

Statutory Rules

1979 No. 140

RULES UNDER THE FEDERAL COURT OF AUSTRALIA ACT 1976¹

We, Judges of the Federal Court of Australia hereby make the following
Rules of Court under the *Federal Court of Australia Act 1976*.

Dated this sixteenth day of July 1979.

N. H. BOWEN *C.J.*
R. A. SMITHERS *J.*
R. A. BLACKBURN *J.*
C. A. SWEENEY *J.*
J. A. NIMMO *J.*
W. E. S. FORSTER *J.*
F. X. L. CONNOR *J.*
A. E. WOODWARD *J.*
R. J. A. FRANKI *J.*
J. B. SWEENEY *J.*
J. H. MUIRHEAD *J.*
P. G. EVATT *J.*
R. J. B. ST. JOHN *J.*
R. M. NORTHROP *J.*
F. G. BRENNAN *J.*
J. A. KEELY *J.*
W. P. DEANE *J.*
J. L. TOOHEY *J.*
D. G. P. MCGREGOR *J.*
F. R. FISHER *J.*
J. F. GALLOP *J.*
J. D. DAVIES *J.*
J. S. LOCKHART *J.*

Judges of the Federal
Court of Australia

J. T. HOWARD
Registrar

FEDERAL COURT RULES

ORDER 1

PRELIMINARY

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| 1. These Rules may be cited as the Federal Court Rules. | Short title |
| 2. These Rules shall come into operation on 1 August 1979. | Commence-
ment |
| 3. 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the Federal Court of Australia Rules, being Statutory Rule No. 20 of 1977 and Statutory Rule No. 220 of 1977, are repealed. | Repeal |
| 4. In these Rules, unless the contrary intention appears— | Interpret-
ation |
| “ the Act ” means the <i>Federal Court of Australia Act</i> 1976; | |
| “ Australia ” or “ the Commonwealth ” means the Commonwealth of Australia and when used in a geographical sense includes external territories; | |
| “ 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; | |
| “ Commonwealth ” means the Commonwealth of Australia and includes a Territory; | |
| “ convention ” means an agreement, arrangement, treaty or convention made between the Crown in right of the Commonwealth or, where appropriate, in right of a State, and a country other than Australia regarding legal proceedings in civil matters; | |
| “ convention country ” means a country other than Australia to which a convention applies; | |
| “ corporation ” includes any artificial person other than an organization; | |
| “ cross-claim ” includes a counter-claim, cross-action, set-off, and third party claim; | |
| “ directions hearing ” means a directions hearing appointed in an application pursuant to Order 4, and except for the purposes of computation of time within which acts must be done, includes any other hearing on which the Court gives directions as to the conduct of the proceedings; | |
| “ document ” includes any record of information, which is a document within the definition contained in section 7A of the <i>Evidence Act</i> 1905; | |

- “ document exchange box ” means a box in a document exchange approved by the Registrar;
- “ examiner ” means an officer of the Court or other person appointed under Order 24 for the examination on oath before him of any person;
- “ hearing ” includes any hearing before the Court, whether final or interlocutory, and whether in open court or in chambers;
- “ Judge ” means a Judge of the Court (including the Chief Judge) and in the expression “the Court or a Judge” means a Judge sitting in chambers;
- “ mentally disabled person ” means a person who, owing to mental illness, is incapable of managing his affairs in respect of the proceedings;
- “ organization ” has the same meaning as in the *Conciliation and Arbitration Act 1904*;
- “ 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;
 - (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; and
- “ tutor ” means a next friend, guardian ad litem or committee of the person or estate of a person under disability.

5. 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.

6. (1) The first document filed in any proceeding shall have a serial number assigned to it for the Division of the Court and for the Registry in which it is filed, and that and each other document in the proceedings shall bear that number preceded by a reference to the appropriate Registry and Division 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. (1) Subject to sub-rule (2), the forms in the First Schedule shall be used where applicable notwithstanding the absence of any specific provision in the Rules in respect of the use of any particular form.

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

9. (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, on application by that person, give directions.

(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.

10. In any case where the Regulations made under the *Conciliation and Arbitration Act* 1904 prevail over the provisions of these Rules, it shall, to the extent that duplication would otherwise be involved, be unnecessary to comply with these Rules.

11. (1) Except as to Order 41 (which relates to form of documents), these Rules do not apply to proceedings under the *Bankruptcy Act* 1966.

(2) Subject to Order 41, the practice and procedure of the Court in relation to proceedings under the *Bankruptcy Act* 1966 shall be in accordance with the Bankruptcy Rules and the Bankruptcy (Offences) Rules as in force for the time being.

ORDER 2

SITTINGS AND VACATION

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| Sittings | 1. 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 Judge directs. |
| Vacations | 2. There shall be a fixed vacation in each year during the period from the beginning of the Monday before 24 December until the first Monday in February together with such other variable vacation or vacations as the Chief Judge shall determine. |
| Court holiday | 3. The day after Easter Monday in each year is a holiday to be observed by the Court and the Registry. |

ORDER 3

TIME

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| Month | 1. 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. |
| Reckoning | <p>2. (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.</p> <p>(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.</p> <p>(3) Where, apart from this sub-rule, 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.</p> <p>(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.</p> <p>(5) Sub-section 36 (2) of the <i>Acts Interpretation Act</i> 1901 does not apply to these Rules.</p> |

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

(2) The Court or a Judge may extend time under sub-rule (1) either before or after the time expires and whether or not an application for the 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. 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. Fixing times

5. In the period from the beginning of the day on which the fixed vacation begins until the end of 14 January next following, time shall not, unless the Court otherwise orders, run so as to put any party in default in respect of any act for the doing of which a time is fixed by the Rules or by any judgment or order of the Court but business may be done during that period. Vacation

6. (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. Registry hours

(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.

ORDER 4

COMMENCEMENT OF PROCEEDINGS

1. (1) Except as otherwise provided in these Rules all proceedings in the Court's original jurisdiction shall be commenced by filing an application. Commencement by application—Form 5

(2) An application shall be in or substantially in the form numbered 5 in the First Schedule.

2. (1) A party claiming relief shall be called an applicant. Parties

(2) A party against whom relief is claimed shall be called a respondent.

Relief
claimed

3. (1) The application shall state specifically the relief claimed by the applicant.

(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.

Name,
address, &c.

4. (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 and telephone number 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 and telephone number 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 him; and
- (b) if the solicitor declares in writing that the application was not filed by him, the Court may, on application by a respondent, stay the proceeding.

Notice to
appear

5. 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 his counsel or solicitor at the time and place stated in the application, the proceeding may be heard and the respondent will be liable to suffer judgment or an order against him; and
- (b) before any attendance at that time the respondent must enter an appearance in the Registry.

Affidavit or
statement of
claim—
Form 7

6. (1) The applicant shall file and serve with the application either an affidavit or a statement of claim, whichever is appropriate.

(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. (1) Upon an application and affidavit or statement of claim being filed, the Registrar on the applicant's request shall sign and seal with the seal of the Court a sufficient number of copies of the application for service and proof of service. Filing and copies

(2) The serial number of the proceeding shall be endorsed on each document.

8. Subject to rule 9, an application shall state a date for a directions hearing. Date for directions hearing

9. (1) Where by his application an applicant seeks interlocutory relief, he shall make a distinct claim for that relief. Claim for interlocutory relief

(2) A date for the hearing of the claim for interlocutory relief shall be endorsed on the application.

(3) Where a date for hearing is endorsed on the application under sub-rule (2), a separate date for a directions hearing shall not also be endorsed on the application.

(4) At the hearing of the claim for interlocutory relief the Court may give such directions as it thinks fit as on a directions hearing.

10. (1) The date for a hearing under rule 8 or rule 9 to be endorsed on the application shall be obtained from the Registry. Endorsement of date

(2) Where the Court has made an order abridging time, the application shall bear a note of the order made.

11. The time to be limited for a respondent to enter an appearance shall be not later than the date for hearing stated in the application pursuant to rule 8 or rule 9 of this Order. Time for appearance

12. 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. Time for service

13. (1) Where a date for hearing has been obtained or made, the Court or the Registrar may alter the date to a later date and may authorize the solicitor for a party to make corresponding alterations in any copy for service of any application or notice. Alteration of date

(2) The Registrar may give authority by telephone or by such other means as he thinks fit.

14. (1) Subject to sub-rule (2) and to Order 43 (which relates to disability), any person may proceed in the Court by a solicitor or in person. Suit 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.

(3) Sub-rule (2) does not apply to an organization.

Proceeding
by rule—
Form 6

15. (1) This rule shall operate only for so long as sub-section 141A (2) of the *Conciliation and Arbitration Act* 1904 specifies the making of a rule as a condition precedent to the grant of financial assistance.

(2) A proceeding under section 140 of section 141 of the *Conciliation and Arbitration Act* 1904 shall be by rule in accordance with Form 6 calling upon the person or organization concerned to show cause why the order should not be made.

(3) An application for a rule specified in the last preceding sub-regulation may be made to a Judge *ex parte* supported by an affidavit verifying the facts upon which the application is based.

(4) The affidavit in support of an application under section 140 of the *Conciliation and Arbitration Act* 1904 shall set forth—

- (a) the rule, or the part of the rule of the organization, to which the application relates;
- (b) the ground specified in that section upon which the application is founded; and
- (c) a short statement of the reasons relied on by the applicant.

(5) The affidavit in support of a complaint under section 141 of the *Conciliation and Arbitration Act* 1904 shall set forth—

- (a) the rule or rules of the organization the performance or observance of which is in question;
- (b) the nature of the order sought; and
- (c) a short statement of the grounds relied on by the applicant as establishing the obligation of the person against whom the order is sought to perform or observe the rule or rules in question.

(6) As soon as practicable after an application for a rule specified in sub-regulation (1) of this regulation is granted, the applicant shall file the rule and the supporting affidavit with the Registrar.

Proceeding
under section
191 of
*Conciliation
and
Arbitration
Act* 1904—
Forms 51
and 52

16. (1) This rule shall operate only for so long as sub-section 191 (2) of the *Conciliation and Arbitration Act* 1904 provides to the effect of sub-rule (2) hereof.

(2) A proceeding under section 191 of the *Conciliation and Arbitration Act* 1904 may be instituted by summons issued upon information without indictment.

ORDER 5

CROSS-CLAIMS AND THIRD PARTY CLAIMS

1. (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. Claim by respondent

(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 sub-rule (2), a respondent may cross-claim for contribution or indemnity.

2. (1) A cross-claim shall be entitled in the proceeding with an addition showing the names of the parties to the cross-claim. Cross-claim
-Form 1

(2) Order 4, rule 3 applies to a cross-claim whether the cross-claim is against an applicant or any other person.

3. 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. Title

4. 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. Rules
applicable
where
statement of
claim

5. (1) A respondent may file a pleading by way of cross-claim within the time fixed for filing his defence or any extension thereof. Pleading—
Forms 8, 9,
10

(2) A cross-claim under sub-rule (1) shall be in or substantially in the forms numbered 8, 9 or 10 in the First Schedule.

(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 proceedings.

(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.

Service of
prior
pleadings—
Form 11

6. (1) Where a respondent to a cross-claim is made a party to the proceedings by the filing of the cross-claim, he may, by notice 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 sub-rule (1) to his notice of appearance.

(3) Where a notice under sub-rule (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.

Rules
applicable
where
affidavit

7. Rules 8 and 9 apply 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.

Cross-claims
by leave

8. (1) Subject to sub-rules 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 sub-rule (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 the First Schedule, 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 sub-rule (3) in his affidavit in reply to the applicant's claim, and need not file a separate affidavit in support of the cross-claim.

Cross-claim
after
directions
hearing

9. (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 sub-rule (1) shall not cross-claim after the directions hearing without the leave of the Court.

10. (1) Where a respondent to a cross-claim has, on the date of Service 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. (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. Conduct of proceeding generally

(2) Subject to this Order and to Order 11, and without limiting the generality of sub-rule (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) Sub-rules (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
- (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.

Directions

12. (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;
- (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 4-7 (directions hearing) apply to a motion for directions under this rule.

Default of
respondent
to
cross-claim

13. Where a respondent to a cross-claim does not enter an appearance or file a defence, if and as required by these Rules, or does not file a defence in accordance with an order to do so, 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 on any other cross-claim in the proceeding shall, unless the Court otherwise orders, be 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.

14. Where judgment on a cross-claim is pronounced and an order made in default of appearance or where applicable, in default of defence or in consequence of default in compliance with an order or direction of the Court, the Court may set aside or vary the judgment or order.

Setting aside
default
judgment

15. 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.

Separate
prosecution

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

Contribution
or indemnity

- (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.

17. Where in any proceeding—

Offer of
contribution

- (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.

ORDER 6

PARTIES AND CAUSES OF ACTION

1. 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.

Multiple
claims

2. Two or more persons may be joined as applicants or respondents in any proceeding—

Joinder of
parties
generally

(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; or

- (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.

Joint right

3. (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 action; and
- (b) any of them who does not consent to being joined as an applicant shall be made a respondent.

(2) Sub-rule (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.

Leave under
rule 2 and
sub-rule
3 (2)

4. (1) The Court may grant leave under rule 2 before or after the joinder and may grant leave under sub-rule 3 (2) before or after the non-joinder.

(2) An applicant may apply for leave under rule 2 or sub-rule 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.

Common
liability

5. (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.

Inconvenient
joinder

6. 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.

Misjoinder
and
non-joinder
of parties

7. (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.

Addition of
parties

8. (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, on application by him or by any party or of its own motion, may order that he 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 his consent.

9. Where a party—

Removal of parties

(a) has been improperly or unnecessarily joined; or

(b) has ceased to be a proper or necessary party,

the Court, on application by any party or of its own motion, may order that he cease to be a party and make orders for the further conduct of the proceeding.

10. (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. Death, transmission, &c.

(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.

(3) The Court may act under sub-rule (2) on application by a party or by a person to whom the interest or liability passes or of its own motion.

11. (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— Further conduct of proceedings

(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 sub-rule (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.

Failure to
proceed after
death of
party

12. (1) Where—

- (a) a party dies but a cause of action in the proceeding survives his 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, on application by a party or by a person to whom liability on the cause of action survives on the death, order that, unless, within a specified time after service of the order in accordance with sub-rule (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 sub-rule (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.

Representa-
tion:
concurrent
interests

13. (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, on the application of the applicant, 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 sub-rule (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 sub-rule (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 sub-rule (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.

14. (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 proceeding is binding on that person. Representation of beneficiaries by trustees

(2) Sub-rule (1) does not limit the power of the Court to order a person having an interest to be made a party.

15. (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 he has no personal representative, the Court may, on the application of any party— Deceased person

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

ORDER 7

SERVICE

1. (1) Subject to the provisions of this Order, originating process shall be served personally on each respondent. Originating process

(2) The copy for service shall be signed and sealed as mentioned in Order 4, rule 7.

(3) Where a respondent to any originating process files an unconditional appearance, the originating process shall be taken to have been served on him personally on the date on which his notice of appearance is filed or on such earlier date as may be proved.

Personal
service: how
effected

2. (1) Personal service of a document is effected on—

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

or as the Court or a Judge may direct.

(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.

Mode of
service

3. 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.

Ordinary
service: how
effected

4. (1) Where personal service of a document is not required, the document may be served—

- (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 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 organization by serving the document in accordance with such provision; or

- (d) where a person to be served has, under rule 7 of this Order, filed a notice for service at an exchange box of a solicitor, by leaving a copy of the document, addressed to that solicitor, in that exchange box.

(2) For the purposes of sub-rule (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 sub-rule (1), he has no address for service in the proceeding, his usual or last known place of business or of abode shall be his 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.

5. For the purposes of the proof of service, evidence of a statement Identity 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. (1) An address for service shall be the address of a place within Address for service ten kilometres of the Registry at the proper place (other than the document exchange referred to in rule 7 of this Order) at which documents in the proceedings may, during ordinary business hours, be left for the person whose address for service it is and to which documents in the proceeding may be posted for that person.

(2) The address for service of a person represented by a solicitor shall be the office of the solicitor or of his 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. (1) A person whose address for service is the office of a solicitor who uses the facilities of a document exchange may file a notice Document exchange—Form 12 authorizing service at that solicitor's said document exchange box in the prescribed form or add a notice to that effect to his originating process (other than a cross-claim) or notice of appearance.

(2) A person may change the particulars stated in his notice authorizing service at a document exchange box by filing a notice showing the new particulars or cancel the notice authorizing service at a document exchange box by filing a notice to that effect.

(3) A person who files a notice authorizing service at a document exchange box (other than a notice added to an originating process or a notice of appearance), a notice of a change or a notice of cancellation shall, 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.

Acceptance
by solicitor

8. (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.

Substituted
service

9. (1) Where for any reason it is impractical to serve a document in the manner set out in the Rules, the Court may on an application 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 sub-rule (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.

Informal
service:
confirmation

10. 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.

Service by
filing

11. Where personal service is not required, and the person to be served is in default of appearance or has entered an appearance but has no address for service in the proceeding, the filing of the document shall, unless the Court otherwise orders, have effect as service of the document on that person.

Notice, &c.,
by the Court

12. 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. 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. Injunction:
service

14. 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. Service
under
contract

15. (1) This rule shall operate for so long as section 146 of the *Conciliation and Arbitration Act* 1904 provides to the effect of sub-rule (2) hereof. Service upon
an
organization

(2) Service of any notice or process on the President, Chairman or Secretary or at the registered office of an organization shall be sufficient for all purposes.

ORDER 8

SERVICE OUTSIDE THE JURISDICTION

Division 1—General

1. Subject to rule 2, originating process may be served outside the Commonwealth in the following cases: Cases for
service of
originating
process

- (a) where the proceeding is founded on a cause of action arising in the Commonwealth;
- (b) where the proceeding is founded on a breach of an Act, where the breach is committed in the Commonwealth;
- (c) where the proceeding is founded on a breach, wherever occurring, of an Act, and is brought in respect of, or for the recovery of, damage suffered wholly or partly in the Commonwealth;
- (d) where the proceeding is for contribution or indemnity in respect of a liability enforceable by a proceeding in the Court;
- (e) where the person to be served is domiciled, incorporated or ordinarily resident in the Commonwealth, or being a corporation carries on business in the Commonwealth or is registered in any State or Territory as a foreign company;

- (f) where the proceeding is a proceeding in respect of which the person to be served has submitted to the jurisdiction of the Court;
- (g) where the proceeding is properly brought against a person served or to be served in the Commonwealth and the person to be served outside the Commonwealth is properly joined as a party to the proceeding;
- (h) where the subject matter of the proceeding, so far as concerns the person to be served is property in the Commonwealth;
- (i) where the proceeding is for the perpetuation of testimony relating to property in the Commonwealth;
- (j) where the proceeding is for an injunction as to anything to be done in the Commonwealth or against the doing of any act in the Commonwealth, whether damages are also sought or not;
- (k) where the proceeding affects the person to be served in respect of—
 - (i) his membership of or office within a corporation incorporated or carrying on business within the Commonwealth;
 - (ii) his membership of or office within an association or organization formed or carrying on the whole or part of its affairs within the Commonwealth; or
 - (iii) his conduct as a member or officer of such corporation, association or organization;
- (l) where the proceeding concerns the construction, effect or enforcement of an Act or a regulation or other instrument having or purporting to have effect under an Act;
- (m) where the proceeding concerns the effect or enforcement of an executive, ministerial or administrative act done or purporting to be done under an Act or regulation or other instrument having or purporting to have effect under an Act;
- (n) where the proceeding, so far as concerns the person to be served, falls partly within one of the foregoing paragraphs and falls, as to the residue, within one or more of the others of the foregoing paragraphs.

Leave or confirmation 2. (1) Service outside the Commonwealth of originating process is not valid under this Order unless—

- (a) the service is in accordance with the prior leave of the Court given under sub-rule (2);
- (b) the Court confirms the Service under sub-rule (4); or

- (c) the person served waives objection by entering an appearance.

(2) Where the Court is satisfied of the following matters—

- (a) that the proceeding is a proceeding in which the Court has jurisdiction;
- (b) that the proceeding is a proceeding to which rule 1 applies; and
- (c) that the applicant has a prima facie case for the relief which he seeks,

the Court may, by order, grant leave to serve originating process outside the Commonwealth under this Order.

(3) The evidence on a motion for leave under sub-rule (2) shall include evidence showing in what country or place the person to be served is, or probably may be found.

(4) Where originating process has been served outside the Commonwealth without a prior motion for leave under sub-rule (2), and the Court is satisfied—

- (a) on the matters mentioned in sub-rule (2); and
- (b) that the failure to apply for leave is sufficiently explained,

the Court may by order confirm the service.

3. Service outside Australia of a document other than originating process is valid if the service is in accordance with the prior leave of the Court or is confirmed by the Court.

Other documents

4. Subject to this Order and subject to any convention, the Rules apply to service outside Australia under this Order as they apply to service inside Australia.

Rules as to service generally

5. A document which is to be served outside Australia need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.

Mode of service

Division 2—Service in Convention Countries

6. Subject to this Order, where a party—

- (a) is required by a convention to effect service in a country other than Australia in accordance with that convention; or
- (b) desires to effect service in a country to which a convention applies in accordance with the convention,

Service under convention

he shall proceed in accordance with this Division.

Requisite documents

7. An applicant under this Division requiring a document to be served in a country other than Australia shall—

- (a) lodge with the Registrar—
 - (i) the document to be served;
 - (ii) unless English is an official language of the country concerned, a translation of the document in accordance with rule 8;
 - (iii) a copy of the document and of the translation;
 - (iv) such further copies of the document and of the translation as the Registrar may direct; and
 - (v) if any special or particular manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned a translation of the request; and
- (b) file—
 - (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) a request and undertaking in accordance with rule 9.

Translation

8. A translation of a document lodged under rule 7 shall—

- (a) be a translation into an official language of the country in which service is required; and
- (b) bear a certificate in that language, of the translator, stating his qualifications and certifying that it is a translation of the document.

Request and undertaking

9. A request and undertaking filed under rule 7 shall contain—

- (a) a request by the applicant to the Registrar of the Court that a sealed copy of the document to be served be transmitted to the country concerned for service on a specified person;
- (b) a reference to the applicable convention; and
- (c) an undertaking by the applicant or his solicitor to pay to the Registrar of the Court an amount equal to the sum of all expenses incurred in consequence of the request for service.

Procedure on filing and lodgment

10. (1) Upon the documents referred to in rule 7 being filed and lodged in a District Registry, they shall be transmitted to the Registrar of the Court.

(2) The Registrar of the Court shall seal the documents lodged with the seal of the Court and shall send them to the Attorney-General for transmission for service, together with such letter of request (if any) as may be necessary.

11. Where the Registrar of the Court has sent documents to the Attorney-General as mentioned in rule 10, and afterwards a certificate purporting to be a certificate of a judicial authority or other responsible person in the country concerned or of a British or Australian consular authority in that country as to service or attempted service or non-service is filed, the certificate shall be evidence of the matters stated in the certificate. Evidence of service

12. Where a person has given an undertaking as mentioned in rules 7 and 9 and does not within 7 days after service on him of an account of expenses incurred in consequence of the request for service, pay to the Registrar of the Court the amount of the expenses, the Court may, on application by the Registrar of the Court— Order for payment of expenses

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

ORDER 9

APPEARANCE

1. (1) A respondent may enter an appearance and may defend a proceeding by a solicitor or in person. Appearance by solicitor or in person

(2) Where a respondent is a person under disability sub-rule (1) has effect subject to Order 43.

(3) Notwithstanding sub-rule (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.

2. (1) Subject to these Rules, a respondent shall enter an appearance before the date appointed for a directions hearing and before filing any document. Time for appearance

(2) Notwithstanding sub-rule (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. (1) An appearance shall be entered by filing a notice of appearance or posting a notice of appearance to the Registry. Mode of entry

(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.

(3) The date of entry of an appearance shall be the date when notice of the appearance is received in the Registry.

Notice of
appearance

4. (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.

(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.

Copies and
service

5. (1) A respondent may, when filing a notice of appearance, tender one or more copies of the notice and request that the copies be dealt with in accordance with sub-rule (3).

(2) A respondent may, when posting a notice of appearance to the Registry, send one or more copies of the notice and request that the copies be dealt with in accordance with sub-rule (3).

(3) Where a notice of appearance is received in the Registry together with one or more copies and a request that the copies be dealt with in accordance with this sub-rule—

- (a) the copies shall be marked by an officer with the date of receipt of the notice of appearance;
- (b) a copy shall be used by an officer for the purpose of his serving the notice on the applicant; and
- (c) further copies shall be used by the officer for the purpose of his serving the notice on other parties to the proceeding.

(4) Unless a copy of a notice of appearance is tendered with a request that it be dealt with in accordance with paragraph (3) (b), the respondent shall, on the date of his appearance, serve the notice of appearance on the applicant.

Conditional
appearance

6. (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. (1) The Court may, on application made by a respondent to any originating process on notice of motion filed within the time fixed by sub-rule (2), by order—

Setting aside
originating
process, &c.

- (a) set aside the originating process;
- (b) set aside the service of the originating process on the respondent;
- (c) declare that the originating process has not been duly served on the respondent;
- (d) discharge any order giving leave to serve the originating process outside Australia or confirming service of the originating process outside Australia.

(2) Notice of a motion under sub-rule (1) may be filed by a respondent before he enters an appearance or within fourteen days after the date of entry of a conditional appearance by him.

ORDER 10

DIRECTIONS HEARING

1. (1) On a directions hearing the Court shall give such directions with respect to the conduct of the proceeding as it thinks proper.

General

(2) Without prejudice to the generality of sub-rule (1) 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;
 - (xiv) the giving of evidence at the hearing, including whether evidence of witnesses in chief shall be given orally or by affidavit, or both; and
 - (xv) costs;

- (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;
 - (d) order that no more than a specified number of expert witnesses may be called;
 - (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.
- (3) The Court may revoke or vary any order made under sub-rules (1) and (2).

Fixing of
date

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

(2) Where a date for hearing is fixed in accordance with paragraph (1) (b) or arranged in accordance with paragraph (1) (c), no further notice of trial need be given by any of the parties.

Despatch,
orders and
directions

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

(2) If no applicant appears before the Court on a directions hearing the Court may dismiss the application or make any other order which it thinks proper.

(3) If no respondent appears before the Court on a directions hearing, the Court may give such directions as it thinks fit.

4. (1) A party may move for an order under Order 20, rule 2, Summary disposal (which deals with summary disposal of proceedings) at the directions hearing, if notice of the motion is served on all other parties to the proceeding not less than 3 days before the directions hearing.

(2) The Court may dispense with service under sub-rule (1).

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

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

7. (1) Where a party fails to comply with an order of the Court Procedure on default directing that party to take a step in the proceeding, any other party may move the Court on notice—

- (a) if the party in default is an applicant—for an order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceeding; or
- (b) if the party in default is a respondent—for judgment or an order against him.

(2) The Court may make an order of the kind mentioned in sub-rule (1) or any other order or may give any directions subject to such terms and conditions as the Court thinks just.

(3) This rule does not limit the powers of the Court to punish for contempt.

ORDER 11

PLEADINGS

Division 1—General

1. Where a pleading alleges or otherwise deals with several Paragraphs—Form 7 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.

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

Facts not evidence

- (b) sub-rule (1) has effect subject to this Order and to Order 4 (which relates to commencement of proceedings) and to Order 12 (which relates to particulars).

Brevity

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

Documents and spoken words

4. 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.

Presumed facts

5. 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.

Conditions precedent

6. (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.

New matter

7. A party may plead a new matter which has arisen since the commencement of the proceeding.

Departure

8. (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) Sub-rule (1) does not affect the right of a party to make allegations of fact, or raise grounds or claims, in the alternative.

Points of law

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

Matters for specific pleading

10. 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) he 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.

Tender

11. 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. 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. Set-off

13. (1) Subject to sub-rule (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. Admissions and traverse

(2) A traverse may be made either by a specific denial or by a statement of specific non-admission.

(3) Subject to sub-rule (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 of non-admission of them is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

14. (1) If there is no reply to a defence, there shall be an implied joinder of issue on that defence. Joinder of issue

(2) Subject to sub-rule (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.

15. (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. Close of pleadings

(2) Sub-rule (1) shall have effect notwithstanding that, on the date mentioned in that sub-rule, a request or order for particulars has been made but has not been complied with.

Embarrassment, &c.

16. 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.

General issue

17. A party shall not plead the general issue.

Denial to be substantial answer

18. 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

Times for filing and service of pleadings

19. 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 23 of this Order.

Defence—Form 16

20. (1) Where the application was accompanied by a statement of claim, the defence shall 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.

Defence to cross-claim

21. 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.

Reply—Form 17

22. (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 shall file and serve the reply 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, he shall put them in one document.

23. (1) Where a party is in default in filing and serving any pleading as required by this Order, any other party may— Procedure on default

- (a) apply pursuant to Order 20, rule 4 for an order that the proceeding be stayed or dismissed or for the pronouncement of judgment; or
- (b) move on notice for an order that pleadings be filed and served within the time limited in the order.

(2) An order under paragraph (1) (b) may be subject to such terms and conditions, and may specify such consequences for non-compliance with the order, as the Court thinks just.

ORDER 12

PARTICULARS

1. (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. General

(2) Rules 2 to 4 do not affect the generality of sub-rule (1).

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

3. (1) A party pleading any condition of mind shall give particulars of the facts on which he relies. Conditions of mind

(2) In sub-rule (1) "condition of mind" includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

4. (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. Damages

(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.

5. (1) The Court may order a party to file and serve on any other party— Order for particulars

- (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 sub-rule (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

Application
of Order

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

General

2. (1) The Court may, at any stage of any proceeding, on application by any party or of its own motion, 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.

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceeding, or of correcting any defect or error in any proceeding, or of avoiding multiplicity of proceedings.

(3) Where there has been a mistake in the name of a party, sub-rule (1) applies to the person intended to be made a party as if he were a party.

Amendment
of pleading
without
leave

3. (1) A party may, without leave, amend any pleading of his once at any time before the pleadings are closed.

(2) A party may further amend any pleading of his before the pleadings are closed and without the leave of the Court if he obtains the consent of all other parties.

Conse-
quential
amendment
of defence
or reply

4. (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,
 then—
 - (e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and
 - (f) Order 11, sub-rule 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. (1) Where a party amends his pleading under sub-rule 3 (1), the Court, on application by an opposite party, may, subject to sub-rule (3), by order disallow the amendment.

Dis-
allowance
of
amendment

(2) Where a party amends his pleading under sub-rule 3 (2) but without obtaining the consent of a party, the Court, on application by that party, may, subject to sub-rule (3), by order disallow the amendment.

(3) Notice of a motion under sub-rule (1) or (2) shall be filed and served within 14 days after the date of service on the applicant under rule 10 of this Order.

(4) Where, on the hearing of an application under sub-rule (1), the Court is satisfied that, if an application for leave to make the amendment

has been made under sub-rule 2 (1) on the date on which the amendment was made under sub-rule 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.

Duration
of leave

6. 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.

Mode
of amend-
ment—
Directions

7. (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 sub-rule (1).

Mode of
amend-
ment—
simple
amend-
ment—
Form 19

8. (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 specifying the amendments and the matters mentioned in sub-rule (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.

Mode of
amend-
ment—
fresh
document

9. Subject to sub-rule 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 sub-rule 8 (2).

Service after
amend-
ment

10. 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—

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

ORDER 14

AFFIDAVITS

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

2. (1) An affidavit shall be made in the first person. Form of affidavit—
Form 20

(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.

(3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, he shall certify in or below the jurat that—

- (a) the affidavit was read in his presence to the deponent; and
- (b) the deponent seemed to understand the affidavit.

(4) Where it appears to the person before whom an affidavit is sworn that the deponent is by reason of physical incapacity incapable of signing the same he shall certify in or below the jurat that—

- (a) the affidavit was read in his presence to the deponent;
- (b) the deponent seemed to understand the affidavit; and
- (c) the deponent signified he swore the affidavit.

(5) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with sub-rule (3) or sub-rule (4) does not appear on the affidavit, the affidavit may not be used unless the Court is satisfied that the affidavit was read to the deponent and that he seemed to understand it.

(6) Each page of an affidavit shall be signed by the deponent and by the person before whom it is sworn provided that it shall not be necessary for a deponent who is physically incapable of signing the affidavit to do so.

3. Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit— Alterations

- (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, rewrites in the margin of the affidavit any words or figures written on the erasure and signs or initials them.

Exhibits and
annexures

4. (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.

Irregularity

5. (1) An affidavit may, unless the Court otherwise orders, be filed notwithstanding any irregularity in form.

(2) An affidavit may, with the leave of the Court, be used notwithstanding any irregularity in form.

Filing

6. An affidavit may not be used without leave of the Court unless it has been filed.

Service

7. (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.

Scandal, &c.

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

Cross-
examination

9. (1) A party may require the attendance for cross-examination of a person making an affidavit.

(2) A requirement under sub-rule (1) shall be made to the party filing or proposing to use the affidavit.

(3) Where the attendance of a person is required under sub-rule (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 I—Discovery*Notice for
discovery—
Form 21

1. After a directions hearing pursuant to Order 10 and within any period limited by the Court for this purpose, any party may, unless the

Court otherwise orders, by notice of discovery filed and served on any other party, require any other party to give discovery of documents.

2. (1) A party required to give discovery shall do so within such time, not being less than 14 days after service of the notice of discovery on him, as may be specified in the notice of discovery. Discovery on notice

(2) A party shall, subject to rule 3, give discovery by filing and serving on the party giving the notice of discovery—

- (a) a list in accordance with rule 6 of documents relating to any matter in question between him and the party giving the notice of discovery; and
- (b) an affidavit verifying the list.

3. (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. Limitation of discovery on notice

(2) The Court shall, on application, make such orders under sub-rule (1) as are necessary to prevent unnecessary discovery.

4. 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. Co-respondents

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

6. (1) A list of documents required by or under this Order shall, unless the Court otherwise orders, conform to the requirements of this rule. Contents of list—Form 22

(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.

Absence of
privilege

7. (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 sub-rule (1) shall not be granted except for special cause.

(3) Any application to the Court for leave under sub-rule (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 sub-rule (1) has been granted and privilege claimed in respect of that document.

Order for
particular
discovery

8. 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.

Deponent

9. (1) Subject to sub-rule (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 organization by a member or officer of the corporation or organization;
- (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 sub-rule (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. (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. Document referred to in pleading or affidavit

(2) Where a notice to produce a document is served on a party under sub-rule (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 sub-rule 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. (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;

Order for production

- (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.

Power to
take copies

12. A party to whom a document is produced for inspection under this Order may make copies of the document.

Production
to the Court

13. (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 sub-rule (1), the Court may deal with the document in such manner as the Court thinks fit.

Inspection to
decide
objection

14. 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

Order only if
necessary

15. 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.

16. Where a party does not file or serve a list of documents or affidavit or other document or does not produce any document as required by or under this Order, the Court may make such order as it thinks fit, including—

- (a) if the party in default is an applicant, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
- (b) if the party in default is a respondent, an order for judgment against him.

17. 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.

ORDER 16

INTERROGATORIES

1. (1) Subject to sub-rule (2), after a directions hearing pursuant to Order 10 and within any period limited by the Court for this purpose, any party may, unless the Court otherwise orders, file and serve on any other party a notice requiring the party served to answer specified interrogatories relating to any matter in question between the interrogating party and any party served.

Interrogatories by notice—
Form 23

(2) Where a party requires another party to give discovery pursuant to Order 15, he shall not require that party to answer interrogatories pursuant to rule 1 until the time specified in the notice of discovery under Order 15, sub-rule 2 (1) has expired.

2. (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.

Answers pursuant to 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. (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.

Limitation of interrogatories by notice

(2) Where any party has been required under rule 1 to answer any interrogatory, the Court may, on application by him, order that an

answer to that interrogatory shall not be required or may limit the extent to which an answer shall be required.

(3) The Court shall, on application, make such orders under sub-rules (1) and (2) as are necessary to prevent unnecessary interrogatories or unnecessary answers to interrogatories.

Co-
respondents

4. 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.

Order to
answer

5. 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.

Contents of
statement—
Form 24

6. (1) A statement in answer to interrogatories required by or under this Order shall, unless the Court otherwise orders, 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 sub-rule (3) and briefly stating the facts on which the objection is based.

(3) Subject to sub-rule (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.

(4) On an application under sub-rule 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.

Deponent—
Form 24

7. (1) Subject to sub-rule (2), an affidavit verifying a statement of a party in answer to interrogatories 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 organization, by a member or officer of the corporation or organization;
- (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 sub-rule (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 affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

8. (1) Where a party fails to answer an interrogatory sufficiently, Insufficient answer
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) Sub-rule (1) does not limit the powers of the Court under rule 9.

9. Where a party does not comply with an order under rule 5 or rule Default
8 to file or serve a statement or affidavit, the Court may make such orders as it thinks fit, including—

- (a) if the party in default is an applicant, an order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceeding; or
- (b) if the party in default is a respondent, an order for judgment against him.

10. (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.

Answers as evidence

(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.

Public
interest

11. 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.

ORDER 17

INSPECTION OF PROPERTY

Inspection of
property

1. (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 recorded by mechanical means.

(2) Any order under sub-rule (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.

Application
and service

2. 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.

View

3. 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. (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. Voluntary admission

(2) A party may, with the leave of the Court, withdraw an admission under sub-rule (1).

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

(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 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. Form 26

(3) A party may, with the leave of the Court, withdraw an admission under sub-rule (2).

(4) Where a party serves a notice disputing a fact or a document under sub-rule (2), and afterwards that fact or the authenticity of the document is proved in the proceeding, he shall, unless the Court otherwise orders, pay the cost of proof.

3. (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 sub-rule (2), the following admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders: Admission of documents discovered

- (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,

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

(3) Sub-rules (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.

Judgment on
admissions

4. (1) Where admissions are made by a party, whether by his pleading or otherwise, the Court may, on the application of any other party, pronounce any judgment or make any order to which the applicant is entitled on the admissions.

(2) The Court may exercise its powers under sub-rule (1) notwithstanding that other questions in the proceeding have not been determined.

ORDER 19

MOTIONS

Application

1. (1) Any interlocutory or other application to the Court or a Judge 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.

Notice of
motion—
Form 27

2. (1) Subject to sub-rule (2), a person shall not move the Court or a Judge for any order unless before moving he has filed notice of the motion 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 sub-rule (1).

(3) Notice of a motion shall—

- (a) state the date and time when, and the place where, the motion is to be made;

- (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. 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. Time for service of notice

4. 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. Service

5. The Court or a Judge may hear and dispose of a motion in the absence of any party— Absence of 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. 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. Notice of adjournment

7. (1) Where notice of a motion for any day has been filed or served, and the motion is not disposed of on that day— Further hearing

- (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 sub-rule (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.

ORDER 20

SUMMARY DISPOSAL AND STAY OF PROCEEDINGS

Summary
judgment

1. (1) Where, in relation to the whole or any part of the applicant's claim for relief, there is evidence of the facts on which the claim or part is based, and—

- (a) there is evidence given by the applicant or by some responsible person that, in the belief of the person giving the evidence, the respondent has no defence to the claim or part;
- (b) the respondent's defence discloses no answer to the applicant's claim or part; or
- (c) the respondent is in default of appearance,

the applicant may move on notice for such judgment for the applicant on that claim or part and the Court may pronounce such judgment and make such orders as the nature of the case requires.

(2) Where the Court pronounces judgment against a party under this rule, and that party claims relief against the party obtaining the judgment, the Court may stay execution on, or other enforcement of, the judgment until determination of the claim by the party against whom the judgment is directed to be entered.

(3) The Court in any application under this rule may give such directions, whether for amendment of the pleadings or otherwise, as may be thought fit.

Frivolity

2. (1) Where in any proceeding it appears to the Court that in relation to the proceeding generally or in relation to any claim for relief in the proceeding—

- (a) no reasonable cause of action is disclosed;
- (b) the proceeding is frivolous or vexatious; or
- (c) the proceeding is an abuse of the process of the Court,

the Court may order that the proceeding be stayed or dismissed generally or in relation to any claim for relief in the proceeding.

(2) The Court may receive evidence on the hearing of an application for an order under sub-rule (1).

No demurrer

3. No proceeding by way of demurrer shall be brought on any pleading, but a party seeking to challenge the adequacy in whole or in part of any pleading, may apply for an order under paragraph 1 (1) (b) or paragraph 2 (1) (a) of this Order or under Order 11, rule 16.

Residue of
proceedings

4. (1) Where in any proceeding—

- (a) a party applies under this Order for—
 - (i) judgment pursuant to rule 1; or

(ii) an order for stay or dismissal pursuant to rule 2; and
 (b) the proceeding is not wholly disposed of by judgment or dismissal or the proceeding is not wholly stayed,
 the proceeding may be continued as regards any claim or part of a claim not disposed of by judgment or dismissal and not stayed.

(2) On the hearing of an application to which sub-rule (1) applies, the Court may give directions for the further conduct of the proceeding.

5. A party applying for an order that a proceeding be stayed or dismissed or for judgment in his favour under any provision of these Rules, shall make the application by motion upon notice. Application by motion

ORDER 21

VEXATIOUS LITIGANTS

1. Upon the application of—

- (a) the Attorney-General or Solicitor-General of the Commonwealth or of a State;
- (b) the Crown Solicitor of the Commonwealth or of a State; or
- (c) the Registrar of the Court,

Vexatious
litigant

where any person (in this rule called the vexatious litigant) habitually and persistently and without any reasonable ground institutes a vexatious proceeding in the Court, and whether against the same person or against different persons, the Court may order that the vexatious litigant shall not, without leave of the Court, institute any proceeding in the Court and that any proceeding instituted by the vexatious litigant in the Court before the making of the order shall not be continued by him without leave of the Court.

2. 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 person aggrieved in the Court before the making of the order shall not be continued by him without leave of the Court. Vexatious proceeding against a person

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

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

Leave to
continue
proceeding

5. Where the Court has made an order under rule 1 or rule 2 against any person, the Court shall not give him leave to institute or continue any proceeding unless the Court is satisfied that the proceeding is not an abuse of process and that there is prima facie ground for the proceeding.

ORDER 22

WITHDRAWAL AND DISCONTINUANCE

Withdrawal
of appear-
ance—
Form 28

1. A party who has entered an appearance may withdraw the appearance at any time with the leave of the Court.

Discon-
tinuance—
Form 29

2. (1) Subject to sub-rule (2) 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 made by him—

- (a) at any time before the directions hearing appointed in the application—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 sub-rule (1) without the leave of the Court.

Costs

3. 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.

Withdrawal
of defence
reply, &c.—
Form 30

4. (1) A party raising any matter in a defence or subsequent pleading may withdraw that matter at any time.

(2) Sub-rule (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.

Mode of
discon-
tinuance or
withdrawal

5. (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 sub-rule (1) must bear the consent of each consenting party.

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

7. 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. Effect of discontinuance

8. 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,

Stay to secure costs

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

ORDER 23

PAYMENT INTO COURT

1. In this Order, unless the context or subject matter otherwise indicates or requires— Interpretation

- “ cause of action ” means a cause of action for the recovery of debt or damages; and
- “ trial ” includes the hearing of a motion for judgment.

2. (1) A respondent may from time to time—

- (a) bring money into Court in answer to any one or more causes of action on which an applicant claims; and
- (b) bring money into Court in addition to money previously brought in under this rule.

Bringing money into Court

(2) A respondent may bring money into Court under this Order by paying the money into Court or by filing a security in accordance with rule 15.

3. A respondent to a cross-claim may not bring money into Court in answer to a cause of action in respect of which he may, before the trial, make an offer of contribution as mentioned in Order 5, rule 17. Respondent to cross-claim

4. Payment of money into Court shall not be deemed an admission of liability. Payment into Court not an admission

Where
tender
before action
pleaded

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

Notice of
deposit—
Form 31

6. (1) On bringing money into Court under this Order, the respondent shall file a notice of deposit in accordance with Form number 31 in the First Schedule.

(2) Where an applicant claims on two or more causes of action and a respondent brings money into Court under this Order, the respondent shall, in his notice of deposit—

- (a) specify the cause or causes of action in answer to which the money is brought in; and
- (b) if the respondent allots part of the money to any cause or causes of action, specify the amount of that part and the cause or causes of action to which he allots that part.

Order to
allot

7. Where, before the beginning of the trial, a respondent brings money into Court or allots money under this Order in answer to two or more causes of action, the Court may order the respondent specifically to allot the money amongst the various causes of action and to file an amended notice of deposit accordingly.

Abandon-
ments of
cross-claim

8. Where a respondent—

- (a) cross-claims against an applicant on any cause of action;
- (b) brings money into Court under this Order; and
- (c) in bringing the money into Court takes into account his cause of action against the applicant on the cross-claim with a view to its abandonment in case the applicant accepts the money,

the respondent shall, in his notice of deposit, specify the cause of action on the cross-claim thus taken into account.

Withdrawal
by respon-
dent—
Form 32

9. (1) Subject to sub-rule (2), where—

- (a) money brought into Court by a respondent is not accepted in accordance with rule 10; and
- (b) leave of the Court is obtained,

the respondent may withdraw the whole or any part of money paid into Court or any security filed by him under this Order.

(2) A respondent may not make a withdrawal of any money after the money has been accepted by the applicant.

(3) A withdrawal under sub-rule (1) shall be made by filing a notice of withdrawal of deposit.

(4) On the filing of a notice of withdrawal of deposit under sub-rule (1) the respondent shall be entitled to receive payment of the money or delivery of the security as the case may be.

10. (1) An applicant may, within the time fixed by sub-rules (2), (3) and (4), accept money brought into Court in satisfaction of the cause of action in answer to which the money is brought in, as against the respondent bringing the money into Court.

Acceptance
by
applicant—
Forms 33
and 34

(2) Where the notice of deposit or last notice of deposit, in answer to a cause of action is filed before the beginning of the trial, the applicant may accept the money in satisfaction of the cause of action within 14 days after service on him of the notice of deposit, or last notice of deposit, but before the beginning of the trial, by filing a notice of acceptance in the prescribed form.

(3) Where the notice of deposit, or last notice of deposit in answer to a cause of action is filed after the beginning of the trial, or a respondent, by notice served on the applicant after the trial begins, confirms a notice of deposit, the applicant may, subject to sub-rule (4), accept the money in satisfaction of the cause of action within two days after service on him of the notice or the last notice, by announcement to the Court during the trial or by filing a notice of acceptance.

(4) An applicant shall not accept money in a case to which sub-rule (3) applies—

- (a) where the trial is before a jury—after the Judge begins to sum up to the jury; or
- (b) in any other case—after the Judge gives his decision or begins to give his reasons for decision.

(5) A respondent who serves notice of confirmation under sub-rule (3) shall file the notice on the day of service.

(6) An applicant who accepts money by announcement to the Court under sub-rule (3) shall file a notice of acceptance in the prescribed form on the day of the announcement.

(7) Where an applicant claims on more than one cause of action and he accepts money brought into Court in answer to some one or more but not all of the causes of action, he may, by filing a notice (which may be combined with his notice of acceptance), abandon all his causes of action other than the cause of action to which the acceptance relates.

(8) Where an applicant claims against two or more respondents on a cause of action against them jointly, and he accepts money brought into Court by one or more but not all of those respondents in answer to that cause of action, he may, by filing a notice (which may be combined with his notice of acceptance), abandon his cause of action against the other or all the others of those respondents.

(9) A notice of acceptance shall be in accordance with the form numbered 33 in the First Schedule.

(10) An applicant who accepts money under this rule shall, subject to rule 13, be entitled to receive payment of the money without any order.

Effect of
acceptance

11. (1) On an applicant accepting money under rule 10 in satisfaction of a cause of action as against any respondent bringing money into Court, the proceeding shall be stayed in relation to—

- (a) that cause of action, as against that respondent;
- (b) any alternative cause of action against that or any other respondent;
- (c) any cause of action abandoned under sub-rule 10 (7) or sub-rule 10 (8); and
- (d) where the respondent, in bringing the money into Court, has taken into account a cause of action on a cross-claim by him as mentioned in rule 8, that cause of action on the cross-claim as against the applicant.

(2) Where a respondent brings money into Court in answer to a cause of action, and the applicant accepts the money in satisfaction of the cause of action as against that respondent the liability of any other person (whether a party to the proceeding or not) jointly with that respondent on the cause of action—

- (a) shall be satisfied in the amount of the money accepted; but
- (b) shall not be discharged by the acceptance except to the extent of that satisfaction.

Withdrawal
of
acceptance—
Form 35

12. (1) An applicant may, by filing a notice in the prescribed form, withdraw his acceptance of money brought into Court—

- (a) where all or any of the money has been brought into Court by the filing of a security and the money accepted is not paid into Court within 7 days after service of notice of the acceptance on the respondent filing the security; or
- (b) where the Court gives leave so to do.

(2) On withdrawal of an acceptance all steps in the proceeding taken in consequence of the acceptance shall have such 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 sub-rule (2);
- (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 proceeding.

13. (1) Where an applicant accepts money in satisfaction of a cause of action, the money shall not be paid out except by order of the Court in the following cases: Order for payment out after acceptance

- (a) if the applicant claims on the cause of action against two or more respondents and any of those respondents does not join in bringing the money into Court and does not consent to the payment out;
- (b) if the applicant claims on an alternative cause of action against a respondent who does not join in bringing the money into Court and does not consent to the payment out;
- (c) if the money is brought into Court in answer to a cause of action to which the respondent bringing the money into Court pleads or otherwise properly raises a defence of tender before the commencement of the proceeding;
- (d) if the applicant accepts the money after the beginning of the trial;
- (e) if the applicant represents other persons pursuant to Order 6, rule 13; or
- (f) if the applicant is a person under disability.

(2) On motion for an order under sub-rule (1), the Court shall, so far as practicable, deal with all the costs of the proceeding.

14. (1) Subject to sub-rules (2) and (3), the fact that money has been brought into Court— Non-disclosure

- (a) shall not be pleaded or disclosed in an affidavit; and
- (b) shall not be disclosed to the Court at the trial or hearing of any question of liability or amount of debt or damages until all such questions have been decided.

(2) Sub-rule (1) does not apply where the money has been brought into Court in answer to a cause of action to which the respondent pleads or otherwise properly raises a defence of tender before commencement of the proceeding.

(3) Paragraph (1) (b) does not apply—

- (a) where the applicant accepts the money pursuant to rule 10; or
- (b) where the disclosure is necessary for the purpose of an application under this Order.

15. (1) A security filed for the purpose of bringing money into Court under this Order shall be an instrument in a form approved by the Security—Form 36

Registrar by which an authorized person (whether a party to the proceeding or not)—

- (a) promises to observe the requirements of this Order with respect to 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 authorized insurer under legislation of any State or Territory providing for workers’ compensation or the insurance of motor vehicles against third party claims, shall, unless the Court otherwise orders, be an authorized person for the purposes of this rule.

(3) A person approved by the Court shall be an authorized 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, he shall have no further liability on the security in the proceeding; and
- (b) the money paid in shall, unless the Court otherwise orders, be dealt with as if brought into Court in place of the security by the party filing the security.

(5) Where a security has been filed, the Court may order the person giving the security to pay, within a time specified in the order, the whole or any part of the money secured into Court or to such person as the Court may direct.

(6) If a person giving a security fails to comply with an order under sub-rule (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 cent yearly 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 or thrown away by reason of failure to comply with the order under sub-rule (5).

(7) The Court may pronounce such judgment as the nature of the case may require in favour of any party against the person giving the security for the whole or any part of any money secured or interest or costs the subject of an order under sub-rule (5) or sub-rule (6) or for costs.

(8) A party moving for an order or direction under any of sub-rules (5), (6) and (7) shall serve notice of the motion on the person giving the security.

(9) A party filing a security shall, on the day of filing, serve a copy of it on each party interested.

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

ORDER 24

EVIDENCE BY DEPOSITION

1. The Court may, for the purpose of proceedings in the Court, make orders—

- (a) for the examination of any person on oath 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 of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.

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

2. (1) Upon the making of an order under paragraph 1 (b) for the sending of a letter of request, the party obtaining the order shall—

Letter of
request

- (a) lodge with the Registrar—
 - (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 sub-paragraph (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 sub-paragraph (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.

Documents
for examiner

3. (1) The party obtaining an order for examination before an examiner under paragraph 1 (a) 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.

(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.

Appoint-
ment for
examination

4. (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 sub-rule (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 sub-rule (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.

Conduct of
examination

5. (1) The examiner shall permit each party, his counsel and solicitor 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.

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

Examination
of additional
persons

6. 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. If any person being examined before the examiner objects to answering any question put to him or to produce any document or thing—

- (a) the examiner shall state to the parties his opinion on, but shall not decide, the validity of the ground for the objection;
- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) must be set out in the deposition of that person or in a statement attached to the deposition;
- (c) the Court may, on motion by the person taking the objection or by any party, decide the validity of the ground for the objection;
- (d) if the Court decides against the person taking the objection or any party, the Court may order him to pay the costs occasioned by the objection.

8. (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. Taking of depositions

(2) The deposition must contain as nearly as may be the statement of the person examined.

(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 sub-rules (2) and (3) and subject to paragraph 7 (b) the deposition need not set out every question and answer.

9. (1) The deposition of a person examined (or the shorthand notes of his examination) shall be read to him. Authen-
tication and
filing

(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.

Special
report

10. (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.

Default of
witness

11. (1) Where a person has been required by subpoena to attend before an examiner, and he 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 shall, at the request of any party, give to that party a certificate, signed by the examiner, of the refusal.

(2) The Court may, upon the certificate being filed, and on motion by any party—

- (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 his refusal.

Order for
payment of
expenses

12. Where a party has given an undertaking as mentioned in sub-paragraph 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.

Perpetuation
of testimony

13. (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.

(5) Where, pursuant to sub-rule (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) Sub-rule (2) does not affect the right of any person to commence a proceeding to perpetuate testimony in cases to which that sub-rule does not apply.

ORDER 25

INTERIM ORDERS

1. In an urgent case, the Court or a Judge may, on the application of a person who intends to commence a proceeding—

Order before
commence-
ment of
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. (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.

Preservation
of property

(2) An order under sub-rule (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.

3. 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—

Disposal of
personal
property

- (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. Where, in a proceeding concerning property, it appears to the Court or a Judge that the property is more than sufficient to answer the

Interim
distribution

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.

Interim
income

5. 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.

Payment
before
ascertain-
ment of all
persons
interested

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

Terms: time
for order

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

Chamber
applications
to Supreme
Court

8. (1) This rule refers to matters pending in the General Division of the Court.

(2) When in any State a party wishes to make an application to a Judge in Chambers for interim relief but no Judge of the Court is available there to take the application, the party shall give notice to the Registrar of the Federal Court in that State of his desire to make such an application.

(3) Upon receipt of such notice the Registrar will communicate with the Chief Judge to enquire as to any arrangement the Chief Judge wishes to make pursuant to sub-section 15 (1) of the Act and will inform the party of the result of that enquiry.

(4) If following such enquiry the Registrar informs the party that no Judge can be made available to take the application, the party may then approach the State Supreme Court to ascertain whether a Supreme Court Judge is available to take it.

(5) If the Party is able to arrange for a State Supreme Court Judge to hear the application the forms and procedures to be used shall be in accordance with these Rules.

(6) The Registrar will arrange when necessary for the Court's documents including the proposed application to be placed before the State Supreme Court Judge.

(7) After the State Supreme Court Judge exercising such jurisdiction has heard the application, the Registrar will arrange for the Court's

documents to be returned to the Registry together with the notes of any orders made and any exhibits and transcript of evidence.

ORDER 26

RECEIVERS

1. (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*. Receiver and manager

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

3. (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. Security--
Form 40

(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 this rule.

(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.

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

5. (1) A receiver shall file accounts at such intervals or on such dates as the court may direct. Accounts

(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.

Default

6. (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 sub-rule (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.

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

Powers

7. (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) Sub-rule (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.

Account on death

8. (1) Where a receiver in any proceeding dies, the Court may on motion in the proceeding, 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 sub-rule (1) unless notice of the motion has been served on the representatives or any other person.

(3) Notice of a motion under this rule may be served in any manner in which a statement of claim may be served.

ORDER 27
SUBPOENAS

1. In this Order, unless the contrary intention appears—

Interpret-
ation

- “ person named ” means, in relation to a subpoena, the person to whom the subpoena is addressed;
- “ subpoena for production ” means an order in writing requiring the person named to attend as directed by the order and produce a document or thing for the purpose of evidence;
- “ subpoena to give evidence ” means an order in writing requiring the person named to attend as directed by the order for the purpose of giving evidence.

2. The Court may, in any proceeding, issue a subpoena to give evidence, or a subpoena for production, or a subpoena both to give evidence and for production in the prescribed form or in such other form as the Court may direct for the attendance of the person named before the Court or before any Judge, officer, examiner or other person having authority to take evidence.

Power to
issue

3. A person named shall be excused from complying with a subpoena requiring him to attend or produce any document or thing on any day on which his attendance is required unless a sum sufficient to meet his reasonable expenses of complying with the subpoena in relation to that day is paid or tendered to him at the time of service of the subpoena or not later than a reasonable time before that day.

Conduct
money

4. (1) Where the person named in a subpoena for production of any document or thing, being a subpoena requiring attendance before the Court or a Judge or officer of the Court, is not a party to the proceeding, the subpoena shall, unless the Court otherwise orders, permit him to produce the document or thing to the Registrar at the Registry from which the subpoena was issued not later than the day before the first date on which his attendance is required, instead of attending and producing the document or thing as required by the subpoena.

Production
by non-party

- (2) Where a document or thing is produced to the Registrar pursuant to sub-rule (1), the Registrar shall—

- (a) give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the Court may direct.

- (3) This rule does not apply to so much of a subpoena as requires the person named to attend to testify in any proceeding.

Banker's
books

5. (1) Where, in any proceeding, the person named in the subpoena is an officer of a bank, and the bank is not a party to the proceeding, and the subpoena requires the officer to produce any banker's book, the contents of which can be proved under an enactment of the State or Territory in which the proceeding is pending by means other than the production of the book, the subpoena shall, unless the Court otherwise orders, expressly permit the officer to produce proof of the relevant entries in accordance with that enactment, instead of producing the banker's book.

(2) The Registrar issuing a subpoena shall not be concerned to enquire whether sub-rule (1) applies to the subpoena but the Court may set aside as irregular a subpoena which does not comply with sub-rule (1).

Issue—
Forms 41, 42
and 43

6. (1) On request by a party, the Registrar shall, unless the Court otherwise orders, issue a subpoena to give evidence or a subpoena for production or a subpoena for both testimony and production.

(2) A subpoena shall be issued under seal.

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

(4) Subpoenas shall be in or substantially in the forms numbered 41 to 43 in the First Schedule.

Document or
thing in
custody of a
court

7. (1) The Registrar shall not issue a subpoena for production of any document or thing in the custody of the Court or another court.

(2) A party desiring the production of a document or thing in the custody of another court shall request the Registrar to proceed under sub-rule (3).

(3) On the receipt of a request under sub-rule (2), the Registrar shall request the court holding the document or thing to send it to the Registrar.

(4) The Registrar shall produce the document or thing as the nature of the case requires or as the Court may direct.

Service

8. (1) Service of a subpoena shall be effected in accordance with this rule and not otherwise.

(2) Service of a subpoena may be effected by handing it to the person named.

(3) If, on tender of a subpoena to the person named, he refuses to accept it, the subpoena may be served by putting it down in his presence after he has been told of the nature of the subpoena.

(4) Where the person named in a subpoena is a party and has a solicitor in the proceeding, the subpoena may, with the consent of the solicitor, be served on the person named by leaving it at his address for service.

(5) A subpoena shall not be enforced pursuant to Order 37 unless service of it has been effected in accordance with this rule.

9. (1) The Court may, on motion by the person named in a subpoena, set aside the subpoena wholly or in part. Setting aside

(2) Notice of a motion under sub-rule (1) must be filed and must be served on the party on whose request the subpoena was issued.

ORDER 28

SECURITY FOR COSTS

1. In this Order—

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

Interpretation

2. (1) An application that an applicant shall provide security for costs shall be made by motion upon notice. Application costs

(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. (1) Where, in any proceeding, it appears to the Court on the application of a respondent— Cases for security

- (a) that an applicant is ordinarily resident outside Australia;
- (b) that an applicant is suing, not for his own benefit, but for the benefit of some other person and there is reason to believe that the applicant will be unable to pay the costs of the respondent if ordered to do so;
- (c) subject to sub-rule (2), that the address of an applicant is not stated or is mis-stated in his originating process; or
- (d) that an applicant has changed his address after the commencement of the proceeding with a view to avoiding the consequences of the proceeding,

the Court may order that applicant to give such security as the Court thinks fit for the costs of the respondent of and incidental to the proceeding.

(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.

Manner of
giving
security

4. 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.

Stay or
dismissal

5. (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 sub-rule (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.

Saving

6. This Order does not affect the provisions of any Act of the Commonwealth or of a State or Territory 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

Interpret-
ation

1. 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.

Order for
decision

2. 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.

Orders,
directions
upon
decision

3. 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. Where the decision of a question under this Order—Disposal of
proceedings

- (a) substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or
- (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. Where several proceedings are pending in the same Division, then, if it appears to the Court—**Consoli-
dation, &c.

- (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**

1. (1) Where the time for taking any step in a proceeding has ceased to run and no date has been fixed for the hearing of a proceeding, a party not in default may give notice of trial.

Notice of
trial—
Form 44

(2) A notice of trial shall be given by filing a notice in accordance with form 44 of the First Schedule.

(3) A party filing a notice of trial shall serve the notice on all other parties to the proceeding within 5 days after filing it.

2. (1) Upon a notice of trial being filed, the Registrar shall fix a date for trial or shall enter the matter in the list of matters awaiting a date for trial.

Date for trial

(2) Within 7 days of a date being fixed under this rule, the Registrar shall notify all parties to the proceeding of the date for trial.

Want of
prosecution
before
setting down

3. (1) This rule applies to matters which have proceeded on pleadings.

(2) Where a matter has been stood out of the list, and the applicant does not, within 6 weeks after the pleadings are closed—

(a) move for a directions hearing; or

(b) give a notice of trial,

the Court, on motion upon notice of any other party may dismiss the proceeding or make such other order as the Court thinks fit.

Restoration
to the list

4. Where a matter has been stood out of the list and a party wishes to restore the matter to the list he shall, unless the Court otherwise orders—

(a) move on notice for a directions hearing; or

(b) if the matter has proceeded on pleadings and is ready for trial—give a notice of trial.

Want of
prosecution
after setting
down

5. (1) Where an applicant does not prosecute the proceeding with due despatch, the Court may stay or dismiss the proceeding or make such other order as the Court thinks fit.

(2) Sub-rule (1) applies with any necessary modifications in relation to a cross-claimant as it applies to an applicant.

Change of
venue

6. (1) Subject to sub-rules (2) and (3), unless the place of trial has been fixed by the Court, the trial of a proceeding shall be at the proper place.

(2) The Court on the application of a party or of its own motion may direct that the trial of a proceeding be fixed at a place other than the proper place.

(3) In this rule a reference to the trial of a proceeding shall include a reference to any interlocutory hearing in the proceeding.

Withdrawal

7. (1) At the request of all parties and subject to the directions of the Court, the Registrar may withdraw a proceeding listed for hearing.

(2) A proceeding withdrawn under sub-rule (1) may be stood out of the list or listed for directions.

ORDER 31

JURIES

1. (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. Notice of motion for jury trial

(2) A notice of motion under sub-rule (1) shall be supported by an affidavit stating the particular facts and grounds upon which the application is based.

ORDER 32

TRIAL

1. 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.

Interpretation

2. (1) If, when a proceeding is called on for trial, any party is absent, the Court may— Absence of party

- (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, on motion by that party, may set aside or vary the order, and may give directions for the further conduct of the proceeding.

(3) Sub-rule (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. (1) If, when a proceeding is called on for trial, no party appears, the Court may— Default of appearance by both parties

- (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.

Conduct of
the trial

4. (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 sub-rule (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 sub-rules of this rule; and

(b) in any other case, the order of evidence and addresses shall be as provided by the following sub-rules 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 sub-rule (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 sub-rule (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.

Record

5. (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.

6. (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. Death before judgment

(2) Sub-rule (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.).

ORDER 33

EVIDENCE: GENERAL

1. 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. Witnesses at a trial

2. (1) This rule applies only to evidence other than evidence on an issue at a trial and only where the circumstances are such that undue delay or inconvenience would otherwise be caused. Hearsay and copies

(2) Where a statement on information and belief is made by a deponent in an affidavit, or by a witness being examined orally, and the deponent or witness gives the source and ground of the information, the Court or Judge may admit such statement notwithstanding that it is hearsay.

(3) Where a deponent swears in an affidavit, or a witness being examined orally states, that a document is a copy of an original, the Court or Judge may admit the document as evidence of the contents of the original notwithstanding that the original is not produced.

3. The Court may at any stage of the proceedings—

- (a) dispense with compliance with the rules of evidence for proving any matter which is not bona fide in dispute; or
- (b) dispense with compliance with the rules of evidence where such compliance might occasion or involve unnecessary or unreasonable expense or delay, including, but without limiting the generality of this power, compliance with the rules relating to proof of handwriting or of documents and the proof of the identity of parties or of authority.

Dispensing
with rules of
evidence

4. (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. Depositions

(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.

Evidence in
other
proceedings

5. (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) Sub-rule (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.

Plans,
photographs
and models

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

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

Proof of
court
documents

7. (1) A document purporting to be marked with a seal of the Court is admissible in evidence without further proof.

(2) An office copy of a document filed in or issued out of the Court is admissible in evidence in all proceedings and between all parties to the same extent as the original document would be admissible.

(3) A document purporting to be marked with a seal of the Court and to be a copy of a document filed in or issued out of the Registry is admissible as an office copy of the latter document without further proof.

Production
of court
documents

8. 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.

Consent of
trustee, &c.

9. (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 sub-rule (2), is evidence of the consent.

(2) A document is sufficiently executed and authenticated for the purposes of sub-rule (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. 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, unless the Court otherwise directs, examine that person by asking him leading questions.

Leading
questions to
witness

11. (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.

Privilege

(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) Sub-rule (1) applies where an order is made for production to, and sub-rule (2) applies where 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 authorized to receive evidence, whether on a trial or hearing or on any other occasion.

(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.

12. (1) Where a party to any proceedings serves on another party notice 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.

Production
on notice—
Form 45

(2) Where the document or thing required to be produced in accordance with sub-rule (1) is not produced, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing.

(3) Sub-rule (2) does not affect the power of the Court to order costs against a party who fails to comply with a notice under sub-rule (1).

13. (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.

Attendance
and
production

(2) An order under sub-rule (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) Sub-rules (1) and (2) apply whether or not the person for whose attendance the order is made has been required to attend by subpoena.

Attendance
of prisoner in
pro-
ceedings
before
Court or
examiner

14. (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 pursuant to Order 24, shall move for an order to that effect.

(2) A motion under sub-rule (1) may be made *ex parte* and shall 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 sub-rule (1) shall be in accordance with Form 46 in the First Schedule.

ORDER 34

COURT EXPERT

Application 1. This Part does not apply to a question or matter to be tried before a jury.

Appointment 2. (1) Where a question for an expert witness arises in any proceedings the Court may, at any stage of the proceedings, on application by a party—

- (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 his 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.

(2) In sub-rule (1), “expert”, in relation to any question, means a person who has such knowledge or experience of, or in connection with, that question, or questions of the character of that question, that his opinion on that question would be admissible in evidence.

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

(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. 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. (1) The remuneration of the court expert shall be fixed by the Court and shall include—

- (a) a fee for his report; and
- (b) a proper sum for each day during which he is required to attend before the Court or before 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, on application by any party or by the court expert, make orders in the proceedings for payment in or towards discharge of the liability of any party under sub-rule (2).

(4) Sub-rules (2) and (3) do not affect the powers of the Court as to costs.

6. Where, pursuant to this Order, a court expert has made a report on any question—

- (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 35

JUDGMENTS AND ORDERS

General
relief

1. 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.

Written
reasons

2. 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.

Date of effect

3. 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.

Time for
compliance

4. (1) Subject to sub-rules (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) Sub-rules (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.

(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.

Fine

5. (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 is subject to the provisions of the *Conciliation and Arbitration Act 1904*.

Dismissal

6. (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
- (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. (1) The Court may vary or set aside a judgment or order before it *Setting aside* has been entered.

(2) The Court, where it is not exercising its appellate or related jurisdiction under Division 2 of Part III of the Act, may if it thinks fit 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 or order from an accidental slip or omission, may at any time be corrected by the Court.

(4) Sub-rule (2) shall not affect the power of the Court to vary or terminate the operation of an order by a supplementary order.

8. A judgment debt shall carry interest at the rate of 8% per annum. *Interest*

9. (1) In any proceedings, the Court may take judicial notice of any order of the Court in the proceedings. *Judicial notice of order*

(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.

Consent
orders

10. (1) A written consent of the parties to a proceeding, or the solicitors, to the making of an order in the proceeding may be filed in the Registry at the proper place.

(2) Notwithstanding anything contained in these Rules, upon the written consent being so filed, the Registrar shall bring the matter before a Judge who, if he thinks fit, may, without any other application being made to him, direct the Registrar to draw up, sign and seal an order in accordance with the terms of the 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.

Undertakings

11. (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 sub-rule (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.

ORDER 36

JUDGMENTS AND ORDERS: ENTRY

Lodgment—
Form 47

1. A party desiring to enter an order shall lodge a draft of the order with the Registrar.

Settlement

2. The Registrar may—

(a) settle the draft without an appointment for the attendance of the parties; or

(b) appoint a time and place for attendance of the parties to settle the draft.

3. (1) Where the Registrar makes an appointment for settlement under paragraph 2 (b), he shall notify the appointment to the party lodging the draft order. Appointment for settlement

(2) The party lodging the draft shall, not less than 2 days before the appointed date, serve notice of the appointment on the other party.

4. (1) Where a party has been served with notice of an appointment to settle a draft of an order, but does not attend on the appointment, or where the party lodging the draft does not attend on the appointment, the Registrar may settle the draft in the absence of that party. Procedure on appointment

(2) The Registrar shall, on or after the appointment, settle the draft.

5. (1) Where the entry of an order is authorised by the Rules or by a direction of the Court, the Registrar may, subject to sub-rule (3), draw and settle the order. Settlement without lodgment

(2) The Registrar may exercise his powers under sub-rule (1)—

- (a) notwithstanding that no party has lodged a draft with him; and
- (b) without appointing any time or place for attendance of the parties on settlement.

(3) The Registrar shall not exercise his powers under sub-rule (1) unless—

- (a) the Court so directs, or
- (b) a party so requests.

6. The Registrar shall on settling a draft of an order, sign the draft or a fair copy of it. Signature

7. Where the Registrar has signed a draft of an order, but the order has not been entered, the Court may review the draft and give such directions as it thinks fit for varying the form and content of the draft. Review

8. (1) Unless the Court otherwise orders, a party may enter an order at any time. Order: where entry required

(2) An order shall be entered in the following cases:

- (a) where the order only takes effect on the signing of the order;
- (b) where the order is to be served;
- (c) where the order is to be enforced;
- (d) where an appeal from the order has been instituted, or an application for leave to appeal from the order has been made;
- (e) where the Court so directs.

(3) Subject to sub-rule (4), an order shall, unless the Court otherwise directs, be entered where some step is to be taken under the order.

(4) Sub-rule (3) does not apply to an order which (in addition to any provision as to costs) merely—

- (a) makes an extension or abridgment of time; or
- (b) grants leave or makes a direction—
 - (i) to amend any document other than an order;
 - (ii) to file any document; or
 - (iii) to do any act to be done by an officer of the Court other than a solicitor; or
- (c) gives directions concerning the conduct of proceedings.

Manner of
entry

9. (1) A party may enter an order by filing it in the form in which it has been settled by the Registrar.

(2) The Registrar may enter an order under sub-rule (1) on the direction of the Court or the request of a party.

Sealing

10. Upon its being entered, the Registrar shall seal the order with the seal of the Court.

Copies

11. (1) The Registrar shall, upon the request of any party, furnish that party with a certified or office copy of the order entered in the proceeding.

(2) The Registrar may, upon payment of the prescribed fee, furnish to any person appearing to have a sufficient interest in the order entered in any proceeding, a certified or office copy of the order.

Service

12. An order need not be served unless the Rules require service or the Court directs service.

ORDER 37

JUDGMENTS AND ORDERS: ENFORCEMENT

Attendance

1. (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, on application by a party or of its own motion—

- (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 his detention in custody in the meantime; and
- (f) order the person in default to pay any costs occasioned by the default.

(2) Sub-rule (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
- (c) the powers of the Court under section 119 of the *Conciliation and Arbitration Act 1904*.

2. (1) Subject to the Rules, an order shall not be enforced by committal or sequestration unless—

Service
before
committal or
sequestration

- (a) the order or a certified or office copy thereof is served personally on the person bound; 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.

(2) Subject to the Rules, where the person bound by an order is a corporation or organization 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 sub-rule (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

(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.

Substituted
performance

3. (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) Sub-rule (1) does not affect any other mode of enforcement of the judgment or order, or the powers of the Court to punish for contempt.

Enforce-
ments by or
against
non-party

4. (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 organization which is not a party, an officer of the corporation or organization shall be liable to the same process of enforcement as if the corporation or organization were a party.

Non-
performance
of condition

5. 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. (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. Matters occurring after judgment

(2) Sub-rule (1) does not affect the powers of the Court to stay execution under rule 10.

7. (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. Enforcement as in State and Territory Supreme Courts

(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.

(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. 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. Ex parte application

9. A person shall not be committed except by or under an order of the Court stating why he is being committed. Committal—Form 49

10. The Court may stay execution of a judgment or order.

Stay of execution

ORDER 38

ASSESSMENT OF DAMAGES

Ascertain-
ment of
damages
where a
matter of
calculation

1. (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.

Certificate of
Registrar

2. (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 sub-rule (1), the Registrar shall deliver a copy of the order to each party.

(3) Where an objection is made under sub-rule (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 sub-rule (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.

Damages in
respect of
continuing
cause of
action

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

ORDER 39

ACCOUNTS AND INQUIRIES

Account:
summary
order

1. (1) Subject to sub-rule (2), where a party claims an account or makes a claim which involves taking an account, the Court may, on application by that party at any stage of the proceedings—

(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 him.

(2) The Court shall not make an order under sub-rule (1)—

- (a) as against a respondent who has not filed an appearance unless he is in default of appearance; or
- (b) if it appears there is some preliminary question to be determined.

2. The Court may, on application by a party at any stage of proceedings, make orders for the taking of any account or the making of any inquiry. Account or inquiry at any stage

3. Where the Court makes an order for the taking of an account, the Court, by the same or subsequent order— Account: directions

- (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. (1) The items on each side of an account shall be numbered consecutively. Account: form and verification

(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. 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. Account: filing and service

6. (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. Account: notice of charge or error

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

8. 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.

Account:
taken before
Registrar

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

Certificate of
Registrar

10. (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 sub-rule (1), the Registrar shall deliver a copy of the order to each party.

(3) Where an objection is made under sub-rule (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 sub-rule (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

Arrest

1. 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.

Charge,
defence and
deter-
mination

2. 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. (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.

Interim
custody

(2) The Court may make a direction under sub-rule (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. This Division does not apply to a case in which the Court proceeds under Division 1.

Application

5. (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.

Procedure
generally

(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. 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.

Statement of
charge

7. (1) Subject to sub-rule (2), the evidence in support of the charge shall be by affidavit.

Evidence

(2) The Court may permit evidence in support of the charge to be given otherwise than by affidavit.

8. The notice of motion or application, the statement of charge, and the affidavits shall be served personally on the accused person.

Service

9. 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

Arrest—
Form 48

- (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 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.

Motion or
proceedings
by the
Registrar

10. (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) Sub-rule (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

Warrant—
Form 48

11. A warrant for the arrest or detention under this Order of an accused person shall be addressed to the Sheriff and may be issued under the hand of the Judge presiding in the Court directing the arrest or detention.

Discharge

12. Where an accused person is committed to prison for a term, the Court may order his discharge before the expiry of the term.

Service
before
proceeding
commenced

13. (1) Subject to sub-rule (3), a proceeding for contempt shall not be commenced by a party for failure of the accused person to obey an order of the Court unless—

- (a) the order or a certified or office copy thereof has been personally served on the accused person; and
- (b) the order or a certified or office copy thereof was endorsed with a statement that the person served in the event of his disobeying the order, may be liable to punishment for contempt of court by imprisonment or fine or both, or in the case of a corporation or organization, by sequestration or fine or both.

(2) Sub-rule (1) does not affect the requirements of Order 37, rule 2.

(3) Where—

- (a) a proceeding for contempt is commenced by a party for the failure of the accused person to observe an undertaking to the Court; and

- (b) the undertaking was not given to the Court by the accused in person, or if the accused person was a corporation or organization, by a responsible officer of the corporation or organization in person,

a document containing the terms of the undertaking shall be personally served on the accused person endorsed with a statement that in the event of his failing to observe the undertaking, the person served may be liable to be punished for contempt of court by imprisonment or fine or both, or in the case of a corporation or organization, by sequestration or fine or both.

14. This Order is subject to section 111 of the *Conciliation and Arbitration Act* 1904.

Order
subject to
Conciliation
and
Arbitration
Act

ORDER 41 DOCUMENTS

1. (1) A document in any proceeding shall be headed in the manner indicated in Form 1 of the Schedule, that is to say with a reference to—

First page of
a
document—
Form 1

- (a) the District Registry in which 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.

(3) A document in any proceeding in which there is no respondent shall be entitled “The application of” together with the name of the applicant.

Form 3

(4) Except in the case of—

Form 2

- (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 bear an abbreviation of the title of the proceeding sufficient to identify the proceeding.

2. (1) This rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impracticable.

Paper and
writing

(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 Judge may direct that documents of different dimensions be accepted in the case of any particular Registry.

(3) The writing on a document shall be on one face of the paper only and a margin of not less than 25 millimetres shall be kept clear on the left hand side.

(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.

Backsheet

3. (1) A document prepared by a party for use in the Court shall have a backsheet showing—

- (a) a description of the document and, if an affidavit, the name of the deponent and the date sworn or affirmed;
- (b) the name and address and telephone number of the solicitor for the party and, if the solicitor acts in the proceeding by an agent, the name, address and telephone number of the agent; and
- (c) where a notice for service at a document exchange is filed under Order 7, rule 7, the exchange box number.

(2) Where the party preparing a document for use in the Court is not represented by a solicitor, paragraph (1) (b) does not apply but the backsheet shall show the name and address for service of the party, and his telephone number, if any.

Numbers

4. Dates, sums and other numbers shall be expressed in figures and not in words.

Scandal, &c.

5. The Court may order to be struck out of any document any matter which is scandalous, vexatious or oppressive.

**Signing documents—
Form 4**

6. Any document filed other than an affidavit, annexure or exhibit attached to another document shall be signed by the party filing it or by his solicitor unless the nature of the document is such that the signature is inappropriate.

ORDER 42

PARTNERSHIPS AND BUSINESS NAMES

Division 1—Partnerships

1. 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. Interpretation

2. (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. Action in 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 sub-rule (1), unless the Court otherwise orders, it shall continue in the partnership name, and not in the names of the individual partners.

3. (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. Disclosure of names, &c., of partners

(2) If the partnership fails to furnish the information pursuant to sub-rule (1), the party making the requirement may move on notice—

- (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. (1) Subject to sub-rule (3), where persons are sued as partners in the partnership name pursuant to rule 2, the originating process shall be served personally— Service

- (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 sub-rule 9 (2) of this Order, where service is effected pursuant to sub-rule (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 sub-rule (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.

Appearance
of partners

5. (1) Where a person is served pursuant to rule 4, he shall enter an appearance in his own name.

(2) Notwithstanding sub-rule (1), the proceeding shall continue in the name of the partnership.

Appearance
under protest
of person
served as
partner

6. (1) Where a person served under rule 4 denies that he is a partner of the partnership, or denies that he was a partner of the partnership at the time of the cause of action arose, he shall file an affidavit making that denial before the directions hearing appointed in the application.

(2) The affidavit shall state the material facts in support of that person's contention.

(3) Sub-rule (1) does not prevent any person raising the defence referred to in that sub-rule, at any later stage of the proceeding.

Defence

7. (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 sub-rule (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 sub-rule (2) or more than one ground of defence appears from the affidavits filed pursuant to sub-rule (2), the applicant shall not be entitled to judgment unless none of the defences raised affords a proper defence to his claim.

Entry of
order

8. 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.

Execution of
judgment
against a
partnership

9. (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;
- (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) Sub-rule 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. (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. Judgment
against
individual
partner

(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. (1) In addition to its other operation, this Order, subject to sub-rule (2), also applies to— Application
to
proceedings
between
co-partners

- (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 sub-rule (1) applies without the leave of the Court.

(3) On an application for leave under sub-rule (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. 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 carries on business, without any addition. Interpret-
ation

Proceedings
in business
name

13. (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.

Application
of rules

14. The succeeding rules of this Order apply where a proceeding is commenced under paragraph 13 (1) (b) against a person in a business name.

Service

15. 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.

Appearance

16. (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 sub-rule (2), the Court may order that his appearance be struck out.

Proceeding
under either
Division

17. Where an appearance filed under sub-rule 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. (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. Amendment
as to parties

(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 sub-rule (1), until amendments are made in accordance with sub-rule (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. (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. Execution

(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 sub-rule (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 the business, or for the purposes and in the course of the business, being property, rights or interest of that person.

20. (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. Variation of
judgment or
order

(2) Notice of a motion for a variation of a judgment or order under sub-rule (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.

Discovery in
aid of rules
18, 20

21. (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 organization order the corporation or organization or any officer of the corporation or organization to produce any document or thing in the possession, custody or power of the corporation or organization relating to the identity or description of the respondent.

(2) In sub-rule (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

Proceeding
by or against
person under
disability

- 1. (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.

Appointment
of tutor by
the court

- 2. (1) The Court may, on motion by a party to a proceeding or any other person, appoint a tutor for a person under disability for the purpose of the 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. (1) The Court may, on motion by a party to a proceeding or by any other person or of its own motion—

Removal of
tutor

- (a) remove a tutor; and
- (b) stay the proceeding until appointment of a tutor in place of the tutor removed.

(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 he is tutor.

4. (1) Subject to these Rules, an order appointing a tutor is not necessary.

Appointment
of tutor
generally

(2) Any person may be a tutor except—

- (a) a person under disability;
- (b) a corporation or organization unless the corporation or organization 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
- (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 sub-rule 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.

Conduct of
proceedings
by tutor

5. (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.

Cross-claim

6. A tutor defending any proceeding for a person under disability may bring a cross-claim under Order 5.

No imputed
admission on
pleadings

7. Order 11, sub-rule 13 (1) does not apply to an opposite party who is a person under disability.

Discovery
and inter-
rogatories

8. Orders 15 and 16 apply to a person under disability and to his tutor.

Compromise,
&c. of
matter in suit

9. (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 sub-rule (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 sub-rule (1) is not binding on the person under disability.

Payment
into Court

10. A tutor shall not, except by leave of the Court, bring money into Court under Order 23 or accept money brought into Court under that Order.

11. (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. Compromise,
&c., before
suit

(2) An agreement approved by the Court under sub-rule (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 sub-rule (1) is not binding on a person under disability by or on whose behalf it is made.

(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. (1) The Court may give its approval under rule 10 or rule 12 on terms. Terms of
approval

(2) Without affecting the generality of sub-rule (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. (1) This rule applies where, in any proceeding, a document is required to be served personally on a person under disability. Service

(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 upwards, on him;
- (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 sub-rules (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 sub-rules (3) to (6), be served personally on the person under disability.

(9) Sub-rule (8) does not apply to an order for interrogatories or for discovery or inspection of documents.

ORDER 44

INTERPLEADER

Division 1—Preliminary

Interpretation

1. 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.

*Division 2—Stakeholder's Interpleader***2. Where—**Case for
relief

- (a) a person is under a liability (otherwise than as a Sheriff) in respect of a debt or other personal property; and
- (b) he 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, on application by such person (in this Order referred to as a “ stakeholder ”), grant relief by way of interpleader.

3. (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.

Application
in a pending
proceeding**(2)** A stakeholder applying pursuant to sub-rule (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 sub-rule (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. (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 claim to the Sheriff.

Notice of
claim—
Form 50**(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 sub-rule (5), a Sheriff may apply for an order under sub-rule (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 sub-rule (3) applies is brought in the Court against a Sheriff, an application by him for an order under that sub-rule restraining the continuance of that proceeding shall be made by motion in that proceeding.

Notice to
execution
creditor

5. (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.

Admission of
claim

6. (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 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 sub-rule (2), a Sheriff may apply for an order under paragraph (1) (c) by motion in the proceeding in which the process is issued.

Interpleader
motion

7. (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 4—General***8. On application for relief by way of interpleader—**Powers
generally

- (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. (1) Where—Default by
claimant

- (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
- (b) a claimant does not comply with an order made in the proceeding on such an application,

the Court may, subject to sub-rule (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 sub-rule (1) shall not affect the rights of the claimants amongst themselves.

Neutrality of
applicant

10. (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 sub-rule (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.

Order in
several
proceedings

11. (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 sub-rule (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.

Disposal

12. 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.

ORDER 45

SOLICITORS

Power to act
by solicitor

1. (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) Sub-rule (1) does not apply where the context or subject matter otherwise indicates or requires.

Adverse
parties

2. 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. (1) Where a solicitor acts for a party in any proceedings the party may change his solicitor. Change of 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. 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. Change of agent

5. 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. Appointment of solicitor

6. (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— Removal of solicitor

- (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. (1) Where a solicitor acts for a party to any proceeding and afterwards ceases to act, the solicitor may, subject to sub-rule (2), file notice of the change and serve the notice on the parties. Withdrawal of solicitor

(2) A solicitor shall not file or serve notice of a change under sub-rule (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 sub-rule (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 sub-rule (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.

8. 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. Effect of change

Signature for
solicitor

9. (1) Where any signature by a solicitor is required or permitted for the purpose of any proceeding, the signature for the solicitor by any of the following persons shall be sufficient:

- (a) a partner of the solicitor;
- (b) a solicitor who is agent of the solicitor for the purpose of the proceeding;
- (c) a partner of the agent;
- (d) a solicitor employed by the solicitor or by the agent.

(2) A signature made pursuant to this rule shall be accompanied by a statement of the capacity in which the signature is made.

ORDER 46

REGISTRIES

Taking of
oaths and
affidavits

1. 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.

Seal of Court

2. (1) The seal of the Court as determined by the Attorney-General pursuant to sub-section 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 Judge 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 Judge directs for the purpose of relating the stamp to that District Registry.

(5) A document or a copy of a document marked with a stamp referred to in sub-rule (3) or (4) is as valid and effectual as if it had been sealed with the seal of the Court.

3. The seal of the Court shall be affixed to—

Use of Seal

- (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. 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.

Stamp of Court

5. (1) Each Registrar shall have charge of documents in proceedings in the Registry and of the records of the Registry.

Custody of documents

(2) Except for the purpose of transmission between Registries, a document shall not be taken out of a Registry without the permission of the Court or a Judge.

(3) The Registrar shall ensure that the records of the Registry are properly kept.

6. (1) Except with the leave of the Court or a Judge a person who is not a party to the proceeding may not search in the Registry for or inspect—

Inspection of documents

- (a) any judgment, order, transcript of a proceeding, or other document which the Court has ordered remain confidential;
- (b) any affidavit;
- (c) interrogatories or answers to interrogatories;
- (d) lists of documents given on discovery;
- (e) admissions;
- (f) evidence taken on deposition;
- (g) any subpoena or any documents lodged with the Registrar in answer to a subpoena for production of documents; or
- (h) any other document which the Registrar considers ought to remain confidential to the parties.

(2) Except with the leave of the Court or a Judge a party may not search in the Registry for or inspect any document filed to support an application that any document, evidence or thing be kept confidential or that any document or thing be privileged from production.

Operation of
Registries

7. (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 party 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.

Temporary
venue

8. (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 sub-rule (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.

(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.

Trans-
mission of
documents

9. (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 sub-rule (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.

10. 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. Transmission of order

11. 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. Summary of order

12. Documents transmitted by use of facsimile transmitting equipment shall be deemed documents transmitted by telegraph for the purposes of this Order. Facsimile

ORDER 47

SHERIFF

Division 1—General

1. In this Order, unless the context or subject matter otherwise indicates or requires— Interpretation

“ 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. (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. Suspension of execution

(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.

Default

3. 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.

Execution:
Motion for
directions

4. 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

Security

5. (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 him money in an amount fixed by him to be applied in or towards satisfaction of his 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 sub-rule (1) objects to the amount fixed by the Sheriff, the Court, on motion by the party, 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 shall repay the excess to the party depositing the money or to his solicitor.

Liability of
solicitor

6. 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).

Bill

7. (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.

Taxation

8. (1) Subject to sub-rule (2), the Court may, on motion by a person interested, 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. (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. Determination

(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. 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. Default by solicitor

ORDER 48

REFERENCE BY INDUSTRIAL REGISTRAR CONCERNING ELECTIONS

1. In this Order—

“applicant” means a party applying for an inquiry into the election for an office in an organization or in a branch of an organization, under section 159 of the *Conciliation and Arbitration Act 1904*;

“Industrial Registrar” has the same meaning as in the *Conciliation and Arbitration Act 1904*;

“matter” means a matter referred by the Industrial Registrar to the Court pursuant to sub-section 159 (4) or sub-section 160 (1) of the *Conciliation and Arbitration Act 1904*.

Interpretation

2. (1) Where the Industrial Registrar refers a matter to the Court he shall forward to the appropriate District Registrar of the Court— Commencement of a proceeding

(a) a document or documents referring the matter; and

(b) the application for an inquiry lodged with him by the applicant and any relevant documents in connection therewith.

(2) Upon the receipt of the documents referred to in sub-rule (1), the District Registrar shall—

- (a) sign and seal the application with the seal of the Court; and
- (b) forward a sealed copy of the application and a copy of any other documents forwarded pursuant to paragraph (1) (b) to the applicant with a note endorsed on the application of—
 - (i) the time and place on which the matter is listed for a directions hearing; and
 - (ii) the names and addresses of the persons (if any) to whom the Court or a Judge has directed that advice of the application be given.

Service

3. (1) Not later than 2 days before the date appointed for a directions hearing, the applicant shall serve a sealed copy of the application and any other documents on all other proper parties to the inquiry.

(2) The copy of the application for service under sub-rule (1) shall bear a note—

- (a) of the time and place for a directions hearing; and
- (b) that if there is no appearance by the party served or his counsel or solicitor at the directions hearing, the proceeding may be heard and orders made in his absence.

Directions

4. At the directions hearing the Court shall give such directions as are required to be given by section 162 of the *Conciliation and Arbitration Act* 1904, and all other directions necessary for the further conduct of the inquiry.

Application pursuant to section 163 of the Conciliation and Arbitration Act

5. At any time after an inquiry in connection with an election has been instituted any person may make an application pursuant to section 163 of the *Conciliation and Arbitration Act* 1904 *ex parte* or upon notice as the Court or a Judge may direct.

ORDER 49

PROCEEDINGS FOR AN OFFENCE

Prosecutions

1. (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. (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 the First Schedule.
3. (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. (1) The summons shall appoint a date on which the defendant is to appear before the Court to answer the charge.
- (2) Except where the defendant enters a plea of guilty or the Court otherwise orders, on the day appointed under sub-rule (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.
- (3) If the defendant does not appear on the date appointed pursuant to sub-rule (1), the Court may issue a warrant for his arrest.
- (4) The warrant shall be in the form numbered 48 in the First Schedule.

Form of
summons,
Forms 51, 52

Summons in
paragraphs

Appointment
of date

Form 48

ORDER 50

CASE STATED AND QUESTIONS RESERVED

1. (1) A case stated, or a question reserved or referred for the consideration of the Court—
- (a) under sub-section 25 (6) or section 26 of the Act;
 - (b) under section 105, 107 or 112 of the *Conciliation and Arbitration Act* 1904;
 - (c) under section 45 of the *Administrative Appeals Tribunal Act* 1975;
 - (d) under section 198 of the *Income Tax Assessment Act* 1936;
 - (e) under section 88 of the *Insurance Act* 1973; or
 - (f) to the extent appropriate under any other Act,
- shall be in the form of a special case.

Application

(2) The special case shall be divided into paragraphs numbered consecutively and shall state concisely such facts and shall annex such documents as are 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.

Special case
to be
prepared,
&c.

2. Unless the Judge, Court, Tribunal, Commission, Industrial Registrar or other authority stating the case or reserving the question otherwise directs, the special case shall be—

- (a) prepared in draft by the party having the carriage of the proceeding after consultation with the other parties concerned;
- (b) settled by the Judge, Court, Tribunal, Commission, Industrial Registrar or other authority stating the case or reserving the question; and
- (c) transmitted by the Judge, Court, Tribunal, Commission, Industrial Registrar or other authority stating the case or reserving the question, with four additional copies, to the Registry at the proper place.

Setting down
for hearing

3. Where a special case has been referred, the Registrar shall—

- (a) set down the proceeding for hearing; and
- (b) notify each party of the date appointed for hearing.

Party having
carriage of
the
proceeding

4. Where a question is referred to the Court by a Tribunal or the Conciliation and Arbitration Commission, the party having the carriage of the proceeding for the purpose of rule 2 shall be—

- (a) where the question is referred by the Tribunal or Commission at the request of a party—that party;
- (b) where 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) where the question is referred by the Commission of its own motion—such party as the Commission appoints for that purpose.

Question
referred
pursuant to
section 112
of
Conciliation
and
Arbitration
Act

5. Where a question is referred to the Court by the Industrial Registrar pursuant to section 112 of the *Conciliation and Arbitration Act* 1904, the District Registrar of the Court shall—

- (a) set down the proceeding for a directions hearing; and
- (b) notify the parties interested in the question and the Industrial Registrar of the date so appointed.

ORDER 51

JUDICIARY ACT 1903—SECTION 78B

1. (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.

Notice of a
constitutional
matter—
Form 53

(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 sub-rule (1) applies.

(3) The notice of a constitutional matter shall be in or substantially in the form numbered 53 in the First Schedule.

2. The party whose case raises the constitutional matter or such other party as the Court may direct shall file notice of a constitutional matter and serve a copy thereof on every other party and on the Attorney-General of the Commonwealth and the Attorney-General of the relevant State—

Filing and
service

- (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.

3. 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—

Affidavit of
service

- (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.

ORDER 52

APPEALS

1. In this Order unless the contrary intention appears—

- “ application ” means application for leave to appeal, and
- “ applicant ” has a corresponding meaning;

Interpret-
ation

“ Court ” means the Court exercising its appellate or related jurisdiction under Part III Division 2 of the Act;

“ judgment ” means the judgment, decree, order, or sentence of a court or judge under appeal, or in respect of which leave to appeal is sought.

Service

2. Where in this Order service is required of a document it may be effected—

- (a) in the case of a notice of appeal or an application for leave to appeal—
 - (i) by serving a signed and sealed copy of the document personally on the party to be served; or
 - (ii) by delivering a signed and sealed copy of the document to that party's address for service in the proceeding in the court appealed from; and
- (b) in the case of any other document—
 - (i) by serving it in the manner prescribed in paragraph (a) above; or
 - (ii) by serving it in the manner prescribed in Order 7, rule 4 for service of documents which need not be served personally.

Division 1—Application for Leave to Appeal

How
applications
for leave to
appeal to be
made

3. (1) Where an appeal from a judgment lies to the Court only with leave, an application shall be determined after an oral hearing.

(2) Where an appeal from a judgment lies to the Court as of right but leave is required pursuant to sub-rule 15 (2) of this Order (which concerns appeals out of time), an applicant may present his case and his argument to the Court in writing pursuant to rule 9 if he so desires.

(3) If an applicant does not proceed pursuant to rule 9, the application shall be determined after an oral hearing.

Form of
application—
Form 54

4. (1) Subject to sub-rule 9 (1), an application shall be made in or substantially in the form numbered 54 in the First Schedule.

(2) An application shall be accompanied by an affidavit showing—

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

5. (1) This rule applies only to applications where an appeal from the judgment lies to the Court only with leave. Time for
filing
application

(2) An application shall be filed within 21 days after—

- (a) the judgment was pronounced; or
- (b) a later date fixed for that purpose by the court or judge who pronounced the decision.

(3) Where an application is not filed within the time limited by sub-rule (2), an order shall be sought in the application that compliance with sub-rule (2) be dispensed with.

6. An application and accompanying affidavit shall be served on each person who was a party to or given leave to intervene in the proceeding in the court appealed from within 5 days of the filing of the application. Service

7. A respondent to an application need not enter an appearance. Appearance

8. A respondent who desires to adduce evidence shall file and serve his affidavits within 14 days of the service of the application on him. Time for
filing and
service of
affidavits

9. (1) An applicant who desires to present his case and argument in writing pursuant to sub-rule 3 (2), shall state in his application that he proposes to file a written case. Use of
written case

(2) A respondent who does not desire to proceed by written case shall within 7 days of service of the application file and serve notice to that effect.

(3) If no notice is filed by a respondent pursuant to sub-rule (2), each party shall file 4 copies of his written case within 28 days after the service of the application on the respondent.

(4) A written case shall—

- (a) bear the title of the proceeding;
- (b) identify the party whose case it is;
- (c) consist of paragraphs consecutively numbered; and
- (d) state as concisely as possible—
 - (i) the circumstances out of which the application arises;
 - (ii) the contentions to be urged by the party concerned; and
 - (iii) the reasons relied upon.

(5) So far as practicable, in a written case, references to the portions of the transcript relied upon shall be given by page and line, and the relevant portions of the transcript shall be annexed to the case.

(6) A written case need not be printed and in bound form but shall be clear and legible and securely fastened.

(7) When a party has filed his case he shall on the day of filing, give written notice to the other party that he has done so.

(8) When all parties have filed their cases they shall exchange copies with one another.

(9) Each party is entitled to 3 copies of the other's case.

(10) A case shall not be available for inspection at the proper place until all parties have filed their cases.

Setting down
for hearing

10. The application shall be set down for hearing (or, if the application is to be determined on written cases, for decision) by the Registrar at the proper place, who shall notify the parties of the date appointed for such hearing (or decision).

Division 2—Appeals

Interpretation

11. If the Court directs that a party other than the appellant shall have the carriage of the appeal, or of a proceeding in or arising out of an appeal, these Rules apply as if that party were included in the description " appellant ".

Form and
filing of
notice of
appeal—
Form 55

12. (1) An appeal shall be instituted by filing a notice of appeal which shall be in or substantially in the form numbered 55 in the First Schedule.

(2) A notice of appeal shall be filed—

- (a) if the appeal is from the judgment of the Supreme Court of a State or Territory—in the District Registry in that State or Territory; and
- (b) if the appeal is from a single Judge of the Court—in the Registry at the proper place.

Title of
proceeding

13. (1) A notice of appeal and all subsequent proceedings in an appeal shall be entitled " In the Federal Court of Australia " with the name of the Registry in which they are filed, " On Appeal From " the court from which the appeal is brought, naming it, and shall also be entitled as between the party appellant and the party respondent.

(2) The notice of appeal shall state—

- (a) whether the whole or part only, and what part, of the judgment is appealed from;
- (b) briefly, but specifically, the grounds relied upon in support of the appeal; and

- (c) what judgment the appellant seeks in lieu of that appealed from.
- (3) If the appeal is brought by leave of the Court—
- (a) the notice of appeal shall so state; and
 - (b) a copy of the order giving leave to appeal shall be annexed to the notice of appeal filed in the court appealed from pursuant to sub-rule 16 (1), and to every copy of the notice of appeal served pursuant to sub-rule 16 (2).
14. (1) Each party to the proceeding in the court appealed from Parties who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment under appeal shall be joined as a party appellant or respondent to the appeal.
- (2) The Court may order the addition or removal of any person as a party appellant or respondent to an appeal.
- (3) A person shall not be made an appellant without his consent.
15. (1) The notice of appeal shall be filed and served—
- (a) within 21 days after—
 - (i) the date when the judgment appealed from was pronounced;
 - (ii) the date when leave to appeal was granted; or
 - (iii) any later date fixed for that purpose by the court appealed from; or
 - (b) within such further time as is allowed by the Court upon application made by motion upon notice issued within the period of 21 days referred to in the last preceding paragraph.
- (2) Notwithstanding anything in the preceding sub-rule, the Court for special reasons may at any time give leave to file and serve a notice of appeal.
16. (1) Where the court appealed from is the Supreme Court of a State or Territory, a copy of the notice of appeal shall be filed in the office of the Registrar, Master or other proper officer of that court. Filing in courts and service upon parties
- (2) The notice of appeal shall be served upon each person who was a party to or given leave to intervene in the proceeding in the court appealed from.
- (3) The Court may direct that the notice of appeal be served on any other person.

Stay

17. (1) An appeal to the Court shall not—

- (a) operate as a stay of execution or of proceedings under the judgment appealed from; or
- (b) invalidate any intermediate act or proceeding,

except so far as the Court or the court below may direct.

(2) The Court may vary or vacate any direction of the Court or the court below referred to in sub-rule (1).

(3) An application for a direction of the Court under sub-rule (1) or an order under sub-rule (2) shall be made to the Court by motion upon notice, and may be made whether or not a similar application has been made to the court below.

Competency
of appeal

18. (1) A respondent may move on notice at any time for an order dismissing an appeal as incompetent.

(2) Upon the hearing of the motion, the burden of establishing the competency of the appeal is on the appellant.

(3) If a respondent does not move under sub-rule (1) but the appeal nevertheless is dismissed by the Court as incompetent, the respondent shall not, unless the Court otherwise orders, receive any costs of the appeal, and the Court may order that he pay the appellant any costs of the appeal proving useless or unnecessary.

Dis-
continuance
of appeal

19. (1) An appellant may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal shall be abandoned.

(2) The notice of discontinuance filed by an appellant under sub-rule (1) does not affect any other appellant in the appeal.

(3) A party filing a notice of discontinuance under sub-rule (1) shall be liable to pay the costs of the other party or parties occasioned by his appeal.

(4) A party whose costs are payable under sub-rule (3) may tax the costs and if the taxed costs are not paid within 14 days after service of the certificate of taxation may enter judgment for the taxed costs.

Security for
costs

20. Unless the Court otherwise directs no security for costs of an appeal to the Court shall be required.

Amendment
by supple-
mentary
notice

21. (1) A notice of appeal may, before the date of the appointment made under rule 24, be amended without leave by filing a supplementary notice.

(2) A party who files a supplementary notice under sub-rule (1) shall serve and file it in accordance with rule 16 as if it were a notice of appeal.

22. (1) A respondent who desires to appeal from a part of the judgment or to seek a variation of a part of the judgment, need not institute a substantive appeal, but he shall—

Cross-appeal

- (a) within 21 days after the service upon him of the notice of appeal, or within such further time as the Court fixes, file in the Registry a notice of cross-appeal; and
- (b) serve a copy of the notice upon the appellant and any other person affected by the relief which he seeks.

(2) The notice of cross-appeal shall state what part of the judgment he cross-appeals from or contends should be varied, and shall state briefly, but specifically, the grounds of the cross-appeal and—

- (a) the relief which he seeks in lieu of the order cross-appealed; or
- (b) the variation of that order which he seeks.

(3) If a respondent proposes to contend that some matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of a part of the judgment pronounced, he need not give a notice of cross-appeal but shall—

- (a) give notice of his contention to the appellant;
- (b) give notice to the appellant of the record of evidence or documents before the court below relevant to his contention, for inclusion in the appellant's draft index to be prepared in accordance with sub-rule 26 (1); and
- (c) at the appointment to settle the appeal papers, request the Registrar to include such record of evidence or documents in the appeal papers.

23. (1) Where an appeal from a judgment lies, by leave or without leave, to the Court, the officer of the court below who has custody of the exhibits in the proceeding, shall, unless the court below otherwise orders, retain the exhibits—

Retention of exhibits

- (a) for 21 days after the date when the judgment is pronounced; or
- (b) if within the period of 21 days leave to appeal to the Court from the judgment is granted, for a period of 21 days after leave is granted.

(2) Upon an appeal to the Court being instituted—

- (a) the proper officer of the court below or the associate to the judge below, shall make out and certify a list of exhibits; and
- (b) the exhibits, the list, and any other document before the court below, shall be delivered or transmitted to the Registry at the proper place.

(3) Where an exhibit cannot be so delivered or transmitted, the associate or officer shall, in his certificate, state the circumstances and give such information as he can to enable the Registrar to cause the exhibit to be available to the Court.

(4) The Registrar shall retain the documents obtained under sub-rules (2) and (3) until the disposal of the appeal and shall thereupon return them to the Officer or persons from whom he obtained them.

Appointment
to settle

24. (1) The appellant shall, on filing his notice of appeal, get from the proper officer in the Registry, an appointment to settle the appeal papers.

(2) The appellant shall serve notice of the appointment on each person on whom the appeal is served.

(3) The notice of appointment may be subscribed to the notice of appeal.

Collection of
papers

25. (1) Before the date appointed for settling the appeal papers, the appellant shall obtain and file in the Registry—

- (a) the reasons for judgment or the summing up of the court or judge below certified by the proper officer below; and
- (b) a copy of the transcript of the proceedings below obtained from a Court Reporting Branch and corrected in accordance with sub-rules (3) and (4).

(2) If evidence was given orally but a copy of the transcript referred to in paragraph (1) (b) is not available—

- (a) if notes of the evidence were taken by the presiding judge in the court below, the appellant shall, subject to any direction by the court or judge below obtain a copy of the notes and file the same in the Registry; or
- (b) if notes of evidence are not obtainable pursuant to paragraph (a), the parties shall prepare a report of the evidence, which, subject to the directions of the court or judge below, shall be certified by the proper officer below, and shall be filed by the appellant in the Registry.

(3) Where the appellant obtains a copy of the transcript referred to in paragraph (1) (b) he shall—

- (a) correct any errors that appear in it;
- (b) submit a list of his corrections to the respondent; and
- (c) afford the respondent a reasonable opportunity of examining the transcript and corrections.

(4) If the parties disagree upon the accuracy of any part of the transcript, or are unable to agree upon a correction, the question shall be

submitted to the proper officer of the court or judge below for the directions of the court or judge on that matter.

26. (1) Before the date appointed for settling the appeal papers the appellant shall prepare and file in the Registry a draft index of the appeal papers. Draft index
of appeal
papers

(2) The appellant shall serve the draft index on the respondent a reasonable time before the appointment to settle the appeal papers.

27. At the appointment to settle the appeal papers the Registrar shall— Settlement

- (a) determine what documents and matters shall be included in the appeal papers and the order of inclusion and such other matters as he thinks fit concerning the preparation of copies of the appeal papers;
- (b) settle the index in accordance with rule 28;
- (c) determine the number of copies of the appeal papers required;
- (d) obtain an estimate of the duration of the hearing; and
- (e) if practicable, fix a date for hearing or list the appeal for hearing in an appellate sittings of the Court.

28. (1) The title page of the appeal papers shall give the full and correct title of the proceeding, including the title of the court from which the appeal is brought, and the names of the solicitors for each party and their addresses for service. Preparation
of appeal
papers

(2) After the title page there shall be an index of the documents comprising the appeal papers and showing the date and page number of each document.

(3) The appeal papers shall be paginated and the documents arranged as follows:

- (a) Process and pleading.
- (b) Evidence, oral or affidavit.
- (c) Testimony taken on commission or before an examiner and put in or used as evidence.
- (d) Exhibits. Arranged in the order in which they have been lettered or numbered as exhibits in the court below.
- (e) The reasons for decisions of the tribunal or board.
- (f) The formal decision of the tribunal or board.
- (g) The notice of appeal, if any, to the court below.

If the court or judge below was hearing an appeal from a tribunal or board.

- (h) The reasons for judgment of the court below.
- (i) The formal judgment or order of the court below.
- (j) The notice of appeal.
- (k) The certificate that the transcript has been examined and is correct.

(4) The date and a short description of the nature of each document shall precede it, but formal headings shall not be printed or copied, and *jurats*, formal identification of exhibits and the like shall be omitted.

(5) Interrogatories and answers and affidavits of documents shall not be copied except so far as they were put in evidence.

(6) A copy of the appeal papers shall be filed in the Registry with a certificate by the parties or their solicitors that it has been examined and is correct.

(7) The appeal papers need not be in bound and printed form but shall be clear and legible and securely fastened.

(8) The appeal papers shall be prepared to the satisfaction of the Registrar.

(9) The requirements of this rule shall be subject to any direction which may be given by the Court or a Judge.

(10) The appellant shall file such number of copies of the appeal papers as the Registrar directs pursuant to paragraph 27 (c).

Setting down
appeal

29. (1) Unless an appeal is set down or listed for hearing at the appointment to settle the appeal papers pursuant to paragraph 27 (e), the appellant shall set the appeal down for hearing in accordance with this rule.

(2) Unless otherwise ordered by the Court or a Judge an appeal shall be heard at the proper place.

(3) Unless otherwise ordered by the Court or a Judge an appeal shall be set down for hearing at the first sittings of the Court in its appellate jurisdiction appointed to be held at the place of hearing after the expiration of 6 weeks from the institution of the appeal.

(4) An appeal shall be set down at least 21 days before the day appointed for the commencement of the sittings.

(5) On the day on which an appeal is set down for hearing notice of the setting down shall be served by the appellant upon the respondent.

Written
submissions

30. (1) Subject to sub-rule (2) a party to an appeal may serve on the other parties a notice that he proposes to prepare and file written submissions.

(2) Where a date for the hearing of the appeal has been fixed, a party shall not, unless the Court or a Judge otherwise orders, give a notice under sub-rule (1) later than 14 days before that date.

(3) Where a notice under sub-rule (1) is served on any party, he may, by notice filed within 2 days after service on him of the notice under sub-rule (1), object to the use of written submissions.

(4) A party filing a notice of objection under sub-rule (3) shall, on the day of filing, serve the notice on each other party.

(5) Upon the filing of a notice of objection under sub-rule (3), the Registrar shall forthwith obtain the direction of the Chief Judge or the senior Judge available, and communicate it to the parties.

31. (1) The Court may, of its own motion, direct the preparation of Directions written submissions.

(2) The Registrar shall serve notice on the parties of a direction under sub-rule (1).

32. (1) Subject to any determination under sub-rule 30 (5), upon Preparation service of a notice under sub-rule 30 (1), each party shall prepare written submissions.

(2) Upon service of notice of a direction under rule 31, each party shall prepare written submissions.

(3) Written submissions—

(a) shall be divided into paragraphs numbered consecutively;

(b) shall state concisely—

(i) the circumstances out of which the appeal arises;

(ii) the contentions to be urged by the party concerned;
and

(iii) the reasons relied upon; and

(c) shall, so far as practicable, refer to matter in the copies of appeal papers by page number, and shall not extract that matter.

33. (1) Each party required to prepare written submissions shall, Filing and not more than 10 days after service on him of a notice under rule 30 or lodgment under rule 31—

(a) file his written submissions; and

(b) lodge with the Registrar such number of copies of the written submissions as the Registrar may direct.

(2) A party filing written submissions under sub-rule (1) shall, on the day of filing, serve notice of the filing on each other party.

(3) A written submission shall not be available for inspection until all parties have filed their submissions.

Service

34. When all parties have filed their written submissions, each party shall serve 3 copies of his written submissions on each other party.

Criminal cases

35. (1) In criminal cases an appellant may present his case and his argument to the Court in writing if he so desires, and, if he does so, it is not necessary for him to appear or to be represented upon the hearing of the appeal.

(2) An appellant who is in custody is not entitled to be present on the hearing of his appeal, or of his application for leave to appeal, without the leave of the Court.

(3) The Court may, upon such terms as it thinks fit, admit an appellant to bail pending the hearing of his appeal or his application for leave to appeal.

Further evidence on appeal

36. (1) This rule applies to any application to the Court to receive evidence in a proceeding on an appeal additional to evidence in the court below.

(2) This rule applies unless the Court otherwise directs.

(3) The application shall be made by motion on the hearing of the appeal without filing or serving notice of the motion.

(4) The grounds of the application shall be stated in an affidavit.

(5) Any evidence necessary to establish the grounds of the application, and the evidence which the applicant wants the Court to receive shall be given by affidavit.

(6) The applicant shall file any affidavit not later than 21 days before the hearing of the appeal.

(7) The evidence of any other party to the appeal shall unless the Court or a Judge otherwise orders be given by affidavit filed not later than 14 days before the hearing of the appeal.

(8) A party to the appeal shall, not later than the time limited for him to file an affidavit under this rule—

(a) lodge as many copies of the affidavit as the Registrar may direct; and

(b) serve 3 copies of the affidavit on each other party to the appeal.

Expediting appeals

37. (1) The Court or a Judge may at any time make such orders as appear just for the expediting of the appeal.

(2) A party requiring leave to appeal may move on notice before the Court for an order that the application for leave to appeal be heard concurrently with or immediately before the hearing of the appeal, and for such consequential orders as may be necessary.

38. (1) Where an appellant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted his appeal with due diligence, the Court may— Time; want of prosecution

- (a) order that the appeal shall be dismissed for want of prosecution;
- (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the appeal shall stand dismissed for want of prosecution, or subsequently and in the event of non-compliance, order that it be so dismissed; or
- (c) make any other order as may seem just.

(2) A respondent may move on notice for an order under sub-rule (1), and the Court, after notice to the appellant has been given by the Registrar, may make orders in accordance with sub-rule (1) of its own motion.

(3) An order under paragraph (1) (b) may be varied at any time before the appeal stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

39. (1) The Judges constituting a Full Bench or a majority of them may during the course of hearing an appeal against conviction or sentence request the Supreme Court Judge of the Territory from whose judgment, order or sentence an appeal is brought to the Court to forward to the Registrar for the information of the Judges hearing the appeal a report on any specified aspect. Appeals in criminal cases from Supreme Courts of a Territory

(2) The Judge may when so requested give a report on any aspect of the case specified in the request.

(3) The Judge's report shall not be available for inspection by the parties or any other person except on the direction of the Court or a Judge.

ORDER 53

ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

1. In this Order unless the contrary intention appears—

“ Tribunal ” means the Administrative Appeals Tribunal;

“ Registrar of the Tribunal ” means the Registrar of the Tribunal, and includes the Deputy Registrar in the Registry in

Interpretation

which the matter before the Tribunal was pending, or other officer for the time being discharging the duties of such Registrar or Deputy Registrar.

Mode of
instituting an
appeal

2. An appeal to the Court from a decision of the Tribunal shall be instituted by filing a notice of appeal.

Parties

3. A party who commences a proceeding in the original jurisdiction of the Court under this Order as appellant from a decision of the Tribunal shall be an applicant, and a party against whom the proceeding is commenced shall be a respondent.

Title of
proceeding

4. (1) The notice of appeal shall—

- (a) be signed by the applicant or by his solicitor;
- (b) be entitled “ In the Federal Court of Australia.....
.....District Registry General Division ”;
- (c) state—
 - (i) the Division of the Tribunal from which the appeal is brought;
 - (ii) the decision of the Tribunal from which the appeal is brought, and the date when the decision was made;
 - (iii) the question or questions of law to be raised on the appeal;
 - (iv) concisely the grounds of appeal; and
 - (v) the order sought.

(2) The Court may, on such terms and conditions as the Court thinks fit, allow a notice of appeal to be amended.

(3) On the hearing of an appeal, the applicant shall not, without the leave of the Court, rely on grounds other than those stated in the notice of appeal.

Filing and
service of
notice of
appeal

5. (1) Within the time specified in paragraph 44 (2A) (a) of the *Administrative Appeals Tribunal Act 1975*, the party desiring to appeal from the decision shall file the notice of appeal in the Registry of the Court at the place where it is desired that the appeal be heard.

(2) Within 7 days after the filing of the notice of appeal the applicant shall—

- (a) serve a copy of the notice of appeal upon all the other parties to the proceeding before the Tribunal; and
- (b) serve a copy of the notice of appeal upon the Registrar of the Tribunal.

(3) Service of a copy of a notice of appeal under this rule may be effected by sending it prepaid by registered post or certified mail properly addressed to the person to be served at his usual or last known place of residence or business, or, in the case of the Registrar of the Tribunal, at his office.

6. (1) The Court may, in special circumstances, order that such security for costs as the Court thinks fit be given of the costs of an appeal under this Order. Security for costs

(2) Subject to sub-rule (1), no security for the costs of an appeal to the Court shall be required.

7. An application to the Court or a Judge for an order under paragraph 44 (6) (a) or (b) of the *Administrative Appeals Tribunal Act 1975* may in urgent cases be made *ex parte*. Ex parte application for suspension of decision

8. (1) Within 21 days from the service of the notice of appeal upon the Registrar of the Tribunal, there shall be forwarded to the Registry at the proper place— Documents to be forwarded

- (a) all the documents referred to in paragraph 46 (1) (a) of the *Administrative Appeals Tribunal Act 1975*;
- (b) a copy of the decision of the Tribunal;
- (c) a copy of the reasons for the decision of the Tribunal;
- (d) where a transcript or notes of proceedings before the Tribunal have been taken, that transcript or those notes; and
- (e) a list of the documents forwarded, specifying the documents (if any) in respect of which—
 - (i) the Tribunal has made an order under sub-section 35 (2) of the *Administrative Appeals Tribunal Act 1975*;
 - (ii) a certificate of the Attorney-General is in force under sub-section 28 (2) of the *Administrative Appeals Tribunal Act 1975*; and
 - (iii) a certificate of the Attorney-General is in force under sub-section 36 (1) of the *Administrative Appeals Tribunal Act 1975* and indicating whether an order was made by the Tribunal with respect to such documents under sub-section 36 (3) of the *Administrative Appeals Tribunal Act 1975*.

(2) When the documents referred to in sub-rule (1) of this rule have been received in the Registry, the Registrar shall, subject to the provisions of section 35 and 36 of the *Administrative Appeals Tribunal Act 1975* forward a copy of the list of documents to all parties to the appeal.

Directions
and entry for
hearing

9. (1) At any time after the filing of the notice of appeal the Registrar may give directions as to any matter which appears to him to be a convenient matter upon which to give directions.

(2) Subject to sub-rule (1), the applicant shall enter the appeal for hearing within 14 days after receiving from the Registrar the list of documents referred to in sub-rule 8 (2) of this Order.

(3) A copy of the entry for hearing shall be served forthwith upon every other party to the appeal.

Notice of
cross-appeal

10. (1) A respondent who desires to appeal from a part of the decision from which the applicant has appealed, or to seek a variation of a part of the decision, need not institute a substantive appeal, but he shall, within 21 days after the service upon him of the notice of appeal, or within such further or other time as the Court fixes, file in the Registry a notice of cross-appeal and serve a copy of the notice upon the applicant and any other person affected by the relief which he seeks.

(2) The notice of cross-appeal shall state what part of the decision he cross-appeals from or contends should be varied and shall state briefly, but specifically—

- (a) the grounds of the cross-appeal;
- (b) the question or questions of law to be raised on the cross-appeal; and
- (c) the relief which he seeks in lieu of the decision appealed from or the variation of that decision which he seeks.

(3) It is not necessary to give notice of cross-appeal if a respondent proposes to contend that some matter of law has been erroneously decided against him but does not seek a discharge or variation of a part of the decision actually pronounced or made.

Time for
entry of
appeal

11. (1) If the applicant does not enter the appeal for hearing within the time prescribed by rule 9 of this Order, any other party to the appeal may enter the appeal for hearing or apply to the Court by motion upon notice for an order dismissing the appeal for want of prosecution.

(2) When an application is made to the Court under sub-rule (1) of this rule, the Court may order the appeal to be dismissed or may make such other order as the Court deems just.

ORDER 54

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT

1977

Application

1. Subject to this Order, the Rules of Court prescribe the manner of making an application under the *Administrative Decisions (Judicial Review) Act 1977*.

2. (1) An application for an order of review made under the *Administrative Decisions (Judicial Review) Act 1977* shall be in, or substantially in, the form numbered 56 in the First Schedule. Form of application—Form 56

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant shall set out in the application particulars of the fraud or bad faith on which he relies.

3. (1) On the filing of an application for an order of review or as soon afterwards as is practicable, the applicant shall file copies of such of the following documents as are in his possession— Documents to be filed

- (a) a statement of the terms of the decision the subject of the application; and
- (b) a statement with respect to that decision furnished to the applicant pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977* or section 28 of the *Administrative Appeals Tribunal Act 1975*, or any other statement furnished by or on behalf of the person who made the decision purporting to set out findings of facts or a reference to the evidence or other material on which those findings were based or the reasons for making the decision,

unless a copy of that document has been filed previously in the proceeding.

(2) An applicant who files a copy of a statement pursuant to sub-rule (1) of this rule shall serve a copy of the statement on the other parties to the application within 5 days of filing.

4. If a respondent to an application objects to the competency of the application he shall, within 14 days after service upon him of the application, file and serve upon the other parties to the proceeding a notice of objection to competency stating briefly the grounds of his objection. Notice of objection to competency—Form 57

5. In addition to the powers of the Court under Order 10 of these Rules the Court may give directions— Directions

- (a) that a party serve a copy of the application upon the Attorney-General of the Commonwealth;
- (b) that a party give notice of the application to such persons or classes of persons in such manner as the Court directs; and
- (c) where a notice of objection to competency has been filed by a party, that the objection be heard and determined before the hearing of the application to which the objection to competency relates.

ORDER 55

NATIONAL HEALTH ACT 1953

Interpretation

1. In this Order, “ fund ” and “ registered organization ” have the same meanings as in the *National Health Act 1953*.

Rules applicable

2. Application to the Court pursuant to Part VIA of the *National Health Act 1953* shall be commenced by application in the same manner as proceedings are commenced under Order 4, and Order 4, rules 1 to 8 inclusive and rules 10 to 14 inclusive shall apply thereto *mutatis mutandis* subject to any direction of the Court or a Judge.

Directions hearing

3. Order 10 shall apply to the directions hearing *mutatis mutandis* and subject to any direction of the Court or a Judge.

Evidence

4. On a directions hearing pursuant to an application under sections 81Z, 82ZF, 82ZG or 82ZH for the winding up or transfer of the business of a fund (but not the judicial management of a fund) unless the Court or a Judge otherwise orders—

- (a) evidence adduced by the applicant shall include whatever is necessary to enable the Court to order a meeting or meetings of the contributors or class of contributors or of the creditors or class of creditors or of any other persons or class of persons where their interests may be affected, to be summoned in such manner as the Court directs; and
- (b) the evidence tendered by the applicant in support of the application ordinarily should include the following:—
 - (i) a form or, if more than one, forms of notice of meeting;
 - (ii) a form or, if more than one, forms of proxy;
 - (iii) a form of notice summoning the meeting or meetings by advertisement;
 - (iv) any proposed scheme for the winding up or transfer of the business of a fund;
 - (v) a statement explaining the effect of the proposed scheme and stating the material interests of the directors or officers of the registered organization whether as directors, officers or as contributors or as creditors or otherwise and the effect thereon of the scheme insofar as it is different from the effect on the like interests of other persons;
 - (vi) consent of the person proposed as the chairman of the meeting or meetings to act as chairman;
 - (vii) the most recent audited accounts and balance sheets of the fund.

5. In every notice summoning the meeting which is given by advertisement, there shall be included a notification of the day to which the application stands adjourned by order of the Court under sub-rule (7), and a notification of the place at which and the manner in which contributors or creditors or others entitled to attend the meeting may obtain copies of the statement mentioned in paragraph 4 (b) (v). Every contributor or creditor or other person entitled to attend the meeting shall, on making application in the manner indicated by the notice, be furnished by the applicant free of charge with a copy of the statement.

Notice
summoning
meeting

6. Every application under Part VIA shall be served on the Minister, the registered organization and the judicial manager unless he or it is the applicant, and on such other persons as the Court or a Judge may direct.

Service

7. Upon the Court giving directions as hereinbefore provided, the application shall stand adjourned to such day as the Court may appoint. On the further hearing of the application on that last mentioned day, the evidence adduced by the applicant shall include the following unless the Court or a Judge otherwise orders:—

Further
evidence on
date of
adjournment

- (a) evidence as to due compliance with the Court's directions;
- (b) the report of the chairman of the meeting or meetings by affidavit;
- (c) evidence of the views expressed by any interested person who opposes the Scheme.

ORDER 56

HEALTH INSURANCE ACT 1973

1. In this Order—

Interpret-
ation

“ Tribunal ” means the Medical Services Review Tribunal or the Optometrical Services Review Tribunal whose decision is under appeal;

“ Minister ” has the same meaning as in the *Health Insurance Act 1973*;

“ Committee ” means the Medical Services Committee of Inquiry upon whose recommendation the Minister made the determination that gave rise to the proceedings.

2. An appeal to the Court from a decision of the Tribunal shall be instituted and conducted in a like manner as an appeal to the Court from a decision of the Administrative Appeals Tribunal is instituted and conducted and Order 53, rules 1 to 11 inclusive shall apply thereto *mutatis mutandis* and subject to any directions of the Court or a Judge.

Rules
applicable

Documents
to be
forwarded

3. The documents to be forwarded by the Tribunal to the Registry at the proper place, pursuant to the application *mutatis mutandis* of Order 53, rule 8, shall be copies of—

- (a) the reference to the Committee that gave rise to the Minister's determination;
- (b) the transcript of proceedings at the hearing conducted by the Committee for the purposes of that reference;
- (c) the Committee's report on that reference and any documents sent to the Minister with that report;
- (d) the Minister's determination;
- (e) the notice requesting the Minister to refer his determination to the Tribunal;
- (f) the reasons for the decision of the Tribunal;
- (g) the formal decision of the Tribunal;
- (h) the transcript of proceedings before the Tribunal;
- (i) any other documents before the Tribunal; and
- (j) a list of the documents forwarded.

ORDER 57

COMPENSATION (COMMONWEALTH GOVERNMENT EMPLOYEES) ACT 1971

Interpret-
ation

1. In this Order—

“ Compensation Tribunal ” and “ prescribed court ” have the same meanings as in the *Compensation (Commonwealth Government Employees) Act 1971*.

Rules
applicable

2. Subject to this Order, an appeal to the Court under section 95 of the *Compensation (Commonwealth Government Employees) Act 1971* from a Compensation Tribunal or a prescribed court shall be instituted and conducted in like manner as an appeal to the Court is instituted and conducted and Order 52 shall apply thereto *mutatis mutandis* and subject to any directions of the Court or a Judge.

Parties

3. (1) A party who commences a proceeding in the original jurisdiction of the Court under this Order as appellant from a decision of the Compensation Tribunal shall be an applicant and a party against whom the proceeding is commenced shall be a respondent.

(2) Order 52 shall apply to the applicant and respondent as if they were the appellant and respondent referred to in that Order.

Notice of
appeal

4. (1) In an appeal under this Order, the notice of appeal shall state the question or questions of law raised on the appeal.

(2) Sub-rule (1) does not limit the matters to be stated in a notice of appeal pursuant to the application under Order 52.

ORDER 58

STEVEDORING INDUSTRY ACT 1956

1. (1) An appeal from a decision of the Stevedoring Industry Authority pursuant to section 45M of the *Stevedoring Industry Act 1956* shall be commenced by application accompanied by an affidavit, in the same manner as proceedings are commenced under Order 4.

Rules
applicable

(2) A copy of the decision of the Stevedoring Industry Authority and any documents tendered in any hearing before that Authority, shall be either annexed or exhibited to the affidavit accompanying the application.

ORDER 59

REPATRIATION ACT 1920

1. A reference to the Court of a question of law from the Repatriation Review Tribunal made pursuant to section 107VZZG of the *Repatriation Act 1920* shall be within the provisions of Order 50, paragraph 1 (1) (f).

Reference of
question of
Law from
Repatriation
Review
Tribunal

2. The provisions of Order 53 shall apply, *mutatis mutandis*, to an appeal to the Court on a question of law from the Repatriation Review Tribunal made pursuant to section 107VZZH of the *Repatriation Act 1920*.

Appeal from
decision of
Repatriation
Review
Tribunal

ORDER 60

CUSTOMS ACT 1901

1. (1) A proceeding under section 243B of the *Customs Act 1901* shall be instituted by filing an application in accordance with Order 4, Rule 1.

Proceedings
under section
243B of
Customs Act

(2) The applicant shall be described as "The Minister for Business and Consumer Affairs" (or the Comptroller-General of Customs) as the case may be, "on behalf of the Commonwealth of Australia".

(3) The person against whom an order under section 243B is sought shall be called a defendant.

2. (1) Where the application mentioned in sub-rule 1 (1) is not signed by either the Minister or the Comptroller there shall be filed with the application an authority signed by the Minister or Comptroller authorizing the institution of the proceeding.

Authorization
for
proceedings

(2) The production to the Registrar of an authority sent by telegraph or facsimile transmitting equipment bearing the name or signature of the Minister or Comptroller purporting to authorize the institution of a proceeding under section 243B of the *Customs Act* 1901 shall be sufficient authority for the issue of the application from the Registry.

Applications
under section
243F of
Customs Act

3. (1) Where the Minister or the Comptroller has instituted a proceeding under section 243B of the *Customs Act* 1901, the Minister or the Comptroller, may in the same application ask the Court for an order directing the official receiver to take control of property pursuant to section 243F of that Act.

(2) The provisions of Order 26 relating to the appointment of receivers do not apply where an official receiver is, by order of the Court, directed to take control of any property pursuant to an application made under section 243F of the *Customs Act* 1901.

ORDER 61

APPEALS FROM COURTS OF MARINE INQUIRY

Rules
applicable

1. Subject to this Order and to the *Navigation Act* 1912, an appeal to the Court from a Court of Marine Inquiry shall be instituted and conducted in like manner as an appeal to the Court under Part III Division 2 of the Act is instituted and conducted and Order 52 shall apply thereto *mutatis mutandis* so far as it is capable of application and subject to the directions of the Court or a Judge.

Interpret-
ations

2. (1) In this Order "Minister" has the same meaning as in the *Navigation Act* 1912.

(2) The Minister shall be made a respondent to an appeal under this Order.

Assessors

3. (1) After an appeal under this Order has been set down for hearing, the Minister shall furnish to the Registrar a list of the assessors appointed under section 360 of the *Navigation Act* 1912, specifying the classes for which they are classified for the purposes of the Navigation (Courts of Marine Inquiry) Regulations, and the places at which they reside.

(2) Subject to sub-rule (4), the Registrar shall select not less than 2 of the assessors specified in the list, from whichever of the classes he considers appropriate, and summon those assessors to attend and assist the Court at the time and place fixed for the hearing of the appeal.

(3) Subject to sub-rule (4) the Court may select, or direct the Registrar to select, other assessors specified in the list, from whichever of the

classes the Court considers appropriate, and may direct the Registrar to summon those assessors to attend and assist the Court at the time and place fixed for the hearing of the appeal in addition to or in place of the assessors summoned by the Registrar under sub-rule (2).

(4) An assessor who assisted a Court of Marine Inquiry in an inquiry into a matter shall not be summoned to attend and assist the Court on an appeal from the decision of that Court of Marine Inquiry in that matter.

ORDER 62

COSTS

1. In this Order unless the contrary intention appears—

Interpretation

“ bill ” means bill of costs;

“ certificate ” includes allocatur; and

“ taxed costs ” means costs taxed in accordance with this Order.

2. The provisions of this Order apply to costs payable or to be taxed under any order of the Court, or under the Rules, and costs to be taxed in the Court under any Act. Application

3. (1) The Court may in any proceeding exercise its powers and discretions as to costs at any stage of the proceeding or after the conclusion of the proceeding. Time for dealing with costs

(2) Where the Court makes an order in any proceeding for the payment of costs the Court may require that the costs be paid forthwith notwithstanding that the proceeding is not concluded.

4. (1) Subject to this Order, where by or under these Rules or any order of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs. Taxed costs and other provisions

(2) Where the Court orders that costs be paid to any person, the Court may further order that as to the whole or any part of the costs specified in the order, instead of taxed costs, that person shall be entitled to—

- (a) a proportion specified in the order of the taxed costs;
- (b) the taxed costs from or up to a stage of the proceeding specified in the order;
- (c) a gross sum specified in the order instead of the taxed costs;
or
- (d) a sum in respect of costs to be ascertained in such manner as the Court may direct.

Costs in
other courts

5. Where in a proceeding transferred to or removed into the Court or in a proceeding on an appeal to the Court, the Court makes an order as to the costs of a proceeding before any other court, the Court may—

- (a) specify the amount of the costs to be allowed;
- (b) order that the costs be taxed in accordance with this Order;
or
- (c) make orders for the ascertainment of the costs by taxation or otherwise in that other court.

Order for
payment

6. Subject to this Order or to the effect of any agreement between the parties a party to a proceeding in the Court shall not be entitled to recover any costs of and incidental to the proceeding from any other party to the proceeding except under an order of the Court.

Order for
taxation—
when not
required

7. (1) Where—

- (a) an order of the Court directs the payment of costs;
- (b) the proceeding is dismissed with costs;
- (c) a motion is refused with costs;
- (d) a party may tax costs under rule 27 on the discontinuance of a proceeding or under Order 52, rule 19 upon the discontinuance of an appeal;
- (e) a party may tax costs under sub-rule 27 (1) or (2) on the acceptance of money paid into Court; or
- (f) a party is otherwise liable under these Rules to pay the costs of another party,

the costs may be taxed without any order directing taxation.

(2) Where—

- (a) a proceeding is dismissed with costs; or
- (b) a motion is refused with costs,

and the costs are not paid within 14 days after service of a sealed copy of a certificate of taxation of the costs, a party to whom the costs are payable may enter an order for the payment of taxed costs.

Registrar to
tax costs

8. (1) Unless the Court or a Judge in a particular case otherwise orders, bills of costs and fees which—

- (a) are payable to barristers and solicitors entitled or admitted to practise in the Court in respect of business transacted by them in the Court or its registries; and
- (b) have been directed by a judgment or order to be taxed or under these Rules are liable to be taxed without express direction,

shall be taxed allowed and certified by a Registrar who in these Rules is referred to as the taxing officer.

(2) The taxing officer shall appoint a time for taxation on the application of the party entitled to costs in the matter.

9. The Court or a Judge may, after reference to and report by the taxing officer, order a solicitor to repay to his client costs ordered to be paid by the client to another party where those costs had been incurred by that party in consequence of delay or misconduct on the part of the solicitor.

Solicitor to
repay costs
due to his
delay or
misconduct

10. (1) Seven days' notice of the time appointed for the taxation of costs together with a copy of the bill of costs shall be given by the party or the solicitor of the party whose costs are to be taxed to the other party or his solicitor except in cases where that party has not entered an appearance.

Notice of
taxing costs
and copy bill

(2) The taxing officer may in cases of urgency direct that one day's notice only shall be given.

11. Every taxation of costs and every decision of a taxing officer shall be subject to review by a Judge.

Review of
Taxation

12. Except as otherwise ordered in all proceedings commenced on and after the date these Rules came into operation, solicitors are, subject to these Rules, entitled to charge and be allowed the fees set forth in the Second Schedule in respect of the matters referred to in that Schedule and higher fees shall not be allowed in any case except such as are by this Order otherwise provided for.

Scale of costs

13. The taxing officers shall be respectively assistant to each other and in the discharge of their duties and for the proper despatch of the business of the respective officers the taxing officer may tax or assist in the taxation of a bill of costs which has been referred to another taxing officer for taxation and for ascertaining what is due in respect of the costs and in that case shall certify accordingly.

Taxing
officers to
assist each
other

14. All costs to which a party is entitled under any interlocutory order made in a proceeding shall be included in the final order then signed or entered unless the costs have already been paid.

Costs of
interlocutory
proceedings

15. Where the costs of a motion, application or other proceeding are reserved by the Court or a Judge, the costs so reserved shall follow the event unless the Court or a Judge otherwise orders.

Costs
reserved

16. If the taxation of a bill is adjourned for any reason notice of the adjournment shall be sent by post by the party with the carriage of the taxation to any solicitor or person not present at the time of the adjournment on whom the original bill of costs was served.

Notice of
adjournment
of taxation

Refusal or
neglect to
procure
taxation

17. Where a party entitled to costs refuses or neglects to bring in his costs for taxation or to procure them to be taxed, the taxing officer may, so as to prevent another party being prejudiced by the refusal or neglect—

- (a) certify the costs of the other party and the refusal or neglect; or
- (b) allow a nominal or other sum to the party refusing or neglecting to bring in his costs.

Delay before
taxing officer

18. Where in a proceeding before the taxing officer a party is guilty of neglect or delay or puts another party to any unnecessary or improper expense the taxing officer may exercise the powers vested in him by the preceding rule.

Cost to be
allowed on
taxation

19. On every taxation the taxing officer shall allow all such costs charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for maintaining or defending the rights of a party, but, except as against the party who incurred them, costs shall not be allowed which appear to the taxing officer to have been incurred or increased—

- (a) through over-caution, negligence or misconduct;
- (b) by payment of special fees to counsel or special charges or expenses to witnesses or other persons; or
- (c) by other unusual expenses.

Disburse-
ments in
solicitors'
bills

20. (1) Subject to the next succeeding sub-rule for taxation of a solicitor's fees, charges and disbursements, a disbursement shall not be allowed which has not been actually made before the delivery of the bill of costs.

(2) Where the bill expressly states that disbursements have not been made before delivery of the bill and sets out the unpaid items of disbursement under a separate heading in the bill, they may be allowed by the taxing officer if they have been actually paid before the giving of the certificate of taxation and are paid in discharge of an antecedent liability of the solicitor, including counsels' fees, properly incurred on behalf of the client.

Fees not here
provided for

21. The taxing officer may in his discretion allow such sum as he thinks just and reasonable having regard to all the circumstances of the case for work and labour properly performed and not specifically provided for in the Second Schedule in respect of work and labour for which, in his opinion, an allowance should be made.

Taxing
officer's
discretion

22. (1) In the case of a fee or allowance which is discretionary it shall, unless otherwise provided, be allowed at the discretion of the taxing officer.

(2) The taxing officer in the exercise of his discretion shall take into consideration—

- (a) the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which such a fee or allowance applies;
- (b) the nature and importance of the proceeding;
- (c) the amount involved;
- (d) the principle involved;
- (e) the interest of the parties;
- (f) the fund, estate or person to bear the costs;
- (g) the general conduct and cost of the proceeding; and
- (h) all other relevant circumstances.

23. Where a party applies for an extension of time he shall, unless the Court otherwise orders, pay the costs of and occasioned by the application or any order made on or in consequence of the application. Extension of time

24. Where a party to any proceeding serves a notice disputing a fact under Order 18, rule 2 (which relates to notices to admit facts) and afterwards that fact is proved in the proceeding he shall, unless the Court otherwise orders, pay the costs of proof. Non-admission of fact

25. Where a party to any proceeding serves a notice disputing the authenticity of a document under Order 18, rule 2 (which relates to notices to admit documents) and afterwards the authenticity of the document is proved in the proceeding he shall, unless the Court otherwise orders, pay the costs of proof. Non-admission of document

26. (1) Where pursuant to Order 22, rule 2 a party to any proceeding discontinues the proceeding without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless the Court otherwise orders, pay the costs of the party against whom the discontinued claim is made occasioned by the discontinued claim and incurred before service of notice of the discontinuance. Discontinuance

(2) A party whose costs are payable under sub-rule (1) may tax the costs and if the taxed costs are not paid within 14 days after service of the certificate of taxation may enter an order for the payment of the taxed costs.

27. (1) Where, pursuant to Order 23, an applicant before the trial or hearing begins— Payment into court

- (a) accepts money brought into Court by a respondent in answer to a cause of action;

- (b) abandons that cause of action as against all other respondents (if any) sued on that cause of action jointly with the respondent bringing the money into Court; and

- (c) abandons all his other causes of action (if any),

then, after payment out, he may, unless the Court otherwise orders, tax his costs of the proceedings in respect of his claims for relief against the respondent bringing the money into Court, incurred before service of notice of the deposit of the money accepted and, if the costs are not paid within 4 days after the signing of a certificate of the taxation, enter an order for the payment by that respondent of the taxed costs.

(2) Where a party has brought money into Court, the Court may, in exercising its discretion as to costs, take into account that fact, and the amount of the money brought into Court.

Continuance
of inter-
locutory
injunction

28. Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification an order as to costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

Costs of
application
or step
within
proceedings

29. Subject to this Order, the costs of any application or other step in any proceedings shall, unless the Court otherwise orders, be deemed to be part of the costs of the cause of the party in whose favour the application or other step is determined and shall be paid and otherwise dealt with in accordance with the provisions of this Order.

Costs of
application
or step
within
proceedings
where stood
over to trial

30. When a motion, application or other proceeding is ordered to stand over to the trial and no order is made at the trial as to the costs of the motion, application or proceeding, the costs of both parties of the motion, application or proceeding shall be deemed to be part of their costs of the cause.

Party and
party basis

31. On a taxation on a party and party basis—

- (a) the costs of briefing more than one counsel may be allowed notwithstanding that none is one of Her Majesty's counsel;
- (b) a retaining fee to more than one counsel shall not be allowed; and
- (c) costs in respect of counsel attending before a Registrar or taxing officer shall not be allowed unless the Registrar or taxing officer certifies the attendance to be proper, or the Court otherwise orders.

Refreshers

32. (1) Where counsel is briefed to appear on a trial or hearing and the trial or hearing occupies more than 4½ hours and costs are taxed on a

party and party basis, the taxing officer may allow refresher fees in such amount as he thinks fit for every 4½ hours occupied by the trial or hearing after the first 4½ hours and for the remaining duration of the trial or hearing.

(2) The taxing officer may allow refreshers under sub-rule (1) whether or not witnesses are examined at the trial or hearing.

33. (1) Where counsel is briefed to appear on a trial or hearing and costs are taxed on a party and party basis, counsel's fee on the brief shall not be allowed unless—

Absence of
counsel

- (a) he is present at the trial or hearing for a substantial amount of the relevant period;
- (b) he gives substantial assistance during the relevant period in the conduct of the proceedings; or
- (c) the Court otherwise orders.

(2) In sub-rule (1) "relevant period" means the period of the trial or hearing or if the trial or hearing lasts more than 4½ hours, the first 4½ hours.

34. (1) In reckoning the 4½ hour period mentioned in rules 32 and 33 the mid-day adjournment shall not be included unless the Court otherwise orders.

4½ hour
periods

(2) Where the commencement or resumption of a trial or hearing is delayed beyond the listed time the taxing officer may include waiting time in reckoning the 4½ hour period mentioned in rules 32 and 33.

35. When a practitioner acts in the capacities of both barrister and solicitor, or in the capacity of counsel, instructed by his partner acting as solicitor, the taxing officer may allow such sum as a counsel's fee as the taxing officer in his discretion thinks just and reasonable having regard to the practice of allowing such fees as are permitted by the Supreme Court Rules of the State or Territory concerned.

Fees to
barristers
and solicitors

36. (1) The Court or Judge may, at a trial or hearing or upon any application and whether or not objection is taken—

Disallowance
of costs of
improper,
vexatious or
unnecessary
matter in
documents
or
proceedings

- (a) direct that any costs which have been improperly, unreasonably or negligently incurred be disallowed;
- (b) direct the taxing officer to examine the costs incurred, and to disallow such costs as he shall find to have been improperly, unreasonably or negligently incurred; or

- (c) direct that a party whose costs are so disallowed shall pay to the other parties the costs incurred by those parties in relation to the proceeding in respect of which his costs have been disallowed.

(2) Where the question of costs having been improperly, unreasonably or negligently incurred has not been raised before and dealt with by the Court or Judge, it is the duty of the taxing officer to look into that question, and thereupon the same consequences shall ensue as if he had been specially directed under paragraph (1) (b) of this rule to examine the costs incurred, and to disallow such costs as he finds to have been improperly, unreasonably or negligently incurred.

Unnecessary
appearance
in court

37. Where a party appears upon a proceeding before the Court or a Judge or before a Registrar, in which he is not interested or upon which, according to the practice of the Court, he ought not to appear, he shall not be allowed any costs of appearance unless the Court, Judge or Registrar expressly directs the costs to be allowed.

Powers of
taxing officer

38. The taxing officer may, for the purpose of taxation of costs—

- (a) summon and examine witnesses either orally or upon affidavit;
- (b) administer oaths;
- (c) direct or require the production of books, papers and documents;
- (d) issue subpoenas;
- (e) make separate or interim certificates or allocators;
- (f) require a party to be represented by a separate solicitor; and
- (g) do such other acts and direct or take all such other steps as are directed by these Rules or by the Court or a Judge.

Registrars
appointed
taxing
officers

39. (1) The Registrar, District Registrars, and Deputy District Registrars are appointed taxing officers.

(2) The taxing officers shall be assistant to each other.

(3) A taxing officer may, of his own motion, refer any question arising in a taxation for the direction of the Court.

Bill of costs

40. A bill of costs shall contain particulars of—

- (a) work done by the solicitor, his servants and agents;
- (b) costs claimed for the work done in paragraph (a) above; and
- (c) disbursements made.

41. (1) An appointment to tax a bill of costs will be given to the party bringing in his bill on its being filed and such appointment shall be endorsed on the bill prior to its being served on all parties affected by the taxation. Appointment to tax bill

(2) Service of the bill shall be effected in accordance with Order 7, rule 4 at least 7 days prior to the date of taxation.

42. (1) Where a taxing officer decides to allow or disallow, wholly or in part, any item in a bill, or to allow some amount in respect of any item, a party to the taxation proceeding who objects to the decision may apply to the taxing officer to reconsider his decision. Objection

(2) An application under sub-rule (1) shall be made by motion to the taxing officer.

(3) Notice of the motion shall be filed within 14 days after the date of the decision.

(4) The applicant shall file with or subscribe to the notice statement of his objections.

(5) A statement of objections shall specify by a list the items as to which the applicant objects to the decision of the taxing officer and must state briefly, but specifically, the nature and grounds of each objection.

(6) An applicant under sub-rule (1) shall, on the date of filing the notice of motion and statement of objections, serve the notice and statement on each party interested.

43. (1) Upon motion made under rule 42, the taxing officer— Recon- sideration

- (a) shall reconsider the decision to which objection is made and shall give his certificate in accordance with his decision on reconsideration; and
- (b) shall, upon request by any party, state, in his certificate or some other document, and by reference to the objections to his previous decision, his reasons for his decision on reconsideration.

(2) On the reconsideration, a party shall not, unless the taxing officer otherwise directs, raise any ground of objection not stated in a statement of objection.

(3) A request under paragraph (1) (b) shall be made within 14 days after the date of the decision on reconsideration to which the request relates.

44. (1) Where a taxing officer gives a certificate in accordance with his decision on reconsideration under rule 43 and pursuant to that rule a party requests the taxing officer to state his reasons for the decision, the Review

Court shall, on motion by any party interested, review the decision of the taxing officer on reconsideration.

(2) Where, during the time within which a request may be made under rule 43, it becomes impracticable to make the request by reason of the death or incapacity of, or other matter personal to, the taxing officer, sub-rule (1) shall apply notwithstanding that a request under rule 43 has not been made.

(3) Notice of the motion shall be filed within 28 days after the certificate is given, but the Court, or the taxing officer when giving his certificate, may extend the time.

(4) On the review, unless the Court by order otherwise directs—

- (a) further evidence shall not be received; and
- (b) a party shall not raise any ground of objection not either stated in a statement of objection or raised before the taxing officer.

(5) Subject to sub-rule (4), on the review, the Court may—

- (a) exercise all the powers and discretions of the taxing officer in relation to the subject matter of the review;
- (b) make orders for the alteration of the certificate;
- (c) make orders for the remission of any item to the same or any other taxing officer for taxation; and
- (d) make such other orders as the nature of the case requires.

Certificate of
taxation

45. (1) On completion of taxation, the taxing officer shall issue a sealed certificate of taxation, with sufficient number of office copies as are needed for the parties responsible for the payment of costs.

(2) The certificate of taxation must be served on the party responsible for its payment.

(3) If, after 14 days from the date of service of the certificate of taxation, the costs remain unpaid then the Registrar shall, at the request of the party in whose favour the costs are awarded draw up sign and seal an order in favour of that party for the sum shown in the certificate of taxation and enter the same.

(4) Interest calculated in accordance with Order 35, rule 8 is payable from the date the order is entered.

ORDER 63

MONEYS PAID INTO COURT

Application

1. Moneys or funds paid into Court shall be governed by this Order.

2. (1) Funds paid into Court under an order, shall, unless otherwise ordered, be paid into a bank account to the credit of an account entitled "Federal Court of Australia Litigants' Fund".

Litigants'
Fund

(2) An account referred to in sub-rule (1) is to be established with the Commonwealth Trading Bank for each District Registry.

(3) The signing officer for the account will be an officer of the Attorney-General's Department and the counter-signing officer will be the person holding the appointment from time to time of District Registrar.

3. An order which directs funds in Court to be paid out, or otherwise dealt with, shall state the particulars of the payment out or other action to be taken by the Registry.

Particulars
of payment

4. (1) The Court or a Judge may, at any time, order that moneys or funds paid into Court, or to be paid into Court, shall be credited or applied in a manner other than payment into a Federal Court of Australia Litigants' Fund.

Other
application
of moneys

(2) In the event that any interest is earned on the moneys or funds referred to in sub-rule (1), the Court or a Judge may direct the disbursement of that interest.

5. No moneys or funds shall be paid out of a Federal Court of Australia Litigants' Fund otherwise than under an order of the Court or a Judge.

Payment
under order

6. The Commonwealth Trading Bank may receive moneys or funds and make payment out without enquiry whether an order has been made.

Enquiry by
bank
unnecessary

ORDER 64

TRANSITIONAL PROVISIONS

1. Proceedings commenced prior to the date these Rules come into operation shall continue under the repealed Rules (Statutory Rules 20 and 220 of 1977), subject to any order or direction of the Court or a Judge.

Prior
proceedings

2. Moneys paid into Court for or on behalf of litigants prior to the date these Rules come into operation shall be transferred to the Federal Court of Australia Litigants' Fund to be established pursuant to Order 63, rule 2.

Litigants'
Fund

NUMERICAL TABLE OF FORMS

Form Number	Title of Form
1	Head of Document
2	Abbreviated Entitling of Document
3	Document where there is no Respondent
4	Conclusion of Document for Signature
5	Application
6	Rule to Show Cause
7	Statement of Claim
8	Cross-Claim where Cross-Claim is served before date of Directions Hearing appointed in Application
9	Cross-Claim where Cross-Claim is not served before date of Directions Hearing appointed in Application
10	Defence and Cross-Claim against a Party
11	Notice for Pleadings
12	Notice of Service at Document Exchange
13	Request for Special Service
14	Request for Service
15	Notice of Appearance
16	Defence
17	Reply
18	Reply and Defence to Cross-Claim
19	Notice of Amendments
20	Affidavit
21	Notice for Discovery
22	List of Documents
23	Notice to answer Interrogatories
24	Example of Verified Statement in answer to Interrogatories
25	Notice to admit Facts (and Authenticity of Documents)
26	Notice disputing Facts (and Authenticity of Documents)
27	Notice of Motion
28	Notice of Withdrawal of Appearance
29	Notice of Discontinuance
30	Notice of Withdrawal of Defence
31	Notice of Deposit
32	Notice of Withdrawal of Deposit
33	Notice of Acceptance
34	Notice Confirming Deposit
35	Notice Withdrawing Acceptance
36	Security to Pay into Court
37	Order for Examination
38	Order Appointing Examiner
39	Order (Order 24, paragraph 1 (b))
40	Deed
41	Subpoena for Production
42	Subpoena to give Evidence
43	Subpoena for Production and to give Evidence
44	Notice of Trial
45	Notice to Produce
46	Order (Order 33, rule 14)
47	Order (Order 36)
48	Warrant for Arrest
49	Warrant for Committal
50	Notice of Claim
51	Summons
52	Information for an Offence
53	Notice of a Constitutional Matter under Section 78B of the <i>Judiciary Act</i> 1903

Form Number	Title of Form
54	Application for Leave to Appeal
55	Notice of Appeal
56	Application for an Order of Review
57	Notice of Objection to Competency

FIRST SCHEDULE

(See Order 1, rule 7)

Form 1 HEAD OF DOCUMENT (Order 41, rule 1)

IN THE FEDERAL COURT OF AUSTRALIA DISTRICT REGISTRY DIVISION	}	No.	of 19	
		A.B.		Applicant
		C.D.		Respondent
		C.D.		Cross-claimant
		A.B. and E.F.		Cross-Respondents

Form 2 ABBREVIATED ENTITLING OF DOCUMENT (Order 41, sub-rule 1 (4))

IN THE FEDERAL COURT OF AUSTRALIA DISTRICT REGISTRY DIVISION	}	No.	of 19	
		A.B. and Others		Applicants
		C.D.		Respondent
		and cross-claimants		

Form 3 DOCUMENT WHERE THERE IS NO RESPONDENT (Order 41, sub-rule 1 (3))

IN THE FEDERAL COURT OF AUSTRALIA DISTRICT REGISTRY DIVISION	}	No.	of 19	
		The application of A.B.		

Form 4

CONCLUSION OF DOCUMENT FOR SIGNATURE

(Order 41, rule 6)

Date: e.g. 7 May, 19 .

(Signed, applicant or his solicitor).

Form 5

APPLICATION

(Order 4, rule 1)

On the grounds appearing in the accompanying affidavit (*or statement of claim*) the applicant claims (*where appropriate*)

1.

2.

etc.

AND ...

And the applicant claims by way of interlocutory relief:

1. An order (*or declaration*) that (*etc.*)

2.

etc.

Date: e.g. 7 May 19 .

(Signed, applicant or his solicitor).

To the respondent (*address*)

A directions hearing in this application (*and/or* for the applicant's claim for an interlocutory order) will be heard by the Court at the time and place specified below. If there is no attendance before the Court by you or by your counsel or solicitor, the application may be dealt with and judgment may be given or an order made in your absence. Before any attendance at that time you must file an appearance in the Registry.

Time: (*Date and time to be entered by Registry unless fixed by Court*).Place: (*Address of Court*)(*Where the time for service has been abridged, add—*)

The time by which this application is to be served has been abridged by the Court to (*specify time*).

Date: e.g. 7 May, 19 .

(Signed, Registrar)

The applicant's address for service is (*specify address for service*).

Form 6
 RULE TO SHOW CAUSE
 (Order 4, sub-rule 15 (2))

IN THE FEDERAL COURT OF AUSTRALIA }
 DISTRICT REGISTRY } No. of 19
 DIVISION }

IN THE MATTER of the Conciliation
 and Arbitration Act 1904

BETWEEN:

Applicant

AND:

Respondent

It is hereby ordered that (*name of respondent*) appear before the Federal Court of Australia at
 in the State of on the day of , 19 , at o'clock in
 the noon, to show cause why (*state nature of relief required*), upon the grounds set forth in
 the affidavit of sworn the day of , 19 , and filed herein.

Date: e.g. 7 May, 19 .

By the Court,

Judge.

Form 7
 STATEMENT OF CLAIM
 (Order 4, rule 6, Order 11)

1. } Plead as required by the Rules.
2. }

The applicant claims the relief specified in the application.
 (*Particulars under Order 12 may be given as follows, for example:*

PARTICULARS OF FRAUD (*Or Other Appropriate Heading*)

1. } State the relevant particulars.
2. }

(*These particulars may appear in the relevant place in the statement of facts or separately at the
 end of the pleading, whichever is convenient.*)

Form 8

CROSS-CLAIM WHERE CROSS-CLAIM IS SERVED BEFORE DATE OF
DIRECTIONS HEARING APPOINTED IN APPLICATION

(Order 5, rules 5 and 8 and sub-rule 11 (6))

IN THE FEDERAL COURT OF AUSTRALIA DISTRICT REGISTRY DIVISION	} No. of 19	
		A.B.
		Applicant
		C.D.
		Respondent
	C.D.	Cross-claimant
	E.F.	Cross-respondent

CROSS-CLAIM

1. } (*Plead as required by the Rules*)
2. }

The cross-claimant C.D. claims--

1. } (*Specify relief sought*)
2. }

(Particulars under Order 12 may be given in the manner indicated in the prescribed form of
Statement of Claim under Form 7.)

Date: e.g. 7 May 19

(Signed, applicant or his solicitor)

To E.F. (*address*)A directions hearing in this application including this cross-claim will be heard by the Court at
the time and place specified below.If there is no attendance before the Court by you or by your counsel or solicitor, the cross-
claim may be dealt with and judgment may be given or an order made in your absence. Before
any attendance at that time you must file an appearance in the Registry.Time: (*Date and time to be entered by Registry unless fixed by Court*).Place: (*Address of Court*).(*Where the time for service has been abridged, add--*The time by which this cross-claim is to be served has been abridged by the Court to
(*specify time*).)

Date: e.g. 7 May, 19

(Signed, Registrar)

The cross-claimant's address for service is (*specify address for service*).

Form 9

CROSS-CLAIM WHERE CROSS-CLAIM IS NOT SERVED BEFORE DATE OF
DIRECTIONS HEARING APPOINTED IN APPLICATION

(Order 5, rules 5 and 8 and sub-rule 11 (6))

IN THE FEDERAL COURT OF AUSTRALIA }
DISTRICT REGISTRY } No. of 19
DIVISION }

A.B.

Applicant

C.D.

Respondent

C.D.

Cross-claimant

E.F.

Cross-respondent

CROSS-CLAIM

1. }
2. } (*Plead as required by the Rules*)

The cross-claimant C.D. claims—

1. }
2. } (*Specify relief sought*)*(Particulars under Part II may be given in the manner indicated in the prescribed form of statement of Claim under Form 7.)*

Date: e.g. 7 May, 19

.....
(*Signed, cross-claimant or his solicitor*)To E.F. (*address*)

1. Judgment may be given or an order made unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this statement of cross-claim upon you and you comply with the Rules of Court relating to your defence.

Date: e.g. 7 May, 19

.....
(*Signed, Registrar*)The cross-claimant's address for service is (*specify address for service*).

Form 10

DEFENCE AND CROSS-CLAIM AGAINST A PARTY

(Order 5, sub-rules 5 (2) and (3))

IN THE FEDERAL COURT OF AUSTRALIA }
 DISTRICT REGISTRY } No. of 19
 DIVISION }

A.B.

Applicant

C.D.

Respondent

C.D.

Cross-claimant

A.B.

Cross-respondent

DEFENCE AND CROSS-CLAIM

Defence

1. }
 2. } (Plead as required by the Rules)

Cross-Claim

1. }
 2. } (Plead as required by the Rules)

The cross-claimant C.D. claims—

1. }
 2. } (Specify the relief claimed)

(Particulars as in Form 8)

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

Form 11

NOTICE FOR PLEADINGS

(Order 5, rule 6)

To: (name of cross-claimant):

(name of cross-respondent)

requires you to serve upon him, within 3 days after service of this notice upon you, copies of all pleadings (or as the case may require) filed before the filing of your Cross-claim.

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

Form 12

NOTICE OF SERVICE AT DOCUMENT EXCHANGE

(Order 7, rule 7)

The (applicant) may be served at the following exchange box in (insert name of capital city) of (insert name of document exchange).

(Name of solicitor whose exchange box it is)

(Exchange box number)

Form 13

REQUEST FOR SPECIAL SERVICE

(Order 8, sub-paragraph 7 (a) (v))

It is requested that the sealed copy of (*description of document*) be served on (*name*) whose address is in (*country*) by (*describe special manner*).

(Follow the prescribed form of conclusion of documents for use by a party, Form 4 and, after the translation add the certificate).

I (*name*), of (*address*), certify—

1. that what appears above is a translation of the document annexed and marked "A".
2. that my qualifications to translate from the English language to the (*name*) language are (*state qualifications*).

Date: e.g. 7 May, 19

(Signed)

(The annexure must bear a note in the same language—"This is the annexure marked "A" referred to in my certificate dated e.g. 7 May, 19").

Form 14

REQUEST FOR SERVICE

(Order 8, rule 9)

To the Registrar of the Court:

I (*name*) request that a sealed copy of (*description of document*) be transmitted to (*country*) for service on (*name*), of (*address*) pursuant to the Convention made between and and I undertake to pay to you an amount equal to the sum of all expenses incurred in consequence of this request.

Form 15

NOTICE OF APPEARANCE

(Order 9, rule 4)

A.B.

of (*address*) (*occupation*) appears.

If a person under disability; his tutor is C.D.

(Where a respondent wishes to make a request under Order 9, sub-rule 5 (3) add:

The Registrar is requested to deal with the copy (*copies*) of this Notice under Order 9, sub-rule 5 (3).

(Add other notices, for example, under Order 5, rule 6, relating to notice for pleadings.)

Solicitor: (*name*)

(*address*)

telephone: (*number*)

Solicitor's agent: (*name*)

(*address*)

telephone: (*number*)

Address for service: (*The office of his solicitor, or as the case may be; see Order 7, rule 6.*)

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

(This notice of appearance may be added to a notice of motion of a person applying to be added as a respondent, for example, under Order 7, sub-rule 8 (1).)

(Where, under Order 9, rule 6, a respondent wishes to enter a conditional appearance insert "conditionally" after "appears".)

Form 16

DEFENCE

(Order 11, rule 20)

(Plead as required by the Rules, for example—

1. The respondent denies &c.)

*(or)**(where one of two or more respondents)*

DEFENCE OF A.B.

1. This respondent denies &c.)

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

Form 17

REPLY

(Order 11, rule 22)

(Plead as required by the Rules and see Order 11 relating to joinder of issue.)

Form 18

REPLY AND DEFENCE TO CROSS-CLAIM

(Order 11, sub-rule 22 (2))

REPLY

(plead as required by the Rules.)

DEFENCE TO CROSS-CLAIM

(plead as required by the Rules.)

Form 19

NOTICE OF AMENDMENTS

(Order 13, rule 8)

The *(describe document)* was amended on e.g. 7 May, 19 , pursuant to an order made
 on , 19 *(pursuant to Order rule)* by—

omitting “.....”

(omitting “.....” *and inserting*

“.....”)

(inserting “.....”).

Form 20

AFFIDAVIT

(Order 14, rule 2)

On e.g. 7 May, 19 , I *(name address and occupation)* say on oath—

1.

2.

Sworn at
before me:

}

Form 21
NOTICE FOR DISCOVERY
(Order 15, rule 1)

To the respondent:

The applicant requires you to give discovery of documents with verification within days after service of this notice upon you.

Form 22
LIST OF DOCUMENTS
(Order 15, rule 6)

Pursuant to notice filed (*or order made*) on e.g. 7 May, 19 , the party says:

1. The party has in his possession, custody or power, the documents enumerated in Schedule 1.
2. The document enumerated in Part 2 of Schedule 1 are privileged from production on the ground—
 - (a) as to documents numbered 4 to 7 inclusive, that (*state the ground*);
 - (b) as to documents 8 and 9, that (*state the ground*).
3. The party has had, but does not now have, in his possession, custody or power, the document enumerated in Schedule 2.
4. (a) document 10, referred to in Schedule 2 was last in the respondent's possession, custody or power on (*state when*);
 (b) (*state what has become of it*); or
 (c) to the best of the respondent's knowledge, information and belief (*state in whose possession, custody or power it is and where it is*).
5. To the best of the respondent's knowledge, information and belief neither the respondent nor his solicitor nor any other person on his behalf has now, or ever had, in his possession, custody or power, any document relating to any matter in question between the applicant and the respondent (*to be altered according to the terms of any order made under Order 15, rule 5*), other than the documents enumerated in the said Schedule 1 and 2.

(*Describe each document in the schedules as original or copy, see Order 18, rule 3.*)

SCHEDULE 1

Part 1

- 1.
- 2.
- 3.

Part 2

- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

Form 22—continued

SCHEDULE 2

10.

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

AFFIDAVIT

On _____, 19____, I, _____ (name) say on oath:—

1. I am the respondent.

2. The statements of fact made in paragraphs 1, 2, 3, 4 and 5 of the above list are true.

Sworn etc.

I certify that, according to my instructions, this list and the statements in it are correct.

The documents enumerated in Part 1 of Schedule 1 may be inspected at _____ (address)
on _____, 19____ between (specify time under Order 15, rule 6).

Respondent's solicitor

Form 23

NOTICE TO ANSWER INTERROGATORIES

(Order 16, rule 1)

Within _____ days after service of this notice upon each of them respectively, CD is required to answer interrogatories numbered 1 to 8 (and verify his answers) and EF is required to answer interrogatories numbered 1 to 12 (and verify his answers).

INTERROGATORIES

1. (State the question.)
2. (State the question.)

Form 24

EXAMPLE OF VERIFIED STATEMENT IN ANSWER TO INTERROGATORIES

(Order 16, rules 6 and 7)

The respondent EF Pty Ltd answers the applicant's interrogatories specified in notice filed on e.g. 7 May, 19____, as follows:

1A. (State in full the interrogatory.)

1B. (State the answer.)

2A. (State in full the interrogatory.)

2B. (a) The respondent objects to answer on the grounds of privilege;

(b) (State the facts on which this objection is based.)

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

AFFIDAVIT

On _____, 19____, I _____ (name), of _____ (address)
(occupation) say on oath:

1. I am the secretary of the respondent and am authorised to make this affidavit on its behalf.

2. (The deponent should state which of the answers are true to his own knowledge and which are true to the best of his knowledge, information and belief based on his inquiries of officers of the company and others and on his other investigations.)

Sworn &c.

Form 25

NOTICE TO ADMIT FACTS (AND AUTHENTICITY OF DOCUMENTS)

(Order 18, rule 2)

To the respondent:

The applicant requires you to admit for the purpose of these proceedings only—

1. } (state each fact)
2. }

The applicant requires you to admit for the purpose of these proceedings only the authenticity of the following documents—

1. } (describe each document)
2. }

If you do not, within 14 days after service of this notice upon you, serve a notice upon the applicant disputing any fact (and the authenticity of any document) above specified, that fact (and the authenticity of that document) shall, for the purpose of these proceedings, be admitted by you in favour of the applicant.

Form 26

NOTICE DISPUTING FACTS (AND AUTHENTICITY OF DOCUMENTS)

(Order 18, rule 2)

The respondent disputes the following facts specified in the applicant's notice dated e.g. 7 May, 19

1. } (state each fact)
2. }

The respondent disputes the authenticity of the following documents which were specified in the applicant's notice (or list of documents) dated e.g. 7 May, 19

1. } (describe each document)
2. }

The respondent admits—

1. } (state each fact or describe each document)
2. }

Form 27

NOTICE OF MOTION

(Order 19, rule 2)

The applicant will at 10.15 a.m. on 7 May, 19, at (address of Court) move the Court for orders—

1. } (State concisely the nature of each order which is sought but not the grounds of the
2. } application)

(Where the time for service under Order 19, rule 3 has been abridged, add—

The time before which this notice of motion is to be served has been abridged by the Court to (specify time). (Follow the prescribed form of conclusion of documents for use by a party Form 4.)

To: (name each party affected by the above order sought).

Form 28

NOTICE OF WITHDRAWAL OF APPEARANCE

(Order 22, rule 1)

The respondent CD withdraws his appearance.

Form 29

NOTICE OF DISCONTINUANCE

(Order 22, rule 2)

The applicant (by consent, *if consent is required*, or pursuant to the leave of the Court granted on e.g. 7 May, 19 , *if leave is obtained*) discontinues the proceedings (in respect of claims numbers 1–3 of the application).

(Follow the prescribed form of conclusion of documents for use by a party, Form 4. Where discontinuance is by consent, each party or his solicitor must sign the notice.)

Form 30

NOTICE OF WITHDRAWAL OF DEFENCE

(Order 22, rule 4)

The respondent CD (by consent *if consent is required*, or by the leave of the Court granted on e.g. 7 May, 19 , *if leave is obtained*), withdraws his defence (in respect of paragraphs numbers 1–3 of his defence).
(conclude as in Form 29).

Form 31

NOTICE OF DEPOSIT

(Order 23, rule 6)

The respondent has paid (filed a security to pay) into Court \$

That sum is in answer to the cause of action (all the causes of action) on which the applicant claims (and after taking into account this respondent's cause of action (for (*specify*)) on his cross-claim).

or

That sum is in answer to the following causes of action on which the applicant claims, namely—

(and after taking into account as above).

or

Of that sum \$ is in answer to the cause of action for (*specify*) on which the applicant claims (and after taking into account as above) and \$ is in answer to the cause of action for (*specify*) on which the applicant claims (and after taking into account as above).

Form 32

NOTICE OF WITHDRAWAL OF DEPOSIT

(Order 23, rule 9)

Pursuant to leave granted by the Court on e.g. 7 May, 19 , the respondent withdraws the deposit of \$ brought into Court by him on e.g. 10 April, 19 .

Form 33

NOTICE OF ACCEPTANCE

(Order 23, rule 10)

The applicant accepts \$ _____ brought into Court by the respondent, CD, in satisfaction of the causes of action in answer to which it was so brought in, as against CD (and abandons all his other causes of action as against CD) (and abandons those causes of action as against the respondents EF and GH).

Form 34

NOTICE CONFIRMING DEPOSIT

(Order 23, rule 10)

The respondent confirms the notice dated e.g. 10 April, 19____, of deposit \$ _____ brought into Court before the beginning of the trial.

Form 35

NOTICE WITHDRAWING ACCEPTANCE

(Order 23, rule 12)

(Pursuant to leave granted by the Court on e.g. 20 May, 19____) the applicant withdraws his acceptance of money brought into Court by the respondent (*name*) _____ being the acceptance mentioned in the applicant's notice of acceptance dated e.g. 7 May, 19____.

Form 36

SECURITY TO PAY INTO COURT

(Order 23, rule 15)

(*name of authorised person under rule 5*) whose address for service is _____ promises to the Registrar of the Court to pay \$ _____ into Court according to the requirements of Order 23 of the Rules.

Signed

or

The Common Seal
(*and so on*)

}

Form 37

ORDER FOR EXAMINATION

(Order 24, paragraph 1 (a))

THE COURT ORDERS THAT:

1. (*name*) _____ of (*address*) _____ be examined on oath before (*name and address, or describe examiner*).

(*Complete as in general form of order under Order 36.*)

Form 38

ORDER APPOINTING EXAMINER

(Order 24, paragraph 1 (a))

THE COURT ORDERS THAT:

1. That (name and address or description) be appointed examiner for the purpose of taking the examination on oath of a witness (name) of (address out of Australia) in accordance with the Rules of this Court (but without the power to compel a witness to attend if this is required by a convention).
 2. The party obtaining this order give to each other interested party 7 days' notice in writing of the date on which he proposes to send this order to the examiner.
 3. Not less than 4 days after that notice has been given each party shall give to the other the name of his agent at (place) to whom notices may be sent.
- (Complete as in general form of order under Order 37.)

Form 39

ORDER

(Order 24, paragraph 1 (b))

THE COURT ORDERS THAT:

1. A letter of request be sent to the judicial authorities of (country) to take or cause to be taken the evidence of (name)
- (Complete as in general form of order under Order 37.)

Form 40

DEED

(Order 26, rule 3)

PARTICULARS

1. Date: e.g. 7 May 19
2. Receiver: (name)
(address for service)
3. Guarantor: (name)
(address for service)
4. Date of order for appointment of Receiver: e.g. 10 April, 19

THIS DEED made between the Guarantor and the Registrar of the Court witnesses that the Guarantor promises the Registrar that if the Receiver does not account to the Court for what he receives as Receiver or does not deal with what he receives as Receiver as the Court directs the Guarantor will pay to the Registrar whatever is required to make good the default to a limit of \$

Signed (&c.)

Form 41

SUBPOENA FOR PRODUCTION

(Order 27, rule 2)

To (name)
(address)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the schedule—

- (a) before (the Court or as the case may be);
- (b) at (address of Court or other place);
- (c) on (insert date) at (insert time) and until you are excused from further attending, but—
 - (i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you;
 - (ii) if you are not a party to these proceedings, instead of so attending you may produce this subpoena and the documents and things described in the schedule to the Registrar of the Court at the above place not later than the day before the first day on which you are required to attend; and
 - (iii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book, and (insert relevant part of State or Territory enactment enabling alternative mode of proof of entries in bankers' books) applies, you need not produce it if you produce proof of the relevant entries in accordance with (that Part or that Division or those sections).

SCHEDULE

(description)

Date: e.g. 7 May, 19

By the Court
(signature and description of officer of the Court)

Note: Failure to comply with this subpoena may constitute contempt of court and may result in your arrest or in the case of a corporation an order of sequestration may be made.
Issued at the request of (name), the applicant's solicitor (or as the case may be).

Form 42

SUBPOENA TO GIVE EVIDENCE

(Order 27, rule 2)

To (name)
(address)

THE COURT ORDERS that you shall attend for the purpose of giving evidence—

- (a) before (the Court or as the case may be);
- (b) at (address of Court or place);
- (c) on (insert date) at (insert time) and until you are excused from further attending; but you need not attend on any day unless reasonable expenses have been paid or tendered to you.

Date: e.g. 7 May, 19

By the Court
(signature and description of officer of the Court)

Note: Failure to comply with this subpoena may constitute contempt of court and may result in your arrest.
Issued at the request of (name), the applicant's solicitor (or as the case may be).

Form 43

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

(Order 27, rule 2)

To (name)
(address)

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

- (a) before (the Court or as the case may be);
- (b) at (address of Court or place);
- (c) on (insert date) at (insert time) and until you are excused from further attending; but—
 - (i) you need not attend or produce any document on any day unless reasonable expenses have been paid or tendered to you; and
 - (ii) if, as an officer of a bank, you are required by this subpoena to produce a banker's book and (insert relevant part of State or Territory enactment enabling alternative mode of proof of entries in bankers' books) applies, you need not produce it if you produce proof of the relevant entries in accordance with (that Part or that Division or those sections).

SCHEDULE

(description)

Date: e.g. 7 May, 19

By the Court

(signature and description of officer of the Court)

Note: Failure to comply with this subpoena may constitute contempt of court and may result in your arrest.

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

Form 44

NOTICE OF TRIAL

(Order 30, rule 1)

The applicant (or as the case may be) requests that the proceedings be set down for trial.

Form 45

NOTICE TO PRODUCE

(Order 33, rule 12)

To the applicant:

The respondent requires you to produce at the trial (or otherwise specify the occasion or place) the following documents for the purpose of evidence—

(enumerate the documents or things)

Form 46

ORDER

(Order 33, rule 14)

THE COURT ORDERS THAT:

1. The Superintendent (*or as the case may be*) shall have (*name*), a prisoner, before this Court to be examined as a witness and duly returned to confinement.
2. The first day on which he is required to have the prisoner before the Court is e.g. 7 May, 19 , at 10.15 a.m. at (*address of Court*).

(Complete as in general form of order under Order 36)

Form 47

ORDER

(Order 36)

JUDGE(S):

DATE OF ORDER:

WHERE MADE:

THE COURT ORDERS (OR DECLARES) THAT:

- 1.
- 2.
- 3.

DISTRICT REGISTRAR

Date Entered:

Form 48

WARRANT FOR ARREST

(Order 40, rules 9 and 11; Order 49, sub-rule 4 (3) and (4))

To the Sheriff—

Arrest (*name*) and bring him before the Court to answer the charge set out below detaining him in custody in the meantime unless, by paying the sum of \$ into Court (*or as the case may be*) he gives security for his appearance in person before the Court to answer the charge and to submit to the (judgment or) order of the Court.

(*Name*) is charged with (*state charge, e.g. contempt of court*) in that (*give particulars*).

Date: e.g. 7 May, 19

Judge

Form 49

WARRANT FOR COMMITTAL

(Order 37, rule 9)

To the Sheriff—

Take (*name*) to (*name of prison*) and deliver him to the Superintendent of that prison.To the Superintendent of (*name of prison*):Receive (*name*) into your custody and keep him there until the further order of this Court (*or as the case may be*).His committal is for contempt of court in that he (*state the nature of the contempt, for example, wilfully insulted the Judge while the Judge was sitting in Court*).

Date: e.g. 7 May, 19

Judge

Form 50

NOTICE OF CLAIM

(Order 44, rule 4)

(*Heading and title*)The claimant claims the property described in the schedule, being (part of) the property taken (intended to be taken) in execution by the Sheriff at (*address*) under process against (*name*).

SCHEDULE

(*description*)

Date: e.g. 7 May, 19

(signature)
Claimant's solicitorClaimant: (*name*)

Place of abode:

Address for service:

To the execution creditor:

If you do not, within 4 days after service of this notice upon you, serve on the Sheriff a notice that you admit this claim, the Court may on application by the Sheriff grant relief by way of interpleader.

If you admit the claim, you will not be liable to the Sheriff for any fees or expenses incurred by him after you serve on him notice that you admit it.

(signature)
Sheriff

Date:

Form 51
SUMMONS

(Order 49, rule 2 and Order 4, rule 16)

To the defendant:

You are required to appear before the Federal Court of Australia at the time and place specified below to answer the charge the prosecutor makes against you, viz.

1. *(state offence)*

The particulars of the charge are—

2. *(State particulars in accordance with Order 49, paragraph 2 (1) (b).)*

3.

TAKE NOTICE that if you do not appear before the Court at the time and place specified below, a warrant may be issued for your arrest.

Time: *(Date and time to be entered by Registry unless fixed by the Court).*Place: *(Address of Court).*The prosecutor's address for service is *(specify address for service).*

Form 52

INFORMATION FOR AN OFFENCE

(Order 49, rule 2 and Order 4, rule 16)

At the time and place specified below *(name of prosecutor)* of *(address of prosecutor)* in the State of _____ appears before *(name of Registrar)* *(description of Registrar)* and informs the said *(name of Registrar)* that on *(Date and place of offence)* *(Name and address of defendant)* did *(or failed to do)* *(Set out details of offence and specific description of legislation creating the offence.)*

*(Signature of Prosecutor)*Time: *(Date and time prosecutor appears before Registrar).*Place: *(Address of Court).*

Signed by the abovenamed prosecutor before me—

Date: e.g. 7 May, 19 _____

Registrar

Form 53

NOTICE OF A CONSTITUTIONAL MATTER UNDER SECTION 78B OF THE
JUDICIARY ACT 1903

(Order 51)

IN THE FEDERAL COURT OF AUSTRALIA }
DISTRICT REGISTRY } No. of 19
GENERAL DIVISION }

A.B.

Applicant

C.D.

Respondent

NOTICE OF A CONSTITUTIONAL MATTER

1. *(The party whose case raises the matter, e.g. applicant, respondent, &c.) gives notice that the above proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the Judiciary Act 1903.*
2. } *(Specify the nature of the matter.)*
3. }
4. } *(Specify the facts showing the matter is one to which section 78B of the Judiciary Act 1903*
5. } *applies.)*

(Conclude in accordance with Form 4)

Form 54

APPLICATION FOR LEAVE TO APPEAL

(Order 52, rule 4)

IN THE FEDERAL COURT OF AUSTRALIA }
DISTRICT REGISTRY } No. of 19
GENERAL DIVISION }

A.B.

Applicant

C.D.

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies for leave to appeal from the judgment of *(specify court or Judge below)* given on *(specify date)* at *(specify place)*.
2. Leave to appeal is required by *(specify legislation giving right to appeal with leave)*.

OR

2. Leave to appeal is required because a notice of appeal was not filed within the time limited by Order 52, rule 15.
3. *(Where Order 52, sub-rule 3 (2) applies)*. The applicant intends to present his case and argument in writing pursuant to Order 52, sub-rule 3 (2).

OR

3. This application will be heard by the Court at on *(place and date to be inserted by the Registrar)*.
4. The grounds of the application appear in the annexed affidavit.
5. *(Where Order 52, sub-rule 5 (3) applies)* The applicant applies for an order that compliance with Order 52, sub-rule 5 (2) be dispensed with.

(Conclude in accordance with Form 4)

Form 55

NOTICE OF APPEAL

(Order 52, rule 12)

IN THE FEDERAL COURT OF AUSTRALIA }
 DISTRICT REGISTRY } No. of
 GENERAL DIVISION }

On appeal from (*specify Court or Judge*)

A.B.

Appellant

C.D.

Respondent

NOTICE OF APPEAL

1. The appellant appeals from the whole (*or if from a part, specify part*) of the judgment of (*specify court or Judge below*) given on (*specify date*) at (*specify place*).
2. (*Where applicable*) The appeal is brought pursuant to leave granted on (*specify time*).

GROUNDS:
 3.
 4. (*Specify grounds of appeal.*)

ORDER SOUGHT: (*State what judgment or order the appellant seeks in lieu of the judgment appealed from.*)

(*Conclude in accordance with Form 4.*)

The papers in the appeal will be settled before the Registrar at on at
 (*place, date and time to be inserted by Registrar.*)

Form 56

APPLICATION FOR AN ORDER OF REVIEW

(Order 54)

IN THE FEDERAL COURT OF AUSTRALIA }
 DISTRICT REGISTRY } No. of 19
 GENERAL DIVISION }

BETWEEN

A.B.

Applicant

AND

C.D.

Respondent

APPLICATION FOR AN ORDER OF REVIEW

Application to review the decision of (the respondent or the first respondent) that (*here specify decision*)

OR

Application to review the conduct of (the respondent or the first respondent) whereby (*here identify conduct*)

OR

Application to review conduct in which the respondent or the first respondent) proposes to engage whereby (*here identify proposed conduct*)

OR

Application to review the failure of (the respondent or the first respondent) to decide that (*here identify the decision which is alleged ought to have been made*)

Form 56—continued

The applicant is aggrieved by the (decision or conduct or proposed conduct or failure) because—

- 1.
- 2.

The grounds of the application are—

- 1.
- 2.

(Particulars of fraud or bad faith if alleged.)

The applicant claims—

1. An order (or declaration) that (specify relief sought).
 - 2.
- etc.

Date: e.g. 7 May, 19

(Signed, applicant or
his solicitor)

To the respondent (address)

If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified below, the application may be dealt with and you will be liable to suffer judgment or an order against you in your absence.

Before any attendance at that time you must file an appearance in the Registry.

APPOINTMENT FOR DIRECTIONS HEARING

Time: (Date and time to be entered by Registry unless fixed by Court.)

Place: (Address of Court.)

(Where the time for service has been abridged, add—

The time by which this application is to be served had been abridged by the Court to (specify time).)

Date: e.g. 7 May, 19

(Signed, Registrar)

The applicant's address for service is (specify address for service).

Form 57

NOTICE OF OBJECTION TO COMPETENCY

(Order 54, rule 4)

To the applicant:

The respondent objects to the jurisdiction of this Court to try this application for an order of review under the *Administrative Decisions (Judicial Review) Act 1977* on the grounds that:

1. } (Set out concisely the whole of the grounds of the objection.)
2. }

(Conclude in accordance with Form 4)

SECOND SCHEDULE

Costs allowable in respect of proceedings commenced on or after the date these Rules come into operation (See order 62, rule 12).

1. Solicitors are, subject to these Rules, entitled to charge and be allowed the costs set out in the Second Schedule to the High Court Rules, as varied from time to time, until such times as another Schedule is prepared providing for a scale of costs of proceedings in the Court. Scale of costs
 2. Writs referred to in the Second Schedule to the High Court Rules shall be deemed to include applications made to the Court in accordance with Order 4 of these Rules. Applications
 3. Writs of subpoena referred to in the Second Schedule to the High Court Rules shall be deemed to include subpoenas issued from the Court in accordance with Order 27 of these Rules. Subpoenas
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NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 25 July 1979.