australia**

### **Division 1                  General**

#### **1                      Definitions for Order 8**

In this Order, unless the contrary intention appears:

*Attorney-General's Department* means the Commonwealth Attorney-General's Department.

*convention*, in relation to a foreign country, means a convention, agreement, arrangement or treaty about service abroad of judicial documents to which the Crown in right of the Commonwealth or, where appropriate, in right of a State, and a foreign country are parties.

*foreign country* means a country other than Australia.

*originating process* means an application commencing a proceeding, and includes a cross-claim in the proceeding against a person who was not previously a party to the proceeding.

#### **2                      When originating process may be served outside Australia**

Subject to rule 3, an originating process may be served on a person in a foreign country in a proceeding which consists of, or includes, any 1 or more of the kinds of proceeding mentioned in the following table:

<b>Item</b>	<b>Kind of proceeding in which originating process may be served on a person outside Australia</b>
1	Proceeding based on a cause of action arising in Australia
2	Proceeding based on a breach of a contract in Australia

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<b>Item</b>	<b>Kind of proceeding in which originating process may be served on a person outside Australia</b>
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3	<p>Proceeding in relation to a contract that:</p> <ul style="list-style-type: none"><li>(a) is made in Australia; or</li><li>(b) is made on behalf of the person to be served by or through an agent who carries on business, or is resident, in Australia; or</li><li>(c) is governed by the law of the Commonwealth or of a State or Territory;</li></ul> <p>in which the applicant seeks:</p> <ul style="list-style-type: none"><li>(d) an order for the enforcement, rescission, dissolution, rectification or annulment of the contract; or</li><li>(e) an order otherwise affecting the contract; or</li><li>(f) an order for damages or other relief in relation to a breach of the contract</li></ul>
4	Proceeding based on a tort committed in Australia
5	Proceeding based on, or seeking the recovery of, damage suffered wholly or partly in Australia caused by a tortious act or omission (wherever occurring)
6	<p>Proceeding seeking the construction, rectification, setting aside or enforcement of:</p> <ul style="list-style-type: none"><li>(a) a deed, will or other instrument; or</li><li>(b) a contract, obligation or liability;</li></ul> <p>affecting property in Australia</p>
7	Proceeding seeking the execution of a trust governed by a law of the Commonwealth, or of a State or Territory, or any associated relief
8	Proceeding that affects the person to be served in relation to the person's membership of a corporation that carries on business in Australia or is registered in a State or Territory as a foreign company
9	Proceeding in relation to an arbitration carried out in Australia
10	Proceeding in which the Court has jurisdiction, seeking relief in relation to the guardianship, protection, or care, welfare and development of a person under 18 years (whether or not the person is in Australia)

**Rule 2**

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<b>Item</b>	<b>Kind of proceeding in which originating process may be served on a person outside Australia</b>
11	Proceeding based on a breach of a provision of an Act that is committed in Australia
12	Proceeding based on a breach of a provision of an Act (wherever occurring) seeking relief in relation to damage suffered wholly or partly in Australia
13	Proceeding in relation to the construction, effect or enforcement of an Act, regulations or any other instrument having, or purporting to have, effect under an Act
14	Proceeding in relation to the effect or enforcement of an executive, ministerial or administrative act done, or purporting to be done, under an Act, regulations or any other instrument having, or purporting to have, effect under an Act
15	Proceeding seeking contribution or indemnity in relation to a liability enforceable by a proceeding in the Court
16	Proceeding in which: <ul style="list-style-type: none"><li>(a) the person to be served is domiciled or ordinarily resident in Australia; or</li><li>(b) if the person is a corporation, the corporation is incorporated in Australia, carries on business in Australia or is registered in a State or Territory as a foreign company</li></ul>
17	Proceeding in which the person to be served has submitted to the jurisdiction of the Court
18	Proceeding properly brought against a person who is served, or is to be served, in Australia, if the person to be served has been properly joined as a party
19	Proceeding in which the subject matter, so far as it concerns the person to be served, is property in Australia
20	Proceeding seeking the perpetuation of testimony in relation to property in Australia
21	Proceeding seeking an injunction ordering a person to do, or to refrain from doing, anything in Australia (whether or not damages are also sought)

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Item	Kind of proceeding in which originating process may be served on a person outside Australia
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| 22 | Proceeding affecting the person to be served in relation to: <ul style="list-style-type: none"><li>(a) the person's membership of, or office in, a corporation incorporated, or carrying on business, in Australia; or</li><li>(b) the person's membership of, or office in, an association or organisation formed, or carrying on business, in Australia; or</li><li>(c) the person's conduct as a member or officer of such a corporation, association or organisation</li></ul> |
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### **3 Application for leave to serve originating process outside Australia**

- (1) Service of an originating process on a person in a foreign country is effective for the purpose of a proceeding only if:
  - (a) the Court has given leave under subrule (2) before the application is served; or
  - (b) the Court confirms the service under subrule (5); or
  - (c) the person served waives any objection to the service by entering an appearance in the proceeding.
- (2) The Court may give leave to a party to serve an originating process on a person in a foreign country in accordance with a convention or the law of the foreign country, on such terms and conditions as it considers appropriate, if the Court is satisfied that:
  - (a) the Court has jurisdiction in the proceeding; and
  - (b) the proceeding is of a kind mentioned in rule 2; and
  - (c) the person seeking leave has a prima facie case for all or any of the relief claimed by the person in the proceeding.

*Note* The law of a foreign country may permit service through the diplomatic channel or service by a private agent.

- (3) The evidence on an application for leave under subrule (2) must include the following:
  - (a) the name of the foreign country where the person to be served is or is likely to be;
  - (b) the proposed method of service;

**Rule 4**

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- (c) a statement that the proposed method of service is permitted by:
  - (i) if a convention applies — the convention; or
  - (ii) in any other case — the law of the foreign country.
- (4) Nothing in this rule prevents the Court from giving leave to a person to give notice, in a foreign country, of a proceeding in the Court on the basis that giving the notice takes the place of serving the originating process in the proceeding.
- (5) If an originating process was served on a person in a foreign country without the leave of the Court, the Court may, by order, confirm the service if the Court is satisfied that:
  - (a) paragraphs (2) (a), (b) and (c) apply to the proceeding; and
  - (b) the service was permitted by:
    - (i) if a convention applies — the convention; or
    - (ii) in any other case — the law of the foreign country; and
  - (c) the failure to apply for leave is sufficiently explained.

**4                      Service of other documents**

- (1) The Court may give leave to a party to serve a document issued by the Court (other than an originating process) on a person in a foreign country in accordance with a convention or the law of the foreign country, on such terms and conditions as it considers appropriate.

*Note* The law of a foreign country may permit service through the diplomatic channel or service by a private agent.
- (2) The evidence on an application for leave under subrule (1) must include the information mentioned in paragraphs 3 (3) (a) to (c).
- (3) If a document (other than an originating process) was served on a person in a foreign country without the leave of the Court, the Court may confirm the service if the Court is satisfied that:
  - (a) the service was permitted by:
    - (i) if a convention applies — the convention; or

- (ii) in any other case — the law of the foreign country;  
and
- (b) the failure to apply for leave is sufficiently explained.

## **5 Application of other rules**

The other Orders of these Rules apply to service of a document on a person in a foreign country in the same way as they apply to service on a person in Australia, so far as they are:

- (a) relevant and not inconsistent with this Order; and
- (b) not inconsistent with:
  - (i) if a convention applies — the convention; or
  - (ii) in any other case — the law of the foreign country.

## **6 Method of service**

A document that is to be served on a person in a foreign country need not be served personally on the person if it is served on the person in accordance with the law of the foreign country.

## **7 Substituted service**

- (1) This rule applies if an official certificate or declaration (whether made on oath or otherwise) is sent to the Court by the government or a court of a foreign country stating that attempts to serve a document on a person in the foreign country, in accordance with a convention or through the diplomatic channel, have not been successful.
- (2) On application by the person seeking service, the Court may order such steps be taken, as are specified in an order, for the purpose of bringing the document to the notice of the person to be served.
- (3) If the Court makes an order under subrule (2), the Court may order that a document is taken to have been served when a specified event happens or on the expiry of a specified time.

**Rule 8**

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**8                      Proof of service**

- (1) An official certificate or declaration (whether made on oath or otherwise) stating that a document has been personally served on a person in a foreign country, or served on the person in another way in accordance with the law of the foreign country, is sufficient proof of the service of the document.
- (2) If filed, the certificate or declaration:
  - (a) is taken to be a record of the service of the document; and
  - (b) has effect as if it were an affidavit of service.

**Division 2                      Service through the diplomatic channel or by transmission to a foreign government**

**9                      Documents to be lodged with the Court**

- (1) This rule applies if a person has been given leave to serve a document on a person in a foreign country:
  - (a) through the diplomatic channel; or
  - (b) by transmission to a foreign government in accordance with a convention (the *relevant convention*).
- (2) The person given leave must lodge in the District Registry:
  - (a) a request for service in accordance with Form 14A; and
  - (b) a request for transmission in accordance with Form 14B; and
  - (c) a written undertaking by the person, or the person's lawyer, to pay to the Registrar the amount of the expenses incurred by the Court in giving effect to the person's request; and
  - (d) 2 copies (or such other number of copies as may be required by the relevant convention) of each document to be served; and

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**Rule 10**

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- (e) if necessary, a translation into an official language of the foreign country (including a statement by the translator attesting to the accuracy of the translation) of the following:
  - (i) the request for transmission mentioned in paragraph (b);
  - (ii) each document to be served.

**10 Order for payment of expenses**

- (1) This rule applies if:
  - (a) a person files an undertaking under paragraph 9 (2) (c) in relation to a request for service on a person in a foreign country in accordance with a convention or through the diplomatic channel; and
  - (b) the person does not, within 14 days after being sent an account for expenses incurred in relation to the request, pay to the Registrar the amount of the expenses.
- (2) On application by the Registrar, the Court may:
  - (a) order the person to pay the amount of the expenses to the Registrar; and
  - (b) stay the proceeding, so far as it concerns the whole or any part of a claim for relief by the person, until the amount of the expenses is paid.

**Rule 1**

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## **Order 9                      Appearance**

### **1                      Appearance by solicitor or in person**

- (1) A respondent may enter an appearance and may defend a proceeding by a solicitor or in person.
- (2) Where a respondent is a person under disability subrule (1) has effect subject to Order 43.
- (3) Notwithstanding subrule (1) and subject to any Act, a corporation may not without the leave of the Court or a Judge enter an appearance or defend any proceeding except by a solicitor.
- (4) For the purposes of this Order *respondent* includes a person who is required to enter an appearance but is not named as a respondent.

### **2                      Time for appearance**

- (1) Subject to these Rules a respondent shall enter an appearance before the date appointed for a directions hearing and before filing any document.
- (2) Notwithstanding subrule (1) a respondent who has not entered an appearance by the date appointed for a directions hearing, may enter an appearance after that date without leave.

### **3                      Mode of entry**

- (1) An appearance shall be entered by filing a notice of appearance in accordance with Form 15.
- (2) Two or more persons entering an appearance by the same solicitor on the same date may do so by a single notice of appearance.

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**Rule 5**

- (3) The date of entry of an appearance shall be the date when notice of the appearance is received in the Registry.
- (4) On the filing of the notice of appearance, the Registrar must:
  - (a) affix the stamp of the Court to the notice and to any copies of the notice; and
  - (b) write the date when the stamp has been affixed on the notice and on any other copies; and
  - (c) return the documents to the person entering the appearance.

**4 Notice of appearance**

- (1) A notice of appearance shall show:
  - (a) the name and address of the person entering the appearance;
  - (b) where the person entering the appearance appears by a solicitor, the name, address and telephone number of the solicitor;
  - (c) where the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent for him in the proceeding, the name, address and telephone number of the agent; and
  - (d) an address for service in accordance with rule 6 of Order 7.
- (2) Where an address shown in a notice of appearance by which a respondent enters an appearance is not genuine, the applicant may, with the leave of the Court, continue the proceeding as if the appearance had not been entered.

**5 Service of appearance**

A respondent shall, upon receiving the copies of the notice of appearance stamped with the stamp of the Registry, forthwith serve on the applicant at his place for service one of the copies so received.

**Rule 6**

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**6 Conditional appearance**

- (1) A respondent may enter a conditional appearance.
- (2) A conditional appearance shall have effect for all purposes as an unconditional appearance, unless the Court otherwise orders or the respondent applies under and in accordance with rule 7 and the Court makes an order under that rule.

**7 Setting aside originating process etc**

- (1) The Court may make an order:
  - (a) setting aside an originating process; or
  - (b) setting aside the service of an originating process on the respondent; or
  - (c) declaring that an originating process has not been duly served on the respondent; or
  - (d) discharging any order giving leave to serve an originating process outside Australia or confirming service of an originating process outside Australia.
- (2) A respondent applying for an order under subrule (1) must file and serve the notice of motion:
  - (a) before the respondent enters an appearance; or
  - (b) within 14 days after the respondent enters a conditional appearance.

## Order 10      Directions hearing

<i>Note</i> Order 35A deals with the procedure on default.
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### 1      Directions hearing — general

- (1) On a directions hearing the Court shall give such directions with respect to the conduct of the proceeding as it thinks proper.
- (1A) In any proceeding which is to be heard by a Full Court, whether in the original or appellate jurisdiction, such directions as is thought proper with respect to the conduct of the proceeding may be given by the Court constituted by a single Judge.
- (2) Without prejudice to the generality of subrule (1) or (1A) the Court may:
  - (a) make orders with respect to:
    - (i) discovery and inspection of documents;
    - (ii) interrogatories;
    - (iii) inspections of real or personal property;
    - (iv) admissions of fact or of documents;
    - (v) the defining of the issues by pleadings or otherwise;
    - (vi) the standing of affidavits as pleadings;
    - (vii) the joinder of parties;
    - (viii) the mode and sufficiency of service;
    - (ix) amendments;
    - (x) cross-claims;
    - (xi) the filing of affidavits;
    - (xii) the giving of particulars;
    - (xiii) the place, time and mode of hearing;

**Rule 1**

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- (xiv) the giving of evidence at the hearing, including whether evidence of witnesses in chief shall be given orally or by affidavit, or both;
  - (xv) the disclosure of reports of experts;
  - (xvi) costs;
  - (xvii) the filing and exchange of signed statements of evidence of intended witnesses and their use in evidence at the hearing;
  - (xviii) the taking of evidence and receipt of submissions by video link, or audio link, or electronic communication, or such other means as the Court considers appropriate;
  - (xix) the proportion in which the parties are to bear the costs (if any) of taking evidence or making submissions in accordance with a direction under subparagraph (xviii); and
  - (xx) the use of mediation, arbitration or an alternative dispute resolution process to assist in the conduct and resolution of all or part of the proceeding.
- (aa) where, in any proceeding commenced in respect of any alleged or threatened breach of a provision of Part IV of the *Trade Practices Act 1974*, an order pursuant to section 80 of that Act is sought, direct that notice be given of the order sought by public advertisement or in such other form as the Court directs;
- (b) notwithstanding that the application is supported by a statement of claim, order that the proceeding continue on affidavits;
- (c) order that evidence of a particular fact or facts be given at the hearing:
- (i) by statement on oath upon information and belief;
  - (ii) by production of documents or entries in books;
  - (iii) by copies of documents or entries; or
  - (iv) otherwise as the Court directs;
- (ca) order that an agreed bundle of documents be prepared by the parties;

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**Rule 1**

- (cab) direct that the parties give consideration to jointly instructing an expert to provide to the parties a report of the expert's opinion in relation to a particular issue or issues in the proceeding, on the basis that the parties concerned will be jointly responsible to pay the expert's fees and expenses;
- (d) order, under paragraph 37P (3) (c) of the Act, that no more than a specified number of expert witnesses may be called;
- (da) order that the reports of experts be exchanged;
- (e) appoint a court expert in accordance with Order 34, rule 2;
- (f) direct that the proceeding be transferred to a place at which there is a Registry other than the then proper place. Where the proceeding is so transferred, the Registrar at the proper place from which the proceeding is transferred shall transmit all documents in his charge relating to the proceeding to the Registrar at the proper place to which the proceeding is transferred;
- (g) order, under section 53A of the Act, that proceedings, a part of proceedings or a matter arising out of proceedings be referred to a mediator, arbitrator or a person suitable to conduct an alternative dispute resolution process;
- (h) order that the parties attend before a Registrar for a conference with a view to satisfying the Registrar that all reasonable steps to achieve a negotiated outcome of the proceedings have been taken, or otherwise clarifying the real issues in dispute so that appropriate directions may be made for the disposition of the matter, or otherwise to shorten the time taken in preparation for and at the trial;
- (i) in a case in which the Court considers it appropriate, direct the parties to attend a case management conference with a Judge or Registrar to consider the most economic and efficient means of bringing the proceedings to trial and of conducting the trial, at which conference the Judge or Registrar may give further directions;
- (j) in proceedings in which a party seeks to rely on the opinion of a person involving a subject in which the person has specialist qualifications, direct that all or part of such opinion be received by way of submission in such

**Rule 2**

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manner and form as the Court may think fit, whether or not the opinion would be admissible as evidence.

- (3) The Court may revoke or vary any order made under (1), (1A) or (2).
- (4) Paragraph (aa) of subrule (2) does not limit the power of the Court to direct at any stage of the proceeding that such notice be given.

**2 Fixing of date**

- (1) On the directions hearing the Court may:
  - (a) fix a date for a further directions hearing;
  - (b) fix a date for trial;
  - (c) direct the parties to arrange with the Registrar a date for trial;
  - (d) fix a date after which either party may request a date for trial; or
  - (e) stand the matter out of the list.

**3 Determination of proceeding**

If the Court thinks fit and the parties agree, the Court may hear and determine the proceeding on a directions hearing.

**4 Motion for summary judgment, stay or dismissal**

- (1) A party may, at the directions hearing, move for:
  - (a) an order under Order 20, rule 4 or 5; or
  - (b) judgment under Order 20, rule 2 or section 31A of the Act.
- (2) The party must serve notice of the motion on each other party to the proceeding at least 3 days before the directions hearing.
- (3) The Court may dispense with service under subrule (2).

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**Rule 9**

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**5 Interlocutory orders**

On a directions hearing, each party shall, so far as is practicable, apply for any interlocutory order or directions which he may require.

**6 Motion on notice**

A party may move on notice for any interlocutory order or directions not made at the directions hearing appointed in the application.

**9 Use of recording device or communication device in place where hearing taking place**

(1) In this rule:

*communication device* includes a mobile telephone, audio link, video link and any other electronic communication equipment.

*recording device* means a device that is capable of being used to record images or sound (including a camera, tape recorder, video recorder, mobile telephone and digital audio recorder).

(2) Except with the leave of the Court or a Judge, a person must not use a communication device or recording device in a place where a hearing is taking place.

(3) An application for leave under subrule (2) may be made to the Court or a Judge at any time before the date of the hearing in which the communication device or recording device is sought to be used.

(4) The Court or a Judge may:

- (a) grant leave under subrule (2) subject to any conditions that the Court or Judge considers appropriate; and
- (b) either generally or in relation to a particular part of a hearing:
  - (i) withdraw such leave; or
  - (ii) impose new conditions or vary or remove any existing conditions to which such leave is subject.

**Rule 9**

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- (5) In considering whether to grant leave under subrule (2) for the use of a communication device or recording device, the Court or a Judge may have regard to any relevant matter including the following:
  - (a) whether the person seeking leave has a reasonable need to use the device in relation to the hearing;
  - (b) if a direction has been given excluding one or more witnesses from the Court, the risk that the device could be used for the purpose of briefing a witness out of court;
  - (c) any possibility that use of the device would disturb the hearing or distract or cause concern to a witness or other participant in the hearing.
- (6) This rule does not prevent:
  - (a) the making of, or the use of a recording device for the purpose of making, an official transcript of a hearing; or
  - (b) the use of a communication device for the purpose of allowing a person to appear before, or make a submission to, the Court or a Judge.
- (7) This rule does not limit the powers of the Court to punish for contempt.

## Order 10A Cross-vesting

### 1 Interpretation

In this Order:

*the Act* means the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth.

*cross-vesting law* means any law of the Commonwealth or a State or Territory (including the Act) relating to the cross-vesting of jurisdiction.

*special federal matter* has the same meaning as in the Act.

### 2 Application of order

The other Orders of the Rules apply to proceedings referred to in this Order in so far as they are not inconsistent with the Rules contained in it.

### 3 Application under the Act

- (1) An application under the Act for transfer of proceedings shall be made by motion.
- (2) The heading of the notice of motion shall refer to the Act.

### 4 Applications for transfer of proceedings

- (1) An application under the Act for the transfer of proceedings shall be heard and determined by a Judge.
- (2) If an application for the transfer of proceedings is made by the Attorney-General of the Commonwealth or of a State or Territory, the Attorney-General does not, by reason of the application, become a party to the proceedings in respect of which the application is made.

**Rule 5**

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**5 Proceedings in which jurisdiction under cross-vesting laws is or may be invoked**

- (1) If a party to a proceeding proposes to invoke a jurisdiction arising under a cross-vesting law, or relies on a cross-vesting law in any other way:
  - (a) the statement of claim or the affidavit accompanying the application or a subsequent pleading (in each instance hereinafter called *the pleading*) shall include a statement of the provision on which the party relies, of the claim in relation to which the party relies on it and of the grounds on which the party relies on it; and
  - (b) the party shall seek directions as soon as practicable on whether the proceeding should be transferred under the Act.
- (2) If a pleading raises a question involving a special federal matter, the pleading shall identify the special federal matter as such and state the grounds on which it is a special federal matter.

**6 Proceedings transferred under cross-vesting laws**

- (1) On the transfer of proceedings by the court under the Act the Registrar shall send to the proper officer of the Court to which the proceedings are transferred all documents filed and orders made in the proceedings.
- (2) On the transfer of proceedings to the court under a cross-vesting law the proper officer shall enter and number the documents received in respect of those proceedings so that the proceedings are distinguished by year of filing and number.
- (3) On the transfer of proceedings to the court under a cross-vesting law the plaintiff or applicant (as the case may be) shall make an application for directions as soon as practicable.

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**Rule 7****7 Conduct of proceedings**

- (1) If the law of a State or Territory may be applied under paragraph 11 (1) (b) of the Act in determining a right of action arising under a written law of that State or Territory, the pleading must identify the right of action and the written law under which it arises.
- (2) If a party proposed to claim that the law of a State or Territory should be applied under paragraph 11 (1) (b) of the Act or that rules of evidence and procedure other than those of the Court should be applied under paragraph 11 (1) (c) of the Act:
  - (a) the party must seek directions on that matter before the proceedings are set down for trial;
  - (b) the Court may at any time give directions in relation to such matter and may revoke or vary any direction given by it in relation to any such matter.

# **Order 11                    Pleadings**

## **Division 1                    General**

### **1                    Paragraphs — Form 7**

Where a pleading alleges or otherwise deals with several matters:

- (a) the pleading shall be divided into paragraphs;
- (b) each matter shall, so far as convenient, be put in a separate paragraph; and
- (c) the paragraphs shall be numbered consecutively.

### **1A                    Pleading to include name of person who prepared it**

A pleading must:

- (a) set out the name of the person who prepared the pleading; and
- (b) include a statement by the person that the person prepared the pleading.

### **1B                    Pleading prepared by lawyer**

- (1) If a pleading is prepared by a lawyer representing a party, the pleading must, when filed, be accompanied by a certificate in accordance with Form 15B signed by the lawyer.
- (2) The certificate required by subrule (1) may be incorporated in the pleading that is being certified.

### **2                    Facts not evidence**

Subject to these Rules:

- (a) a pleading of a party shall contain, and contain only, a statement in a summary form of the material facts on

which the party relies, but not the evidence by which those facts are to be proved; and

- (b) paragraph (a) has effect subject to this Order and to Order 4 (which relates to commencement of proceedings) and to Order 12 (which relates to particulars).

### **3 Brevity**

A pleading shall be as brief as the nature of the case admits.

### **4 Documents and spoken words**

Where any document or spoken words are referred to in a pleading, it is permissible to state the effect of the document or spoken words without setting out the precise terms thereof.

### **5 Presumed facts**

A party need not plead a fact if:

- (a) the fact is presumed by law to be true; or  
(b) the burden of disproving the fact lies on the other party;  
except so far as may be necessary to meet a specific denial of that fact by the other party in his pleading or failure to plead such fact is likely to cause the other party to be taken by surprise.

### **6 Conditions precedent**

- (1) It shall not in any pleading be necessary to make a general allegation of fulfilment of a condition precedent to a right of action.  
(2) Any party wishing to deny the fulfilment of any such condition precedent shall plead such denial.

### **7 New fact or matter**

A party may plead a fact or matter that has occurred or arisen since the commencement of the proceeding.

**Rule 8**

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**8 Departure**

- (1) A party shall not in any pleading make an allegation of fact, or raise any ground or claim, inconsistent with a previous current pleading of his.
- (2) Subrule (1) does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative.

**9 Points of law**

A party may by his pleading raise any point of law.

**10 Matters for specific pleading**

In a pleading subsequent to a statement of claim a party shall plead specifically any matter of fact or point of law (for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality) that:

- (a) the party alleges makes a claim or defence of the opposite party not maintainable;
- (b) if not specifically pleaded might take the other party by surprise; or
- (c) raises issues of fact not arising out of the preceding pleading.

**11 Tender**

Where in any proceeding a defence of tender before the commencement of the proceeding is pleaded, the respondent shall bring into Court in accordance with Order 23 the amount alleged to have been tendered, and the tender shall, unless the Court has dispensed with compliance with this rule, not be available as a defence unless and until the amount has been brought into Court.

**12 Set-off**

Where a claim by a respondent to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the

whole or part of a claim made by an applicant, it may be included in the defence and set off against the applicant's claim, whether or not the respondent also cross-claims for that sum of money.

### **13 Admissions and traverse**

- (1) Subject to subrule (3) and to Order 43, rule 7 (which deals with persons under disability), an allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.
- (2) A traverse may be made either by a specific denial or by a statement of specific non-admission.
- (3) Subject to subrule (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement on non-admission of them is not a sufficient traverse of them.
- (4) Any allegation that a party has suffered damage and any allegations as to the amount of damages is deemed to be traversed unless specifically admitted.

### **14 Joinder of issue**

- (1) If there is no reply to a defence, there shall be an implied joinder of issue on that defence.
- (2) Subject to subrule (3), a joinder of issue operates as a denial of every allegation of fact made in the pleading on which there is a joinder of issue.
- (3) A party may admit or specifically plead to allegations of fact made in the pleading on which there is a joinder of issue, in which case the joinder shall operate as a denial of every other allegation of fact.

**Rule 15**

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**15 Close of pleadings**

- (1) The pleadings on a statement of claim shall, unless the Court otherwise orders, be closed, as between any applicant and any respondent, on the date of expiry of the last of the times fixed by or under these Rules for filing a defence or reply or other pleading between those parties.
- (2) Subrule (1) shall have effect notwithstanding that, on the date mentioned in that subrule, a request or order for particulars has been made but has not been complied with.

**16 Embarrassment etc**

Where a pleading:

- (a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading;
  - (b) has a tendency to cause prejudice, embarrassment or delay in the proceeding; or
  - (c) is otherwise an abuse of the process of the Court;
- the Court may at any stage of the proceeding order that the whole or any part of the pleading be struck out.

**17 General issue**

A party shall not plead the general issue.

**18 Denial to be substantial answer**

When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively or generally, but must answer the point of substance, in accordance with rule 13 of this Order.

## **Division 2                      Progress of pleadings**

<i>Note</i> Order 35A deals with the procedure on default.
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### **19                      Times for filing and service of pleadings**

Where a proceeding commenced by application supported by statement of claim continues on pleadings after the directions hearing, or at the directions hearing it is ordered that the proceeding continue on pleadings, the times for filing and serving pleadings shall, unless the Court otherwise directs, be in accordance with rules 20 to 22 of this Order.

### **20                      Defence — Form 16**

- (1) Where the application was accompanied by a statement of claim, a defence in accordance with Form 16 must be filed within 7 days after the directions hearing.
- (2) Where at the directions hearing it is ordered that the applicant file and serve a statement of claim or points of claim, the defence or points of defence shall be filed and served within 14 days after service of the statement of claim or the points of claim.

### **21                      Defence to cross-claim**

Where a cross-claim is filed and served pursuant to Order 5, a cross-respondent shall file and serve a defence to the cross-claim within 21 days after service on him of the cross-claim or within 7 days after the directions hearing appointed in the application, whichever is the later.

### **22                      Reply — Forms 17 and 18**

- (1) Where a respondent serves a defence on an applicant or a cross-respondent serves a defence to cross-claim on a cross-claimant, and a reply is needed for compliance with rule 10 of this Order, the applicant or cross-claimant as the case may be must file and serve the reply, in accordance with

**Rule 22**

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Form 17, within 14 days after service on him of the defence or defence to the cross-claim.

- (2) Where an applicant files both a reply and a defence to a cross-claim, both must be put in one document, in accordance with Form 18.

## Order 12      Particulars

### 1      **General**

- (1) A party pleading shall state in the pleading or in a document filed and served with it the necessary particulars of any claim, defence or other matter pleaded by him.
- (2) Rules 2 to 4 do not affect the generality of subrule (1).

### 2      **Fraud etc**

A party pleading shall give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which he relies.

### 3      **Conditions of mind**

- (1) A party pleading any condition of mind shall give particulars of the facts on which he relies.
- (2) In subrule (1) *condition of mind* includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

### 4      **Damages**

- (1) Where a party pleading claims damages which include moneys which he has paid or is liable to pay, he shall give particulars of those moneys.
- (2) Where a party pleading claims exemplary damages, he shall give particulars of the facts and matters on which he relies to establish that claim.

**Rule 5**

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**5 Order for particulars**

- (1) The Court may order a party to file and serve on any other party:
  - (a) particulars of any claim, defence or other matter stated in his pleading, or in any affidavit ordered to stand as his pleading;
  - (b) a statement of the nature of the case on which he relies; or
  - (c) where he claims damages, particulars relating to general or other damages.
- (2) Without limiting the generality of subrule (1), where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court may order that party to file and serve on any other party:
  - (a) where he alleges knowledge, particulars of the facts on which he relies; and
  - (b) where he alleges notice, particulars of the notice.
- (3) The Court shall not make an order under this rule before the filing of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the respondent to plead or for some other special reason.

## Order 13      Amendment

### **1      Application of Order**

This Order does not apply to the amendment of a judgment or order or draft thereof.

### **2      General**

- (1) Subject to the following provisions of this rule, the Court may, at any stage of any proceeding, order that any document in the proceeding be amended, or that any party have leave to amend any document in the proceeding, in either case in such manner as the Court thinks fit.
- (3) Where an application to the Court for leave to make the amendment mentioned in subrules (4), (5) or (6) or paragraph (7) (a) is made after any relevant period of limitation current at the date of commencement of the proceeding has expired, the Court may, nevertheless, grant such leave in the circumstances mentioned in that subrule if it thinks it is just to do so.
- (4) Where there has been a mistake in the name or identity of a party, an amendment to correct the name of the party may be made notwithstanding that the effect of the amendment is to substitute another person as a party.
- (5) Where an order to correct a mistake in the name of a party has the effect of substituting another person as a party, the proceeding shall be taken to have commenced with respect to that person on the day the proceeding commenced.
- (6) An amendment to alter the capacity in which a party sues may be made if the new capacity is one which that party had at the date of the commencement of the proceeding or has since acquired.

**Rule 3**

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- (7) An amendment may be made even if the effect of the amendment is to add a new claim for relief or foundation in law for a claim for relief (whether by way of substitution for an existing claim for relief or foundation in law or not) if the new claim for relief or foundation in law:
  - (a) arises out of the same facts or substantially the same facts as those already pleaded to support an existing claim for relief by the party applying for leave to make the amendment; or
  - (b) subject to subrule (9), arises, in whole or in part, out of facts or matters that have occurred or arisen since the commencement of the proceeding.
- (8) Subject to subrule (9), an amendment of a pleading may be made even if the amendment pleads a fact or matter that has occurred or arisen since the commencement of the proceeding.
- (9) Paragraph (7) (b) and subrule (8) do not permit an amendment that would have an effect inconsistent with any statute that limits the time within which an action or a proceeding of a particular kind may be brought or instituted.

**3 Amendment of pleading without leave**

- (1) A party may, without leave, amend any pleading filed by the party unless:
  - (a) the time for pleadings has closed; or
  - (b) the party has previously amended the pleading.
- (3) Subject to subrule (4), an amendment may be made even if:
  - (a) the effect of the amendment is to add a new claim for relief or foundation in law for a claim for relief, whether by way of substitution for an existing claim for relief or foundation in law or not; or
  - (b) the amendment pleads a fact or matter that has occurred or arisen since the commencement of the proceeding.
- (4) Subrule (3) does not permit an amendment that would have an effect inconsistent with any statute that limits the time within which an action or a proceeding of a particular kind may be brought or instituted.

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**Rule 4****3A Date when amendment takes effect**

Unless the Court otherwise orders, an amendment of a document that is made under rule 2 or 3 takes effect:

- (a) if the amendment is made under paragraph 2 (7) (b), subrule 2 (8) or subrule 3 (3) — on the date when the amendment is made; and
- (b) in any other case — on the date when the document was first filed.

**4 Consequential amendment of defence or reply**

- (1) Where an applicant amends his statement of claim:
  - (a) if the respondent has filed his defence, he may amend his defence; and
  - (b) the time for filing his defence or amended defence, as the case may be, shall be either the time fixed by these Rules for filing his defence or 14 days after service on him under rule 10 whichever expires later.
- (2) Where a respondent amends his defence:
  - (a) if the applicant has filed a reply, he may amend his reply; and
  - (b) the time for filing his reply or amended reply, as the case may be, shall be either the time fixed by these Rules for filing his reply or 14 days after service on him under rule 10, whichever expires later.
- (3) The rights to amend under paragraph (1) (a) and paragraph (2) (a) are in addition to the right to amend under rule 3.
- (4) Where the following is the order of events:
  - (a) a party (in this rule called the first party) files a pleading (in this rule called the first pleading);
  - (b) an opposite party files a pleading (in this rule called the second pleading) in answer (whether by way of defence, reply or otherwise) to the first pleading;
  - (c) the first party amends the first pleading;
  - (d) the opposite party does not amend the second pleading within the time allowed by this rule;

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then:

- (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and
- (f) Order 11, subrule 14 (1) shall not apply but, if no further pleading between those parties is filed, there shall be, at the close of pleadings, an implied joinder of issue on the second pleading.

**5 Disallowance of amendment**

- (1) If a party amends a pleading under subrule 3 (1), the Court may, subject to subrule (3), by order disallow the amendment.
- (2) If a party amends a pleading under subrule 3 (2) but without obtaining the consent of a party, the Court may, subject to subrule (3), by order disallow the amendment.
- (3) A person applying for an order under subrule (1) or (2) must file and serve the notice of motion within 14 days after the date on which the amended pleading was served on the person under rule 10 of this Order.
- (4) Where, on the hearing of an application under subrule (1), the Court is satisfied that, if an application for leave to make the amendment had been made under subrule 2 (1) on the date on which the amendment was made under subrule 3 (1) or (2), the Court would not have given leave to make the whole or some part of the amendment, the Court shall disallow the amendment or that part, as the case may be.

**6 Duration of leave**

Subject to Order 3, rule 3 (which relates to the extension and abridgment of time), where the Court makes an order under this Order giving a party leave to amend a document, then, if the party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, before the expiration of 14 days after the date on which the order is made, the order shall cease to have effect.

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**7 Mode of amendment — directions**

- (1) Where the Court orders, or gives leave for, the making of an amendment, the Court may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment.
- (2) Rules 8, 9 and 10 have effect subject to subrule (1).

**8 Mode of amendment — simple amendment — Form 19**

- (1) Where the amendments authorized under this Order to be made to a document are not so numerous or lengthy or otherwise of such nature as to render the document difficult or inconvenient to read, the amendments may be made by:
  - (a) filing a notice, in accordance with Form 19, specifying the amendments and the matters mentioned in subrule (2); and
  - (b) where the document to be amended has been filed, writing the alterations in the document.
- (2) A filed document amended under this rule shall be marked with a statement specifying the date of the amendment and also, if made pursuant to an order, the date of the order or, if not made pursuant to an order, a reference to the rule authorizing the amendment.

**9 Mode of amendment — fresh document**

Subject to subrule 8 (1), amendments authorized under this Order to a filed document shall be made by filing a fresh document, amended as so authorized, and bearing a statement specifying the matters mentioned in subrule 8 (2).

**10 Service after amendment**

Where a document has been served and is afterwards amended, the party making the amendment shall, on the day on which the amendment is made, serve on the parties on whom the document was served:

**Rule 10**

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- (a) if the amendment is made under rule 8 — the notice mentioned in subrule 8 (1); or
- (b) if the amendment is made under rule 9 — the fresh document.

## Order 14      Affidavits

### **1      Time for swearing**

An affidavit for use in any proceeding may be sworn before or after the commencement of the proceeding.

### **2      Form of affidavit — Form 20**

- (1) An affidavit must be in accordance with Form 20 and made in the first person.
- (2) The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.
- (2A) Each page of an affidavit, including any annexure, must be numbered legibly and distinctively, beginning on the first page of the affidavit with the numeral '1'.
- (2B) Each annexure to an affidavit must be identified sequentially on the first page of each annexure by:
  - (a) a letter of the alphabet, beginning with the letter 'A' for the first annexure; or
  - (b) the initials of the deponent followed by a number, beginning with the number '1' for the first annexure.
- (2C) The full name of the deponent and the date on which the affidavit was sworn must appear on the first visible page of an affidavit (being the first page, cover page or front cover page, as the case may be).
- (3) If the deponent of an affidavit is illiterate, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that the affidavit was read in his or her presence to the deponent.

**Rule 2**

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- (4) Subject to subrule (5), if the deponent of an affidavit is blind, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that the affidavit was read in his or her presence to the deponent.
- (5) Subrule (4) does not apply if the deponent:
  - (a) has read the affidavit using a computer with a screen reader, text-to-speech software or a braille display; and
  - (b) includes in the affidavit a statement that:
    - (i) he or she is blind; and
    - (ii) he or she has read the affidavit; and
    - (iii) specifies the means by which it was read.
- (6) If the deponent of an affidavit is incapable of signing the affidavit because of a physical disability, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that the deponent signified that he or she swore or affirmed the affidavit.
- (7) An affidavit made by a deponent who is illiterate may be used only if:
  - (a) the affidavit includes a certificate in accordance with subrule (3); or
  - (b) the Court is satisfied that the affidavit was read to the deponent.
- (8) An affidavit made by a deponent who is blind may be used only if:
  - (a) the affidavit includes a certificate in accordance with subrule (4); or
  - (b) the affidavit includes a statement in accordance with subrule (5); or
  - (c) the Court is satisfied that the affidavit was read to the deponent.
- (9) Each page of an affidavit must be signed by:
  - (a) the deponent of the affidavit, unless the deponent is incapable of signing the affidavit because of a physical disability; and
  - (b) the person before whom the affidavit is sworn or affirmed.

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**Rule 5A**

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**3 Alteration**

Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit:

- (a) the affidavit may nevertheless be filed, unless the Court otherwise orders; but
- (b) the affidavit may not be used without the leave of the Court unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the affidavit any words or figures written on the erasure and signs or initials them.

**4 Exhibits and annexures**

- (1) Any original document to be used in conjunction with an affidavit shall be exhibited and not annexed to the affidavit.
- (2) Any exhibit to an affidavit must be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.
- (3) Copies of all documents exhibited or annexed to an affidavit shall be served with the affidavit.

**5 Irregularity**

Unless the Court otherwise orders, an affidavit may be filed despite any irregularity in form.

**5A Certificate of compliance — Form 20A**

- (1) If, according to the Court file for a proceeding, a solicitor acts for a party in the proceeding, an affidavit that is presented or sent to a registry for filing on behalf of the party must be accompanied by a certificate (a *compliance certificate*) in accordance with Form 20A signed by the solicitor.
- (2) A compliance certificate may be endorsed on the affidavit on or immediately after the last page of the affidavit.

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- (3) An affidavit that is not accompanied by a compliance certificate must not be accepted for filing without the leave of the Court or a Registrar.

**6 Use of affidavit**

An affidavit must not be used in a proceeding without the leave of the Court if:

- (a) it has not been filed; or
- (b) it has been filed but is irregular in form; or
- (c) it has been accepted for filing under subrule 5A (3).

**7 Service**

- (1) A party intending to use an affidavit shall serve it on each other interested party not later than a reasonable time before the occasion for using it arises.
- (2) The Court may give directions concerning the service of affidavits.

**8 Scandal etc**

Where there is scandalous or oppressive matter in an affidavit, the Court may order that the affidavit be taken off the file.

**9 Cross-examination**

- (1) A party may require the attendance for cross-examination of a person making an affidavit.
- (2) A requirement under subrule (1) shall be made to the party filing or proposing to use the affidavit.
- (3) Where the attendance of a person is required under subrule (1) and he does not attend, his affidavit shall not be used without the leave of the Court.
- (4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine him.

# **Order 15      Discovery and inspection of documents**

## **Division 1      Discovery**

### **1      Notice of discovery — Form 21**

A party in a proceeding may, with the leave of the Court and within any period fixed by the Court for this purpose, require another party to the proceeding to give discovery by filing and serving on that party a notice for discovery in accordance with Form 21.

### **2      Discovery on notice**

- (1) A party required to give discovery must do so within the time specified in the notice of discovery (not being less than 14 days after service of the notice of discovery on the party), or within such time as the Court or a Judge directs.
- (2) Unless the Court or a Judge orders otherwise, a party must give discovery by serving:
  - (a) a list of documents required to be disclosed; and
  - (b) an affidavit verifying the list.
- (3) Without limiting rule 3 or 7, the documents required to be disclosed are any of the following documents of which the party giving discovery is, after a reasonable search, aware at the time discovery is given:
  - (a) documents on which the party relies; and
  - (b) documents that adversely affect the party's own case; and
  - (c) documents that adversely affect another party's case; and
  - (d) documents that support another party's case.

**Rule 3**

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- (4) However, a document is not required to be disclosed if the party giving discovery reasonably believes that the document is already in the possession, custody or control of the party to whom discovery is given.
- (5) For subrule (3), in making a reasonable search, a party may take into account:
  - (a) the nature and complexity of the proceedings; and
  - (b) the number of documents involved; and
  - (c) the ease and cost of retrieving a document; and
  - (d) the significance of any document likely to be found; and
  - (e) any other relevant matter.
- (6) If the party does not search for a category or class of document, the party must include in the list of documents a statement of the category or class of document not searched for and the reason why.

**3                      Limitation of discovery on notice**

- (1) The Court may, before or after any party has been required under rule 1 to give discovery, order that discovery under rule 2 by any party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceeding, as may be specified in the order.
- (2) The Court may make such orders under subrule (1) as are necessary to prevent unnecessary discovery.

**4                      Co-respondents**

Where an applicant claims relief against two or more respondents, and requires any respondent to give discovery under rule 2, that respondent shall serve his list of documents and affidavit not only on the applicant but also on each other respondent who has filed a defence.

**5                      Order for general discovery**

The Court may, at any stage of the proceeding, order any party to give discovery in accordance with rule 2.

**6 Contents of list — Form 22**

- (1) A list of documents required by or under this Order shall, unless the Court otherwise orders, be in accordance with Form 22 and conform to the requirements of this rule.
- (2) A list of documents shall enumerate the documents which are or have been in the possession, custody or power of the party making the list.
- (3) A list of documents shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.
- (4) Where a party making a list of documents claims that any document in his possession, custody or power is privileged from production, he shall, in the list, sufficiently state the grounds of the privilege.
- (5) A list of documents shall distinguish those documents which are in the possession, custody or power of the party making the list from those that have been but are no longer in his possession, custody or power.
- (6) A list of documents shall, as to any document which has been but is not then in the possession, custody or power of the party making the list, state when he parted with the document and what has become of it.
- (7) A list of documents shall appoint a time within 7 days after service of the list when, and a place where, the documents in the list may be inspected.
- (8) Where a party making a list of documents has a solicitor in the proceeding, the solicitor shall certify on the list that, according to his instructions, the list and the statements in the list are correct.

**6A Discovery of documents**

A party required to give discovery who has or has had in its possession, custody or power more than one copy, however

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made, of a particular document is not required to give discovery of additional copies by reason only of the fact that the original or any other copy is discoverable.

**7                      Absence of privilege**

- (1) Except with the leave of the Court, a party to any proceeding in the Court may not claim privilege from production of any document on the ground that it relates solely to and does not tend to impeach his own case and does not relate to or tend to support the case of any opposing party.
- (2) Leave under subrule (1) shall not be granted except for special cause.
- (3) Any application to the Court for leave under subrule (1) may be made without serving notice of the motion.
- (4) The Court may, at any stage of the proceeding, order a party to produce a document to any other party notwithstanding that leave under subrule (1) has been granted and privilege claimed in respect of that document.

**7A                    Supplementary discovery**

Where a party has been required, or ordered to give discovery, that party shall be under a continuing obligation to discover any document not previously discovered and which would otherwise be necessary to comply with the requirement or order.

**8                      Order for particular discovery**

Where, at any stage of the proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that some document or class of document relating to any matter in question in the proceeding may be or may have been in the possession, custody or power of a party, the Court may order that party:

- (a) to file any affidavit stating whether that document or any document of that class is or has been in his possession,

custody or power and, if it has been but is not then in his possession, custody or power, when he parted with it and what has become of it; and

- (b) to serve the affidavit on any other party.

## **9 Deponent**

- (1) Subject to subrule (2), an affidavit verifying a list of documents of a party or an affidavit to be filed by a party pursuant to an order under rule 8 may be made as follows:
- (a) by the party;
  - (b) where the party is a person under disability, by his tutor;
  - (c) where the party is a corporation or organisation by a member or officer of the corporation or organisation;
  - (d) where the party is a body or persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body;
  - (e) where the party is the Crown or an officer of the Crown suing or being sued in his official capacity, by an officer of the Crown.
- (2) Where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies and the affidavit is to be filed and served pursuant to an order, the Court may:
- (a) specify by name or otherwise the person to make the affidavit; or
  - (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.
- (3) Subject to subrule (2), where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

## **Division 2                      Inspection**

### **10                      Document referred to in pleading or affidavit**

- (1) Where a pleading or affidavit filed by a party refers to a document, any other party may, by notice to produce served on him require him to produce the document for inspection.
- (2) Where a notice to produce a document is served on a party under subrule (1), he shall, within 4 days after that service, serve on the party requiring production a notice:
  - (a) appointing a time within 7 days after service of the notice under this subrule when, and a place where, the document may be inspected;
  - (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
  - (c) stating that the document is not in his possession, custody or power and stating to the best of his knowledge information and belief where the document is and in whose possession, custody or power it is.

### **11                      Order for production**

- (1) Where:
  - (a) it appears from a list of documents filed by a party under this Order that any document is in his possession, custody or power;
  - (b) a pleading or affidavit filed by a party refers to any document; or
  - (c) it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that any document relating to any matter in question in the proceeding is in the possession, custody or power of a party;the Court may, subject to any question of privilege which may arise, order the party:
  - (d) to produce the document for inspection by any other party at a time and place specified in the order; or

- (e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.
- (2) An affidavit made pursuant to an order under paragraph (1) (e) shall, unless the Court otherwise orders, state whether there are in the document copied any and, if so, what erasures, interlineations or alterations.

## **12 Copying of documents produced for inspection**

A party to whom a document is produced for inspection under this Order may, at his own expense, make copies, including photocopies, of the document subject to any reasonable conditions which may be imposed by the party producing the document.

## **13 Production to the Court**

- (1) The Court may, at any stage of any proceeding, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the proceeding.
- (2) Upon production of a document to the Court pursuant to an order under subrule (1), the Court may deal with the document in such manner as the Court thinks fit.

## **14 Inspection to decide objection**

Where an application is made for an order under rule 11 for the production of any document for inspection by another party or for an order under rule 13 for the production of any document to the Court and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

## **Division 3                    General**

<i>Note</i> Order 35A deals with the procedure on default.
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### **15                    Order only if necessary**

The Court shall not make an order under this Order for the filing or service of any list of documents or affidavit or other document or for the production of any document unless satisfied that the order is necessary at the time when the order is made.

### **17                    Public interest**

This Order does not affect any rule of law which authorizes or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

### **18                    Use of documents**

Any order or undertaking, whether express or implied, not to use a document for any purpose other than those of the proceedings in which it is disclosed shall cease to apply to such a document after it has been read to or by the Court or referred to, in open Court, in such terms as to disclose its contents unless the Court otherwise orders on the application of a party, or of a person to whom the document belongs.

## Order 15A Preliminary discovery and discovery from non-party

### 1 Interpretation

In this Order, unless the context or subject-matter otherwise requires:

*applicant* means applicant for an order under this Order.

*description* includes the name, and (as applicable) the place of residence, registered office, place of business, occupation and sex of the person against whom the applicant desires to bring a proceeding, and also whether that person is an individual or a corporation.

*possession* means possession, custody or power.

### 2 Privilege

An order made under this Order shall not operate to require the person against whom the order is made to produce any document which, on the ground of privilege, the person could not be required to produce:

- (a) in the case of an order under rule 3 or rule 6, if the applicant had commenced a proceeding against the person;
- (b) in the case of an order under rule 5 or rule 7, if the applicant had made the person a party to the proceeding;
- (c) in the case of an order made under rule 8, if the person had been served with a subpoena for production of the document at the trial of the proceeding.

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**3      Discovery to identify a respondent**

- (1) Where an applicant, having made reasonable inquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this rule called *the person concerned*) and it appears that some person has or is likely to have knowledge of facts, or has or is likely to have or has had or is likely to have had possession of any document or thing, tending to assist in such ascertainment, the Court may make an order under subrule (2).
- (2) The Court may order that the person, and in the case of a corporation, the corporation by an appropriate officer, shall:
  - (a) attend before the Court to be examined in relation to the description of the person concerned;
  - (b) make discovery to the applicant of all documents which are or have been in the person's or its possession relating to the description of the person concerned.
- (3) Where the Court makes an order under paragraph (2) (a), it may:
  - (a) order that the person or corporation against whom or which the order is made shall produce to the Court on the examination any document or thing in the person's or its possession relating to the description of the person concerned;
  - (b) direct that the examination be held before a Registrar.

**4      Conduct money**

Order 27 rule 3 as to conduct money shall apply in relation to an order under paragraph (2) (a) of rule 3 hereof as it applies in relation to a subpoena.

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**Rule 7****5 Party an applicant**

Rule 3 shall, with any necessary modification, apply where the applicant is a party to a proceeding and wishes to make in the proceeding against a person who is not a party a claim which could properly have been made in the proceeding had the person been a party.

**6 Discovery from prospective respondent**

Where:

- (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from a person whose description has been ascertained;
- (b) after making all reasonable inquiries, the applicant has not sufficient information to enable a decision to be made whether to commence a proceeding in the Court to obtain that relief; and
- (c) there is reasonable cause to believe that that person has or is likely to have or has had or is likely to have had possession of any document relating to the question whether the applicant has the right to obtain the relief and that inspection of the document by the applicant would assist in making the decision;

the Court may order that that person shall make discovery to the applicant of any document of the kind described in paragraph (c).

**7 Party an applicant**

Rule 6 shall, with any necessary modification, apply where the applicant is a party to a proceeding and there is reasonable cause to believe that the applicant has or may have the right to obtain against a person who is not a party relief which the applicant could properly have claimed in the proceeding had the person been a party.

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**8 Discovery from non-party**

The Court may order that a person who is not a party and in respect of whom it appears that the person has or is likely to have or has had or is likely to have had in the person's possession any document which relates to any question in the proceeding shall make discovery to the applicant of any such document.

**9 Procedure**

- (1) An application under rule 3 shall, unless the Court or a Judge otherwise orders, be served personally on the person concerned.
- (2) An application under rule 6 shall, unless the Court or a Judge otherwise orders, be served personally on the person mentioned in paragraph (a) of that rule.
- (3) An application under any rule of this order shall be supported by an affidavit:
  - (a) stating the facts upon which the applicant relies; and
  - (b) specifying or describing the documents or any class of documents in respect of which an order is sought.
- (4) A copy of the supporting affidavit shall be served on every person upon whom the application is served.

**10 Inspection of documents**

Division 2 of Order 15 shall, with any necessary modification, apply to the inspection of the documents referred to in a list of documents made and served in accordance with this Order as if the list were a list of documents as mentioned in Order 15 rule 2.

**11 Costs**

- (1) The Court may make an order for the costs and expenses of the applicant, a party to the proceeding or a person against whom an order is made or sought, including the following:
  - (a) the costs of making and serving a list of documents;

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**Rule 12**

- (b) the costs of producing a document for inspection in accordance with rule 10;
  - (c) the costs of complying with an order made under Division 2 of Order 15;
  - (d) if the order made or sought was similar to a subpoena — expenses or compensation that would have been allowable under Order 27, rule 11 if the order was for a subpoena.
- (2) The Court may make an order under this Order on condition that the applicant give security for the costs and expenses of the person against whom the order is made.

**12 Power to order inspection, preservation etc of property**

The Court may also make an order providing for any one or more of the following matters:

- (a) the inspection, measurement, photocopying, preservation, custody and detention of property:
    - (i) which relates to the subject matter of the proceedings; or
    - (ii) as to which any question arises in the proceedings;
  - (b) any of the following:
    - (i) taking of samples;
    - (ii) observation;
    - (iii) carrying out of any experiment;
    - (iv) making, playing or screening of tape recordings and films and other means of recording sight or sound;
    - (v) making and reproducing or displaying other instrumental recordings and tracings;
- with respect to any such property mentioned in paragraph (a).

**Rule 1**

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## **Order 16      Interrogatories**

### **1      Interrogatories by notice — Form 23**

- (1) The Court may, in its discretion, give leave to any party to file and serve upon any other party, within the period limited by the Court for this purpose, a notice requiring the party served to answer interrogatories relating to any matter in question between the interrogating party and the party served.
- (2) The notice to answer interrogatories shall be made in, or substantially in, the form numbered 23 in Schedule 1.

### **2      Answers pursuant to notice**

- (1) A party required to answer interrogatories shall do so within such time, not being less than 14 days after service on him of the notice under rule 1, as may be specified in the notice.
- (2) A party shall, subject to rule 3, answer interrogatories by filing and serving on the party requiring the answers:
  - (a) a statement in accordance with rule 6; and
  - (b) an affidavit verifying that statement.

### **3      Limitation of interrogatories by notice**

- (1) The Court may, before or after any party has been required under rule 1 to answer interrogatories, order that answers to interrogatories under rule 2 by any party shall not be required, or shall be limited to such interrogatories or classes of interrogatories, or to such of the matters in question in the proceeding, as may be specified in the order.
- (2) Where any party has been required under rule 1 to answer any interrogatory, the Court may order that an answer to that interrogatory shall not be required or may limit the extent to which an answer shall be required.

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**Rule 6**

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- (3) The Court may make such orders under subrules (1) and (2) as are necessary to prevent unnecessary interrogatories or unnecessary answers to interrogatories.

**4 Co-respondents**

Where an applicant claims relief against two or more respondents, and requires any respondent to answer interrogatories under rule 2, that respondent shall serve his statement in answer and affidavit not only on the applicant but also on each other respondent who has entered an appearance.

**5 Order to answer**

The Court may, at any stage of the proceeding, order any party to answer interrogatories either in accordance with rule 2 or in accordance with such directions as the Court may give.

**6 Contents of statement — Form 24**

- (1) A statement in answer to interrogatories required by or under this Order must, unless the Court otherwise orders, be in accordance with Form 24 and conform to the requirements of this rule.
- (2) A statement in answer to interrogatories shall deal with each interrogatory specifically either:
- (a) by answering the substance of the interrogatory without evasion; or
  - (b) by objecting to answer the interrogatory on one or more of the grounds mentioned in subrule (3) and briefly stating the facts on which the objection is based.
- (3) Subject to subrule (4), a party may object to answering any interrogatory on the following grounds but no other:
- (a) where the answering is not required by an order, that the interrogatory does not relate to any matter in question between him and the party requiring the answer;
  - (b) that the interrogatory is vexatious or oppressive; and
  - (c) privilege.

**Rule 7**

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- (4) On an application under subrule 3 (2) or rule 5 in respect of any interrogatory, the Court may require the applicant to specify on what grounds he objects to answering that interrogatory and may determine the sufficiency of the objection and, if the Court determines that the objection is not sufficient, the applicant shall not be entitled to object to answering that interrogatory in a statement in answer to interrogatories.

**7 Deponent — Form 24**

- (1) Subject to subrule (2), an affidavit verifying a statement of a party in answer to interrogatories must be in accordance with Form 24, and may be made:
- (a) by the party;
  - (b) where the party is a person under disability, by his tutor;
  - (c) where the party is a corporation or organisation, by a member or officer of the corporation or organisation;
  - (d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body;
  - (e) where the party is the Crown or an officer of the Crown suing or being sued in his official capacity, by an officer of the Crown.
- (2) Where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies and the affidavit is to be filed and served pursuant to an order, the Court may, in relation to any or all of the interrogatories:
- (a) specify by name or otherwise the person to make the affidavit; or
  - (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.
- (3) Subject to subrule (2), where the party is a person to whom any of paragraphs (1) (c), (d) and (e) applies, the party shall, in relation to each interrogatory, choose a person to make the

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**Rule 11**

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affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

**8 Insufficient answer**

- (1) Where a party fails to answer an interrogatory sufficiently, the Court may:
  - (a) if he has made an insufficient answer, order him to make a further answer verified by affidavit in accordance with rule 7; or
  - (b) order him or any of the persons mentioned in paragraphs 7 (1) (b) to (d) as the nature of the case requires, to attend to be orally examined.
- (2) Subrule (1) does not limit the powers of the Court under Order 35A.

*Note* Order 35A deals with the procedure on default.

**10 Answers as evidence**

- (1) A party may tender as evidence:
  - (a) one or more answers to interrogatories without tendering the others; or
  - (b) part of an answer to an interrogatory without tendering the whole of the answer.
- (2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may:
  - (a) look at the whole of the answers; and
  - (b) if it appears to the Court that any other answer or any part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

**11 Public interest**

This order does not affect any rule of law which authorizes or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

**Rule 1**

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# Order 17      Inspection of property

## **1      Inspection of property**

- (1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceeding, make orders for:
  - (a) the inspection of any property;
  - (b) the taking of samples of any property;
  - (c) the making of any observation of any property;
  - (d) the trying of any experiment on or with any property;
  - (e) the observation of any process; or
  - (f) the copying of any document or the copying, transcribing or production of any material, data or information stored or recorded by mechanical or electronic means.
- (2) Any order under subrule (1) may authorize any person to enter any land or to do any other thing for the purpose of getting access to the property.
- (3) In this rule *property* includes any land and any document or other chattel, whether in the ownership, possession, custody or power of a party or not.

## **2      Application and service**

An order referred to in rule 1 shall not be made against a party or a person not being a party to the proceeding unless an application for such order is served upon that person or the Court or a Judge orders that such service be dispensed with.

## **3      View**

The Court may inspect, or, at a trial, may authorize a jury to inspect, any place, process or thing with respect to which any question arises in the proceedings.

## Order 18      Admissions

### **1      Voluntary admission**

- (1) A party to a proceeding may, by notice served on another party, admit, in favour of the other party but for the purpose of the proceeding only, the facts specified in the notice.
- (2) A party may, with the leave of the Court, withdraw an admission under subrule (1).

### **2      Notice to admit facts — Form 25**

- (1) A party to a proceeding may, by notice in accordance with Form 25 served on another party, require him to admit, for the purpose of the proceeding only, the facts or documents specified in the notice.

#### **Form 26**

- (2) If, as to any fact or document specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit facts or documents, a notice in accordance with Form 26 disputing that fact or document, that fact or document shall, for the purpose of the proceeding, be admitted by the party on whom the notice to admit facts or documents is served in favour of the party serving the notice.
- (3) A party may, with the leave of the Court, withdraw an admission under subrule (2).

### **3      Admission of documents discovered**

- (1) Where a list of documents is served on a party under Order 15 (which relates to discovery and inspection of documents), and inspection of any document specified in the list is permitted to that party under that Order, then, subject to subrule (2), the

**Rule 4**

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following admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders:

- (a) that the document, if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been; or
- (b) that the document, if described in the list as a copy, is a true copy.

(2) Where a party:

- (a) has by his pleading or affidavit denied the authenticity of a document; or
- (b) within 14 days after the time limited under Order 15 for inspection of a document, serves on the party giving inspection a notice that he disputes the authenticity of the document;

subrule (1) does not work an admission by the first-mentioned party as to that document.

- (3) Subrules (1) and (2) apply in relation to an affidavit made in compliance with an order under Order 15, rule 8 (which relates to discovery of particular documents) as they apply in relation to a list of documents served under that Order.

**4 Judgment on admissions**

- (1) If an admission is made by a party, whether by a pleading or otherwise, the Court may pronounce any judgment or make any order to which the applicant is entitled on the admission.
- (2) The Court may exercise its powers under subrule (1) notwithstanding that other questions in the proceeding have not been determined.

## Order 19      Motions

### **1      Application**

- (1) Any interlocutory or other application in any proceeding which has already been commenced in accordance with these Rules shall be made by motion.
- (2) The motion shall be supported by affidavit setting forth the facts relied upon.
- (3) Such application may be made to the Court or a Judge.

### **2      Notice of motion — Form 27**

- (1) Subject to subrule (2), a person shall not move the Court or a Judge for any order unless before moving he has filed notice of the motion in accordance with Form 27 and has served the notice on each interested party who has an address for service in the proceeding.
- (2) A person may move the Court or a Judge without previously filing or serving notice of the motion:
  - (a) where the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant;
  - (b) where each party interested, other than the applicant, consents to the order;
  - (c) where under these Rules the motion may properly be made without the prior filing or service (as the case may be) of notice of the motion; or
  - (d) where the Court or a Judge dispenses with the requirements of subrule (1).
- (3) Notice of a motion shall:
  - (a) state the date and time when, and the place where, the motion is to be made;

**Rule 3**

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- (b) where the Court or a Judge makes an order under rule 3, bear a note of the order made;
  - (c) state concisely the nature of the order which is sought; and
  - (d) name each party affected by the order which is sought.
- (4) Costs need not be specifically claimed.

**3 Time for service of notice**

Where a notice of motion is required to be served, it shall, unless the Court or a Judge otherwise orders, be served not less than three days before the date fixed for the motion.

**4 Service**

Where notice of a motion is to be served on a person who has not entered an appearance, the notice shall, unless the Court or a Judge otherwise orders, be served personally.

**5 Absence of party**

The Court or a Judge may hear and dispose of a motion in the absence of any party:

- (a) where service of notice of the motion on the absent party is not required by the Rules or by an order; or
- (b) where notice of the motion has been duly served on the absent party.

**6 Notice of adjournment**

Where a notice of motion has been served for any date or the hearing of a motion has been adjourned to any date and, before that date, any party files a request, bearing the consent of each other party to the motion, for an adjournment in accordance with this rule, the hearing of the motion shall stand adjourned to the date specified in the notice or to such later date as the Court or a Judge may appoint.

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**Rule 7****7 Further hearing**

- (1) Where notice of a motion for any day has been filed or served, and the motion is not disposed of on that day:
  - (a) the Court or a Judge may hear and dispose of the motion on any later day fixed by the Court or Judge; and
  - (b) subject to subrule (2), filing or service of further notice of motion shall not be required.
- (2) Paragraph (1) (b) shall not have effect:
  - (a) where the Court or a Judge directs the filing or service of a further notice of motion; or
  - (b) where service is required on a party on whom notice of the motion has not previously been served.

**Rule 1**

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## **Order 20      Summary disposal and stay of proceedings**

### **1      Definitions**

In this Order:

*applicant* includes a cross-claimant.

*claim* includes a cross-claim.

*respondent* includes a cross-respondent.

### **2      Summary judgment (proceedings commenced before 1 December 2005)**

- (1) This rule applies to a proceeding commenced before 1 December 2005 if, for the whole or a part of an applicant's claim for relief:
  - (a) there is evidence of the facts on which the claim or part is based; and
  - (b) either:
    - (i) there is evidence given by the applicant or by a responsible person that, in the belief of the person giving the evidence, the respondent has no defence to the claim or part; or
    - (ii) the respondent's defence discloses no answer to the claim or part.
- (2) The Court may give judgment for the applicant on the claim or part.
- (3) If the Court gives judgment for the applicant against the respondent under this rule, and the respondent claims relief against the applicant, the Court may stay execution on, or other enforcement of, the judgment until the respondent's claim is determined.

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**Rule 5****3 Stay of enforcement of summary judgment  
(proceedings commenced on or after 1 December 2005)**

- (1) This rule applies if:
  - (a) the Court gives judgment under subsection 31A (1) of the Act for the whole or a part of the prosecuting party's claim for relief; and
  - (b) the other party claims relief against the prosecuting party.
- (2) The Court may stay execution on, or other enforcement of, the judgment until the other party's claim is determined.

**4 Stay or dismissal (proceedings commenced before 1 December 2005)**

- (1) This rule applies to a proceeding commenced before 1 December 2005 if the Court is satisfied that, for the proceeding generally or for a claim for relief in the proceeding:
  - (a) no reasonable cause of action is disclosed; or
  - (b) the proceeding or claim is frivolous or vexatious; or
  - (c) the proceeding or claim is an abuse of the process of the Court.
- (2) The Court may order that the proceeding be stayed or dismissed generally or in relation to the claim for relief.
- (3) The Court may receive evidence on the hearing of an application for an order under subrule (2).

**5 Stay or dismissal (proceedings commenced on or after 1 December 2005)**

- (1) This rule applies to a proceeding commenced on or after 1 December 2005 if the Court is satisfied that, for the proceeding generally or for a claim for relief in the proceeding:
  - (a) the proceeding or claim is frivolous or vexatious; or
  - (b) the proceeding or claim is an abuse of the process of the Court.

**Rule 6**

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(2) The Court may order that the proceeding be stayed or dismissed generally or in relation to the claim for relief.

(3) The Court may receive evidence on the hearing of an application for an order under subrule (2).

*Note* For a proceeding commenced on or after 1 December 2005 in which the prosecuting party has no reasonable prospect of success, see subsection 31A (2) of the Act.

**6 Residue of proceedings**

(1) Subrule (2) applies if, in a proceeding commenced before 1 December 2005:

(a) a party applies for:

(i) a judgment under rule 2; or

(ii) an order for stay or dismissal under rule 4; and

(b) the proceeding is not wholly determined by judgment or dismissal or is not wholly stayed.

(2) The proceeding may be continued for a claim or part of a claim not disposed of by judgment or dismissal and not stayed.

(3) Subrule (4) applies if, in a proceeding commenced on or after 1 December 2005:

(a) a party applies for:

(i) an order for stay or dismissal under rule 5; or

(ii) a judgment under section 31A of the Act; and

(b) the proceeding is not wholly determined by judgment or dismissal or is not wholly stayed.

(4) The proceeding may be continued for a claim or part of a claim not disposed of by judgment or dismissal and not stayed.

## Order 21      Vexatious litigants

### 1      Vexatious litigant

- (1) If a person institutes a vexatious proceeding and the Court is satisfied that the person has habitually, persistently and without reasonable grounds instituted other vexatious proceedings in the Court or any other Australian court (whether against the same person or against different persons), the Court may order:
  - (a) that any proceeding instituted by the person may not be continued without leave of the Court; and
  - (b) that the person may not institute a proceeding without leave of the Court.
- (2) An order under this rule may be made:
  - (a) on the application of a person against whom the person mentioned in subrule (1) has instituted or conducted vexatious proceedings; or
  - (b) on the application of a person who has sufficient interest in the matter; or
  - (c) on the Court's own motion; or
  - (d) on the application of the Attorney-General of the Commonwealth or of a State or Territory; or
  - (e) on the application of the Registrar.

### 2      Vexatious proceeding against a person

Where any person (in this rule called the vexatious litigant) habitually and persistently and without any reasonable ground institutes a vexatious proceeding against any person (in this rule called the person aggrieved) in the Court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without leave of the Court, institute any proceeding against the person aggrieved in the Court and that any proceeding instituted by the vexatious litigant against the

**Rule 3**

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person aggrieved in the Court before the making of the order shall not be continued by him without leave of the Court.

**3 Application**

A person seeking an order under rule 1 or rule 2 shall proceed by application.

**4 Rescission or variation of order**

The Court may from time to time rescind or vary any order made by it under rule 1 or 2.

**5 Leave to start or continue proceeding**

- (1) If the Court has made an order under rule 1 or rule 2 against any person, the person may be given leave to institute or continue a proceeding only if the Court is satisfied that:
  - (a) the proceeding is not an abuse of process; and
  - (b) there is prima facie ground for the proceeding.
- (2) Unless the Court orders otherwise, an application by a person who is subject to an order under subrule 1 (2) or rule 2 may be determined by the Court without an oral hearing.

## Order 22      Withdrawal and discontinuance

### 1      Withdrawal of appearance — Form 28

A party who has entered an appearance may withdraw the appearance, by notice in accordance with Form 28, at any time with the leave of the Court.

### 2      Discontinuance — Form 29

- (1) Subject to subrules 2 and 3 a party making a claim for relief may discontinue a proceeding so far as concerns the whole or any part of any claim for relief, by notice in accordance with Form 29:
  - (a) at any time before the directions hearing — without the leave of the Court or the consent of any other party;
  - (b) where after the directions hearing the proceeding continues on pleadings but the pleadings are not closed — without the leave of the Court or the consent of any other party;
  - (c) where judgment has not been entered — with the consent of all the parties; and
  - (d) at any time — with the leave of the Court.
- (2) A party who represents any other person in the proceeding shall not discontinue his claim for relief under subrule (1) without the leave of the Court.
- (3) An application for a winding up order under section 459P or paragraph 461 (1) (a) of the *Corporations Act 2001* may not be discontinued without leave of the Court.

**Rule 3**

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**3 Costs**

- (1) A party who discontinues pursuant to paragraph 2 (1) (a) or (b) shall be liable to pay the costs of the other party or parties occasioned by the whole or the relevant part of the proceeding.
- (2) A party who discontinues under paragraph 2 (1) (c) is liable to pay the costs of the other party or parties occasioned by the whole or the relevant part of the proceeding, unless the terms of the consent provide otherwise.

**4 Withdrawal of defence reply etc — Form 30**

- (1) A party raising any matter in a defence or subsequent pleading may withdraw that matter, at any time, by notice in accordance with Form 30.
- (2) Subrule (1) does not enable a party to withdraw, without the consent of another party or the leave of the Court, an admission or any other matter operating for the benefit of that other party.

**5 Mode of discontinuance or withdrawal**

- (1) A discontinuance or withdrawal under rule 2, 3 or 4 shall be made by filing a notice stating the extent of the discontinuance or withdrawal.
- (2) Where the discontinuance or withdrawal is by consent, the notice under subrule (1) must bear the consent of each consenting party.

**6 Service**

A party filing a notice under rule 5 shall, on the day of filing, serve the notice on each other party.

**7 Effect of discontinuance**

A discontinuance under this Order as to any cause of action shall not, subject to the terms of any leave to discontinue, be a defence to a proceeding for the same, or substantially the same, cause of action.

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**Rule 8****8 Stay to secure costs**

Where:

- (a) a party discontinues proceedings so far as concerns the whole or any part of any claim for relief;
- (b) he is, by reason of the discontinuance, liable to pay the costs of another party occasioned by the proceedings; and
- (c) before payment of the costs, he brings against that other party a further proceeding on the same or substantially the same cause of action as that on which the discontinued proceeding was brought;

the Court may stay the further proceeding until those costs are paid.

Rule 1

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## Order 23      Offer of compromise and payment into court

### 1      Interpretation

In this Order, unless the contrary intention appears:

*applicant* includes *cross-claimant*.

*claim in the proceeding* includes a claim in relation to costs to which Order 62 applies.

*proceeding* does not include a proceeding on an interlocutory application that is not capable of:

- (a) substantially disposing of the proceeding or of the whole or any part of any claim for relief in the proceeding; or
- (b) rendering unnecessary any trial or further trial in the proceeding or of the whole or any part of any claim for relief in the proceeding.

*respondent* includes *cross-respondent*.

### 2      Application

- (1) In any proceeding, a party may make to another party an offer to compromise any claim in the proceeding on the terms set out in the notice of offer.
- (2) If an offer to compromise the separate claims of several parties to the proceeding is in a single notice of offer, the notice of offer must specify separately the offer made to each party.

### 3      Form of offer

- (1) An offer of compromise is made to a party by serving a notice of the offer on the party.
- (2) A notice of offer must:
  - (a) be prepared in accordance with Order 41; and

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**Rule 5**

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- (b) bear a statement to the effect that the offer is made under this Order; and
  - (c) be signed by the party making the offer or by the solicitor appearing for that party.
- (3) Until an offer has been accepted, notice of the offer must not be filed.

**4 Further requirements of offer**

- (1) If:
  - (a) a sum of money is offered; and
  - (b) that sum is inclusive of the costs of the proceeding;  
the notice of offer may specify the amount that is in respect of costs.
- (2) If:
  - (a) a sum of money is offered; and
  - (b) that sum is inclusive of interest;  
the notice of offer must specify the amount that is in respect of interest and how it is calculated.
- (3) An offer to pay a sum of money is, unless a notice of offer otherwise provides, taken to be an offer to pay that sum within 28 days after acceptance of the offer.

**5 Time for making or accepting offer**

- (1) An offer may be made at any time before the time prescribed by subrule (7) in respect of the claim to which it relates.
- (2) A party may make more than one offer.
- (3) An offer may be expressed to be limited as to the time that it is open to be accepted, but the time expressed must not be less than 14 days beginning on the day after it is made.
- (4) An offeree may accept an offer by serving notice of acceptance in writing on the offeror before:
  - (a) the expiration of the time specified in accordance with subrule (3); or

**Rule 6**

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- (b) the time prescribed by subrule (7) in respect of the claim to which the offer relates;  
which ever time is sooner.
- (5) An offer must not be withdrawn within 14 days after it is made, unless:
  - (a) the Court otherwise orders; or
  - (b) the offer is replaced by an offer in terms more favourable to the offeree.
- (6) An offer is open to be accepted within the period referred to in subrule (4) despite the fact that during that period the party to whom the offer is made makes a counter-offer, whether or not the counter-offer is made in accordance with this Order.
- (7) The time prescribed for the purposes of subrules (1) and (4) is:
  - (a) if the trial is before a jury — when the judge begins to sum up to the jury; or
  - (b) in any other case — when the Court, registrar or taxing officer pronounces the decision or begins to give reasons for the decision.

**6 Withdrawal of acceptance**

- (1) A party who accepts an offer may, by serving a notice of withdrawal on the offeror, withdraw the acceptance:
  - (a) if:
    - (i) the offer provides for payment of a sum of money; and
    - (ii) the sum is not paid to the offeree or into Court:
      - (A) within 28 days after the acceptance of the offer; or
      - (B) within such other time as the offer provides; and
    - (iii) the notice of withdrawal is served within 7 days after the expiration of the relevant period; or
  - (b) if the Court gives leave to do so.

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**Rule 9**

- (2) On withdrawal of an acceptance, all steps in the proceedings taken in consequence of the acceptance have effect only as the Court may direct.
- (3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may:
  - (a) give directions under subrule (2); and
  - (b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and
  - (c) give directions for the further conduct of the proceedings.

**7 Offer to be without prejudice**

An offer made in accordance with this Order is taken to have been made without prejudice, unless the notice of offer otherwise provides.

**8 Offer not to be disclosed to Court**

- (1) No statement of the fact that an offer has been made is to be contained in any pleading or affidavit.
- (2) If an offer has not been accepted, no communication with respect to the offer is to be made to the Court at the trial or hearing until after all questions of liability and the relief to be granted have been determined.
- (3) This rule does not apply where a notice of offer provides that the offer is not made without prejudice.

**9 Failure to comply with accepted offer**

- (1) If a party to an accepted offer fails to comply with the terms of the offer, the Court may, subject to rule 6:
  - (a) if the party is an applicant — order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the party; or
  - (b) if the party is a respondent — order that the defence be struck out; or

**Rule 10**

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- (c) give judgment or make an order to give effect to the terms of the offer.

(2) If:

- (a) a party to an accepted offer fails to comply with the terms of the offer; and
- (b) a respondent in the proceeding has made a cross-claim that is not the subject of the accepted offer;

the Court may:

- (c) make such order or give such judgment under subrule (1); and
- (d) make such order that the proceeding on the cross-claim be continued;

as it thinks fit.

**10 Multiple respondents**

If:

- (a) two or more respondents are alleged to be jointly, or jointly and severally, liable to the applicant in respect of a debt or damages; and
- (b) rights of contribution or indemnity appear to exist between the respondents;

rule 9 does not apply to an offer unless:

- (c) in the case of an offer made by the applicant — the offer:
  - (i) is made to all respondents; and
  - (ii) is an offer to compromise the claim against all of them; or
- (d) in the case of an offer made to the applicant:
  - (i) the offer is to compromise the claim against all respondents; and
  - (ii) if the offer is made by 2 or more respondents — by the terms of the offer, the respondents who made the offer are jointly, or jointly and severally, liable to the applicant for the whole amount of the offer.

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**Rule 11****11 Costs**

- (1) On the acceptance of an offer of compromise in accordance with subrule 5 (4), the applicant may, unless the Court otherwise orders, or the offer is inclusive of the costs of the proceeding:
  - (a) tax costs on a party and party basis in respect of the claim against the respondent incurred up to and including the day the offer was accepted; and
  - (b) if the costs are not paid within 4 days after the signing of a certificate of taxation — enter judgment against that respondent for the taxed costs.
- (2) If a notice of offer contains a term that purports to negative or limit the operation of subrule (1), that term is of no effect for any purpose of this Order.
- (3) Subrules (4), (5) and (6) apply to an offer that has not been accepted within the time prescribed by subrule 5 (4).
- (4) If:
  - (a) an offer is made by an applicant and not accepted by the respondent; and
  - (b) the applicant obtains judgment on the claim to which the offer relates not less favourable than the terms of the offer; then, unless the Court otherwise orders, the applicant is entitled to an order against the respondent for costs incurred in respect of the claim:
  - (c) up to and including the day the offer was made — taxed on a party and party basis; and
  - (d) after that day — taxed on an indemnity basis.
- (5) If:
  - (a) an offer is made by a respondent and not accepted by the applicant; and
  - (b) the applicant obtains judgment on the claim to which the offer relates not more favourable than the terms of the offer;then, unless the Court otherwise orders:

**Rule 11**

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- (c) the applicant is entitled to an order that the respondent pay the applicant's costs in respect of the claim incurred up to 11 am on the day after the day when the offer was made, taxed on a party and party basis; and
  - (d) the respondent is entitled to an order that the applicant pay the respondent's costs in respect of the claim incurred after that time, taxed on an indemnity basis.
- (6) If:
  - (a) an offer is made by a respondent and not accepted by the applicant; and
  - (b) the respondent obtains an order or judgment on the claim to which the offer relates as favourable to the respondent, or more favourable to the respondent, than the terms of the offer;  
then, unless the Court otherwise orders:
    - (c) the respondent is entitled to an order that the applicant pay the respondent's costs in respect of the claim incurred up to 11 am on the day after the day the offer was made, taxed on a party and party basis; and
    - (d) the respondent is entitled to an order that the applicant pay the respondent's costs in respect of the claim incurred after that time, taxed on an indemnity basis.
- (7) If an applicant obtains judgment for the payment of a debt or damages and:
  - (a) the amount for which judgment is given includes interest or damages in the nature of interest; or
  - (b) by or under any Act the Court awards the applicant interest or damages in the nature of interest in respect of the amount;  
then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (5), the Court must disregard so much of the interest as relates to the period after the day the offer was made.
- (8) Subrules (4) and (5) do not apply unless the Court is satisfied by the party making the offer that the party was at all material times willing and able to perform the offer if the offer had been accepted.

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**Rule 15**

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**12 Where tender before action pleaded**

If a respondent pleads, or otherwise raises, a defence of tender before action, the sum of money alleged to have been tendered must, unless the Court otherwise orders, be paid into Court.

**13 Payment of money out of Court**

Money paid into Court must not be paid out of Court except under an order of the Court or a Judge.

**14 Notice of deposit — Form 31**

If a party pays, or files a security to pay, money into Court, that party must, at the same time, file a notice in accordance with Form 31.

**15 Security to pay into Court — Form 36**

- (1) A security to pay money into Court must be an instrument in accordance with Form 36 or in a form approved by the Registrar by which an authorised person (whether a party to the proceeding or not):
  - (a) promises to pay into Court, when ordered to do so, a specified sum of money (in this rule called *the money secured*); and
  - (b) gives an address for service.
- (2) A person who is a licensed or authorised insurer under legislation of any State or Territory providing for workers' compensation or the insurance of motor vehicles against third party claims must, unless the Court otherwise orders, be an authorised person for the purposes of this rule.
- (3) A person approved by the Court is taken to be an authorised person for the purposes of this rule.
- (4) A person giving security under this rule may pay the money secured into Court and thereupon:
  - (a) subject to any order or judgment for interest under this rule, or for costs — that person has no further liability on the security in the proceeding; and

**Rule 15**

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- (b) the money paid into Court must, unless the Court otherwise orders, be dealt with as if it had been brought into Court in place of the security by the party filing the security.
- (5) If a security has been filed, the Court may order the person giving the security to pay, within the time specified in the order, the whole or any part of the money secured:
  - (a) into Court; or
  - (b) to such person as the Court may direct.
- (6) If a person giving a security fails to comply with an order under subrule (5), the Court may:
  - (a) order the person giving the security to pay into Court, or pay to such person as the Court may direct, interest on the money unpaid until payment at such rate not exceeding 10% per annum as the Court may determine;
  - (b) in addition to any order as to costs which the Court may make, order the person giving the security to pay the costs of any party incurred by reason of failure to comply with the order under subrule (5) (including costs known as 'costs thrown away').
- (7) The Court may pronounce such judgment as the nature of the case may require in favour of any party against a person giving a security for:
  - (a) the whole or any part of any money secured; or
  - (b) interest or costs the subject of an order under subrule (5) or (6); or
  - (c) costs.
- (8) A party moving for an order or direction under subrule (5), (6) or (7) must serve notice of the motion on the person giving the security.
- (9) A party filing a security must, on the day of filing, serve a copy of it on each party interested.

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**Rule 16****16      Service**

A party filing a notice under this Order must, on the day of filing, serve the notice on each other party on whom the notice has not previously been served.

**Rule 1**

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## **Order 24      Evidence taken in Australia or abroad or evidence taken under Part 2 of the *Foreign Evidence Act 1994***

### **1      Order for examination of witness — Forms 37, 38 and 39**

- (1) The Court may, for the purpose of proceedings in the Court, make orders:
  - (a) for the examination of any person on oath or affirmation before a Judge or before such other person as the Court may appoint as examiner at any place whether in or out of Australia; or
  - (b) for the sending or issue of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.
- (2) Drafts of the orders must be lodged:
  - (a) for examination — in accordance with Form 37; and
  - (b) for appointment of an examiner — in accordance with Form 38; and
  - (c) for a letter of request — in accordance with Form 39.

### **2      Letter of request**

- (1) Upon the making of an order under paragraph 1 (b) or under paragraph 7 (1) (c) of the *Foreign Evidence Act 1994* for the sending or issue of a letter of request, the party obtaining the order shall:
  - (a) lodge with the Registrar:

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**Rule 3**

- (i) a form of the appropriate letter of request;
    - (ii) the interrogatories (if any) and cross-interrogatories (if any) to accompany the letters of request; and
    - (iii) where English is not an official language of the country to whose judicial authorities the letter of request is to be sent, a translation of each of the documents mentioned in subparagraph (i) and (ii) in an official language of that country appropriate to the place where the evidence is to be taken; and
  - (b) file:
    - (i) a copy of each of the documents mentioned in paragraph (a); and
    - (ii) an undertaking by the party obtaining the order or his solicitor to be responsible for all expenses incurred by the Court or by any person at the request of the Court in respect of the letter of request and, on being given notice of the amount of any such expenses, to pay the amount to the Registrar.
- (2) A translation lodged under subparagraph (1) (a) (iii) must be certified by the person making it to be a correct translation, and the certificate must state his full name and address and his qualifications for making the translation.

**2A Procedure where orders are made under paragraph 7 (1) (a) or (b) of the *Foreign Evidence Act 1994***

If an order is made under paragraph 7 (1) (a) or (b) of the *Foreign Evidence Act 1994*, rules 3 to 11 apply, *mutatis mutandis*, subject to any directions which may be given by the Court under subsection 8 (1) of that Act.

**3 Documents for examiner**

- (1) The party obtaining an order for examination before an examiner under paragraph 1 (a) or under paragraph 7 (1) (a) or (b) of the *Foreign Evidence Act 1994* shall furnish the examiner with copies of such of the documents in the proceeding as are necessary to inform the examiner of the questions to which the examination is to relate.

**Rule 4**

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- (2) Where the documents in the proceeding are not sufficient to inform the examiner of the questions to which the examination is to relate the Court shall, in the order for examination or in a later order, state the question to which the examination is to relate.

**4 Appointment for examination**

- (1) Unless otherwise ordered by the Court, the examiner shall appoint a place and time for the examination.
- (2) Where an examiner appoints a time under subrule (1) it shall, having regard to the convenience of the person to be examined and to the circumstances, be as soon as practicable after the making of the order.
- (3) Where an examiner appoints a time under subrule (1) he shall give notice of the appointment to the party obtaining the order and that party shall, not less than 3 days before the time appointed, give notice of the appointment to each other party.

**5 Conduct of examination**

- (1) The examiner shall permit each party and any lawyer representing the party to attend the examination.
- (2) Subject to this Order, the proceeding before the examiner shall be in accordance with the procedure of the Court.
- (3) A person examined before an examiner may, unless the Court otherwise orders, be cross-examined and re-examined.
- (4) The examination, cross-examination and re-examination of a person before an examiner shall, unless the Court otherwise orders, be conducted in like manner as at a trial.
- (5) The examiner may put any question to a person examined before him as to:
  - (a) the meaning of any answer made by that person; or
  - (b) any matter arising in the course of the examination.

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**Rule 8**

- (6) The examiner may adjourn the examination from time to time or from place to place.

**6 Examination of additional persons**

The examiner may, with the consent in writing of each party to the proceeding, take the examination of any person in addition to the person named or provided for in the order for examination and, if he does so, he shall annex to the deposition of that person the consent of each of the parties.

**7 Objection**

If a person being examined before the examiner objects to answering a question or producing a document or thing:

- (a) the examiner must state to the parties the examiner's opinion on, but must not decide, the validity of the ground for the objection; and
- (b) the following information must be set out in the deposition of the person or in a statement attached to the deposition:
  - (i) the question;
  - (ii) the ground for the objection;
  - (iii) the opinion of the examiner;
  - (iv) the answer (if any); and
- (c) the Court may decide the validity of the ground for the objection; and
- (d) if the Court decides against the person making the objection or any party, the Court may order the person or party to pay the costs occasioned by the objection.

**8 Taking of depositions**

- (1) The deposition of a person examined before an examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner.
- (2) The deposition must contain as nearly as may be the statement of the person examined.

**Rule 9**

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- (3) The examiner may direct that the words of any question and the answer to the question be set out in the deposition.
- (4) Subject to subrules (2) and (3) and subject to paragraph 7 (b) the deposition need not set out every question and answer.

**9 Authentication and filing**

- (1) The deposition of a person examined (or the shorthand notes of his examination) shall be read to him.
- (2) The examiner shall, if any party so requests, ask the person examined to sign his deposition.
- (3) The examiner shall authenticate the deposition by his signature.
- (4) The examiner shall make on, or attach to, the deposition a note signed by him of the time occupied in the examination and the fees received by him in respect of the examination.
- (5) The examiner shall send the deposition to the Registrar and the Registrar shall file it in the proceeding.
- (6) The examiner shall, unless the Court otherwise orders, send the exhibits to the Registrar and the Registrar shall deal with the exhibits in such manner as the Court may direct.

**10 Special report**

- (1) The examiner may make to the Court a special report with regard to an examination before him and with regard to the absence of any person from, or the conduct of any person at, the examination.
- (2) The Court may direct such proceedings to be taken, or make such order, on the report as the Court thinks fit.

**11 Default of witness**

- (1) Where a person has been required by subpoena to attend before an examiner, and the person refuses to be sworn for the purposes of the examination or to answer any lawful question, or to produce any document or thing, the examiner must, at the

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**Rule 13**

request of any party, give to that party a certificate, signed by the examiner, of the refusal.

- (2) On the certificate being filed, the Court may:
- (a) order that person to be sworn, or to answer the question or to produce the document or thing as the case may be; and
  - (b) order that person to pay any costs occasioned by the person's refusal.

**12 Order for payment of expenses**

Where a party has given an undertaking as mentioned in subparagraph 2 (1) (b) (ii) and does not, within 7 days after service on him of notice of the amount of the expenses concerned, pay the amount of the expenses to the Registrar, the Court may, on application by the Registrar:

- (a) order the party to pay the amount of the expenses to the Registrar; and
- (b) stay the proceeding until payment so far as concerns the whole or any part of any claim for relief by that party.

**13 Perpetuation of testimony**

- (1) Witnesses shall not be examined to perpetuate testimony unless a proceeding has been commenced for the purpose.
- (2) Any person who would, in the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any property, the right or claim to which cannot be tried before the happening of the future event, may commence a proceeding to perpetuate any testimony which may be material for establishing the right or claim.
- (3) A proceeding to perpetuate the testimony of witnesses shall not be set down for trial.
- (4) Where a proceeding to perpetuate testimony touches any matter or thing in which the Crown may have an interest, the Attorney-General may be made a respondent.

**Rule 14**

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- (5) Where, pursuant to subrule (4), the Attorney-General is made a respondent to a proceeding to perpetuate testimony, a deposition taken in that proceeding shall not be inadmissible in other proceedings by reason that the Crown was not a party to the proceeding to perpetuate testimony.
- (6) Subrule (2) does not affect the right of any person to commence a proceeding to perpetuate testimony in cases to which that subrule does not apply.

**14 Exclusion of evidence in criminal proceedings**

This order does not affect the power of the Court in a criminal proceeding to exclude evidence that has been obtained illegally or would, if admitted, operate unfairly against a defendant.

## Order 25      Interim Orders

### **1      Order before commencement of proceeding**

- (1) In an urgent case, the Court or a Judge may, on the application of a person who intends to commence a proceeding:
  - (a) grant an injunction;
  - (b) appoint a receiver; or
  - (c) make an order under rule 2;to the same extent, as if the applicant had commenced the proceeding and the application were made in the proceeding and whether or not the party against whom relief is sought has been given notice of the application.
- (2) An applicant under subrule (1) must give an undertaking to the Court to commence proceedings in relation to the subject matter of the application within 14 days of the determination of the application.

### **2      Preservation of property**

- (1) In a proceeding concerning any property, or in a proceeding in which any question may arise as to any property, the Court or a Judge may make orders for the detention, custody, preservation or inspection of the property.
- (2) An order under subrule (1) may authorize any person to enter any land or to do any other thing for the purpose of giving effect to the order.
- (3) In a proceeding concerning the right of any party to a fund, the Court or a Judge may order that the fund be paid into Court or otherwise secured.

**Rule 3**

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**3 Disposal of personal property**

Where, in a proceeding concerning any property (other than land) or in a proceeding in which any question may arise as to any property (other than land), it appears to the Court or a Judge that:

- (a) the property is of a perishable nature or is likely to deteriorate; or
- (b) for any other reason it is desirable that the property should be sold or otherwise disposed of;

the Court or the Judge may make an order for the sale or other disposal of the whole or any part of the property by such person, in such manner, and upon such terms (if any) as the Court or the Judge may direct.

**4 Interim distribution**

Where, in a proceeding concerning property, it appears to the Court or a Judge that the property is more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court or the Judge may allow any part of the property to be conveyed, transferred or delivered to any person having an interest in the property.

**5 Interim income**

Where, in a proceeding concerning property, it appears to the Court or a Judge that the whole or any part of the income of the property is not required to answer the claims on the property or its income for which provision ought to be made in the proceeding, the Court or a Judge may allow that income or part to be paid during such period as the Court may determine, to all or any of the persons having an interest in the income.

**6 Payment before ascertainment of all persons interested**

Where two or more persons are entitled to share in a fund, the Court or a Judge may order or allow immediate payment to any of those persons of his share without reserving any part of his

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**Rule 7**

share to meet the subsequent costs of ascertaining any other of those persons.

**7      Terms: time for order**

The Court or a Judge may make orders under this Order at any stage of the proceeding.

**Rule 1**

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## Order 25A    Freezing Orders

### **1        Interpretation**

In this Order, unless the contrary intention appears:

*ancillary order* has the meaning given by rule 3.

*another court* means a court outside Australia or a court in Australia other than the Court.

*applicant* means a person who applies for a freezing order or an ancillary order.

*freezing order* has the meaning given by rule 2.

*judgment* includes an order.

*respondent* means a person against whom a freezing order or an ancillary order is sought or made.

### **2        Freezing order**

- (1) The Court may make an order (a *freezing order*), upon or without notice to a respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied.
- (2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.

### **3        Ancillary order**

- (1) The Court may make an order (an *ancillary order*) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.

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**Rule 5**

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- (2) Without limiting the generality of subrule (1), an ancillary order may be made for either or both of the following purposes:
- (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
  - (b) determining whether the freezing order should be made.

**4      Respondent need not be party to proceeding**

The Court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.

**5      Order against judgment debtor or prospective judgment debtor or third party**

- (1) This rule applies if:
- (a) judgment has been given in favour of an applicant by:
    - (i) the Court; or
    - (ii) in the case of a judgment to which subrule (2) applies — another court; or
  - (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in:
    - (i) the Court; or
    - (ii) in the case of a cause of action to which subrule (3) applies — another court.
- (2) This subrule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.
- (3) This subrule applies to a cause of action if:
- (a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and
  - (b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

**Rule 5**

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- (4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because any of the following might occur:
- (a) the judgment debtor, prospective judgment debtor or another person absconds; or
  - (b) the assets of the judgment debtor, prospective judgment debtor or another person are:
    - (i) removed from Australia or from a place inside or outside Australia; or
    - (ii) disposed of, dealt with or diminished in value.
- (5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a *third party*) if the Court is satisfied, having regard to all the circumstances, that:
- (a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because:
    - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
    - (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
  - (b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.
- (6) Nothing in this rule affects the power of the Court to make a freezing order or ancillary order if the Court considers it is in the interests of justice to do so.

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**Rule 8****6 Jurisdiction**

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a freezing order or ancillary order.

**7 Service outside Australia of application for freezing order or ancillary order**

An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.

**8 Costs**

- (1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

**Rule 1**

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## Order 25B      Search Orders

### **1            Interpretation**

In this Order, unless the contrary intention appears:

*applicant* means an applicant for a search order.

*described* includes described generally whether by reference to a class or otherwise.

*premises* includes a vehicle or vessel of any kind.

*respondent* means a person against whom a search order is sought or made.

*search order* has the meaning given by rule 2.

### **2            Search order**

The Court may make an order (a *search order*), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

### **3            Requirements for grant of search order**

The Court may make a search order if the Court is satisfied that:

- (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) there is sufficient evidence in relation to a respondent that:
  - (i) the respondent possesses important evidentiary material; and

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**Rule 5**

- (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

**4 Jurisdiction**

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a search order.

**5 Terms of search order**

- (1) A search order may direct each person who is named or described in the order:
  - (a) to permit, or arrange to permit, such other persons as are named or described in the order:
    - (i) to enter premises specified in the order; and
    - (ii) to take any steps that are in accordance with the terms of the order; and
  - (b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order; and
  - (c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order; and
  - (d) not to disclose any information about the order, for up to 3 days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
  - (e) to do or refrain from doing any act as the Court considers appropriate.
- (2) Without limiting the generality of subparagraph (1) (a) (ii), the steps that may be taken in relation to a thing specified in a search order include:
  - (a) searching for, inspecting or removing the thing; and
  - (b) making or obtaining a record of the thing or any information it may contain.

**Rule 6**

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- (3) A search order may contain such other provisions as the Court considers appropriate.
- (4) In subrule (2):  
*record* includes a copy, photograph, film or sample.

**6 Independent solicitors**

- (1) If the Court makes a search order, the Court must appoint one or more solicitors, each of whom is independent of the applicant's solicitors, (the *independent solicitors*) to supervise the execution of the order, and to do such other things in relation to the order as the Court considers appropriate.
- (2) The Court may appoint an independent solicitor to supervise execution of the order at any one or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do such other things in relation to the order as the Court considers appropriate.

**7 Costs**

- (1) The Court may make any order as to costs that it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a search order.

## Order 26      Receivers

### 1      **Receiver and manager**

- (1) A party applying for an order for the appointment of a receiver under any Act, shall move the Court or a Judge for the order on notice, but in urgent cases may move *ex parte*.
- (2) Unless the Court otherwise orders, a person appointed by the Court as a receiver shall have the powers of a receiver and manager.

### 2      **Address for service**

A receiver shall, within 7 days after his appointment, file a notice specifying an address for service.

### 3      **Security — Form 40**

- (1) Where the Court appoints a receiver, the Court may give directions for the filing by the receiver of security in accordance with this rule.
- (2) Where the Court directs the appointment of a receiver, then, unless the Court otherwise orders, a person shall not be appointed receiver pursuant to the direction until he has filed a security in accordance with Form 40.
- (3) A security to be filed in accordance with this rule shall be a security approved by the Court that the receiver will account for what he receives as receiver and will deal with what he receives as the Court may direct.
- (4) Where a security has been filed under this rule, the Court may make orders for the vacation of the security.

**Rule 4**

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**4 Remuneration**

A receiver shall be allowed such remuneration, if any, as may be fixed by the Court.

**5 Accounts**

- (1) A receiver shall file accounts at such intervals or on such dates as the court may direct.
- (2) The receiver shall, on the day on which he files an account, obtain an appointment to pass the account and serve the account, with a note of the appointment, on each party interested who has an address for service in the proceeding.
- (3) The receiver shall, unless the Court otherwise orders, attend on the appointment to pass the account.

**6 Default**

- (1) Where a receiver:
  - (a) is required by these Rules or by an order or direction of the Court:
    - (i) to file any account or affidavit;
    - (ii) to attend on an appointment to pass his account; or
    - (iii) to do any other thing; and
  - (b) does not carry out the requirement;  
the Court may make such orders and give such directions as the Court thinks fit, including orders and directions for:
  - (c) the discharge of the receiver;
  - (d) the appointment of another receiver; and
  - (e) the payment of costs.
- (2) Without limiting subrule (1), where a receiver is required by these Rules or by an order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not carry out the requirement, the Court may charge him with interest at the rate of 10 per cent yearly on that sum while in his possession as receiver.

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**Rule 8**

- (3) This rule does not limit the powers of the Court as to the enforcement of orders or as to the punishment of contempt.

**7 Powers**

- (1) The Court may authorize a receiver to do (either in his own name or in the name of the parties or any of them and either generally or in any particular instance) any act or thing which the parties or any of them might do if of full age and capacity.
- (2) Subrule (1) has effect notwithstanding that the parties or any of them are not of full age and capacity.
- (3) This rule does not limit the powers of the Court apart from this rule to authorize a receiver to do any act or thing.

**8 Account on death**

- (1) Where a receiver in any proceeding dies, the Court may make such orders as the Court thinks fit for the filing and passing of accounts by the representatives of the deceased receiver or by any other person who has or has had possession or control of any property being subject to the receivership for the payment into Court of any amount shown to be due or for the delivery of any property being subject to the receivership.
- (2) The Court shall not make any order under subrule (1) unless notice of the proposed order has been served on the representatives or any other person.
- (3) Notice of a proposed order under this rule may be served in any manner in which a statement of claim may be served.

Rule 1

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## Order 27      Subpoenas

### 1      Definitions

- (1) In this Order, unless the contrary intention appears:
- addressee* means the person who is the subject of the order expressed in a subpoena.
- conduct money* means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending.
- issuing officer* means an officer empowered to issue a subpoena on behalf of the Court.
- issuing party* means the party at whose request a subpoena is issued.
- subpoena* means an order in writing requiring the addressee:
- (a) to attend to give evidence; or
  - (b) to produce the subpoena or a copy of it and a document or thing; or
  - (c) to do both of those things.
- (2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a *subpoena to attend to give evidence*.
- (3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a *subpoena to produce*.

### 2      Issuing of subpoena

- (1) The Court may, in any proceeding, by subpoena order the addressee:
- (a) to attend to give evidence as directed by the subpoena; or

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**Rule 3**

- (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
  - (c) to do both of those things.
- (2) An issuing officer must not issue a subpoena:
- (a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena:
    - (i) not be issued; or
    - (ii) not be issued without the leave of the Court and that leave has not been given; or
  - (b) requiring the production of a document or thing in the custody of the Court or another court.

*Note for paragraph (a)* Order 27A deals with applications to the Court for leave to issue a subpoena.

- (3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.
- (4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in accordance with subrule (3).

### **3 Form of subpoena**

- (1) A subpoena must be in accordance with Form 41.
- (2) A subpoena must not be addressed to more than one person.
- (3) Unless the Court otherwise orders, a subpoena must identify the addressee by name or by description of office or position.
- (4) A subpoena to produce must:
  - (a) identify the document or thing to be produced; and
  - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence must specify the date, time and place for attendance.
- (6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court.

**Rule 3A**

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- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.
- (8) The last date for service of a subpoena:
  - (a) is:
    - (i) the date falling 5 days before the earliest date on which the addressee is required to comply with the subpoena; or
    - (ii) an earlier or later date fixed by the Court; and
  - (b) must be specified in the subpoena.
- (9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

**3A Change of date for attendance or production**

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
- (2) Where notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena.

**4 Setting aside or other relief**

- (1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in respect of it.
- (2) An application under subrule (1) must be made on notice to the issuing party.
- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

**5 Service**

- (1) A subpoena must be served personally on the addressee.

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**Rule 6**

- (2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

**6 Compliance with subpoena**

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.
- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.
- (3) Despite subrule 5 (1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (4) The addressee must comply with a subpoena to produce:
- (a) by attending at the date, time and place specified for production, or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time, and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
  - (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, or, if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production or, if the addressee has received notice of a later date or time from the issuing party, before that later date.

**Rule 7**

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- (5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.
- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) The copy of a document may be:
  - (a) a photocopy; or
  - (b) in PDF format on a CD-ROM; or
  - (c) in any other electronic form that the issuing party has indicated will be acceptable.

**7 Production otherwise than upon attendance**

- (1) This rule applies if an addressee produces a document or thing in accordance with paragraph 6 (4) (b).
- (2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.
- (4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.
- (5) The addressee may at the time of production inform the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

**8 Removal, return, inspection, copying and disposal of documents and things**

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

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**Rule 9****9      Inspection of, and dealing with, documents and things produced otherwise than on attendance**

- (1) This rule applies if an addressee produces a document or thing in accordance with paragraph 6 (4) (b).
- (2) On the request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred, and, if so, include a description, in general terms, of the documents and things produced.
- (3) Subject to this rule, no person may inspect a document or thing produced unless the Court has granted leave and the inspection is in accordance with that leave.
- (4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.
- (5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.
- (6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar in writing of the objection and of the grounds of the objection.
- (7) On receiving notice of an objection under this rule, the Registrar:
  - (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
  - (b) must refer the objection to the Court for hearing and determination.
- (8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.

**Rule 10**

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- (9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.
- (10) A solicitor who signs an application under subrule (9) and removes a document or thing from the Registry, undertakes to the Court by force of this Rule that:
  - (a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and
  - (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.
- (11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

**10 Return of documents and things produced**

- (1) Unless the Court otherwise orders, the Registrar may, in the Registrar's discretion, return to the addressee any document or thing produced in response to the subpoena.
- (2) Unless the Court otherwise orders, the Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.
- (3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration in accordance with Form 41A.
- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the Court under the subpoena.

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**Rule 12**

- (5) Subject to subrule (6), the Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents, produced in the proceedings in compliance with a subpoena, that were declared by the addressee to be copies.
- (6) The Registrar may cause to be destroyed those documents, declared by the addressee to be copies, that have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

**11 Costs and expenses of compliance**

- (1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.
- (2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- (3) An amount fixed under this rule is separate from and in addition to:
  - (a) any conduct money paid to the addressee; and
  - (b) any witness expenses payable to the addressee.

**12 Failure to comply with subpoena — contempt of court**

- (1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.
- (2) Despite subrule 5 (1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

**Rule 13**

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- (3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

**13 Documents and things in the custody of a court**

- (1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.
- (2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing:
  - (a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or
  - (b) as the Court directs.
- (3) If the document or thing is in the custody of another court, the Registrar must, unless the Court has otherwise ordered:
  - (a) request the other court to send the document or thing to the Registrar; and
  - (b) after receiving it, produce the document or thing:
    - (i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or
    - (ii) as the Court directs.

## Order 27A    Leave to issue subpoena

### 1        **Application of Order 27A**

This Order applies to a subpoena that is to be issued under Order 27.

### 2        **Leave to issue subpoena**

- (1) A subpoena must not be issued without the leave of the Court or a Judge.
- (2) The Court or a Judge may give leave to issue a subpoena:
  - (a) generally or in relation to a particular subpoena or subpoenas; and
  - (b) subject to conditions.
- (3) An application for leave to issue a subpoena may:
  - (a) be made by a party to a proceeding without notice to the person who is the subject of the order expressed in the subpoena (the *addressee*) or any other party to the proceeding; and
  - (b) be decided by the Court or a Judge in the absence of the addressee or any party to the proceeding.
- (4) Subject to subrule (5), the Registrar at the proper place must, in accordance with the leave given under subrule (2) and on the request of a party, issue:
  - (a) a subpoena to attend to give evidence; or
  - (b) a subpoena to produce the subpoena or a copy of it and a document or thing; or
  - (c) a subpoena to do both of those things.

**Rule 2**

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- (5) If the Registrar considers that a request for the issue of a subpoena may be an abuse of the process of the Court or be frivolous or vexatious, the Registrar may refer the request to a Judge for directions.

## Order 28      Security for costs

### 1      Interpretation

In this Order:

- (a) references to an applicant extend to any person who makes a claim for relief in any proceedings; and
- (b) references to a respondent extend to any person against whom a claim for relief is made in any proceeding.

### 2      Application

- (1) An application that an applicant shall provide security for costs shall be made by motion upon notice.
- (2) The notice of motion shall be supported by an affidavit stating the material facts and the grounds upon which security for costs is sought.

### 3      Cases for security

- (1) When considering an application by a respondent for an order for security for costs under section 56 of the Act, the Court may take into account the following matters:
  - (a) that an applicant is ordinarily resident outside Australia;
  - (b) that an applicant is suing, not for the applicant's own benefit, but for the benefit of some other person and the Court has reason to believe that the applicant will be unable to pay the costs of the respondent if ordered to do so;
  - (c) subject to subrule (2), that the address of the applicant is not stated or is incorrectly stated in the originating process;
  - (d) that an applicant has changed address after the commencement of the proceeding in an attempt to avoid the consequences of the proceeding.

**Rule 4**

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- (2) The Court shall not order an applicant to give security by reason only of paragraph (1) (c) if it appears to the Court that the failure to state his address or the mis-statement of his address was made without intention to deceive.

**4 Manner of giving security**

Where the Court orders an applicant to give security for costs, the security shall be given in such manner, at such time, and in such terms (if any), as the Court may by order direct.

**5 Stay or dismissal**

- (1) Where the Court orders that the applicant provide security for costs, it may order:
- (a) that the proceeding on any claims by the applicant for relief be stayed until security is provided; or
  - (b) that if the applicant fails to comply with the order to provide security within the time limited in the order, the proceeding be thereafter stayed or dismissed.
- (2) Subject to subrule (1), the Court may set aside or vary any order made under this Order.
- (3) Where a proceeding stands dismissed pursuant to an order under this Order, that order shall not be set aside or varied except in special circumstances.

**6 Saving**

This Order does not affect the provisions of any Act under which the Court may require security for costs to be given.

# **Order 29      Separate decision of questions: consolidation**

## **Division 1      Separate decision of questions**

### **1      Interpretation**

In this Order, *question* includes any question or issue in any proceeding, whether of fact or law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties or otherwise.

### **2      Order for decision**

The Court may make orders for:

- (a) the decision of any question separately from any other question, whether before, at or after any trial or further trial in the proceedings; and
- (b) the statement of a case and the question for decision.

### **3      Orders, directions upon decision**

Where any question is decided under this Order, the Court shall, subject to rule 4, make such order, grant such relief or give such directions as the nature of the case requires.

### **4      Disposal of proceedings**

Where the decision of a question under this Order:

- (a) substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or

**Rule 5**

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- (b) renders unnecessary any trial or further trial in the proceeding or on the whole or any part of any claim for relief in the proceeding;

the Court may, as the nature of the case requires:

- (c) dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or
- (d) pronounce any judgment; or
- (e) make any other order.

## **Division 2                      Consolidation**

### **5                      Consolidation etc**

Where several proceedings are pending in the Court, then, if it appears to the Court:

- (a) that some common question of law or fact arises in both or all of them;
- (b) that the rights to relief claimed therein are in respect of, or arise out of, the same transaction or series of transactions; or
- (c) that for some other reason it is desirable to make an order under this rule;

the Court may order those proceedings to be consolidated or may order them to be tried at the same time or one immediately after another or may order them to be stayed until after the determination of any of them.

## Order 30      Setting down

<i>Note</i> Order 35A deals with the procedure on default.
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### 1      Interpretation

- (1) In this Order:

*applicant* includes a plaintiff.

*respondent* includes a defendant.

- (2) In this Order:

(a) a reference to the trial of a proceeding includes any interlocutory hearing for which a date for trial is required to be fixed in the proceeding; and

(b) the Rules apply, with any necessary modification, to proceedings commenced by way of cross-claim.

### 2      Request to fix date for trial (Form 44)

- (1) If the time provided for taking any step in a proceeding has ceased to run, and no date has been fixed for the trial of the proceeding, a party who is not in default may request the Registrar to fix a date for the trial by filing a notice in accordance with Form 44 in Schedule 1.

- (2) The party filing notice must serve a copy of the notice on all other parties to the proceeding within 3 days after filing it.

### 3      Fixing date for trial

Where the Court or the Registrar is satisfied that a proceeding is ready for trial and fixes a date for trial, the Registrar must notify the date and place of the trial to all parties to the proceeding as soon as practicable after the date is fixed.

**Rule 4**

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**4 Notice of date for trial (Form 44A)**

Within 7 days after being notified of the date for trial, the party who requested that the date be fixed or, if no request was made, the applicant, must:

- (a) file in the Registry a notice in accordance with Form 44A; and
- (b) serve a copy of the notice on all other parties to the proceeding.

*Note* See Part 2 of the *Federal Court of Australia Regulations 2004* in relation to setting-down fees.

**6 Place of trial**

- (1) Subject to subrule (2), the place of trial of a proceeding is to be the proper place.
- (2) The Court may direct that the trial, or part of the trial, of a proceeding be held at a place other than the proper place.

**7 Vacating date for trial**

A date for trial fixed by the Court may be vacated only by order of the Court.

## Order 31      Juries

### **1      Notice of motion for jury trial**

- (1) A party applying for an order that the trial of a suit or of an issue of fact be heard by a Judge and jury shall file and serve notice of his motion not later than 21 days before the date appointed for the trial.
- (2) A notice of motion under subrule (1) shall be supported by an affidavit stating the particular facts and grounds upon which the application is based.

**Rule 1**

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# Order 32      Trial

## **1      Interpretation**

For the purposes of this Order:

- (a) where the burden of proof on any issue lies on the applicant, he shall begin; and
- (b) where the burden of proof on all the issues lies on the respondent, he shall begin.

## **2      Absence of party**

- (1) If, when a proceeding is called on for trial, any party is absent, the Court may:
  - (a) order that the trial be not had unless the proceeding is again set down for trial, or unless such other steps are taken as the Court may direct;
  - (b) adjourn the trial;
  - (c) if the party absent is an applicant or cross-claimant dismiss the action or the cross-claim; or
  - (d) proceed with the trial generally or so far as concerns any claim for relief in the proceeding.
- (2) Where the Court proceeds with a trial in the absence of a party, and at or at the conclusion of the trial an order is made, the Court may set aside or vary the order, and may give directions for the further conduct of the proceeding.
- (3) Subrule (2) does not enable the Court to vary the verdict, finding or assessment of a jury at a trial except with the consent of each interested party present at the trial.

## **3      Default of appearance of both parties**

- (1) If, when a proceeding is called on for trial, no party appears, the Court may:

**Rule 4**

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- (a) adjourn the proceeding to a specific date or generally; or
  - (b) order that the proceeding be struck out.
- (2) Where an order is made under paragraph (1) (b) the proceeding shall thereupon, unless the Court otherwise orders, be wholly discontinued, and neither party shall be entitled to costs.

**4 Conduct of the trial**

- (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the trial.
- (2) Subject to subrule (1):
- (a) where the only parties are the applicant and persons in the same interest and the respondent and persons in the same interest, and there is no cross-claim, the order of evidence and addresses shall be as provided by the following subrules of this rule; and
  - (b) in any other case, the order of evidence and addresses shall be as provided by the following subrules of this rule, subject to such modifications as the nature of the case may require.
- (3) The party to begin may make an address opening his case and may then adduce his evidence.
- (4) Where, at the conclusion of the evidence for the party to begin, no document or thing has been admitted in evidence on tender by the opposite party, the opposite party may elect to adduce evidence or not to adduce evidence.
- (5) If, pursuant to subrule (4), the opposite party elects not to adduce evidence, the party to begin may make an address closing his case and then the opposite party may make an address stating his case.
- (6) If, pursuant to subrule (4), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing his evidence and after adducing his evidence he may make an address closing his case and thereupon the party to begin may make an address closing his case.

**Rule 4A**

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**4A Limitation on time etc to be taken for trial**

- (1) At any time before or during a trial, the Court or a Judge may make a direction limiting:
  - (a) the time for examining, cross-examining or re-examining a witness; or
  - (b) the number of witnesses (including expert witnesses) that a party may call; or
  - (ba) the number of documents that may be tendered in evidence; or
  - (c) the time for making any oral submissions; or
  - (d) the time for a party to present the party's case; or
  - (e) the time to hear the trial.
- (2) The Court or Judge may amend a direction made under this rule.

*Note* See section 37P of the Act for the powers of the Court to give directions about practice and procedure in a civil proceeding.

**5 Record**

- (1) The associate, or other proper officer present at the trial, shall be clerk at the trial and shall maintain and complete a record of the trial.
- (2) The associate or other proper officer shall:
  - (a) take charge of every document or object put in as an exhibit during the trial or hearing of a proceeding;
  - (b) mark or label every exhibit so as to indicate the party by whom the exhibit was put in, and so that all exhibits put in by a party are lettered or numbered consecutively; and
  - (c) make a list of the exhibits.
- (3) The list of exhibits when completed shall form part of the record of the proceeding.

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**Rule 6****6      Death before judgment**

- (1) Where a party dies after the verdict or finding on the issues of fact, the Court may pronounce judgment, and the order of the judgment may be entered, notwithstanding the death.
- (2) Subrule (1) does not affect the power of the Court to make orders under Order 6, rule 10 (which relates to change of parties by reason of death, etc.).

**Rule 1**

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## **Order 32A    Dealing with applications and matters in original jurisdiction without oral hearing**

### **1        Court may deal with certain applications and matters without an oral hearing**

The Court or a Judge may order that the Court will deal with an application mentioned in subsection 20 (3) of the Act, or a matter mentioned in subsection 20 (5) of the Act, without an oral hearing.

### **2        Request that Court deal with application or matter without an oral hearing**

- (1) A party who wants the Court or a Judge to deal with an application or civil matter without an oral hearing under subsection 20A (2) of the Act or rule 1 must file a notice to this effect and serve a copy of the notice on each other party to the application or matter.
- (2) If a party objects to the Court or a Judge dealing with an application or civil matter without an oral hearing, the party must file a notice to this effect and serve a copy of the notice on each other party to the application or matter.

### **3        Summary of argument**

- (1) If the Court or a Judge makes an order under subsection 20A (2) of the Act or rule 1 in relation to an application or matter, each party to the application or matter must file a summary of argument and serve a copy of the

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**Rule 3**

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summary on each other party within the time specified in the order.

- (2) A summary of argument must:
- (a) not exceed 10 pages; and
  - (b) include the title of the proceeding; and
  - (c) include the name of the party by whom it is to be filed; and
  - (d) consist of paragraphs numbered consecutively; and
  - (e) state as concisely as possible:
    - (i) if the summary of argument is to be filed by the applicant — the factual background to the application; and
    - (ii) if the summary of argument is to be filed by a respondent — the factual issues in dispute; and
    - (iii) the claims to be argued by the party concerned; and
    - (iv) the reasons relied upon for those claims; and
  - (f) be clear and legible; and
  - (g) be securely fastened.

**Rule 1**

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## **Order 33      Evidence: general**

### **1      Witnesses at a trial**

Unless the Court otherwise orders or the parties otherwise agree, the evidence of a witness at the trial of a cause shall be given orally.

### **4      Depositions**

- (1) Subject to this Order and to any order of the Court, a deposition not taken in the proceedings pursuant to Order 24 is not admissible as evidence.
- (2) A deposition taken in the proceedings pursuant to Order 24, is admissible as evidence, but the Court may direct that the deposition be not admissible unless the party tendering it produces the deponent for cross-examination.
- (3) This rule does not apply to evidence taken pursuant to an order made under subsection 7 (1) of the *Foreign Evidence Act 1994* or a record of that evidence.

### **5      Evidence in other proceedings**

- (1) A party may, with the leave of the Court, but saving all just exceptions, read evidence taken, or an affidavit filed, in other proceedings.
- (2) Subrule (1) does not enable evidence taken, or an affidavit filed, in other proceedings to be read as evidence on any issue at a trial, except in relation to the proof of particular facts.

### **6      Plans, photographs and models**

- (1) Where a party intends to tender any plan, photograph or model at a trial or hearing, he shall, not less than 7 days before the commencement of the trial or hearing, give the other parties an

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opportunity to inspect it and to agree to its admission without proof.

- (2) Non-compliance with subrule (1) shall not affect the admissibility of a plan, photograph or model.

**8 Production of court documents**

Where, for the purpose of any proceedings, a person, by request in writing, requires a Registrar to produce to the Court or to a Judge or an officer of the Court any document in the custody of the Registrar, the Registrar shall, unless the Court otherwise orders, produce the document in accordance with the request.

**9 Consent of trustee etc**

- (1) A document purporting to contain the written consent of a person to act as tutor of a person under disability, to act as trustee, to act as receiver, or to act in any other office on appointment by the Court, and purporting to be executed and authenticated in accordance with subrule (2), is evidence of the consent.
- (2) A document is sufficiently executed and authenticated for the purposes of subrule (1):
- (a) where the consenting person is not a corporation, if the document is signed by the consenting person and the signature is verified by some other person; or
  - (b) where the consenting person is a corporation, if the seal of the corporation is affixed to the document in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation.

**10 Leading questions to witness**

Where a person is examined in relation to an investigation, inspection or report made by him in the course of carrying out public or official duties, the party calling the person may,

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unless the Court otherwise directs, examine that person by asking him leading questions.

**11 Privilege**

- (1) Where the Court, by subpoena or otherwise, orders any person to produce any document or thing, and any person makes and substantiates sufficient lawful objection to production on grounds of privilege, the Court shall not compel production of that document or thing except production to the Court for the purpose of ruling on the objection.
- (2) Where a question is put to a person in the course of examination, and any person makes and substantiates sufficient lawful objection on grounds of privilege to the question being answered, the Court shall not compel an answer to the question.
- (3) Subrule (1) applies only if an order is made for production to the Court or any officer of the Court, or any examiner, or other person authorised to receive evidence, on a trial or hearing or other occasion on which evidence is being adduced.
- (3A) Subrule (2) applies only if a question is put to a person in the course of examination before the Court or any officer of the Court, or any examiner, or other person authorised to receive evidence, on a trial or hearing or other occasion on which evidence is being adduced.
- (4) This rule does not affect any rule of law which authorizes or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.
- (5) In this rule:  
***ground of privilege*** means a ground on which a person may rely to make an objection under Part 3.10 of the *Evidence Act 1995*.

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**Rule 13****12 Production on notice — Form 45**

- (1) Where a party to any proceedings serves on another party notice, in accordance with Form 45, requiring the party served to produce at any trial or hearing in the proceedings, or before any Judge, officer, examiner or other person having authority to take evidence in the proceedings any document or thing for the purpose of evidence and the document or thing is in the possession, custody or power of the party served, the party served shall, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for any subpoena for production.
- (2) Where the document or thing required to be produced in accordance with subrule (1) is not produced, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing.
- (3) Subrule (2) does not affect the power of the Court to order costs against a party who fails to comply with a notice under subrule (1).

**13 Attendance and production**

- (1) The Court may make orders for:
  - (a) the attendance of any person for the purpose of being examined; or
  - (b) the attendance of any person and production by him of any document or thing specified or described in the order.
- (2) An order under subrule (1) may be made for the attendance of any person before, and production by him to, the Court or any officer of the Court, examiner, or other person authorized to take evidence, on any trial, hearing or other occasion.
- (3) Subrules (1) and (2) apply whether or not the person for whose attendance the order is made has been required to attend by subpoena.

**Rule 14**

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**14 Attendance of prisoner in proceedings before Court or examiner**

- (1) A party requiring the production of a prisoner from lawful custody to give evidence in proceedings whether before the Court or before an examiner under Order 24, must move for an order to that effect.
- (2) A motion under subrule (1) may be made *ex parte* and must be supported by an affidavit showing:
  - (a) the person in whose custody the prisoner is held; and
  - (b) the reasons for which the prisoner's evidence and attendance are required.
- (3) An order under subrule (1) must be in accordance with Form 46 in Schedule 1.

**15 Parties in lawful custody**

- (1) If a party to a proceeding before the Court is in lawful custody, the Court may:
  - (a) make an order requiring production of the party; and
  - (b) make an order in relation to the continuing custody of the party that the Court considers appropriate.
- (2) An order made under subrule (1) may if the Court thinks it appropriate be in accordance with Form 46B in Schedule 1.

**16 Notice of intention to adduce evidence of previous representation — Form 144**

- (1) This rule is made for the purposes of section 67 of the *Evidence Act 1995*.
- (2) In this rule, ***notice of intention to adduce evidence of previous representation*** means a notice given under subsection 67 (1) of the *Evidence Act 1995*.
- (3) A notice of intention to adduce evidence of previous representation:
  - (a) must be in accordance with Form 144; and

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**Rule 18**

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(b) may have attached to it an affidavit that sets out evidence of the previous representation.

- (4) Compliance with paragraph (3) (a) may be dispensed with, in whole or in part, if the Court is satisfied, having regard to all the circumstances, including any affidavit that has been served, that the purpose of the paragraph has been satisfied.

**17 Notice of objection to tender of hearsay evidence if maker available — Form 145**

- (1) This rule is made for the purposes of section 68 of the *Evidence Act 1995*.
- (2) In this rule, ***notice of objection to tender of hearsay evidence if maker available*** means a notice given under subsection 68 (2) of the *Evidence Act 1995*.
- (3) A notice of objection to tender of hearsay evidence if maker available must be in accordance with Form 145.
- (4) Compliance with subrule (3) may be dispensed with, in whole or in part, if the Court is satisfied, having regard to all the circumstances, including any affidavit that has been served, that the purpose of the subrule has been satisfied.

**18 Notice of intention to adduce tendency evidence — Form 146**

- (1) This rule is made for the purposes of section 99 of the *Evidence Act 1995*.
- (2) In this rule, ***notice of intention to adduce tendency evidence*** means a notice given under subsection 97 (1) of the *Evidence Act 1995*.
- (3) A notice of intention to adduce tendency evidence must be in accordance with Form 146.
- (4) Compliance with subrule (3) may be dispensed with, in whole or in part, if the Court is satisfied, having regard to all the circumstances, including any affidavit that has been served, that the purpose of the subrule has been satisfied.

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**Rule 19**

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**19 Notice of intention to adduce coincidence evidence — Form 147**

- (1) This rule is made for the purposes of section 99 of the *Evidence Act 1995*.
- (2) In this rule, ***notice of intention to adduce coincidence evidence*** means a notice given under subsection 98 (1) of the *Evidence Act 1995*.
- (3) A notice of intention to adduce coincidence evidence must be in accordance with Form 147.
- (4) Compliance with subrule (3) may be dispensed with, in whole or in part, if the Court is satisfied, having regard to all the circumstances, including any affidavit that has been served, that the purpose of the subrule has been satisfied.

**20 Form of expert report**

- (1) In this rule:  
***expert***, in relation to a question, means a person who has specialised knowledge about matters relevant to the question based on that person's training, study or experience.  
***expert report*** means a document prepared by an expert that sets out the expert's opinion on each question referred to the expert.
- (2) The body of an expert report must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject.
- (3) Each page of an expert report, including any annexure, must be numbered legibly and distinctively, beginning on the first page of the report with the numeral '1'.
- (4) Each annexure to an expert report must be identified sequentially on the first page of each annexure by a letter of the alphabet, beginning with the letter 'A' for the first annexure.
- (5) The full name of the author of the expert report and the date on which the report was prepared must appear on the first visible page of the report (being the first page, cover page or front cover page, as the case may be).

**Rule 20**

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- (6) Non-compliance with this rule does not affect the admissibility of an expert report.

**Rule 1**

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## **Order 34      Court expert**

### **1      Application**

This Part does not apply to a question or matter to be tried before a jury.

### **1A      Definition**

In this Order:

*expert*, in relation to a question, means a person who has specialised knowledge about matters relevant to the question based on that person's training, study or experience.

### **2      Appointment**

- (1) If a question for an expert witness arises in a proceeding, the Court may, at any stage of the proceeding:
  - (a) appoint an expert as court expert to inquire into and report upon the question;
  - (b) authorize the court expert to inquire into and report upon any facts relevant to the inquiry and report on the question;
  - (c) direct the court expert to make a further or supplemental report or inquiry and report; and
  - (d) give such instructions as the Court thinks fit relating to any inquiry or report of the court expert.
- (3) Instructions pursuant to paragraph (1) (d) may include provision concerning any experiment or test for the purposes of any inquiry or report of a court expert.

### **3      Report**

- (1) The court expert shall send his report to the Registrar, together with so many copies of the report as the Court may direct.

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**Rule 6**

- (2) The Registrar shall send a copy of the report to each party interested in the question.
- (3) The report shall, unless the Court otherwise orders, be admissible in evidence on the question on which it is made, but shall not be binding on any party except to the extent to which that party agrees to be bound by it.

**4 Cross-examination**

Upon application made by any party within 14 days after receiving a copy of a court expert's report, the Court shall make an order for the cross-examination of the court expert by all the parties, either:

- (a) before the Court, at the trial or at some other time; or
- (b) before an examiner.

**5 Remuneration**

- (1) The remuneration of the court expert must be fixed by the Court and must include:
  - (a) a fee for the expert's report; and
  - (b) a proper sum for each day on which the expert is required to attend before the Court or an examiner.
- (2) Unless the Court otherwise orders, the parties shall be jointly and severally liable to the court expert to pay the amount fixed by the Court for his remuneration.
- (3) The Court may make orders in the proceeding for payment in or towards discharge of the liability of any party under subrule (2).
- (4) Subrules (2) and (3) do not affect the powers of the Court as to costs.

**6 Further expert evidence**

Where, pursuant to this Order, a court expert has made a report on any question:

**Rule 6**

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- (a) any party may adduce evidence of one other expert on the same question, but only if he has, at a reasonable time before the commencement of the trial, hearing or examination at which he adduces the evidence, given to the other interested parties notice of his intention to do so; but
- (b) subject to paragraph (a), a party shall not adduce evidence of any other expert on the same question, except with the leave of the Court.

## Order 34A Evidence of expert witnesses

### 1 Application

This order does not apply to a question or matter to be tried before a jury.

### 2 Definitions

In this order:

*expert witness* means a person who is called, or is to be called, by a party to give opinion evidence, based on the person's specialised knowledge, based on the person's training, study or experience.

### 3 Evidence by expert witnesses

- (1) This rule applies if 2 or more parties to a proceeding call, or intend to call, expert witnesses to give opinion evidence about the same, or a similar, question.
- (2) The Court or a Judge may direct:
  - (a) that the expert witnesses confer; or
  - (b) that the expert witnesses produce for use by the Court a document identifying:
    - (i) the matters and issues about which their opinions are in agreement; and
    - (ii) the matters and issues about which their opinions differ; or
  - (c) that:
    - (i) the expert witnesses give evidence at trial after all or certain factual evidence relevant to the question has been led; and

**Rule 3**

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- (ii) each party intending to call 1 or more expert witnesses close that party's case in relation to the question, subject only to adducing the evidence of the expert witnesses later in the trial; or
- (d) that, after all or certain factual evidence has been led, each expert witness file and serve an affidavit or statement indicating:
  - (i) whether the expert witness adheres to any opinion earlier given; or
  - (ii) whether, in the light of factual evidence led at trial, the expert witness wishes to modify any opinion earlier given; or
- (e) that:
  - (i) each expert witness be sworn one immediately after another; and
  - (ii) when giving evidence, an expert witness occupy a position in the courtroom (not necessarily in the witness box) that is appropriate to the giving of evidence; or
- (f) that each expert witness give an oral exposition of his or her opinion, or opinions, on the question; or
- (g) that each expert witness give his or her opinion about the opinion, or opinions, given by another expert witness; or
- (h) that the expert witnesses be cross-examined in a certain manner or sequence; or
- (i) that cross-examination, or re-examination, of the expert witnesses be conducted:
  - (i) by completing the cross-examination or re-examination of an expert witness before starting the cross-examination or re-examination of another; or
  - (ii) by putting to each expert witness, in turn, each question relevant to one subject or issue at a time, until the cross-examination or re-examination of all the witnesses is completed.

## Order 34B    Expert assistant

### 1        **Application**

This order does not apply to a question or matter to be tried before a jury.

### 2        **Appointment of expert assistant**

- (1) The Court or a Judge may, at any stage of a proceeding and with the consent of the parties, appoint an expert as an expert assistant to assist the Court on any issue of fact or opinion identified by the Court or Judge (other than an issue involving a question of law) in the proceeding.
- (2) A person who has given evidence, or whom a party intends to call to give evidence, in the proceeding must not be appointed as an expert assistant in the proceeding.
- (3) For this rule, *expert* means a person who has specialised knowledge based on the person's training, study or experience.

### 3        **Assistance to be given**

- (1) An expert assistant in a proceeding must give the Court a written report on the issues identified by the Court or Judge only.
- (2) However, at the direction of the Court or a Judge and with the consent of the parties, the expert assistant may assist the Court by making other comments in the report.
- (3) The expert assistant must:
  - (a) state in the report each issue identified by the Court or Judge; and
  - (b) give a copy of the report to each party.

**Rule 4**

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- (4) The Court must give each party a reasonable opportunity to comment on the report and may allow a party to adduce evidence, or further evidence, in relation to an issue identified, but not to examine or cross-examine the expert assistant.
- (5) A party must not communicate, directly or indirectly, with the expert assistant about any issue to be reported on, without the leave of the Court or a Judge.
- (6) The expert assistant must not give evidence in the proceeding.

**4 Remuneration of expert assistant**

The Court may make an order for the payment of an amount for the reasonable remuneration and expenses of an expert assistant, including an order that the amount be paid by 2 or more parties jointly.

## Order 35      Judgments and orders

### 1      **General relief**

The Court may, at any stage of any proceedings, on the application of any party, pronounce such judgment or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that order in any originating process.

### 2      **Written reasons**

The reasons of the Court for any order may, if in written form, be published by being delivered in open Court to an associate or other proper officer.

### 3      **Date of effect**

A judgment or order shall take effect on the date on which it is pronounced or made, unless the Court orders that it take effect at an earlier or later date.

### 4      **Time for compliance**

- (1) Subject to subrules (3) and (4), an order which requires a person to do an act shall specify the time within which he is required to do the act.
- (2) The time shall, unless the Court otherwise orders, be 14 days after the date of service of the order on the person required to do the act.
- (3) Subrules (1) and (2) apply to an order which requires a person to pay money into Court, but otherwise do not apply to so much of an order as requires a person to pay money.

**Rule 5**

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- (4) Where an order requires a person to do an act within a specified time, the Court may, by order, require him to do the act within another specified time.
- (5) Where an order requires a person to do an act but does not specify a time within which he is required to do the act, the Court may, by order, require him to do the act within a specified time.

**5 Fine**

- (1) Where the Court imposes a fine, the Court shall order that the person on whom the fine is imposed pay the fine to the Registrar and specify the time within which he is required to pay it.
- (2) The Registrar shall pay into the Consolidated Revenue Fund all moneys paid to him on account of any fine imposed by the Court.
- (3) This rule does not apply to a fine imposed under the *Workplace Relations Act 1996*, the *Fair Work Act 2009* or the *Fair Work (Registered Organisations) Act 2009*.

**6 Dismissal**

- (1) Where the Court makes an order for the dismissal of proceedings or for the dismissal of proceedings so far as concerns any cause of action or the whole or any part of any claim for relief, the Court may order that such dismissal shall be without prejudice to any right of the applicant or claimant to bring fresh proceedings or to claim the same relief in fresh proceedings.
- (2) Where:
  - (a) the Court makes an order for the dismissal of proceedings so far as concerns any cause of action or the whole or any part of any claim for relief by any party;
  - (b) the Court orders that party to pay any costs; and

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**Rule 8**

- (c) before payment of the costs, that party brings against a party to whom the costs are payable further proceedings on the same or substantially the same cause of action or for the same or substantially the same relief;

the Court may stay the further proceedings until those costs are paid.

**7 Setting aside**

- (1) The Court may vary or set aside a judgment or order before it has been entered.
- (2) The Court may vary or set aside a judgment or order after the order has been entered where:
  - (a) the order has been made in the absence of a party, whether or not the absent party is in default of appearance or otherwise in default and whether or not the absent party had notice of the motion for the order;
  - (b) the order was obtained by fraud;
  - (c) the order is interlocutory;
  - (d) the order is an injunction or for the appointment of a receiver;
  - (e) the order does not reflect the intention of the Court; or
  - (f) the party in whose favour the order was made consents.
- (3) A clerical mistake in a judgment or order, or an error arising in a judgment order from an accidental slip or omission, may at any time be corrected by the Court.
- (4) Subrule (2) shall not affect the power of the Court to vary or terminate the operation of an order by a supplementary order.

**8 Interest on judgment**

The prescribed rate at which interest is payable under paragraph 52 (2) (a) of the Act is:

- (a) in respect of the period from 1 January to 30 June in any year — the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and

**Rule 9**

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- (b) in respect of the period from 1 July to 31 December in any year — the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

*Note* Subsection 52 (2) of the Act provides that interest is payable:

- (a) at such rate as is fixed by the Rules of Court; or
- (b) if the Court, in a particular case, thinks that justice so requires — at such lower rate as the Court determines.

**9 Judicial notice of order**

- (1) In any proceedings, the Court may take judicial notice of any order of the Court in the proceedings.
- (2) In any proceedings, the Court may be informed of an order of the Court in the proceedings by (amongst other things) reference to a note made by the Judge making the order or by an associate or other proper officer.

**10 Consent orders by filing in a Registry**

- (1) A written consent of the parties to a proceeding, or of the lawyers on the record as representing the parties, to the making of an order in the proceeding may be filed in the Registry at the proper place.
- (2) Despite anything contained in these Rules:
  - (a) if a written consent is filed, unless paragraph (b) applies, the Registrar must bring the matter before a Judge who, without any other application being made, may:
    - (i) make an order in accordance with rule 10A; or
    - (ii) direct the Registrar, or an officer acting with the authority of the Registrar, to draw up, sign and affix the stamp of the Court to an order in accordance with the terms of the consent.
  - (b) if the written consent is in respect of an order that the Registrar has power to make, unless the Registrar is of the opinion that the consent should be brought before a Judge, the Registrar, or an officer acting with the authority of the

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**Rule 11**

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Registrar, may draw up, sign and affix the stamp of the Court to an order in accordance with the terms of consent.

- (3) The order shall state that it is made by consent and shall be of the same force and validity as if it had been made after a hearing by the Judge.

**10A Consent orders**

- (1) A Judge may make an order in accordance with the terms of a written consent of the parties to a proceeding, or of the lawyers on the record as representing the parties, by initialling or otherwise annotating the written consent and placing it on the Court file.
- (2) The order must state that it is made by consent.
- (3) The order is of the same force and validity as if it had been made after a hearing by the Judge.

**11 Undertakings**

- (1) Where:
- (a) a person (whether a party or not) gives an undertaking to the Court to do or refrain from doing any act or to pay any sum of money; and
- (b) the person fails to fulfil the undertaking;
- any party may move on notice for a judgment or order requiring that person to do or refrain from doing the act in question, or to pay the sum of money in question.
- (2) The Court, on being satisfied that the undertaking was binding on the person, shall make the order referred to in subrule (1).
- (3) The Court may be informed of an undertaking to the Court in the proceedings by (amongst other things) reference to a note made by the Judge hearing the proceedings or by his clerk.
- (4) This rule does not affect the powers of the Court to punish a person for contempt.

**Rule 1**

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## **Order 35A    Order or judgment on default**

### **1        Definitions**

In this Order:

*applicant* includes a cross-claimant.

*claim* includes a cross-claim.

*respondent* includes a cross-respondent.

### **2        When a party is in default**

- (1) For this Order, an applicant is in default if the applicant:
  - (a) fails to comply with an order of the Court in the proceeding; or
  - (b) fails to attend a directions hearing; or
  - (c) fails to file and serve a pleading as required by Order 11; or
  - (d) fails to serve a list of documents or an affidavit or other document, or does not produce a document as required by Order 15; or
  - (e) fails to do any act required to be done by these Rules; or
  - (f) fails to prosecute the proceeding with due diligence.
- (2) For this Order, a respondent is in default if the respondent has not satisfied the applicant's claim and:
  - (a) the time for the respondent to enter an appearance has expired and the respondent has failed to enter an appearance; or
  - (b) the time for the respondent to file a defence has expired and the respondent has failed to file a defence; or
  - (c) the respondent fails to attend a directions hearing; or

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**Rule 3**

- (d) the respondent fails to comply with an order of the Court in the proceeding; or
- (e) the respondent fails to file and serve a pleading as required by Order 11; or
- (f) the respondent fails to serve a list of documents or an affidavit or other document, or does not produce a document as required by Order 15; or
- (g) the respondent fails to do any act required to be done by these Rules; or
- (h) the respondent fails to defend the proceeding with due diligence.

**3 Orders on default**

- (1) If an applicant is in default, the Court may order that:
  - (a) the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant; or
  - (b) a step in the proceeding be taken within the time limited in the order; or
  - (c) the proceeding be stayed or dismissed, as to the whole or any part of the relief claimed by the applicant, if the applicant does not take a step ordered by the Court in the proceeding in the time limited in the order.
- (2) If a respondent is in default, the Court may:
  - (a) order that a step in the proceeding be taken within the time limited in the order; or
  - (b) if the claim against the respondent is for a debt or liquidated damages — grant leave to the applicant to enter judgment against the respondent for the debt or liquidated damages and, if appropriate:
    - (i) costs:
      - (A) in a sum fixed by the court; or
      - (B) to be taxed; and
    - (ii) interest; or
  - (c) if the proceeding was commenced by an application supported by a statement of claim or the Court has ordered

**Rule 3**

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that the proceeding continue on pleadings — give judgment against the respondent for the relief that:

- (i) the applicant appears entitled to on the statement of claim; and
  - (ii) the Court is satisfied it has power to grant; or
- (d) give judgment or make any other order against the respondent; or
- (e) make an order specified in paragraph (b), (c) or (d) to take effect if the respondent does not take a step ordered by the Court in the proceeding in the time limited in the order.
- (3) If leave has been granted under paragraph (2) (b) and the applicant has filed in the Registry:
- (a) an affidavit, or affidavits, proving:
    - (i) service of the application claiming judgment for the debt or liquidated damages; and
    - (ii) that the respondent is in default; and
  - (b) an affidavit in respect of the debt or liquidated damages in accordance with Form 46C;
- the Registrar must enter judgment for the debt or liquidated damages, costs and interest against the respondent as specified in the leave given under paragraph (2) (b), without giving notice, or further notice, to the respondent.
- (4) Unless the Court otherwise orders, if a respondent to a cross-claim is in default, a judgment (including a judgment by default or by consent), or decision (including a decision by consent), on any claim, question or issue in the proceeding on the originating process, or any other cross-claim in the proceeding, is binding as between the cross-claimant and the respondent to the cross-claim so far as the judgment or decision is relevant to any claim, question or issue in the proceeding on the cross-claim.
- (5) The Court may make an order of the kind mentioned in subrule (1), (2) or (4), or any other order, or may give such directions, and specify such consequences for non-compliance with the order, as the Court thinks just.

*Note* An order or judgment under this Order may be set aside or varied under Order 35 rule 7.

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**Rule 4****4 Contempt**

This Order does not limit the power of the Court to punish for contempt.

**Rule 1**

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## **Order 36      Entry of orders**

### **1      Definition**

For rules 3 and 7 of this Order:

**Registrar** includes an officer acting with the authority of the Registrar.

### **2      When entry is required**

- (1) Subject to subrule (2), an order must be entered if:
  - (a) the order is to be served; or
  - (b) the order is to be enforced; or
  - (c) an appeal from the order has been instituted, or an application for leave to appeal from the order has been made; or
  - (d) a step is to be taken under the order; or
  - (e) the Court directs that the order be entered.
- (2) An order need not be entered if, in addition to any provision as to costs, the order merely:
  - (a) extends or abridges time; or
  - (b) grants leave or makes a direction:
    - (i) to amend a document (other than an order); or
    - (ii) to file a document; or
    - (iii) for an act to be done by an officer of the Court (within the meaning of section 18N of the Act); or
  - (c) gives directions about the conduct of a proceeding.

### **3      Entry of an order**

- (1) An order may be entered in accordance with subrule (2) or rule 5.

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**Rule 7**

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- (2) A Registrar may enter an order by authenticating the order in accordance with subrule 7 (1) if:
  - (a) the order has been settled in accordance with rule 4; and
  - (b) the Court or a Judge directs, or a party requests, that the order be entered.

**4 Lodgment of orders for entry**

- (1) If a party wishes to have an order entered, the party may lodge with the Registrar a draft of the order, in accordance with Form 47.
- (2) An order may be settled by the Court or a Judge, or a Registrar, even if no draft of the order has been lodged under subrule (1).
- (3) The Court or a Judge may give directions to a Registrar who is settling an order under this rule.

**5 Courtroom entry**

The Court or a Judge may direct that an order be entered by the order being authenticated in Court in accordance with subrule 7 (1) at the time the order is made.

**6 Date of effect**

Unless the Court otherwise orders, the date as of which an order is entered is the date when the order was made.

**7 Authentication of orders**

- (1) An order is authenticated by:
  - (a) the Court or a Judge, or a Registrar signing the order; and
  - (b) the Court or a Judge, or a person at the direction of the Court or a Judge, or a Registrar, affixing the stamp of the Court to the order.
- (2) On request by a party to a proceeding, the Registrar must give a copy of an authenticated order in the proceeding to the party.

**Rule 8**

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- (3) The Registrar may give a copy of an authenticated order in the proceeding to any person who:
- (a) appears to have a sufficient interest in the proceeding; and
  - (b) pays the prescribed fee (if any).

**8 Service of orders**

Unless these Rules otherwise provide or the Court otherwise directs, an order need not be served.

**9 Certificate of judgment**

On request by a judgment creditor, the Registrar must give to the creditor a certificate in accordance with Form 47A setting out the particulars of the judgment.

## **Order 37      Judgments and orders: enforcement**

### **1      Attendance**

- (1) Where the Court by subpoena or otherwise, makes an order in any proceedings for the attendance of a person:
  - (a) for the purpose of giving evidence;
  - (b) for the production of any document or thing;
  - (c) to answer a charge of contempt; or
  - (d) for any other purpose;and the person defaults in attendance in accordance with the order, the Court may:
  - (e) issue, or make an order for the issue of, a warrant to the Sheriff or such other person as the Court may appoint for the arrest of the person in default and for the production of the person in default before the Court or before an examiner or other person for the purpose of the proceedings and for the detention in custody of the person in default in the meantime; and
  - (f) order the person in default to pay any costs occasioned by the default.
- (2) Subrule (1) does not affect:
  - (a) the powers of the Court to punish for the contempt;
  - (b) the provisions of Order 40 (which relates to contempt); or

### **2      Service before committal or sequestration**

- (1) Subject to the Rules, an order shall not be enforced by committal or sequestration unless:
  - (a) the order or a certified or office copy thereof is served personally on the person bound; and

**Rule 2**

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- (b) if the order requires the person bound to do an act within a specified time, the order or a certified or office copy thereof is so served before that time expires.
- (2) Subject to the Rules, where the person bound by an order is a corporation or organisation the order shall not be enforced by committal of an officer of the person bound or by sequestration of the property of an officer of the person bound unless, in addition to service under subrule (1) on the person bound:
  - (a) the order or a certified or office copy thereof is served personally on the officer; and
  - (b) if the order requires the person bound to do an act within a specified time, the order or a certified or office copy thereof is so served before that time expires.
- (3) An order or a certified or office copy thereof served under this rule must bear a notice (naming the persons concerned) that the person served is liable to imprisonment or to sequestration of property if:
  - (a) where the order requires the person bound to do an act within a specified time, the person bound refuses or neglects to do the act within that time; or
  - (b) where the order requires the person bound to abstain from doing an act, the person bound disobeys the order.
- (4) Subject to the Rules, where:
  - (a) an order requires the person bound to do an act; and
  - (b) another order specifies the time in which the act is required to be done;each order or a certified or office copy thereof shall be served on the person bound before the expiry of that time as so abridged or extended.
- (5) Where a person liable to committal or sequestration of his property by way of enforcement of a judgment or order has notice of the judgment or order:
  - (a) by being present when the judgment is pronounced or when the order is made; or

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**Rule 4**

- (b) by being notified of the terms of the judgment or order whether by telephone, telegram or otherwise;

the judgment or order may be enforced by committal of that person or by sequestration of his property notwithstanding that service has not been effected in accordance with this rule.

- (6) The Court may dispense with service under this rule.

**3 Substituted performance**

- (1) Where a judgment or order requires the person bound to do an act and the person bound does not do the act, the Court may:
  - (a) direct that the act be done by a person appointed by the Court; and
  - (b) order the person bound to pay the costs incurred pursuant to the direction.
- (2) Subrule (1) does not affect any other mode of enforcement of the judgment or order, or the powers of the Court to punish for contempt.

**4 Enforcements by or against non-party**

- (1) Where, in any proceeding, a person who is not a party obtains an order, or an order is made in favour of a person who is not a party, he may enforce the order by the same means as if he were a party.
- (2) Where, in any proceeding, obedience to a judgment may be enforced against a person who is not a party, the judgment may be enforced against him by the same means as if he were a party.
- (3) Where, in any proceeding, obedience to a judgment may be enforced against a corporation or organisation which is not a party, an officer of the corporation or organisation shall be liable to the same process of enforcement as if the corporation or organisation were a party.

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**Rule 5**

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**5 Non-performance of condition**

Where a person is entitled under a judgment subject to the fulfilment of a condition, and there is a failure to fulfil the condition, then, unless the Court otherwise orders:

- (a) he shall lose the benefit of the judgment; and
- (b) any other person interested may take any steps which:
  - (i) are warranted by the judgment; or
  - (ii) might have been taken if the judgment had not been pronounced or the order had not been made.

**6 Matters occurring after judgment**

- (1) A person bound by a judgment may move the Court for a stay of execution of the judgment, or for some other order, on the ground of matters occurring after the date on which the judgment takes effect and the Court may make such order as the nature of the case requires.
- (2) Subrule (1) does not affect the powers of the Court to stay execution under rule 10.

**7 Enforcement as in State and Territory Supreme Courts**

- (1) Subject to the Rules, and without limiting any other means of enforcement which may be available, the Court may, in order to enforce a judgment or order of the Court, make any order, issue any writ or take any other step that could be made, issued or taken, by the Supreme Court of the State or Territory in which the judgment or order is to be enforced if the judgment or order had been made by that Supreme Court.
- (2) The modes of procedure and forms of process of the Supreme Court of the State or Territory in which the judgment or order is sought to be enforced shall be available and followed in the Court so far as is practicable *mutatis mutandis* for the enforcement of orders of the Court.

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**Rule 10**

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- (3) The Sheriff when executing the orders of the Court, shall be authorized to act in the same manner and to the same extent as the Sheriff or like officer of the Supreme Court of the State or Territory in which the order is being executed, is entitled to act.
- (4) Where it is desired to enforce an order in more than one State or Territory:
  - (a) it shall not be necessary to adopt different modes of procedure and forms of process in each State or Territory; and
  - (b) it shall be sufficient to adopt the mode of procedure and form of process of the Supreme Court of one of the States or Territories in which execution is to be made, and to execute the order in like manner in the other States and Territories.

**8      *Ex parte* application**

A party interested in the execution or enforcement of an order may apply to the Court *ex parte* for directions as to its execution or enforcement.

**9      Warrant for committal — Forms 49 and 49A**

If the Court makes an order that a person be committed, a Judge may issue a warrant for committal:

- (a) if the order is made in relation to a contempt of court — in accordance with Form 49; or
- (b) in any other case — in accordance with Form 49A.

**10     Stay of execution**

The Court may stay execution of a judgment or order.

**Rule 1**

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## **Order 38      Assessment of damages**

### **1      Ascertainment of damages where a matter of calculation**

- (1) Where:
  - (a) a respondent admits liability on an applicant's claim, but denies liability to the extent of the damages claimed; or
  - (b) the Court finds that a party is liable to pay damages; the Court, if it considers that the amount of damages to be recovered is substantially a matter of calculation, may direct that the amount which the party liable shall be ordered to pay be ascertained by the Registrar at the proper place.
- (2) The attendance of witnesses and the production of documents before the Registrar may be compelled by subpoena.
- (3) The Registrar may adjourn the inquiry from time to time.

### **2      Certificate of Registrar**

- (1) The Registrar shall certify the amount of damages which he has ascertained pursuant to rule 1, and shall deliver a copy of the certificate to each party and, unless within 7 days of the delivery thereof to him any party objects the Registrar shall deliver the certificate to a Judge, who, without the attendance of any party, may make an order that the person liable pay the amount of damages so ascertained.
- (2) Upon an order being made pursuant to subrule (1), the Registrar shall deliver a copy of the order to each party.
- (3) Where an objection is made under subrule (1), the Registrar shall give notice of the objection to the other party and list the matter for hearing before the Court and deliver his certificate to the Court.

**Rule 3**

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- (4) Upon a hearing pursuant to subrule (3) it shall be a matter for the Court as to what weight should in the circumstances of the case, be given to the certificate of the Registrar.

**3 Damages in respect of continuing cause of action**

Where damages are assessed in respect of a continuing cause of action, they shall be assessed down to the time of assessment.

**Rule 1**

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## **Order 39      Accounts and inquiries**

### **1      Account: summary order**

- (1) Subject to subrule (2), where a party claims an account or makes a claim which involves taking an account, the Court may, at any stage of the proceeding:
  - (a) order that an account be taken; and
  - (b) order that any amount certified on taking the account to be due to any party be paid to the party.
- (2) The Court shall not make an order under subrule (1):
  - (a) as against a respondent who has not filed an appearance unless the respondent is in default of appearance; or
  - (b) if it appears there is some preliminary question to be determined.

### **2      Account or inquiry at any stage**

The Court may, at any stage of a proceeding, make orders for the taking of any account or the making of any inquiry.

### **3      Account: directions**

Where the Court makes an order for the taking of an account, the Court, by the same or subsequent order:

- (a) may give directions concerning the manner of taking or vouching the account; and
- (b) without limiting paragraph (a), may direct that in taking the account the relevant books of account shall be evidence of the matters contained in them.

### **4      Account: form and verification**

- (1) The items on each side of an account shall be numbered consecutively.

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**Rule 9**

- (2) An accounting party shall, unless the Court otherwise orders, verify his account by affidavit and the account shall be made an exhibit to the affidavit.

**5 Account: filing and service**

An accounting party shall, unless the Court otherwise orders:

- (a) file his account and verifying affidavit; and
- (b) serve the account and affidavit on each other party on the date of filing.

**6 Account: notice of charge or error**

- (1) Where a party seeks to charge an accounting party with an amount beyond that of which the accounting party by his account admits receipt, he shall give to the accounting party notice of the charge, stating, so far as he is able, the amount which he seeks to charge, with brief particulars.
- (2) Where a party alleges that any item in the account of an accounting party is erroneous in amount or otherwise, he shall give to the accounting party notice of the allegation, stating the grounds for alleging the error.

**7 Account: allowances**

In taking an account under a judgment or order, all just allowances shall be made.

**8 Delay**

Where it appears to the Court that there is delay in the prosecution of any account, inquiry or other matter under a judgment or order, the Court may make such orders as it thinks fit for staying or expediting the proceedings or for the conduct of the proceedings.

**9 Account: taken before Registrar**

The Court may order any account or inquiry under this Order to be taken before or held by the Registrar at the proper place.

**Rule 10**

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**10 Certificate of Registrar**

- (1) The Registrar shall certify the results of the account or inquiry which he has taken or held pursuant to rule 9, and shall deliver a copy of the certificate to each party and, unless within 7 days of the delivery thereof to him any party objects the Registrar shall deliver the certificate to a Judge, who, without the attendance of any party, may make an order that the person liable pay the amount so certified to be due to any party.
- (2) Upon an order being made pursuant to subrule (1), the Registrar shall deliver a copy of the order to each party.
- (3) Where an objection is made under subrule (1), the Registrar shall give notice of the objection to the other party and list the matter for hearing before the Court and deliver his certificate to the Court.
- (4) Upon a hearing pursuant to subrule (3) it shall be a matter for the Court as to what weight should, in the circumstances of the case, be given to the certificate of the Registrar.

# **Order 40      Contempt**

## **Division 1      Contempt in the face or hearing of the Court**

### **1      Arrest**

Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of court, committed in the face of the Court or in the hearing of the Court, the Court may:

- (a) by oral order direct that he be brought before the Court; or
- (b) issue a warrant for his arrest.

### **2      Charge, defence and determination**

Where the accused person is brought before the Court, the Court shall:

- (a) cause him to be informed orally of the contempt with which he is charged;
- (b) require him to make his defence to the charge;
- (c) after hearing him, determine the matter of the charge; and
- (d) make an order for his punishment or discharge.

### **3      Interim custody**

- (1) The Court may, pending disposal of the charge:
  - (a) direct that the accused person be kept in such custody as the Court may determine; or
  - (b) direct that he be released.
- (2) The Court may make a direction under subrule (1) which may include a requirement that the accused person give security, in such sum as the Court directs, for his appearance in person to answer the charge.

## **Division 2                      Motion or proceedings for punishment**

### **4                      Application**

This Division does not apply to a case in which the Court proceeds under Division 1.

### **5                      Procedure generally**

- (1) Where it is alleged that a contempt has been committed in connection with a proceeding in the Court, an application for punishment for the alleged contempt must be made by motion on notice in the proceeding, but if a separate proceeding for punishment of the alleged contempt is commenced, the proceeding so commenced may be continued unless the Court otherwise orders.
- (2) Where it is alleged that a contempt has been committed, but not in connection with the proceeding in the Court, the proceeding for punishment of the alleged contempt must be commenced as a substantive proceeding but, if an application for punishment of the alleged contempt is made by motion on notice in any proceeding, the application may be heard and disposed of in the latter proceeding, unless the Court otherwise orders.

### **6                      Statement of charge**

A statement of charge, that is, a statement specifying the contempt of which the accused person is alleged to be guilty, shall be subscribed to, or filed with, the notice of motion or application.

### **7                      Evidence**

- (1) Subject to subrule (2), the evidence in support of the charge shall be by affidavit.
- (2) The Court may permit evidence in support of the charge to be given otherwise than by affidavit.

**8 Service**

The notice of motion or application, the statement of charge, and the affidavits shall be served personally on the accused person.

**9 Arrest — Form 48**

Where:

- (a) notice of a motion for punishment of a contempt has been filed or a proceeding has been commenced for punishment of a contempt; and
- (b) it appears to the Court that the accused person is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court;

the Court may issue a warrant, in accordance with Form 48, for the arrest of the accused person and his detention in custody until he is brought before the Court to answer the charge, unless he, in the meantime, gives security in such manner and in such sum as the Court directs, for his appearance in person to answer the charge and to be dealt with in accordance with any order of the Court.

**10 Motion or proceedings by the Registrar**

- (1) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court, the Court may, by order, direct the Registrar to apply by motion for, or to commence a proceeding for, punishment of the contempt.
- (2) Subrule (1) does not affect such right as any person other than the Registrar may have to apply by motion for, or to commence a proceeding for, punishment of contempt.

## **Division 3                      General**

### **11                      Warrant — Form 48**

A warrant for the arrest or detention under this Order of an accused person must be in accordance with Form 48 and addressed to the Sheriff, and may be issued under the hand of the Judge presiding in the Court directing the arrest or detention.

### **12                      Discharge**

Where an accused person is committed to prison for a term, the Court may order his discharge before the expiry of the term.

## Order 41      Documents

### 1      **First page of a document — Form 1**

- (1) A document in any proceeding must be headed in the manner indicated in Form 1, that is to say with a reference to the following:
  - (a) the District Registry where the document is filed;
  - (b) the appropriate Division of the Court; and
  - (c) the serial number of the proceeding.

- (2) A document in any proceeding between parties shall be entitled between the parties.

*Note* Order 78, subrule 41A (3) allows certain documents in proceedings under the *Native Title Act 1993* to be headed with a short title that does not mention the parties.

### **Form 3**

- (3) A document in a proceeding in which there is no respondent must be headed in accordance with Form 3.

### **Form 2**

- (4) Except in the case of:
  - (a) an originating process;
  - (b) a document to be served on a person not a party to a proceeding; or
  - (c) a final order;a document may be headed in accordance with Form 2, using an abbreviation of the title of the proceeding sufficient to identify the proceeding.

### 2      **Documents**

- (1) This rule applies to a document prepared by a party for use in

**Rule 3**

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the Court, except to the extent that the nature of the document renders compliance impracticable.

- (2) A document shall be on paper of durable quality, capable of receiving ink writing, and measuring about 295 millimetres long and 210 millimetres wide provided that the Chief Justice may direct that documents of different dimensions be accepted in the case of any particular Registry.
- (3) The writing on a document may be on 1 or both sides of the paper, but not partly on 1 side and partly on both sides.  
*Note* The Court or a Judge may direct that one-sided documents be provided to the Court.
- (3A) A margin of at least 25 millimetres must be kept clear on the left side of each page of a document containing writing.
- (4) There shall be a space of not less than 3 millimetres between the lines of writing.
- (5) The writing shall be clear, sharp, legible and permanent.
- (6) A carbon copy shall not be filed.
- (7) A document shall not be filed if it bears any blotting, erasure, or such alteration as to cause material disfigurement.
- (8) There shall be a space of not less than 20 mm between the last line of writing and the end of each page of a document.
- (9) The pages of a document must be securely fastened.

**3 Details to be shown on first page of a document**

- (1) A document prepared by a party for use in the Court shall have a horizontal line drawn at the foot of the first page below which shall be shown:
  - (a) the party on whose behalf the document is filed, the name, address, telephone number and, if applicable, the facsimile number and the email address of the solicitor for the party, and, if the solicitor acts in the proceedings by an agent, the name, address, telephone number and, if applicable, the facsimile number and the email address of the agent; and

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**Rule 7**

- (b) where a notice for service at a document exchange is filed under Order 7, paragraph 7 (1) (a), the exchange box number.
- (2) Where a party preparing a document for use in the Court is not represented by a solicitor, paragraph (1) (a) does not apply but instead the name and address for service of the party, and, if applicable, his or her telephone number, facsimile number and email address, must be shown.

**4 Numbers**

Dates, sums and other numbers shall be expressed in figures and not in words.

**5 Scandalous, vexatious or oppressive material**

If there is matter in a document (other than an affidavit) which is, having regard to the issues in the proceeding, scandalous, vexatious or oppressive, the Court may order that:

- (a) the document be removed from the file; or
- (b) the matter be struck out of the document.

**6 Signing documents — Form 4**

A document filed, other than an affidavit, annexure or exhibit attached to another document, must be concluded in accordance with Form 4 and signed by the party filing it or by a lawyer unless the nature of the document is such that the signature is inappropriate.

**7 Signature by electronic means**

If a document (other than an affidavit) is required by these Rules to be signed, that requirement is satisfied if a facsimile of the signature is affixed on the document by electronic means, by, or at the direction of, the signatory.

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**7A Signature by electronic means — Registrar**

A requirement in these Rules that a document (other than an affidavit) must be signed by a Registrar is satisfied if a facsimile of the signature of the Registrar appointed under section 18C of the Act is affixed on the document by electronic or other means by, or at the direction of, an officer acting with the authority of that Registrar.

**8 Documents filed electronically**

If a document has been filed electronically and a notice has been inserted as the first page of the document in accordance with Order 1, paragraph 5AC (5) (a) or (b), the notice is deemed to be part of the document for the purposes of the Act and these Rules (including any rules about service of the document).

# **Order 42      Partnerships and business names**

## **Division 1      Partnerships**

### **1      Interpretation**

In this Division, *partnership name* means a name under which two or more persons carry on business in partnership within Australia, whether or not the name consists of the names of one or more of those persons.

### **2      Action in partnership name**

- (1) An action by or against two or more persons claiming as partners or against two or more persons claimed to be liable as partners and who carry on business in partnership within Australia may be brought in the partnership name.
- (2) The partnership name shall be that obtaining at the time the cause of action arose.
- (3) Where the proceeding is commenced pursuant to subrule (1), unless the Court otherwise orders, it shall continue in the partnership name, and not in the names of the individual partners.

### **3      Disclosure of names etc of partners**

- (1) At any stage of the proceeding any party may, by notice in writing, require the partnership to furnish it with the names and places of residence of those persons who were partners of the partnership at the time the cause of action arose.
- (2) If the partnership fails to furnish the information pursuant to subrule (1), the party making the requirement may move on notice:

**Rule 4**

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- (a) for an order requiring the partnership to furnish the information; and
- (b) if the partnership is an applicant — for an order that the action be stayed until the information is provided.

**4 Service**

- (1) Subject to subrule (3), where persons are sued as partners in the partnership name pursuant to rule 2, the originating process shall be served personally:
  - (a) upon any one or more of the partners; or
  - (b) by leaving a copy of the process at the place where the business is carried on with some person apparently engaged (as an employee or otherwise) in the business and apparently of or above the age of 16 years.
- (2) Subject to subrule 9 (2) of this Order, where service is effected pursuant to subrule (1), it shall be deemed to be served upon all the partners of the partnership, including any partner outside the jurisdiction at the time of the issue of the originating process.
- (3) Where the applicant is aware that the partnership has been dissolved prior to the commencement of the proceedings, he shall, in addition to effecting service under subrule (1), effect service on any partner sought to be made liable who has ceased to be a partner of the partnership at the time of the commencement of the proceedings.

**5 Appearance of partners**

- (1) Where a person is served pursuant to rule 4, he shall enter an appearance in his own name.
- (2) Notwithstanding subrule (1), the proceeding shall continue in the name of the partnership.

**6 Appearance under protest of person served as partner**

- (1) A person served under rule 4 who denies that he or she is a partner of the partnership, or that he or she was a partner of the partnership at the time of the cause of action arose, must file an affidavit making that denial before the directions hearing.
- (2) The affidavit shall state the material facts in support of that person's contention.
- (3) Subrule (1) does not prevent any person raising the defence referred to in that subrule, at any later stage of the proceeding.

**7 Defence**

- (1) Subject to rule 6, where the proceeding is commenced against partners in the partnership name pursuant to rule 2, a partner is not entitled to file a personal defence, or file affidavits in defence as if the proceeding were brought against him personally.
- (2) Notwithstanding subrule (1) any partner may file a defence or an affidavit in defence in the partnership name.
- (3) Where more than one defence is filed pursuant to subrule (2) or more than one ground of defence appears from the affidavits filed pursuant to subrule (2), the applicant shall not be entitled to judgment unless none of the defences raised affords a proper defence to his claim.

**8 Entry of order**

Where a proceeding has been commenced under this Order, an order in favour of or against the partnership shall be entered in the partnership name and not in the name of an individual partner.

**9 Execution of judgment against a partnership**

- (1) Where a judgment or order is against partners in the name of the partnership, the judgment or order may be executed:
  - (a) against any property of the partnership within Australia;

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- (b) against any partner who has entered an appearance;
  - (c) against any person who has admitted that he is or has been adjudged to be a partner; and
  - (d) against any partner who has been individually served with the originating process.
- (2) Subrule 4 (2) of this Order does not apply to render any partner individually liable who has not been personally served with the originating process and has not entered an appearance.
- (3) Execution may be had against any partnership property within Australia, notwithstanding that any partner may be resident abroad.

**10 Judgment against individual partner**

- (1) Where a party has obtained judgment against partners in the partnership name and desires to issue execution against an individual partner who is not liable under rule 9, he shall move on notice to the individual partner for judgment against him.
- (2) On the hearing of the motion, if the partner admits liability, judgment may be pronounced and an order made against him.
- (3) On the hearing of the motion, if the partner denies liability, the Court shall give the necessary directions for the hearing of the proceeding which shall be against the partner individually, and not in the partnership name.

**11 Application to proceedings between co-partners**

- (1) In addition to its other operation, this Order, subject to subrule (2), also applies to:
  - (a) a proceeding between a partnership and one or more of its members; and
  - (b) a proceeding between partnerships having one or more members in common;provided such partnership or partnerships carry on business in Australia.

- (2) No execution shall be issued in a proceeding to which subrule (1) applies without the leave of the Court.
- (3) On an application for leave under subrule (2), the Court may give such directions and order the taking and holding of such accounts and inquiries as it thinks just.

## **Division 2                      Individuals trading under a business name**

### **12                      Interpretation**

In this Division, *business name* means a name, style, title or designation under which a person carries on a business not being a name consisting of the name of that person and the name of each other person, if any, in association with whom that person carried on business, without any addition.

### **13                      Proceedings in business name**

- (1) Where a claim is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within Australia by that person under a business name:
  - (a) if the business name is registered in a register in the State or Territory in which the business is carried on, which register discloses the name and residential address of the person — a proceeding shall only be commenced against that person in his own name or pursuant to Division 1; and
  - (b) if the business name is not registered in a register referred to in paragraph (a) — a proceeding may be commenced against that person in that business name.
- (2) Where a proceeding is commenced against a person in a business name pursuant to paragraph (1) (b):
  - (a) that business name shall, for the purpose of the proceeding, be a sufficient designation of that person in any process; and
  - (b) any judgment or order made in the proceeding may be enforced against that person.

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**14 Application of rules**

The succeeding rules of this Order apply where a proceeding is commenced under paragraph 13 (1) (b) against a person in a business name.

**15 Service**

Personal service of any document on the person may be made:

- (a) by leaving a copy of the document with him; or
- (b) by leaving a copy of the document at the place where the business is carried on, with some person apparently engaged (as an employee or otherwise) in the business and apparently of or above the age of 16 years.

**16 Appearance**

- (1) Where any person is sued in a business name, he shall not enter an appearance except in his own name.
- (2) Where any person enters an appearance in a proceeding in which he is sued in a business name, he shall file and serve with his notice of appearance a statement of the names and places of residence of all the persons carrying on business under that business name on the date of commencement of the proceeding.
- (3) Where a person fails to comply with subrule (2), the court may order that his appearance be struck out.

**17 Proceeding under either Division**

Where an appearance filed under subrule 16 (2) discloses the names of other persons who carry on or who carried on business under that business name, a party may proceed in accordance with Division 1 or under this Division, both on the date of commencement of the proceeding and on the date (if any) specified in the application as the date on which the cause of action arose.

**18 Amendment as to parties**

- (1) Where a proceeding is commenced against a person in a business name, the applicant shall, as soon as practicable, take all reasonable steps (whether by way of discovery of documents, interrogatories or otherwise) for the purpose of ascertaining the name of the respondent and shall, so far as practicable, make amendments so that the proceedings are continued against the person sued in his own name and not in his business name.
- (2) Where a proceeding is commenced against a person in a business name, the applicant shall not, without the leave of the Court, take any step in the proceeding, except in respect of service of the originating process and except for the purpose of compliance with subrule (1), until amendments are made in accordance with subrule (1).
- (3) Where an amendment is made under this rule, the mode of amendment and service after amendment shall be in accordance with Order 13, rules 8, 9 and 10.
- (4) A party may make an amendment pursuant to Order 13, rule 4 notwithstanding he has made an amendment under this rule.

**19 Execution**

- (1) Where proceedings against a person in a business name are continued by leave given under rule 18, a judgment or order against that person in the business name shall not be enforced by execution except as mentioned in this rule.
- (2) A judgment or order against a person in a business name may be enforced by execution against any property of the business carried on under that name and, where the judgment or order is against partners in the partnership name it may be executed in accordance with rule 9.
- (3) In subrule (2), the expression *property of the business*, in relation to a judgment or order against a person in a business name, means all property and rights and interests in property, originally brought into the business carried on under that name or acquired, whether by purchase or otherwise, on account of

**Rule 20**

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the business, or for the purposes and in the course of the business, being property, rights or interest of that person.

**20 Variation of judgment or order**

- (1) Notwithstanding rule 19, the Court may vary a judgment or order against a person in a business name so as to make it a judgment or order against that person in his own name, and when so varied, the judgment or order may be enforced accordingly.
- (2) Notice of a motion for a variation of a judgment or order under subrule (1) shall be served personally on the person against whom the judgment was given or the order was made, and paragraph 15 (b) shall not apply to that service.

**21 Discovery in aid of rules 18 and 20**

- (1) Where it appears to the Court that some person has or may have knowledge of facts, or has or may have in his possession, custody or power any document or thing, tending to assist in the ascertainment of the identity or description, of a respondent sued in a business name, the Court may, for the purpose of enabling amendments to be made under rule 18 or a variation of a judgment or order to be made under rule 20:
  - (a) order that person to attend before the Court or an officer of the Court and be orally examined on any matter relating to the identity or description of the respondent;
  - (b) order that person to produce any document or thing in his possession, custody or power relating to the identity or description of the respondent; and
  - (c) if that person is a corporation or organisation order the corporation or organisation or any officer of the corporation or organisation to produce any document or thing in the possession, custody or power of the corporation or organisation relating to the identity or description of the respondent.
- (2) In subrule (1), ***description***, in relation to a respondent, includes the name, place of residence, place of business, occupation and sex of the respondent.

## Order 43      Disability

### **1      Proceeding by or against person under disability**

- (1) An infant or minor may sue by his next friend.
- (2) An infant or minor may defend in a proceeding by his guardian appointed for that purpose.
- (3) A mentally disabled person may sue in a proceeding by the committee if any, of his person or estate as the case may be, or where there is no such committee, by his next friend.
- (4) A mentally disabled person may defend by his committee if any, or where there is no such committee, by his guardian appointed for that purpose.

### **2      Appointment of tutor by the court**

- (1) The Court may appoint a tutor for a person under disability for the purpose of a proceeding.
- (2) A person moving for an appointment under this rule shall, unless the Court otherwise orders, serve notice of the motion on the person under disability.

### **3      Removal of tutor**

- (1) The Court may:
  - (a) remove a tutor in a proceeding; and
  - (b) stay the proceeding until a tutor has been appointed in place of the removed tutor.
- (2) A person moving for an order under this rule shall, unless the Court otherwise orders, serve notice of the motion on the tutor whose removal is sought and on the person under disability for whom the tutor was appointed.

**Rule 4**

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**4 Appointment of tutor generally**

- (1) Subject to these Rules, an order appointing a tutor is not necessary.
- (2) Any person may be a tutor except:
  - (a) a person under disability;
  - (b) a corporation or organisation unless the corporation or organisation is any of the following:
    - (i) the Public Trustee of New South Wales;
    - (ii) the Public Trustee of Victoria;
    - (iii) the Public Curator of Queensland;
    - (iv) the Public Trustee of South Australia;
    - (v) the Public Trustee of Western Australia;
    - (vi) the Public Trustee of Tasmania;
    - (vii) The Curator of Estates of Deceased Persons of the Australian Capital Territory;
    - (viii) the Public Trustee of the Northern Territory;
    - (ix) a trustee company which has by Statute or Ordinance of a State or Territory of Australia been given a right to act as trustee, executor or administrator.
- (3) A person may not be a tutor of a person under disability in any proceeding in which he has an interest adverse to the interest of the person under disability.
- (4) A person shall not be made a tutor without his consent.
- (5) Where a person has been or is tutor for a person under disability in any proceeding, no other person may, except on appointment by the Court, act as tutor for the person under disability in that proceeding.
- (6) A person shall not take any step in any proceeding as tutor for a person under disability unless beforehand there have been filed:
  - (a) his consent to act; and

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**Rule 8**

- (b) a certificate by his solicitor that the tutor has no interest in the proceeding adverse to that of the person under disability.
- (7) The evidence on a motion for an appointment under subrule 3 (1) shall include evidence:
  - (a) that the person for whom the tutor is proposed to be appointed is a person under disability;
  - (b) that the proposed tutor:
    - (i) consents to act;
    - (ii) is a proper person for appointment; and
    - (iii) has no interest in the proceeding adverse to the interest of the person under disability; and
  - (c) that the person under disability is in default of appearance, if that is the fact.

**5 Conduct of proceedings by tutor**

- (1) Subject to the Rules, where a person under disability is a party to any proceedings, anything which would, if he were not a person under disability, be required or authorized by these Rules to be done by him shall or may be done by his tutor.
- (2) A tutor must act by a solicitor.

**6 Cross-claim**

A tutor defending any proceeding for a person under disability may bring a cross-claim under Order 5.

**7 No imputed admission on pleadings**

Order 11, subrule 13 (1) does not apply to an opposite party who is a person under disability.

**8 Discovery and interrogatories**

Orders 15 and 16 apply to a person under disability and to his tutor.

**Rule 9**

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**9 Compromise etc of matter in suit**

- (1) Where a proceeding has been commenced, and afterwards an agreement is made by the tutor in the proceeding of a person under disability, for the compromise or settlement of any matter in dispute in the proceeding, the tutor shall apply to the Court for approval of the agreement and the Court may approve or disapprove the agreement.
- (2) An agreement approved by the Court under subrule (1) is as binding on the person under disability as if the person under disability were not a person under disability and his tutor were his agent to make the agreement.
- (3) An agreement disapproved by the Court under subrule (1) is not binding on the person under disability.

**10 Payment into Court**

A tutor shall not, except by leave of the Court, pay money into Court or make an offer of compromise.

**11 Compromise etc before suit**

- (1) Where a claim enforceable by a proceeding in the Court is made by or on behalf of, or against a person under disability and, before the proceeding is commenced to enforce the claim, an agreement is made by or on behalf of the person under disability for the compromise or settlement of the claim, the Court may approve or disapprove the agreement.
- (2) An agreement approved by the Court under subrule (1) is as binding on the person under disability by or on whose behalf it is made as if the person under disability were not a person under disability and, where the agreement is made by another person on behalf of the person under disability as if that other person were his agent to make the agreement.
- (3) An agreement disapproved by the Court under subrule (1) is not binding on a person under disability by or on whose behalf it is made.

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**Rule 13**

- (4) A person shall commence a proceeding by application for approval of an agreement under this rule, and may, by the application, seek enforcement of the claim in case the Court does not approve the agreement.
- (5) Where, in a proceeding under this rule, the Court does not approve an agreement but the applicant seeks to enforce the claim, the Court may give directions for the further conduct of the proceeding.

**12 Terms of approval**

- (1) The Court may give leave or approval under rule 10 or 11 on terms.
- (2) Without affecting the generality of subrule (1), the Court:
  - (a) may, as a term of its approval, require that any money or other property payable or applicable to or for the benefit of a person under disability be dealt with by way of settlement or otherwise as the Court thinks fit for the benefit of the person under disability; and
  - (b) may make such orders as it thinks fit for the carrying out of its requirements under paragraph (a).

**13 Service**

- (1) This rule applies where, in any proceeding, a document is required to be served personally on a person under disability.
- (2) Personal service on a person under disability shall not be effected otherwise than in accordance with this rule.
- (3) Where the person under disability has a tutor in the proceeding, the document may be served on the tutor.
- (4) The document may be served on any person (including the person under disability) whom the Court may, before or after service, approve.
- (5) Where the person to be served is an infant or minor and has no tutor in the proceeding, the document may be served:
  - (a) if he is aged 16 years or upward, on him;

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- (b) on a parent of his or a guardian of his person or of his estate; or
  - (c) if he has no parent and has no guardian of his person or of his estate, on a person with whom he resides or in whose care he is.
- (6) Where the person to be served is a mentally disabled person and has no tutor in the proceeding, the document may be served:
  - (a) if a committee is appointed of his person or estate, or he has a guardian, on the committee or guardian; or
  - (b) if there is no committee or guardian, on a person with whom he resides or in whose care he is.
- (7) A document served pursuant to any of subrules (3) to (6) must be served in the manner required by the Rules with respect to the document.
- (8) A judgment or order requiring a person under disability to do, or refrain from doing any act, a notice of motion for the committal of a person under disability, and a subpoena against a person under disability, must, in addition to any other service required by these Rules, and notwithstanding anything in subrules (3) to (6), be served personally on the person under disability.
- (9) Subrule (8) does not apply to an order for interrogatories or for discovery or inspection of documents.

# Order 44      Interpleader

## Division 1      Preliminary

### 1      Interpretation

In this Order, unless the context or subject matter otherwise indicates or requires:

*claimant* means a person making a claim to property in dispute.

*execution creditor* means a person on whose behalf process is issued.

*process* means process for execution issued by or under the authority of the Court.

*property in dispute* means any debt or property which is the subject of proceedings under this Order.

*stakeholder* means a person described in rule 2.

## Division 2      Stakeholder's interpleader

### 2      Case for relief

Where:

- (a) a person is under a liability (otherwise than as a Sheriff) in respect of a debt or other personal property; and
- (b) the person is sued, or expects to be sued, in the Court, for or in respect of the debt or property by two or more persons making adverse claims to the debt or property;

the Court may grant relief by way of interpleader.

**3                      Application in a pending proceeding**

- (1) Where a stakeholder has, in a proceeding in the Court, been sued for or in respect of the property in dispute, the application shall be by motion in the proceeding.
- (2) A stakeholder applying pursuant to subrule (1):
  - (a) shall serve notice of the motion on each party to the proceeding who claims any interest in the property in dispute; and
  - (b) shall serve notice of the motion personally on each claimant who is not a party to the proceeding.
- (3) In a case to which subrule (1) does not apply, a stakeholder applying for relief by way of interpleader shall commence the proceeding by application, joining each claimant as a respondent.

**Division 3                      Sheriff's interpleader**

**4                      Notice of claim — Form 50**

- (1) Where a Sheriff takes or intends to take any personal property in execution under process, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice of his or her claim, in accordance with Form 50, to the Sheriff.
- (2) A notice of claim given under this rule shall:
  - (a) specify the claim;
  - (b) state the name and place of abode of the claimant;
  - (c) state an address for service; and
  - (d) be accompanied by a copy of the notice.

- (3) Where a person who is entitled to give notice under this rule does not, within a reasonable time after having knowledge of the facts, give notice under this rule, the Court may, on application by the Sheriff, restrain the commencement or stay the continuance by that person of the proceeding in the Court or restrain the commencement or the continuance by that person of a proceeding in any other court against the Sheriff for or in respect of anything done by the Sheriff in execution of the process after the time when that person might reasonably have given notice under this rule.
- (4) Subject to subrule (5), a Sheriff may apply for an order under subrule (3) by motion in the proceeding in which the process is issued and, if he so applies, he shall serve notice of the motion personally on the person against whom the order is sought.
- (5) If a proceeding to which subrule (3) applies is brought in the Court against a Sheriff, an application by him for an order under that subrule restraining the continuance of that proceeding shall be made by motion in that proceeding.

## **5 Notice to execution creditor**

- (1) A Sheriff shall, on being given notice of claim under rule 4, serve the notice on the execution creditor.
- (2) The execution creditor may serve on the Sheriff notice that he admits the claim.

## **6 Admission of claim**

- (1) Where an execution creditor admits a claim by notice under rule 5:
  - (a) he shall not be liable to the Sheriff for any fees or expenses incurred by the Sheriff under the process after the notice under rule 5 is given;
  - (b) the Sheriff shall withdraw from possession of the property claimed; and
  - (c) the Court may, on application by the Sheriff, restrain the commencement or stay or restrain the continuance by the person whose claim is admitted of a proceeding in any

**Rule 7**

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court against the Sheriff for or in respect of anything done by the Sheriff in execution of the process.

- (2) If a proceeding to which paragraph (1) (c) applies is brought in the Court against the Sheriff, an application by him for an order under that paragraph restraining the continuance of that proceeding shall be made by motion in that proceeding.
- (3) Subject to subrule (2), a Sheriff may apply for an order under paragraph (1) (c) by motion in the proceeding in which the process is issued.

**7                      Interpleader motion**

- (1) Where a Sheriff has, under rule 5, served a notice of claim on the execution creditor and the execution creditor does not, within 4 days after service of the notice, under rule 5, serve on the Sheriff notice that he admits the claim, and the claim has not been withdrawn, the Court may, on application by the Sheriff, grant relief by way of interpleader.
- (2) An application of the Sheriff under this rule shall be by motion in the proceeding in which the process is issued.
- (3) A Sheriff moving pursuant to this rule shall serve notice of the motion on each party to the proceeding who claims any interest in the property in dispute and on each claimant.

**Division 3A                  Payment pursuant to statutory entitlement**

**7A                      Payment pursuant to statutory entitlement**

A person who wishes to make a payment into Court pursuant to a specific entitlement to do so contained in any Act of the Commonwealth may, at the time of making such payment, apply to the Court for such order and directions as are considered necessary.

## **Division 4                      General**

### **8                      Powers generally**

On application for relief by way of interpleader:

- (a) the Court may make such orders and directions as it thinks fit for the hearing and determination of all matters in dispute; and
- (b) without limiting the generality of paragraph (a), the Court may:
  - (i) where a proceeding in the Court is pending in which the applicant is sued for or in respect of any of the property in dispute, order that any claimant be added as a respondent in that proceeding in addition to or in substitution for the applicant, or order that that proceeding be stayed or dismissed;
  - (ii) order the applicant to pay or transfer any or all of the property in dispute into Court or otherwise to dispose of any or all of the property in dispute;
  - (iii) where a claimant claims to be entitled by way of security for debt to any or all of the property in dispute, make orders for the sale of any or all of the property in dispute and for the application of the proceeds of sale;
  - (iv) on request by any party, summarily determine any or all questions of fact or law in which the requesting party is interested arising on the application;
  - (v) make orders for the settlement and trial of issues; and
  - (vi) make such order, or pronounce such judgment, as the nature of the case requires.

### **9                      Default by claimant**

- (1) Where:
  - (a) a claimant has been given due notice of the hearing of an application for relief by way of interpleader and does not appear at the hearing; or

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(b) a claimant does not comply with an order made in the proceeding on such an application;

the Court may, subject to subrule (2), order that the claimant and those claiming under him be barred from prosecuting his claim against the applicant and those claiming under him.

(2) An order under subrule (1) shall not affect the rights of the claimants amongst themselves.

**10 Neutrality of applicant**

(1) Where a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or pronounce judgment against the applicant unless the Court is satisfied on the following matters:

(a) that the applicant claims no interest in the property in dispute except for charges or costs;

(b) that the applicant does not collude with any claimant.

(2) Where a Sheriff applies for relief by way of interpleader, the Court may require the Sheriff to satisfy the Court on the matters mentioned in subrule (1) and the Court may, if not satisfied on those matters, dismiss the application.

(3) Nothing in this rule affects the power of the Court in other cases to dismiss the application or to pronounce judgment against the applicant.

**11 Order in several proceedings**

(1) Where an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any or all of the property in dispute, the Court may make an order in any two or more of those several proceedings.

(2) An order made pursuant to subrule (1) shall be entitled in all the proceedings in which it is made and the order shall be binding on all the parties to them.

**12 Disposal**

The Court before which an issue is tried under this order may pronounce such judgment, or may make such order, as the nature of the case requires, including a judgment or order finally disposing of all questions arising in the proceedings.

**Rule 1**

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## **Order 45      Solicitors**

### **1      Power to act by solicitor**

- (1) Every matter or thing which under the Act or the Rules or otherwise by law is required or allowed to be done by a party may be done by his solicitor.
- (2) Subrule (1) does not apply where the context or subject matter otherwise indicates or requires.

### **2      Adverse parties**

Where a solicitor or his partner acts as solicitor for any party to any proceeding, or is a party to any proceeding, that solicitor shall not, without the leave of the Court, act for any other party to the proceedings not in the same interest.

### **3      Change of solicitor**

- (1) Where a solicitor acts for a party in any proceedings the party may change his solicitor.
- (2) Where a party changes his solicitor, he shall file notice of the change and serve the notice on the other parties and, where practicable, his former solicitor.

### **4      Change of agent**

Where a solicitor (in this rule called the principal solicitor) acts for a party in any proceeding and another solicitor acts as agent for the principal solicitor in the proceeding and the principal solicitor changes the solicitor acting as agent, the party shall file notice of the change and serve the notice on the other parties and on the former agent solicitor.

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**Rule 7****5 Appointment of solicitor**

Where a party acts for himself in any proceeding and afterwards appoints a solicitor to act for him in the proceeding, the party shall file notice of the change and serve the notice on the other parties.

**6 Removal of solicitor**

- (1) Where a solicitor acts for a party in any proceeding and afterwards the party determines the authority of the solicitor to act for him in the proceeding:
  - (a) the party shall file notice of the change and serve the notice on the other parties and on his former solicitor; and
  - (b) the former solicitor may file notice of the change and serve the notice on the parties.

**7 Withdrawal of solicitor**

- (1) Where a solicitor acts for a party to any proceeding and afterwards ceases to act, the solicitor may, subject to subrule (2), file notice of the change and serve the notice on the parties.
- (2) A solicitor shall not file or serve notice of a change under subrule (1) without leave of the Court unless he has, not less than 7 days before doing so, served on his former client notice of his intention to file and serve the notice of change.
- (3) A solicitor filing a notice of change under subrule (1) shall, except where the notice is filed with the leave of the Court, file and serve with the notice an affidavit showing service in compliance with subrule (2).
- (4) A solicitor may serve a notice under this rule on his former client by posting it to the former client at the residential or business address of the former client last known to the solicitor.

**Rule 7A**

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**7A New address for service**

- (1) A notice of a change mentioned in rule 3, 5 or 6 must include the information required by Order 9, paragraphs 4 (1) (a), (b) and (d) and, if applicable, the information required by paragraph 4 (1) (c).
- (2) A notice of change of agent filed by a party in accordance with rule 4 must, if the party's address for service was that of the agent, include the party's new address for service in accordance with Order 7, rule 6.
- (3) A party served with a notice of intention in accordance with subrule 7 (2) must, within 7 days after being served with the notice, file and serve on each party to the proceeding a notice that sets out the information required by Order 9, paragraphs 4 (1) (a), (b) and (d) and, if applicable, the information required by paragraph 4 (1) (c).

**8 Effect of change**

A change of which notice is required or permitted to be filed under any of rules, 3, 4, 5, 6 and 7 shall not have effect as between a party or solicitor to which the change relates on the one hand and the Court or any other party on the other hand until notice of the change is filed and, as regards any other party, is served on that other party.

**9 Signature for lawyer**

- (1) If a signature by a lawyer is required or permitted for the purpose of a proceeding, it is the signature of the lawyer with primary conduct of the matter that is required or permitted.
- (2) For this rule, a barrister is not the lawyer with primary conduct of the matter if the barrister is instructed by a solicitor.
- (3) If the lawyer with primary conduct of the matter is a solicitor, any of the following persons may sign for the lawyer:
  - (a) a partner of the lawyer;
  - (b) a solicitor who is an agent of the lawyer for the purpose of the proceeding;

**Rule 9**

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- (c) a partner of the agent;
  - (d) a solicitor employed by the lawyer or by the agent;
  - (e) a solicitor employed by the lawyer's employer.
- (4) A signature made under subrule (3) must be accompanied by a statement of the capacity in which the signature is made.

**Rule 1**

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## **Order 46      Registries**

### **1      Taking of oaths and affidavits**

A Registrar has, by virtue of his office, authority to administer oaths and affirmations for the purposes of the Court and proceedings in the Court.

### **2      Seal of Court**

- (1) The seal of the Court as determined by the Attorney-General pursuant to subsection 36 (1) of the Act is in the form represented hereunder.



- (2) The seal of the Court shall be kept at the Principal Registry in such custody as the Chief Justice directs.
- (3) The Registrar shall have in his custody a stamp the design of which shall, as nearly as practicable, be the same as the design of the seal of the Court with the addition of the words 'Principal Registry'.
- (4) The District Registrar in respect of each District Registry shall have in his custody a stamp the design of which shall as nearly as practicable be the same as the design of the seal of the Court, with the addition of such words as the Chief Justice directs for the purpose of relating the stamp to that District Registry.

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**Rule 5**

- (5) A document or a copy of a document to which a stamp has been affixed in accordance with rule 4 is as valid and effectual as if it had been sealed with the seal of the Court.

**3 Use of seal**

The seal of the Court shall be affixed to:

- (a) Rules of Court;
- (b) commissions issued by authority of the Court;
- (c) documents issued by the Court for use outside Australia, not being documents for service on a party to the proceeding; and
- (d) such other documents as the Court or a Judge directs or as the law requires.

**4 Stamp of Court**

The stamp of the Court shall be affixed to all process filed in the Court and orders entered and to all such other documents as the Court directs.

**4A Affixing the seal or stamp of the Court**

The seal or stamp of the Court may be affixed on a document:

- (a) by hand; or
- (b) by electronic means; or
- (c) in another way.

**5 Custody of documents**

- (1) Each Registrar shall have charge of documents in proceedings in the Registry and of the records of the Registry.
- (2) Subject to subrule (2A), documents must not be taken out of a Registry except:
  - (a) for the purpose of transmission between Registries; or
  - (b) with the permission of the Court or a Judge.

**Rule 6**

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- (2A) Subject to any conditions specified by a Registrar, a Registrar may permit a party to proceedings to take documents out of a Registry, unless the Court or a Judge orders otherwise.
- (3) The Registrar shall ensure that the records of the Registry are properly kept.

**6 Inspection of documents**

- (1) A person may search in the Registry for, and inspect, a document in a proceeding that is specified in subrule (2), unless the Court, or a Judge, has ordered that the document is confidential.
- (2) For the purposes of subrule (1), the documents are:
  - (a) an application or other originating process;
  - (b) a notice of appearance;
  - (c) a pleading or particulars of a pleading;
  - (d) a notice of motion or other application;
  - (e) a judgment;
  - (f) an order;
  - (g) a written submission;
  - (h) a notice of appeal;
  - (i) a notice of discontinuance;
  - (j) a notice of change of solicitors;
  - (k) a notice of ceasing to act;
  - (l) in a proceeding to which Order 78 applies:
    - (i) an affidavit accompanying an application, or an amended application, under section 61 of the *Native Title Act 1993*;
    - (ii) an extract from the Register of Native Title Claims received by the Court from the Native Title Registrar;
  - (m) a statement of agreed facts;
  - (n) reasons for judgment.

**Rule 6**

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- (3) Except with the leave of the Court or a Judge, a person who is not a party to a proceeding must not inspect any of the following documents in the proceeding:
  - (a) an affidavit (other than an affidavit mentioned in subparagraph (2) (l) (i));
  - (b) an unsworn statement of evidence filed in accordance with a direction given by the Court or a Judge;
  - (c) interrogatories or answers to interrogatories;
  - (d) a list of documents given on discovery;
  - (e) an admission;
  - (f) evidence taken on deposition;
  - (h) a subpoena or document lodged with the Registrar in answer to a subpoena for production of a document;
  - (i) a judgment, order, or other document that the Court has ordered is confidential.
- (4) Except with the leave of the Court or a Judge, or with the permission of the Registrar, a person who is not a party to a proceeding must not inspect any document in the proceeding that is not referred to in subrule (2) or (3).
- (5) Except with the leave of the Court or a Judge, a party to a proceeding or other person must not search in the Registry for, or inspect:
  - (a) a transcript of the proceeding; or
  - (b) a document filed in the proceeding to support an application for an order that a document, evidence or thing be privileged from production.
- (6) A party to a proceeding or other person may copy a document in the proceeding if:
  - (a) the document is produced by the Court, a Judge or the Registrar for inspection by the party or other person; and
  - (b) the Registrar gives the party or other person permission to copy the document; and
  - (c) the party or other person has paid the prescribed fee.

**Rule 7**

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- (7) In this Rule:

*Native Title Registrar* has the same meaning as in Order 78.

*Register of Native Title Claims* has the same meaning as in the *Native Title Act 1993*.

**7 Operation of registries**

- (1) Subject to these Rules and the direction of the Court or a Judge, the Registrar of the Court may give a direction as to the operation of any Registry.
- (2) A person may apply to the Court *ex parte* for a direction to the Registrar that he do any act which he is bound or entitled to do and has refused to do.

**7A Refusal to accept document for filing**

- (1) A Registrar may refuse to accept a document submitted for filing (including any document that, if accepted for filing, would become an originating document), or refuse to issue a document, if the Registrar considers the document to be an abuse of the process of the Court, or to be frivolous or vexatious:
- (a) on the face of the document; or
  - (b) by reference to:
    - (i) any document submitted for filing with the document; or
    - (ii) any document mentioned in the document or in any document mentioned in subparagraph (i).
- (2) A Registrar may seek the direction of a Judge about whether a document mentioned in subrule (1):
- (a) be accepted for filing or issued; or
  - (b) not be accepted for filing or issued; or
  - (c) not be accepted for filing, or issued, without the leave of a Judge.

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**Rule 7AA****7AA Powers of the Court that may be exercised by a Registrar (Act s 35A)**

For paragraph 35A (1) (h) of the Act, the following powers of the Court are prescribed:

- (a) a power of the Court under a provision of an Act mentioned in Schedule 3;
- (b) a power of the Court under a provision of these Rules mentioned in Schedule 3;
- (ba) the power of the Court under subsection 20A (2) of the Act to deal with a matter without an oral hearing if the requirements of paragraphs (a) to (c) of that subsection are met, if:
  - (i) the application was made *ex parte*; or
  - (ii) the parties to the matter consent to the Court dealing with the matter without an oral hearing;
- (c) the power of the Court under section 23 of the Act:
  - (i) to make an order for the dismissal of a proceeding in accordance with a written consent given by the parties to the proceeding, or by the lawyers on the record as representing the parties; and
  - (ii) to make an order, in conjunction with an order under subparagraph (i), for the payment of costs in accordance with a written consent given by the parties to the proceeding, or by the lawyers on the record as representing the parties;
- (d) the power of the Court under section 53A of the Act to make an order referring a proceeding, a part of a proceeding or any matter arising out of a proceeding:
  - (i) to an arbitrator for arbitration; or
  - (ii) to a mediator for mediation; or
  - (iii) to a suitable person for resolution by an alternative dispute resolution process;
- (e) the power of the Court under Order 35, rule 7 to set aside a judgment or order, made by the Registrar exercising the power, before it has been entered.

*Note* See also the following:

- (a) paragraphs 35A (1) (a) to (g) of the Act;

**Rule 7B**

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- (b) Order 78, rule 3A and Schedule 4;
- (c) rule 16.1 and Schedule 2 to the *Federal Court (Corporations) Rules 2000*;
- (d) rule 2.02 and Schedule 2 to the *Federal Court (Bankruptcy) Rules 2005*.

**7B Registrar's exercise of power (Act, s 35A)**

- (1) Subject to any direction by the Court or a Judge to the contrary, an application under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar under subsection 35A (1) of the Act must be made by motion on notice within 21 days after the day on which the power was exercised.
- (2) An application under paragraph 35A (7) (b) of the Act may be made orally to the Registrar at the time that the Registrar is hearing the application for the exercise of a power mentioned in subsection 35A (1) of the Act.
- (3) In this rule:  
**Registrar** has the meaning given by subsection 35A (8) of the Act.

**8 Temporary venue**

- (1) When any party to any proceeding desires to make an application therein to the Court or a Judge, and no Judge of the Court is available there to take the application, the party may lodge with the Registrar at the proper place a request that the application be heard and disposed of at another place.
- (2) Where a party makes a request under subrule (1), the Registrar at the proper place shall thereupon transmit the request to the Registrar at such other place (in this rule referred to as the **temporary venue**) as that Registrar may determine together with such documents as are necessary for the purpose of hearing and disposing of the application.
- (3) The application may then be heard and disposed of at that temporary venue and, as soon as it has been disposed of, all documents relating to it shall be re-transmitted to the Registry at the proper place.

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**Rule 9**

- (4) In any of the cases mentioned in this rule, if the application is to be made upon notice to any person, the notice shall specify that the application will be made before the Court or a Judge at the temporary venue on a day on which it is fixed to be heard.

**9 Transmission of documents**

- (1) In any such case as is mentioned in rule 8, any party desiring to make an immediate application to the Court or a Judge may, instead of requesting that the application be heard and disposed of at another place require the Registrar at the proper place to transmit by telegraph to the Registry at another place the contents of all such documents filed in the Registry at the proper place as are necessary for the purpose of hearing and disposing of the application, and the Registrar at the proper place shall, on payment by such party of the expense of transmission, transmit them accordingly to such other place (in this rule referred to as the *temporary venue*) as that Registrar may determine.
- (2) The copy so received by telegraph shall be filed in the Registry at the temporary venue and shall be receivable in evidence for the purpose of the application to the same extent as the original documents would be admissible.
- (3) If the application is to be made upon notice to any person, the notice shall state that the documents will be transmitted by telegraph to the Registry at the temporary venue.
- (4) If any person to whom notice is given under subrule (3) requires any other documents to be transmitted by telegraph to the Registry at the temporary venue, they shall be transmitted accordingly and shall be receivable in evidence in like manner.
- (5) Evidence of service of the notice may also be so transmitted.

**Rule 10**

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**10      Transmission of order**

When in any of the cases mentioned in rules 8 and 9 an order has been made by the Court or a Judge at a temporary venue, the Registrar at the temporary venue shall at the request and expense of either party and without payment of any further fee inform the Registrar at the proper place by telegraph of the effect of the order, and thereupon and without waiting for the receipt of the order, full effect shall be given to the order.

**11      Summary of order**

In any of the cases aforesaid a Registrar may, by consent of the parties, instead of transmitting by telegraph the full contents of any document transmit a summary thereof certified by him to be complete and correct, and the summary may be received and acted upon by the Court or Judge as if it were a copy of the original document.

**12      Facsimile**

Documents transmitted by use of facsimile transmitting equipment shall be deemed documents transmitted by telegraph for the purposes of this Order.

# Order 47      Sheriff

## Division 1      General

### 1      Interpretation

In this Order, unless the context or subject matter otherwise indicates or requires:

*bill* means bill of fees of the Sheriff.

*fees* includes charges and poundage.

*person interested* in relation to the fees of the Sheriff in respect of the service or execution of any process, means:

- (a) a party who lodges the process with the Sheriff for service or execution;
- (b) a solicitor who gives an undertaking to pay the fees or is otherwise liable to pay the fees; or
- (c) in the case of a writ of execution authorizing the Sheriff to levy the fees on any property, the person upon whose property the levy is authorized.

### 2      Suspension of execution

- (1) The Sheriff shall not suspend the execution of any process, except upon an absolute instruction in writing to that effect lodged with him by the party by whom the process is lodged.
- (2) A party who has lodged an instruction to suspend the execution of any process may withdraw the instruction by lodging with the Sheriff an instruction to execute the process.

### 3      Default

Where the Sheriff defaults by not executing any process according to its tenor, application may be made for an order directing him to execute the same.

**Rule 4**

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**4                      Execution: motion for directions**

The Sheriff may move the Court or a Judge *ex parte* or on notice for directions as to whether process should be executed, and the manner in which execution should be made.

**Division 2                      Fees**

**5                      Security**

- (1) Where a party to any proceeding lodges any process with the Sheriff for service or execution, the Sheriff may, upon lodgment and from time to time after lodgment:
  - (a) require the party to deposit with the Sheriff money in an amount fixed by the Sheriff to be applied in or towards satisfaction of the Sheriff's fees; or
  - (b) as to the whole or any part of the fees, take an undertaking by the party's solicitor to pay them instead of requiring a deposit.
- (2) Where a party required to make a deposit under subrule (1) objects to the amount fixed by the Sheriff, the Court may, by order, fix the amount to be deposited.
- (3) The Sheriff may defer service or execution of any process until a deposit is made or an undertaking is given in accordance with this rule.
- (4) Where it appears that the amount deposited under this rule exceeds the fees of the Sheriff, the Sheriff must repay the excess to the party depositing the money or to the party's solicitor.

**6                      Liability of solicitor**

Where a party, by his solicitor, lodges with the Sheriff any process for service or execution the solicitor shall be liable for the fees of the Sheriff, whether or not the solicitor has given an undertaking pursuant to paragraph 5 (1) (b).

## **7 Bill**

- (1) The Sheriff shall, on the request of a person interested, furnish him with a bill.
- (2) The Sheriff may serve a bill on any person interested.

## **8 Taxation**

- (1) Subject to subrule (2), the Court may order that fees be taxed.
- (2) Where the Court orders that fees be taxed, an application to proceed with the taxation shall be made by the Sheriff to a taxing officer by motion in the proceeding.

## **9 Determination**

- (1) Where a bill is served on or furnished to a person interested by the Sheriff, the amount of fees shown in the Bill shall, unless the Court otherwise orders, be binding as between the Sheriff and the person interested unless the person interested obtains an order for taxation under rule 8.
- (2) Where the fees are taxed pursuant to an application by a person interested under rule 8, the amount fixed on taxation shall, subject to any alteration on reconsideration review or appeal, be binding as between the Sheriff and the person interested.

## **10 Default by solicitor**

Where in any proceeding a solicitor has given an undertaking to pay, or is otherwise liable to pay, any fees of the Sheriff, and the solicitor does not pay the fees within 7 days after the amount has become binding under rule 9 as between the solicitor and the Sheriff, the Court may, on motion in the proceeding by the Sheriff, order the solicitor to pay the fees to the Sheriff.

## **Order 48                      Fair Work proceedings**

### **Division 1                    General**

#### **1                      Definitions for Order 48**

In this Order:

*Fair Work Act* means the *Fair Work Act 2009*.

*RAO Schedule* means Schedule 1 to the *Workplace Relations Act 1996*.

*Registered Organisations Act* means the *Fair Work (Registered Organisations) Act 2009*.

*Workplace Relations Act* means the *Workplace Relations Act 1996*.

#### **2                      Expressions used in the Workplace Relations Act, the Fair Work Act and the Registered Organisations Act**

Unless the contrary intention appears:

- (a) an expression used in Division 2 of this Order and in the Workplace Relations Act has the same meaning in Division 2 as it has in the Workplace Relations Act;
- (b) an expression used in Divisions 3 and 4 of this Order and in the Fair Work Act has the same meaning in Divisions 3 and 4 as it has in the Fair Work Act;
- (c) for a matter to which the RAO Schedule applies — an expression used in Divisions 5 and 6 of this Order and in the Workplace Relations Act has the same meaning in Divisions 5 and 6 as it has in the Workplace Relations Act;
- (d) for a matter to which the Registered Organisations Act applies — an expression used in Divisions 5 and 6 of this Order and in the Registered Organisations Act has the

same meaning in Divisions 5 and 6 as it has in the Registered Organisations Act.

### **3 Application of Order 48**

- (1) This Order applies to a proceeding in the Court to which the Workplace Relations Act, the Fair Work Act or the Registered Organisations Act applies.
- (2) The other Orders of these Rules apply, to the extent that they are relevant and not inconsistent with this Order, to a proceeding in the Court to which the Workplace Relations Act, the Fair Work Act or the Registered Organisations Act applies.

*Note* Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Workplace Relations Act continues to apply, on and after the WR Act repeal day, to conduct that occurred before the WR Act repeal day. The WR Act repeal day is 1 July 2009.

## **Division 2                      Unlawful termination of employment (Workplace Relations Act)**

### **4 Application in relation to alleged unlawful termination of employment (Workplace Relations Act s 663)**

An application by an employee for an order in relation to an alleged unlawful termination of the employee's employment that occurred before 1 July 2009 must:

- (a) be in accordance with Form 5; and
- (b) be accompanied by:
  - (i) a claim in accordance with Form 5A; and
  - (ii) a certificate issued under subsection 650 (2) of the Workplace Relations Act regarding the failure, or likely failure, of conciliation.

*Note 1* Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Workplace Relations Act continues to apply, on and after the WR Act repeal day, to conduct that occurred before the WR Act repeal day. The WR Act repeal day is 1 July 2009.

**Rule 5**

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*Note 2* Section 665 of the Workplace Relations Act sets out the orders the Court may make.

**Division 3 Unlawful dismissal from, or termination of, employment (Fair Work Act)**

**5 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, s 539 (2), table, item 11)**

An application for an order in relation to an allegation that an employee was dismissed in contravention of a general protection mentioned in Part 3-1 of the Fair Work Act must:

- (a) be in accordance with Form 5; and
- (b) be accompanied by:
  - (i) a claim in accordance with Form 5B; and
  - (ii) a certificate issued by Fair Work Australia under section 369 of the Fair Work Act that states that Fair Work Australia is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

*Note* Sections 545 and 546 of the Fair Work Act set out the orders the Court may make.

**6 Application in relation to alleged unlawful termination of employment (Fair Work Act, s 539 (2), table, item 35)**

An application by an employee for an order in relation to an alleged unlawful termination of the employee's employment that occurred on or after 1 July 2009 must:

- (a) be in accordance with Form 5; and
- (b) be accompanied by:
  - (i) a claim in accordance with Form 5C; and

- (ii) a certificate issued by Fair Work Australia under section 777 of the Fair Work Act that states that Fair Work Australia is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

*Note* Sections 545 and 546 of the Fair Work Act set out the orders the Court may make.

## **Division 4                      Unlawful discrimination (Fair Work Act)**

### **7                      Application in relation to alleged discrimination (Fair Work Act, s 539 (2), table, item 11)**

An application for an order in relation to an alleged contravention of subsection 351 (1) of the Fair Work Act must:

- (a) be in accordance with Form 5; and
- (b) be accompanied by:
  - (i) a claim in accordance with Form 5D; and
  - (ii) a certificate issued by Fair Work Australia under section 369 of the Fair Work Act that states that Fair Work Australia is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

*Note 1* Sections 545 and 546 of the Fair Work Act set out the orders the Court may make.

*Note 2* Under subsection 351 (1) of the Fair Work Act, an employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. The meaning of 'adverse action' is defined in section 342 of the Fair Work Act.

## Division 5 Rules to show cause

### 8 Definition for Division 5

In this Division:

**rule to show cause** means a rule calling on a person, or an organisation, to show cause why an order should not be made in relation to the person or organisation under:

- (a) if the rule to show cause relates to conduct that occurred before 1 July 2009 — section 163, 164 or 164A or subsection 167 (2) of the RAO Schedule.
- (b) in any other case — section 163, 164 or 164A or subsection 167 (2) of the Registered Organisations Act.

*Note 1* Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Workplace Relations Act continues to apply, on and after the WR Act repeal day, to conduct that occurred before the WR Act repeal day. The WR Act repeal day is 1 July 2009.

*Note 2* Section 163 of the RAO Schedule and section 163 of the Registered Organisations Act provide that a member of an organisation may apply to the Court for an order declaring that the whole or a part of a rule of the organisation contravenes section 142 of the RAO Schedule or section 142 of the Registered Organisations Act (which states general requirements for rules), or that the rules of the organisation contravene section 142 of the RAO Schedule or section 142 of the Registered Organisations Act, in a particular respect.

*Note 3* Section 164 of the RAO Schedule and section 164 of the Registered Organisations Act provide that a member of an organisation may apply to the Court for an order giving directions for the performance or observance of any of the rules of the organisation by any person who is under an obligation to perform or observe the rules.

*Note 4* Section 164A of the RAO Schedule and section 164A of the Registered Organisations Act provide that a member of an organisation may apply to the Court for an order directing a person (who may be the person who has breached the rule) to do specified things that will, in the opinion of the Court, as far as is reasonably practical, place the organisation in the position in which it would have been if the breach of the rule had not occurred. The Court may make the order if satisfied that a person who was under an obligation to perform or observe the rule or rules of the organisation has acted unreasonably in so breaching the rule or rules.

*Note 5* Subsection 167 (1) of the RAO Schedule and subsection 167 (1) of the Registered Organisations Act provide that a person or organisation may apply to the Court for a declaration as to the entitlement of a person to be

admitted as a member of the organisation or to remain a member of the organisation. Under subsection 167 (2) of the RAO Schedule or subsection 167 (1) of the Registered Organisations Act, the Court may make an order to give effect to a declaration made under that subsection.

## **9 Application of Division 5**

- (1) This Division applies to an application for a rule to show cause.
- (2) However, this Division does not apply unless:
  - (a) if the rule to show cause relates to conduct that occurred before 1 July 2009 — the granting of a rule to show cause is necessary, under paragraph 324 (2) (a) or (q) of the RAO Schedule, for the Minister to authorise payment of financial assistance to an applicant for an order under section 163, 164 or 164A or subsection 167 (2) of the RAO Schedule.
  - (b) in any other case — the granting of a rule to show cause is necessary, under paragraph 324 (2) (a) or (q) of the Registered Organisations Act, for the Minister to authorise payment of financial assistance to an applicant for an order under section 163, 164 or 164A, or subsection 167 (2) of the Registered Organisations Act.

*Note* Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Workplace Relations Act continues to apply, on and after the WR Act repeal day, to conduct that occurred before the WR Act repeal day. The WR Act repeal day is 1 July 2009.

## **10 Requirements for applications (RAO Schedule ss 163, 164, 164A and 167 and Registered Organisations Act ss 163, 164, 164A and 167)**

- (1) An application may be made to a Judge ex parte.
- (2) The application must be accompanied by an affidavit in accordance with subrule (3), (4), (5) or (6).

**Rule 10**

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- (3) If the application is made under section 163 of the RAO Schedule or section 163 of the Registered Organisations Act, the affidavit must state:
  - (a) the rule, or part of the rule, of the organisation that is alleged to contravene section 142 of the RAO Schedule or section 142 of the Registered Organisations Act; and
  - (b) the ground on which the rule, or part of the rule, is alleged to contravene the section; and
  - (c) the facts and other reasons relied on by the applicant in support of the application.
- (4) If the application is made under section 164 of the RAO Schedule or section 164 of the Registered Organisations Act, the affidavit must state:
  - (a) the nature of the order sought by the applicant; and
  - (b) each rule of the organisation the applicant seeks to have performed or observed by a person who is under an obligation to perform or observe the rule; and
  - (c) the ground relied on by the applicant to establish the obligation of the person to perform or observe the rule.
- (5) If the application is made under section 164A of the RAO Schedule or section 164A of the Registered Organisations Act, the affidavit must state:
  - (a) the nature of the order sought by the applicant; and
  - (b) each rule of the organisation the breach of which the application seeks to rectify; and
  - (c) the facts and other reasons relied on by the applicant in support of the application.
- (6) If the application is made under section 167 of the RAO Schedule or section 167 of the Registered Organisations Act, the affidavit must state:
  - (a) the nature of the order sought by the applicant; and
  - (b) each rule of the organisation on which the application is based; and
  - (c) the facts and other reasons relied on by the applicant in support of the application.

**11 Form of rule to show cause — Form 6**

A rule to show cause must be in accordance with Form 6.

**12 Filing of rule to show cause**

If the Court grants a rule to show cause, the applicant must file with the Court the rule and the supporting affidavit as soon as practicable after the rule is granted.

**Division 6 Inquiries and ballots in relation to registered organisations****13 Application of Division 6**

This Division applies to the following applications:

- (a) an application, under section 200 of the RAO Schedule, for an inquiry into an election conducted before 1 July 2009 for an office in an organisation, or branch of an organisation;
- (b) an application under subsection 69 (1) of the RAO Schedule for an inquiry into an alleged irregularity in relation to a ballot held under Part 2 of Chapter 3 of the RAO Schedule;
- (c) an application under subsection 108 (1) of the RAO Schedule for an inquiry into an alleged irregularity in relation to a ballot held under Part 3 of Chapter 3 of the RAO Schedule;
- (d) an application under section 200 of the Registered Organisations Act for an inquiry into an election conducted on or after 1 July 2009 for an office in an organisation, or branch of an organisation;
- (e) an application under subsection 69 (1) of the Registered Organisations Act for an inquiry into an alleged irregularity in relation to a ballot conducted under Part 2 of Chapter 3 of the Registered Organisations Act;

**Rule 14**

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- (f) an application under subsection 94 of the Registered Organisations Act for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation;
- (g) an application under subsection 108 (1) of the Registered Organisations Act for an inquiry into an alleged irregularity in relation to a ballot held under Part 3 of Chapter 3 of the Registered Organisations Act;
- (h) an application, under subsection 109 (1) of the Registered Organisations Act, for an order in relation to the withdrawal of a constituent part of an amalgamated organisation from the organisation.

*Note 1* Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Workplace Relations Act continues to apply, on and after the WR Act repeal day, to conduct that occurred before the WR Act repeal day. The WR Act repeal day is 1 July 2009.

*Note 2* Under regulation 82 of the *Fair Work (Registered Organisations) Regulations 2009*, an application mentioned in paragraph 10 (f) must be in accordance with Form 2 of those Regulations.

*Note 3* Under regulation 107 of the *Fair Work (Registered Organisations) Regulations 2009*, an application mentioned in paragraph 10 (h) must be in accordance with Form 4 of those Regulations.

**14 Form of application for an inquiry or ballot**

- (1) An application mentioned in paragraph 13 (a) or paragraph 13 (d) must:
  - (a) be in accordance with Form 50A; and
  - (b) be accompanied by an affidavit stating the nature of the applicant's claim and the material facts on which the claim is based.
- (2) An application mentioned in paragraph 13 (b) or paragraph 13 (e) must:
  - (a) be in accordance with Form 50B; and
  - (b) be accompanied by an affidavit stating the nature of the applicant's claim and the material facts on which the claim is based.

- (3) An application mentioned in paragraph 13 (c) or paragraph 13 (g) must:
- (a) be in accordance with Form 50C; and
  - (b) be accompanied by an affidavit stating the nature of the applicant's claim and the material facts on which the claim is based.

## **15 Duties of District Registrar on receiving application**

On receiving an application and any supporting documents, the District Registrar must:

- (a) sign and affix the stamp of the Court to the application; and
- (b) endorse on the application:
  - (i) the date, time and place fixed for a directions hearing; and
  - (ii) if the Court or a Judge has directed that a person be given notice of the application — the name and address of the person; and
- (c) provide the applicant with a stamped copy of the application and a copy of any supporting documents by:
  - (i) if the application was presented to the Registry — giving them to the applicant; or
  - (ii) if the application was sent to the Registry by post or document exchange — sending them to the applicant in accordance with Order 1, subrule 5A (11); or
  - (iii) if the application was sent to the Registry by facsimile transmission — sending them to the applicant in accordance with Order 1, paragraph 5AB (4) (c); or
  - (iv) if the application was sent to the Registry by electronic communication — sending them to the applicant in accordance with Order 1, paragraph 5AC (5) (e).

**Rule 16**

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**16 Service of application and supporting documents**

- (1) At least 2 days before the date fixed for the directions hearing, the applicant must serve a stamped copy of the application, and a copy of any supporting documents, on each other party (if any) to the proceeding.
- (2) The stamped copy of the application must:
  - (a) have endorsed on it the date, time and place fixed for the directions hearing; and
  - (b) state that, if the party, or the party's counsel, solicitor or authorised representative, does not appear at the directions hearing, the proceeding may be heard and orders may be made in the absence of the party, or the party's counsel, solicitor or authorised representative.

**17 Application for interim orders**

- (1) This rule applies to the following applications:
  - (a) an application for an interim order to be made under section 204 of the RAO Schedule in relation to an inquiry into an election held before 1 July 2009 for an office in an organisation, or a branch of an organisation;
  - (b) an application for an order to be made under subregulation 77(1) of the *Fair Work (Registered Organisations) Regulations 2009* in relation to an inquiry into an alleged irregularity in relation to a ballot conducted under Part 2 of Chapter 3 of the RAO Schedule;
  - (c) an application for an interim order to be made under section 204 of the Registered Organisations Act in relation to an inquiry into an election held on or after 1 July 2009 for an office in an organisation, or a branch of an organisation;
  - (d) an application for an order to be made, under subregulation 77(1) of the *Fair Work (Registered Organisations) Regulations 2009*, in relation to an inquiry into an alleged irregularity in relation to a ballot conducted under Part 2 of Chapter 3 of the Registered Organisations Act.

- (2) An application may be made:
  - (a) ex parte; or
  - (b) in any other way directed by the Court or a Judge.

## **18 Court directions to issue subpoenas**

- (1) If the Court is of the opinion that an inquiry would be assisted by the production of a document or other item, or by calling a witness, the Court may direct the Registrar to issue a subpoena for the production of the document or other item, or for the witness to attend the inquiry.
- (2) The Registrar must arrange for:
  - (a) service of each subpoena; and
  - (b) payment of attendance money and witness expenses for each witness attending the inquiry.

**Rule 1**

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## **Order 49      Proceedings for an offence**

### **1      Prosecutions**

- (1) A prosecution for an offence shall be commenced by summons upon information.
- (2) The person bringing the prosecution shall be called a prosecutor, and the person against whom the prosecution is brought shall be called a defendant.

### **2      Form of summons, Forms 51 and 52**

- (1) A summons shall:
  - (a) state the offence with which the defendant is charged; and
  - (b) give particulars of the act or omission of the defendant to which the prosecution relates.
- (2) A summons and an information shall be in the forms numbered 51 and 52 in Schedule 1.

### **3      Summons in paragraphs**

- (1) A summons shall not be prolix and shall be divided into paragraphs numbered consecutively.
- (2) So far as convenient, each paragraph shall deal only with one matter.

### **4      Appointment of date**

- (1) The summons shall appoint a date on which the defendant is to appear before the Court to answer the charge.

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**Rule 5**

- (2) Except where the defendant enters a plea of guilty or the Court otherwise orders, on the day appointed under subrule (1), the charge shall not be heard, but the Court shall:
  - (a) give any necessary directions as to the conduct of the prosecution and defence; and
  - (b) fix a date for hearing or further directions.

**Form 48**

- (3) If the defendant does not appear on the date appointed pursuant to subrule (1), the Court may issue a warrant for his arrest.
- (4) The warrant shall be in the form numbered 48 in Schedule 1.

**5 Affidavits as to fine or penalty**

- (1) Unless the Court otherwise directs, where the Court is empowered to impose a fine or penalty under any Act, the prosecutor shall, and the defendant may, file such affidavit evidence as each considers necessary having regard to the terms of the relevant Act to assist the Court to determine the appropriate fine or penalty.
- (2) The provisions of Order 14 relating to affidavits including requirement for cross-examination apply in relation to affidavits filed in accordance with subrule (1).
- (3) This rule applies in a case where there has been a plea of guilty or where after a finding of guilty the matter has been adjourned to enable evidence as to the appropriate fine or penalty or where the defendant proposes to plead guilty or not to deny the charge alleged in the summons and has so advised the prosecutor at the hearing on the date appointed under subrule 4 (1) or within the time then appointed.

**Rule 1**

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## **Order 50      Case stated and questions reserved**

### **1      Definition for Order 50**

In this Order:

***FWA President*** means the President of Fair Work Australia appointed under section 626 of the *Fair Work Act 2009*.

### **2      Application**

- (1) A case to be stated, or a question to be reserved or to be referred for the consideration of the Court, must be in the form of a special case.
- (2) The special case must:
  - (a) be divided into consecutively numbered paragraphs; and
  - (b) state the facts concisely; and
  - (c) annex all documents necessary to enable the Court to decide the questions raised by the special case.
- (3) The Court may draw from the facts stated and the documents annexed in the special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

### **3      Special case to be prepared etc**

Unless the Judge, Court, Tribunal, FWA President or other authority stating the case or reserving the question directs, the special case must be:

- (a) prepared in draft by the party having the carriage of the proceeding after consultation with the other parties, and must contain an address for service of each of the parties; and

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**Rule 6**

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- (b) settled by the Judge, Court, Tribunal, FWA President or other authority stating the case or reserving the question; and
- (c) transmitted by the Judge, Court, Tribunal, FWA President or other authority stating the case or reserving the question, with four additional copies, to the Registry at the proper place.

**4 Setting down for hearing**

When a special case has been referred, the Registrar will:

- (a) set down the proceeding for a directions hearing; and
- (b) notify each party of the date appointed for the directions hearing.

**5 Setting down for hearing (Fair Work Act 2009 s 608)**

If a question is referred to the Court by the FWA President under section 608 of the *Fair Work Act 2009* the District Registrar will:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the FWA President and each party to the proceeding, of the date appointed for the directions hearing.

**6 Party having carriage of the proceedings**

If a question is referred to the Court by a Tribunal or the FWA President, the party having the carriage of the proceeding for the purpose of rule 2 must be:

- (a) if the question is referred by the Tribunal or the FWA President at the request of a party — that party; and
- (b) if the question is referred by a Tribunal of its own motion — the person who made the decision to which the proceeding before the Tribunal relates; and
- (c) if the question is referred by the FWA President of his or her own motion — the party appointed by the FWA President for that purpose.

**Rule 1**

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## **Order 51      *Judiciary Act 1903* — section 78B**

### **1      Notice of a constitutional matter — Form 53**

- (1) Where a proceeding pending in the Court involves a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903* the party whose case raises the matter shall file a notice of a constitutional matter in the Registry at the proper place.
- (2) Notice of a constitutional matter shall state:
  - (a) specifically the nature of the matter; and
  - (b) the facts showing that the matter is one to which subrule (1) applies.
- (3) The notice of a constitutional matter shall be in or substantially in the form numbered 53 in Schedule 1.

### **2      Notices of a constitutional matter**

The party whose case raises the constitutional matter, or such other party as the Court may direct, must file notice of a constitutional matter and serve a copy of the notice on all other parties and the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory:

- (a) if the matter arises before the directions hearing — not later than 2 days before the date of the directions hearing;
- (b) if the matter arises at the directions hearing — within such time as the Court or a Judge directs; or
- (c) otherwise if the matter arises before the date fixed for trial — not later than 10 days before that date.

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**Rule 4****3 Affidavit of service**

The party whose case raises the constitutional matter shall file an affidavit of service of the notice of a constitutional matter proving compliance with paragraph 2 (a), (b) or (c) not later than the day before:

- (a) the date appointed for the directions hearing;
- (b) the date ordered by the Court or a Judge at the directions hearing; or
- (c) the date fixed for trial.

**4 Additional papers for intervening Attorneys-General**

The party whose case raises the constitutional matter shall provide copies of any additional papers filed in the matter to any intervening Attorney-General as soon as practicable after notice of the intervention is given to the party.