



Western Australia

## **Rules of the Supreme Court 1971**

Compare between:

[15 Mar 2013, 08-e0-01] and [23 Apr 2013, 08-f0-01]



Western Australia

Supreme Court Act 1935

## **Rules of the Supreme Court 1971**

## **Order 1 — Application, elimination of delay and forms**

*[Heading inserted in Gazette 26 Mar 1993 p. 1840.]*

### **1. Short title**

These rules may be cited as the *Rules of the Supreme Court 1971*<sup>1</sup>.

### **2. Commencement and saving**

(1) These rules shall take effect on 14 February 1972.

*[(2) deleted]*

(3) A proceeding pending, and a judgment, decree or order given or made before the commencement of these rules, being of a kind to which these rules apply, shall be treated as if pending, given or made under these rules, and may be proceeded with, enforced, varied, reversed or otherwise dealt with accordingly, subject to any special order or direction made or given by the Court in any particular case.

*[Rule 2 amended in Gazette 21 Feb 2007 p. 533; 22 Feb 2008 p. 634.]*

### **3. Certain proceedings excluded**

(1) Subject to the provisions of this Order, these rules shall have effect in relation to all proceedings in the Supreme Court.

(2) These rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the enactments specified in the 2nd column of that Table) —

**Table**

<b>Proceedings</b>	<b>Enactments</b>
<i>[1. deleted]</i>	
2. Non-contentious or common form probate business.	<i>Administration Act 1903</i> , s. 144. <i>Supreme Court Act 1935</i> , s. 167. <i>Public Trustee Act 1941</i> , s. 65.
<i>[3. deleted]</i>	
4. Proceedings in the Court of Disputed Returns to which <i>The Electoral Rules of 1908</i> apply.	<i>Electoral Act 1907</i> , s. 173.
(3) These rules, save as expressly provided, shall not apply to —	
(a) any criminal proceedings;	
<b><i>[(b) deleted]</i></b>	
(c) matters of practice or procedure or other matters to which rules of court made pursuant to a power conferred by any Act of the Commonwealth, apply.	
(4) In the case of proceedings mentioned in subrules (2) and (3), nothing in those subrules shall be taken as affecting any provision of any rules (whether made under the Act or any other Act) by virtue of which the rules of the Supreme Court or any provisions thereof are applied in relation to any of those proceedings.	
<i>[Rule 3 amended in Gazette 10 Sep 1973 p. 3428; 28 Jun 1994 p. 3049; 8 May 2000 p. 2161; 29 Dec 2000 p. 7918; 27 Jul 2001 p. 3895; 21 Feb 2007 p. 533; 28 Jun 2011 p. 2552-3.]</i>	

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**3A. Inherent powers not affected**

The inherent power of the Court to control the conduct of a proceeding is not affected by these rules.

*[Rule 3A inserted in Gazette 28 Oct 1996 p. 5673.]*

**4. Terms used**

- (1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely —

**Accountant** means the chief finance officer, designated under the *Financial Management Act 2006* section 57, of the department of the Public Service principally assisting in the administration of the Act;

**Act** means the *Supreme Court Act 1935*;

**Australian diplomatic or consular agent** includes a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside Australia —

- (a) ambassador; and
- (b) high commissioner; and
- (c) minister; and
- (d) head of mission; and
- (e) commissioner; and
- (f) chargé d'affaires; and
- (g) counsellor, secretary or attaché at an embassy, high commissioner's office, legation or other post; and
- (h) consul-general; and
- (i) consul; and
- (j) vice-consul; and
- (k) trade commissioner; and
- (l) consular agent;

*case* has the meaning given in Order 4A rule 1;

*case management registrar* means a registrar appointed as such by the Chief Justice;

*case manager* has the meaning given in Order 4A rule 1;

*Cause Book* means the book kept in the Central Office in which the number of and other details relating to a cause or matter are recorded;

*Central Office* means the central office of the Supreme Court at Perth;

*consular agent* means a consul-general, consul, vice-consul, pro-consul or consular agent, or acting consul-general, acting consul, acting vice-consul, acting pro-consul, or acting consular agent;

*costs* includes fees to counsel, charges, disbursements, expenses and remuneration;

*diplomatic agent* means an ambassador, envoy, minister, chargé d'affaires, or secretary of an embassy or a legation;

*folio* means 72 words, each figure being counted as one word;

*form* has a meaning affected by rule 6 and, if followed by a number, means the form of that number in Schedule 2;

*geographical address* of a person, has the meaning given by Order 71A rule 2;

*master* means a master of the Supreme Court, and includes an acting master;

*officer* means an officer of the Supreme Court;

*originating summons* means every summons other than a summons in a pending cause or matter;

*practitioner* means an Australian legal practitioner as defined in the *Legal Profession Act 2008* section 3;

*prescribed fee* means the fee prescribed by the *Supreme Court (Fees) Regulations 2002*;

*probate action* has the meaning assigned to it by Order 73;

**proper officer** shall mean an officer to be ascertained as follows:

- (a) where any duty to be discharged under any Act or these rules is a duty which has heretofore been discharged by any officer, such officer shall unless otherwise provided by these rules continue to be the proper officer to discharge the same;
- (b) where under any Act or these rules any new duty is to be discharged, the proper officer to discharge the same shall be the officer directed by these rules, or if no such officer, such other officer as may from time to time be directed by the Chief Justice to discharge the same;
- (c) when any doubt arises as to who is the proper officer to discharge any duty the Chief Justice may direct by what officer such duty is to be discharged;

**receiver** includes a manager or consignee;

**registrar** means a person for the time being holding or acting in an office designated under the *Supreme Court Act 1935*, “Registrar of the Supreme Court”, and a reference to the registrar or to a registrar may include a reference to the Principal Registrar or a deputy registrar;

**rules, these rules or rules of court** means these rules, and includes —

- (a) any forms, fees and costs referred to in these rules; and
- (b) any other rules of court, forms, fees and costs made or prescribed in amendment of, or in addition to, these rules;

**service details** of a person, has the meaning given by Order 71A rule 3;

**taxing officer** includes a registrar, and any other officer of the Court having power to tax costs;

**to file** means to file in the Central Office, and **file, filed** and **filing** have corresponding meanings;



*trial* includes hearing;

*working day* means a day other than a Saturday, a Sunday, or a public holiday throughout the State;

*writ* means a writ of summons.

- (2) In these rules, unless the context otherwise requires, the *Court* means the Supreme Court or any one or more judges thereof, whether sitting in court or in chambers, or a master: but this provision shall not be taken as affecting any provision of these rules, and in particular Order 60, by virtue of which the authority and jurisdiction of the masters is defined and regulated.

*[Rule 4 amended in Gazette 14 Dec 1979 p. 3869; 30 Nov 1984 p. 3951-2; 28 Oct 1996 p. 5674; 19 Apr 2005 p. 1298; 21 Feb 2007 p. 533-4; 3 Jul 2009 p. 2699; 28 Jul 2010 p. 3440 and 3482; 28 Jun 2011 p. 2551.]*

#### **4A. Delays, elimination of**

The practice, procedure and interlocutory processes of the Court shall have as their goal the elimination of any lapse of time from the date of initiation of proceedings to their final determination beyond that reasonably required for interlocutory activities essential to the fair and just determination of the issues bona fide in contention between the parties and the preparation of the case for trial.

*[Rule 4A inserted in Gazette 26 Mar 1993 p. 1840.]*

#### **4B. Case flow management, use and objects of**

- (1) Actions, causes and matters in the Court will, to the extent that the resources of the Court permit, be managed and supervised in accordance with a system of positive case flow management with the objects of —
- (a) promoting the just determination of litigation; and
  - (b) disposing efficiently of the business of the Court; and

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- (c) maximising the efficient use of available judicial and administrative resources; and
  - (d) facilitating the timely disposal of business; and
  - (e) ensuring the procedure applicable, and the costs of the procedure to the parties and the State, are proportionate to the value, importance and complexity of the subject matter in dispute; and
  - (f) that the procedure applicable, and the costs of the procedure to the parties, are proportionate to the financial position of each party.
- (2) These rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the objects referred to in subrule (1).

*[Rule 4B inserted in Gazette 26 Mar 1993 p. 1840-1; amended in Gazette 28 Jul 2010 p. 3440; 28 Jun 2011 p. 2552.]*

**4C. Parties to notify settlement**

When any cause or matter is disposed of in whole or in part by settlement the solicitors for the parties to the settlement shall notify the Principal Registrar in writing forthwith.

*[Rule 4C inserted in Gazette 26 Mar 1993 p. 1841; amended in Gazette 12 Jun 2012 p. 2445.]*

*[5. Deleted in Gazette 28 Jun 2011 p. 2551.]*

**6. Forms**

- (1) The forms in Schedule 2 shall be used where applicable with such variations as the circumstances of the particular case require, and the reference to any form in or at the end of any rule shall be read as referring to the appropriate Form in Schedule 2 and as a direction to use that Form for the purpose indicated by the rule.

*[(2) deleted]*

*[Rule 6 amended in Gazette 30 Nov 1984 p. 3952; 22 Feb 2008 p. 634; 28 Jun 2011 p. 2553.]*

**7. Court fees**

These rules are to be read with but do not affect the operation of the *Supreme Court (Fees) Regulations 2002*.

*[Rule 7 inserted in Gazette 28 Jul 2010 p. 3482.]*

## **Order 2 — Effect of non-compliance**

### **1. Non-compliance with rules**

- (1) Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.
- (2) Subject to subrule (3) the Court may, on the ground that there has been such a failure as is mentioned in subrule (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings, or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.
- (3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552.]*

### **2. Application to set aside for irregularity**

- (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

- (2) An application under this rule shall be made by summons or motion, as the case may require, and the grounds of objection must be stated in the summons or notice of motion.

## **Order 3 — Time**

**1. Term used: month**

Without prejudice to the definition of the word *month* in section 5 of the *Interpretation Act 1984*, in its application to these rules, the word *month* where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

*[Rule 1 amended in Gazette 29 Apr 2005 p. 1791.]*

**2. Reckoning periods of time**

- (1) Where clear days are prescribed by these rules or fixed by any judgment, order or direction, the time shall be reckoned exclusively of the first and last day. Where any number of days not expressed to be clear days is prescribed or fixed the time shall be reckoned exclusively of the first and inclusively of the last day.
- (2) Where less than 7 days is prescribed by these rules or limited by any judgment, order or direction for doing any act any day on which the Central Office is closed for business shall not be reckoned.

**3. Period between 24 Dec and 15 Jan excluded when computing time**

In the computation of the time prescribed by these rules or by an order or direction for filing, serving or amending any pleading or for filing and serving any notice of appeal the period or any part of the period which is between 24 December and 15 January next following shall not be reckoned unless the Court orders.

*[Rule 3 amended in Gazette 9 Nov 1973 p. 4164.]*

**4. Time expiring on day Central Office closed, effect of**

Where the time prescribed by these rules or by any judgment, order or direction for doing any act expires on a day on which the Central Office is closed, and by reason thereof such act cannot be done on that day, the time shall be extended to the day on which the Central Office shall next be open.

**5. Extending and abridging time**

- (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these rules, or by any judgment, order, or direction, to do any act in any proceedings.
- (2) The Court may extend any such period as is referred to in subrule (1) although the application for extension is not made until after the expiration of that period.
- (3) The period within which a person is required by these rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

*[Rule 5 amended in Gazette 29 Apr 2005 p. 1791; 28 Jun 2011 p. 2552.]*

**6. Extension of time where security ordered**

Where any security is ordered to be given by a party the time prescribed by these rules or fixed by any order for the taking of any step by another party contingent on due compliance with the order for security, shall be deemed to be extended by the period between service of the order for security, and the giving of security.

**7. Notice of intention to proceed after year's delay**

Where a year or more has elapsed since the last proceeding in an action, the party who desires to proceed must give to every other

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party not less than one month's notice of his intention to proceed. A summons on which no order was made is not a proceeding for the purpose of this rule.

[8.        *Deleted in Gazette 20 Jun 1986 p. 2040.*]



## **Order 4A — Case management**

*[Heading inserted in Gazette 28 Jul 2010 p. 3441.]*

### **Division 1 — Preliminary matters**

*[Heading inserted in Gazette 28 Jul 2010 p. 3441.]*

#### **1. Terms used**

In this Order, unless the contrary intention appears —

***approved mediator*** means a registrar or other person, approved as a mediator by the Chief Justice;

***case*** means any action, cause, or matter, that is an original proceeding between a plaintiff and a defendant;

***case management direction*** has the meaning given in rule 2;

***case manager*** means —

- (a) for a case on the CMC List, the CMC List judge to whom the case is assigned;
- (b) for any other case, a master or a case management registrar;

***CMC List*** means the Commercial and Managed Cases List referred to in Division 3;

***CMC List case*** means a case that is on the CMC List;

***CMC List judge*** means a judge who the Chief Justice has appointed to deal with CMC List cases;

***enforcement order*** has the meaning given in rule 3.

*[Rule 1 inserted in Gazette 28 Jul 2010 p. 3441.]*

#### **2. Term used: case management direction**

- (1) A case management direction is any procedural direction that in the Court's opinion it is just to make in a case to facilitate the attainment of the objects referred to in Order 1 rule 4B(1).

- (2) Without limiting subrule (1), a case management direction may do one or more of the following —
- (a) give directions to assist the convenience of the parties or witnesses;
  - (b) direct the parties to comply with a timetable for procedural steps that are needed in the case;
  - (c) dispense with all or any or any further pleadings;
  - (d) direct specified pleadings to be filed;
  - (e) dispense with any interlocutory step;
  - (f) direct that an interlocutory application not be heard;
  - (g) as to any interlocutory matter —
    - (i) direct the parties or their practitioners to file and exchange memoranda before the hearing of it in order to clarify the matters in issue before the hearing;
    - (ii) direct that it be dealt with by telephone, video link or other similar means of communication;
    - (iii) give directions as to the use of audio-visual equipment, computers and other equipment in any hearing of it;
    - (iv) direct that it be dealt with, and any evidence in relation to it be provided, by email, fax, telegram, telex, courier, post or other similar means;
    - (v) give directions for the speedier and more effective recording of evidence at any hearing of it;
  - (h) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;
  - (i) limit discovery or direct that discovery be given in stages;

- (j) direct any or all of the parties to confer on a “without prejudice” basis for the purpose of identifying, resolving and narrowing the points of difference between them;
- (k) direct that experts, whose reports have been exchanged under Order 36A, confer on a “without prejudice” basis for the purpose of identifying, resolving and narrowing the points of difference between them;
- (l) if under paragraph (j) or (k) a conference is directed to be held —
  - (i) subject to subrule (5) and rule 8, direct that it be conducted by a mediator;
  - (ii) direct that it be held by telephone, video link or other similar means of communication;
  - (iii) set the terms or conditions for it and deal with anything in relation to it;
- (m) direct that a certificate of readiness is not required for the purposes of Order 33 or Order 58 rule 19;
- (n) direct a party (**A**) intending to produce a plan, photograph, model or other object (the **object**) at trial to serve on the other party (**B**), at a time specified, a written notice —
  - (i) describing the object; and
  - (ii) stating where and when it may be inspected; and
  - (iii) requiring B to serve A, within 7 days after the date on which the notice is served, a written notice agreeing or refusing to agree to the admission in evidence of the object without further proof of it;
- (o) direct a practitioner for a party to give the party a memorandum stating —
  - (i) the approximate solicitor and client costs and disbursements of the party to the date of the memorandum; and

- (ii) the estimated future solicitor and client costs and disbursements of the party to but not including the trial; and
  - (iii) the estimated length of the trial and the estimated solicitor and client costs and disbursements of the trial; and
  - (iv) the estimated party and party costs that would be payable by the party if the party were unsuccessful at trial;
- (p) set a timetable for the trial of the case including a timetable that includes any limit that could be directed under Order 34 rule 5A(1);
- (q) limit the length of written submissions that can be made in the case;
- (r) direct the parties to prepare bundles, files or folders of documents for use at the trial of the case, either —
  - (i) grouped according to topic, class, category, allegation in issue or otherwise; or
  - (ii) in an order or sequence,as specified in the direction, and identified or indexed as specified in the direction;
- (s) direct a party to serve on the other parties, at times set by the case manager making the direction, a signed written statement of the proposed evidence in chief of each witness to be called by that party;
- (t) direct that a signed written statement referred to in paragraph (s) or any part of it stand as the evidence in chief of the witness;
- (u) change the venue of the trial, or adjourn the trial part heard to continue at a different venue;
- (v) in exceptional circumstances, direct that an application made by a party under this Order operate as a stay of proceedings;

- (w) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a decision made under this Order by a case management registrar operate as a stay of proceedings;
  - (x) give directions as to the manner in which the parties are to defray the costs of giving effect to any case management direction;
  - (y) direct that a specified case management direction be complied with by a set date;
  - (z) direct that a referee give the Court a report on any question or issue of fact.
- (3) A case management direction may —
- (a) include any ancillary direction that is needed for the purpose of the direction; and
  - (b) amend or cancel another case management direction.
- (4) A registrar cannot make a case management direction —
- (a) under subrule (2)(z); or
  - (b) under subrule (3)(b) that amends or cancels a case management direction made by a judge or master.
- (5) A case management direction must not, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator.

*[Rule 2 inserted in Gazette 28 Jul 2010 p. 3441-6.]*

**3. Term used: enforcement order**

An enforcement order is —

- (a) an order as to the payment of costs;
- (b) an order as to the payment of costs of the parties on an indemnity basis, to be fixed in a manner specified in the order, and payable within 14 days after the date of the order;

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- (c) a self-executing order for judgment, striking out pleadings or otherwise;
- (d) an order under Order 66 rule 5.

*[Rule 3 inserted in Gazette 28 Jul 2010 p. 3446.]*

**4. Inconsistencies with other rules**

If a provision in this Order is inconsistent with these rules or the *Supreme Court (Corporations) (WA) Rules 2004*, the provision in this Order prevails.

*[Rule 4 inserted in Gazette 28 Jul 2010 p. 3446.]*

**Division 2 — Provisions applicable to all cases**

*[Heading inserted in Gazette 28 Jul 2010 p. 3446.]*

**5. Court may review a case at any time**

- (1) The case manager for a CMC List case or, in any other case, a judge, master or registrar —
  - (a) at any time in the case, on his or her own initiative after notifying the parties; or
  - (b) when hearing a summons for directions or any other application in the case,

may review the progress of the case and may do any or all of the following —

- (c) make any interlocutory order the Court considers just;
  - (d) make any case management direction the Court considers just;
  - (e) make any enforcement order the Court considers just.
- (2) For the purposes of subrule (1)(a), a judge, master or registrar may at any time require any or all of the parties to a case to attend before him or her.

*[Rule 5 inserted in Gazette 28 Jul 2010 p. 3446-7.]*

**6. Timetables**

- (1) This rule applies if the Court directs the parties to a case to comply with a timetable for procedural steps that are needed in the case.
- (2) The judge, master or registrar making the direction must set the timetable.
- (3) The judge, master or registrar making the direction or the case manager for the case may do any or all of the following —
  - (a) amend the timetable, whether on his or her own initiative or on a party's application;
  - (b) at any time request the parties to explain in writing why the timetable has not been complied with;
  - (c) at any time summons the parties to explain why the timetable has not been complied with;
  - (d) for the purposes of hearing a summons issued under paragraph (c), direct the parties to file such affidavits in response to the summons at such times as he or she considers just;
  - (e) on the return of a summons issued under paragraph (c) —
    - (i) amend the timetable;
    - (ii) make any case management direction he or she considers just;
    - (iii) make any enforcement order he or she considers just;
  - (f) if a party does not comply with the timetable, or obey a summons issued under paragraph (c), or file affidavits as directed, make any case management direction or enforcement order he or she considers just.
- (4) If a request is made under subrule (3)(b), the parties and their practitioners must —

- (a) give the Court the information required within the time specified in the request; and
- (b) serve the information on each other party.

*[Rule 6 inserted in Gazette 28 Jul 2010 p. 3447-8.]*

**7. Who has to attend conferences**

- (1) This rule applies if a conference, other than a listing conference or a conference between experts, is required or directed under this Order to be held.
- (2) Each party to the case and the practitioner, if any, representing each party must attend the conference, unless ordered otherwise.
- (3) If a party is not a natural person, a representative of the party familiar with the substance of the case and with authority to compromise it must attend the conference.
- (4) If there is no practitioner on the record for a party that is a body corporate, the case manager presiding at the conference may permit a person who is not a practitioner to represent the party.

*[Rule 7 inserted in Gazette 28 Jul 2010 p. 3448-9.]*

**8. Conferences of the parties with a mediator**

- (1) This rule applies if the Court directs the parties to a case to attend a conference conducted by a mediator.
- (2) The Court must direct whether the mediator is to be an approved mediator or some other person.
- (3) The Court must not direct that the mediator is to be a person who is not an approved mediator unless the parties consent.
- (4) In the absence of any other order made by the Court —
  - (a) the conference must take place at the time and place directed; and
  - (b) if the Court does not set a date for the conference, each party must, subject to any directions, take the steps



necessary to ensure the conference takes place as soon as possible; and

- (c) each party's costs of and incidental to the conference shall be the party's costs in the cause, unless it is ordered otherwise or the parties agree; but a party may apply for those costs if they have been unnecessarily incurred due to the conduct of the other party; and
  - (d) the fees and expenses of any mediator who is not a registrar must be paid by the parties in equal shares, unless it is ordered otherwise or the parties agree; and
  - (e) within 2 weeks after the conclusion of the conference, the plaintiff must file a report, signed by or on behalf of each party —
    - (i) confirming that the conference has taken place as directed; and
    - (ii) recording the substance of any resolution or narrowing of the points of difference between the parties resulting from the conference.
- (5) The mediator —
- (a) must not, unless the parties agree, report to the Court on the conference; but
  - (b) whether or not the parties agree, may report to the Court on any failure by a party to cooperate in the conference.
- (6) A report given under subrule (5)(b) must not be disclosed to the trial judge except for the purposes of determining any question as to costs.

*[Rule 8 inserted in Gazette 28 Jul 2010 p. 3449-50.]*

## **9. Referees**

- (1) This rule applies if the Court directs that a referee give the Court a report on any question or issue of fact.

- (2) The judge, master or registrar making the direction or the case manager for the case may do any or all of the following —
- (a) appoint the referee;
  - (b) give the referee instructions about the question or issue of fact referred and the report required;
  - (c) give directions with respect to the conduct of proceedings before the referee;
  - (d) give directions for the provision —
    - (i) of services of officers of the Court;
    - (ii) of courtrooms and other facilities, for the purpose of the referee;
  - (e) vary or cancel a direction given under this subrule.
- (3) The judge, master or registrar making the direction or the case manager for the case may —
- (a) determine the amount of the fees to be paid to the referee; and
  - (b) direct how, when and by whom the whole or any part of the fees referred to in paragraph (a) are to be paid.
- (4) Evidence before the referee —
- (a) may be given orally or in writing; and
  - (b) must, if the referee so requires, be given on oath or affirmation.
- (5) Evidence additional to the evidence taken before the referee cannot be adduced before the Court except with the leave of the Court.

*[Rule 9 inserted in Gazette 28 Jul 2010 p. 3450-1.]*

**Division 3 — Cases on the CMC List**

*[Heading inserted in Gazette 28 Jul 2010 p. 3451.]*

**10. Application of this Division**

This Division applies to every CMC List case unless and to the extent it is ordered otherwise by a CMC List judge.

*[Rule 10 inserted in Gazette 28 Jul 2010 p. 3451.]*

**11. Cases on CMC List**

These cases are on the CMC List —

- (a) any case in which defamation is alleged;
- (b) any case that is ordered to be on the list under rule 13;
- (c) any case on the CMC List, as established administratively by the Court, immediately before the *Supreme Court Amendment Rules 2010* rule 5 comes into operation.

*[Rule 11 inserted in Gazette 28 Jul 2010 p. 3451-2.]*

**12. Headings to documents**

The heading of every document filed or issued in a CMC List case must include “Commercial and Managed Cases List” under “In the Supreme Court of Western Australia”.

*[Rule 12 inserted in Gazette 28 Jul 2010 p. 3452.]*

**13. CMC List judge may order case to be on or taken off CMC List**

- (1) Only a CMC List judge can order that a case be admitted to or taken off the CMC List.
- (2) A CMC List judge, on his or her own initiative or on a request made under rule 14, may order a case to be admitted to the CMC List.
- (3) A CMC List judge, on his or her own initiative or on an application by a party, may order a CMC List case to be taken off the list.

*[Rule 13 inserted in Gazette 28 Jul 2010 p. 3452.]*

**14. Asking for case to be put on CMC List**

- (1) A party to a case may ask for an order that the case be admitted to the CMC List.
- (2) The request should ordinarily be made as soon as possible after the case is commenced and each party who is required to enter an appearance has done so.
- (3) The request must be made —
  - (a) by filing a letter, addressed to the Central Office, containing —
    - (i) the request; and
    - (ii) the email address (if any) of each party to the case, other than a party who is required to enter an appearance and has not;
  - and
  - (b) serving a copy of the letter on each other party to the case, other than a party who is required to enter an appearance and has not.
- (4) The email addresses in the letter must comply with Order 71A rule 3.
- (5) A request made under this rule must be decided by a CMC List judge.
- (6) At the hearing of the request, the CMC List judge, if satisfied the case should be subject to this Division, may order the case be admitted to the CMC List unless a party shows cause why it should not be admitted.

*[Rule 14 inserted in Gazette 28 Jul 2010 p. 3452-3.]*

**15. Interlocutory hearings**

- (1) The case manager of a CMC List case may hear any interlocutory matter relating to the case, or may refer the matter to another judge or master for hearing who has and may exercise all powers of the case manager.
- (2) A party to a CMC List case who is represented by a practitioner need not attend an interlocutory hearing in the case unless subpoenaed or ordered to do so by the case manager.

*[Rule 15 inserted in Gazette 28 Jul 2010 p. 3453.]*

**Division 4 — Cases not on the CMC List**

*[Heading inserted in Gazette 28 Jul 2010 p. 3453.]*

**16. Application of this Division**

This Division applies to every case that is not on the CMC List unless and to the extent it is ordered otherwise by a judge or master.

*[Rule 16 inserted in Gazette 28 Jul 2010 p. 3453.]*

**17. Requesting interlocutory orders and case management directions**

- (1) A party to a case may at any time ask a case manager for any or all of the following —
  - (a) for any interlocutory order that the case manager has jurisdiction to make;
  - (b) for a case management direction to be made under this Order;
  - (c) to have a case management direction amended or cancelled.
- (2) The request must be made by giving a letter that details the order or direction wanted to the associate to the case manager, or if the case manager is not known, the Principal Registrar.

- (3) A case manager, on receipt of the request —
- (a) if the manager has jurisdiction to make the order or direction —
    - (i) may deal with the request without requiring the parties to attend a hearing; or
    - (ii) may deal with the request at any conference required by this Order or at the hearing of any other matter in the case and for that purpose may relist such a conference or matter;
  - or
  - (b) otherwise, may refer the request to a judge or master who has jurisdiction to make the order or direction.

*[Rule 17 inserted in Gazette 28 Jul 2010 p. 3454.]*

**18. Status conference**

- (1) A case manager shall summons all parties to a case to attend a status conference before a case manager.
- (2) The status conference must be held within 21 days after the first appearance is entered in the case or at a later time decided by a case manager.
- (3) If within 6 months after a case is commenced an affidavit of service of the writ, originating motion or originating summons has been filed but no appearance has been entered in the case, a case manager may summons the plaintiff to a status conference.
- (4) The status conference shall be held even if, at the time of the conference, not all parties to the case have been served with the originating process or have entered appearances.
- (5) At the status conference the case manager is to review the documents on the Court file and inquire into these matters —
  - (a) whether pleadings or any specified pleadings are necessary;

- (b) the state of the pleadings and whether the times prescribed by these rules for pleadings are being complied with and if not, why;
  - (c) whether any party intends to commence third party or similar proceedings under Order 19;
  - (d) whether any party intends to require discovery and inspection under Order 26;
  - (e) whether any party intends to interrogate under Order 27;
  - (f) whether a conference of the parties with a mediator is needed and if so, when;
  - (g) the likely length of the trial;
  - (h) any other matter relevant to ensuring the case is managed in accordance with Order 1 rule 4B.
- (6) At the status conference the case manager may at the request of a party or the parties or on the manager's own initiative —
- (a) make any interlocutory order the manager considers just;
  - (b) make any case management direction the manager considers just;
  - (c) make any enforcement order the manager considers just;
  - (d) make an order that rule 19 does not apply to the case.
- (7) A case manager may adjourn the status conference from time to time.

*[Rule 18 inserted in Gazette 28 Jul 2010 p. 3455-6.]*

## **19. Case evaluation conference**

- (1) Unless ordered otherwise under rule 18(6)(d), a case manager must summons all parties to a case to attend a case evaluation conference before a case manager.
- (2) The case evaluation conference shall be held within 28 weeks after the initial appearance to the summons to the status conference or at a later time decided by a case manager.

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- (3) The case evaluation conference shall be held even if, at the time of the conference, not all parties to the case have been served with the originating process or have entered appearances.
- (4) At the case evaluation conference the case manager is to review the documents on the Court file and inquire into these matters —
- (a) the state of the pleadings and if they are not closed, why;
  - (b) whether a conference of the parties with a mediator is needed and if so, when;
  - (c) the content of any reports by experts that have been or may be exchanged under Order 36A and whether a conference between them is needed;
  - (d) whether the case, at the time of the listing conference, will be ready for trial and if not, why;
  - (e) whether the estimated length of the trial is still accurate;
  - (f) the number of witnesses to be called at the trial, whether there are any known difficulties as to the availability of any witness, and the estimated time it will take for them to give their evidence;
  - (g) the administrative resources likely to be needed for the trial.
- (5) At the case evaluation conference the case manager may at the request of a party or the parties or on the manager's own initiative do any or all of the following —
- (a) make any interlocutory order the manager considers just;
  - (b) make any case management direction the manager considers just;
  - (c) make any enforcement order the manager considers just.
- (6) A case manager may adjourn the case evaluation conference from time to time; but not to a date on or after the date of the listing conference.

*[Rule 19 inserted in Gazette 28 Jul 2010 p. 3456-7.]*



**20. Listing conference**

- (1) A listing conference shall be held before a judge in chambers.
- (2) The listing conference shall be held as soon as practicable after the case is entered for trial or, in the case of an originating summons, after an application is made for an appointment for the attendance of the parties for the hearing of the summons.
- (3) At the listing conference the judge may review the documents on the Court file and inquire into these matters —
  - (a) whether the case can be settled;
  - (b) which documents will be admitted at trial by consent;
  - (c) the number of witnesses to be called at the trial, whether there are any known difficulties as to the availability of any witness, and the estimated time it will take for them to give their evidence in chief;
  - (d) whether the case in all respects is ready to go to trial.
- (4) At the listing conference the judge may do any or all of the following —
  - (a) make any case management direction the judge considers just;
  - (b) amend or cancel any case management direction made previously;
  - (c) if the judge considers it is convenient to do so to facilitate the preparation for, or the conduct of, the trial, or is otherwise desirable —
    - (i) after giving notice to the parties, determine any question of law; or
    - (ii) determine any question of procedure.
- (5) The judge may adjourn the listing conference from time to time.
- (6) At the listing conference the judge may fix the date of the trial of the case and the length of the trial.

*[Rule 20 inserted in Gazette 28 Jul 2010 p. 3458-9.]*

**Division 5 — Inactive Cases List**

*[Heading inserted in Gazette 28 Jul 2010 p. 3459.]*

**21. Term used: Inactive Cases List**

In this Division —

***Inactive Cases List*** means a list of inactive cases kept by the Principal Registrar under rule 25.

*[Rule 21 inserted in Gazette 28 Jul 2010 p. 3459.]*

**22. Case manager may issue summons to show cause**

- (1) The case manager of a case may at any time summons the parties to attend a hearing before a case manager to show cause why the case should not be put on the Inactive Cases List.
- (2) The hearing date for the summons must be at least 7 days after the date on which it is issued.
- (3) The issue of the summons does not prevent any party to the case from taking any procedural step in the case.
- (4) At the hearing the case manager may order that the case be put on the Inactive Cases List if not satisfied that the case is being conducted in a timely way, having regard to the requirements of these rules and the circumstances of the case.
- (5) An order may be made under subrule (4) in the absence of any party.

*[Rule 22 inserted in Gazette 28 Jul 2010 p. 3459.]*

**23. Springing order that case be put on Inactive Cases List**

- (1) A judge, master or registrar making an interlocutory order or case management direction in a case may include an order that unless the interlocutory order or direction is complied with by a

date stated in the order, the case is to be put on the Inactive Cases List.

- (2) Unless countermanded by a judge, master or registrar, before it has effect, the order has effect according to its terms.

*[Rule 23 inserted in Gazette 28 Jul 2010 p. 3460.]*

**24. Cases inactive for 12 months deemed inactive**

If no procedural step is taken in a case for 12 months by any party to the case, the case is taken to be inactive unless the case manager for the case orders otherwise.

*[Rule 24 inserted in Gazette 28 Jul 2010 p. 3460.]*

**25. Parties to be notified of case being on Inactive Cases List and to advise clients**

- (1) When an order is made under rule 22(4), or an order made under rule 23(1) takes effect, or a case is taken to be inactive under rule 24, the Principal Registrar must —

- (a) put the case on the Inactive Cases List; and
- (b) give all parties to the case written notice that the case is on the Inactive Cases List and of the effect of rule 26.

- (2) As soon as practicable after being notified under subrule (1), the practitioner for a party to the case must notify the party of —

- (a) the fact that the case is on the Inactive Cases List and why; and
- (b) the effect of rule 26.

*[Rule 25 inserted in Gazette 28 Jul 2010 p. 3460.]*

**26. Consequences of case being on Inactive Cases List**

- (1) If a case is on the Inactive Cases List, only these documents may be filed in the Court in relation to the case —

- (a) a summons for an order under rule 27(1);

- (b) a notice of discontinuance by the plaintiff under Order 23 rule 2;
  - (c) an application for leave made by the plaintiff or the defendant under Order 23 rule 2;
  - (d) a written consent under Order 43 rule 16 to the making of an order that would finally dispose of the case.
- (2) If the plaintiff or defendant in a case on the Inactive Cases List files an application for leave under Order 23 rule 2, the Court may grant leave under that rule even though the case has not been removed from that list.
- (3) If a written consent is filed under Order 43 rule 16 to the making of an order in a case on the Inactive Cases List that would finally dispose of the case, the Court may make the order even though the case has not been removed from that list.

*[Rule 26 inserted in Gazette 12 Jun 2012 p. 2445-6.]*

**27. Removing cases from Inactive Cases List**

- (1) Any party to a case on the Inactive Cases List may apply to the Court for an order that the case be taken off the Inactive Cases List.
- (2) The Court may order a case be taken off the Inactive Cases List if satisfied the case will be conducted in a timely way or for any other good reason.
- (3) An order that a case be taken off the Inactive Cases List may include any conditions necessary to ensure the case is conducted in a timely way.

*[Rule 27 inserted in Gazette 28 Jul 2010 p. 3461.]*

**28. Certain inactive cases to be taken to have been dismissed**

- (1) A case that is on the Inactive Cases List for 6 continuous months is taken to have been dismissed for want of prosecution.

- (2) If no procedural step (except an application to dismiss the case for want of prosecution) is taken in the 6 months after the date on which a case is ordered to be taken off the Inactive Cases List, the case is taken to have been dismissed for want of prosecution.
- (3) If under subrule (1) or (2) a case is dismissed, the Principal Registrar must give all parties to the case written notice of the fact.
- (4) Notwithstanding a case is dismissed under subrule (1) or (2) —
  - (a) any party to the case may apply for an order for costs; and
  - (b) the Court may make an order as to costs.

*[Rule 28 inserted in Gazette 28 Jul 2010 p. 3461; amended in Gazette 12 Jun 2012 p. 2446.]*

## **Order 4 — Mode of commencing proceedings: applications in pending proceedings**

### **1. Commencing civil proceedings**

Subject to the provisions of any Act and of these rules —

- (a) every action in the Court must be commenced by writ;
- (b) civil proceedings between parties to be heard in chambers must be commenced by originating summons;
- (c) all other civil proceedings must be commenced by originating motion.

### **2. Applications in pending proceedings**

Applications in pending proceedings must be made —

- (a) if in court, by motion;
- (b) if in chambers, in accordance with Order 59.

*[Rule 2 amended in Gazette 28 Oct 1996 p. 5674.]*

### **3. Individual may act in person or by solicitor; body corporate must act by solicitor**

- (1) Subject to subrule (2) and to Order 70 rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Supreme Court by a solicitor or in person.
- (2) Except as expressly provided by or under any Act a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

*[Rule 3 amended in Gazette 28 Jun 2011 p. 2552.]*

## Order 5 — Writs of summons

**1. Form of writ**

The writ for the commencement of an action, shall, except in the cases in which any different form is provided in these rules, be in Form No. 1 or 2, whichever is appropriate.

**2. Writ for service outside WA, form of**

A writ to be served outside the State shall be in the form of Form 3.

*[Rule 2 inserted in Gazette 12 Jun 2012 p. 2446.]*

**3. Place of trial to be shown**

In all cases in which it is proposed that the trial shall be elsewhere than in Perth, the writ must show the proposed place of trial.

**4. Place of issue**

Every writ shall be issued out of the Central Office.

**5. Preparation of writ**

Writs shall be prepared by the plaintiff or his solicitor.

**6. Sealing of writ**

Issue of a writ takes place upon its being sealed by the proper officer.

**7. Copy to be left with officer**

The plaintiff or his solicitor shall, on presenting a writ for sealing, leave with the officer a copy of the writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

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**8. Copy to be filed**

The officer receiving such copy shall file it and an entry of the filing thereof shall be made in a book to be called the Cause Book, which shall be in such form and kept in such manner as the Chief Justice may from time to time direct, and the action shall be distinguished by the date of the year and a number.

**9. Writ for service outside Australia, leave to issue needed**

A writ for service outside Australia shall not be issued without the leave of the Court.

*[Rule 9 inserted in Gazette 12 Jun 2012 p. 2446.]*

**10. All writs to be in name of Chief Justice or Senior Puisne Judge**

Every writ of summons and also (unless by an Act or by these rules it is otherwise provided) every other writ shall bear date on the day on which it is issued and shall be tested in the name of the Chief Justice, whether he is within or outside the State, or if there is no Chief Justice, in the name of the Senior Puisne Judge.

**11. Time for appearance to be stated in writ**

- (1) The time to be stated in a writ for the appearance of any defendant shall be not less than the time next hereinafter specified according to the place of service, that is to say —

<b>Where the place for service is</b>	<b>Time</b>
(1) In the State of Western Australia — Less than 300 km from Perth .....	10 days. 16 days. 21 days.
300 km but less than 600 km from Perth .....	
600 km and above 600 km .....	
(2) Outside the State but within Australia	See subrule (2).



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<b>Where the place for service is</b>	<b>Time</b>
(3) Outside Australia .....	See subrule (3).

- (2) In respect of a writ to be served outside the State but within Australia, the time must accord with the *Service and Execution of Process Act 1992* (Commonwealth).
- (3) In respect of a writ to be served outside Australia, the time must be fixed by the Court in accordance with Order 10 rule 5.
- (4) In the computation of the times prescribed by this rule, the day of service shall be excluded.

*[Rule 11 amended in Gazette 7 Dec 1973 p. 4488; 14 Dec 1979 p. 3869; 3 Jul 2009 p. 2683; 12 Jun 2012 p. 2453.]*

## **Order 6 — Indorsement of claim: other indorsements**

### **1. Nature of claim etc. to be endorsed on writ**

- (1) Before a writ is issued it must be indorsed with a concise statement of the nature of the claim made, and of the relief or remedy required in the action.
- (2) In case of non-compliance with subrule (1) the defendant may apply before appearance to set aside or amend the writ or for particulars.

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552.]*

### **2. Action for libel**

In actions for libel the indorsement must state sufficient particulars to enable the publications in respect of which the action is brought to be identified.

### **3. Statement of claim may be endorsed on writ in some actions**

In any action other than an action which includes —

- (a) a claim by the plaintiff based on an allegation of fraud;  
or
- (b) a claim by the plaintiff in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

a statement of claim may, at the option of the plaintiff, be indorsed on the writ.

### **4. Claim for liquidated demand, indorsements required for, costs etc.**

Where the plaintiff's claim is for a debt or liquidated demand only, the writ before it is issued must be indorsed with a statement of the amount claimed in respect of the debt or demand, and for costs up to and including service, respectively, and such indorsement shall further state that upon payment

thereof within the time allowed for appearance, further proceedings will be stayed. The defendant may notwithstanding such payment have the costs taxed and if more than one-sixth is disallowed, the plaintiff's solicitor shall pay the costs of taxation, unless otherwise ordered by the taxing officer.

**5. Representative character**

If the plaintiff sues, or the defendant, or any of the defendants, is sued in a representative capacity, the indorsements shall show, in accordance with such of the indorsements in Form No. 5 as is applicable to the case or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

**6. Claim for account**

In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ shall be indorsed with a claim that such account be taken.

**7. Writ etc. to state contact details**

A writ or other document commencing proceedings must, in accordance with Order 71A, state —

- (a) the geographical address; and
- (b) the service details,

of each person commencing the proceedings.

*[Rule 7 inserted in Gazette 21 Feb 2007 p. 534.]*

*[8-11. Deleted in Gazette 21 Feb 2007 p. 534.]*

## **Order 7 — Duration and renewal of writ: concurrent writs**

### **1. Duration and renewal of writ**

- (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.
- (2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application is made to the Court before that day or such later day (if any) as the Court may allow.
- (3) Before a writ, the validity of which has been extended under this rule, is served it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.
- (4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

### **2. Proof of extension of validity of writ**

The production of a writ purporting to be marked with the official stamp showing the period for which the validity of the writ has been extended shall be sufficient evidence of the validity of the writ having been so extended, and of the commencement of the action as of the date of the original writ, for all purposes.

**3. Concurrent writs**

- (1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.
- (2) Each concurrent writ shall bear *teste* of the same day as the original writ, and shall be sealed by the proper officer with a seal bearing the word “Concurrent” and the date of issue of the concurrent writ.
- (3) Without affecting the generality of subrule (1) —
  - (a) a writ to be served within the jurisdiction may be issued as a concurrent writ with one to be served out of the jurisdiction; and
  - (b) a writ to be served out of the jurisdiction may be issued as a concurrent writ with one to be served within the jurisdiction.
- (4) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

*[Rule 3 amended in Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2447.]*

**4. Unserved writs may be struck out**

- (1) If at any time after 6 months after a writ is issued it appears to the Court that —
  - (a) no affidavit of service of the writ has been filed by the plaintiff; and
  - (b) no appearance has been entered to the writ,the Court may issue a summons (to a hearing at least 7 days after it is issued) to the plaintiff to show cause why the writ should not be struck out.

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- (2) If at the hearing the Court is not satisfied that the writ has not been served for good reason the Court may —
  - (a) strike out the writ; or
  - (b) make directions as to the service of or the time for serving the writ.
- (3) On being struck out, a writ and any writ that is concurrent with it cease to be valid.

*[Rule 4 inserted in Gazette 28 Oct 1996 p. 5674-5.]*

## **Order 8 — Disclosure by solicitors: change of solicitors**

- 1. Solicitor to declare, if required to, whether writ issued by him**
  - (1) Every solicitor whose name is indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority.
  - (2) If the solicitor answers in the affirmative, then he shall also, in case the Court so orders and directs, declare in writing within a time allowed by the Court, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of court.
  - (3) If the solicitor declares that the writ was not issued by him or with his authority, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court.
- 2. Change of solicitor**
  - (1) A party suing or defending by a solicitor may change his solicitor without an order for that purpose, upon notice of such change being filed in the Central Office, but until such notice is filed and a copy thereof served in accordance with this rule, the former solicitor shall subject to the provisions of this Order, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.
  - (2) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

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**3. Change of solicitor acting as agent**

- (1) Where a solicitor for whom some other solicitor is acting as agent in a cause or matter changes the solicitor so acting, notice of the change must be given, and rule 2(1) shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of solicitor.
- (2) The solicitor giving the notice must serve on every party to the cause or matter (not being the party for whom he is acting or a party in default as to entry of appearance) and on the solicitor formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

**4. Appointment of solicitor by self-represented person**

Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose, by filing in the Central Office a notice of appointment of a solicitor and rule 2(2) shall with the necessary modifications, apply in relation to a notice of appointment of a solicitor as it applies in relation to a notice of change of solicitor.

**5. Intention to act in person, notice of**

Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 2 shall with the necessary modifications apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor.

*[Rule 5 amended in Gazette 21 Feb 2007 p. 534.]*

**5A. Notices to state party's contact details**

A notice filed under rule 2, 3, 4 or 5 by or in respect of a party must, in accordance with Order 71A, state —

- (a) the party's geographical address; and



(b) the party's service details.

*[Rule 5A inserted in Gazette 21 Feb 2007 p. 534.]*

**6. Removal of solicitor from the record**

- (1) Where a solicitor who has acted for a party in a cause or matter has died or become bankrupt, or cannot be found or has ceased to have the right of practising in the Court, or for any other reason has ceased to practise, and the party has not given notice of change of solicitor or notice of intention to act in person, any other party to the cause or matter may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.
- (2) An application for an order under this rule must be made by summons which, unless the Court otherwise directs, must be served on the party to whose solicitor the application relates, and must be supported by an affidavit stating the grounds of the application.
- (3) Where an order is made under this rule the party on whose application it was made must —
  - (a) forthwith serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order; and
  - (b) file in the Central Office a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

**7. Withdrawal of solicitor who has ceased to act for party**

- (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with the provisions of this Order, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or

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matter and the Court may make an order accordingly; but unless and until the solicitor —

- (a) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and
- (b) files in the Central Office a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to rules 1 to 6, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.

- (2) An application for an order under this rule must be made by summons, which unless the Court otherwise directs, must be served on the party for whom the solicitor acted, and must be supported by an affidavit stating the grounds of the application.
- (3) The Court may dispense with the necessity of serving a party to a cause or matter with an order of the kind mentioned in subrule (1).

*[Rule 7 amended in Gazette 15 Jun 1973 p. 2247; 23 May 1975 p. 1404; 28 Jun 2011 p. 2552 and 2553.]*

**8. Effect of order made under this Order**

Any order made under this Order shall not affect the rights of the solicitor and the party as between themselves.

**9. Service details of party whose solicitor is removed**

If —

- (a) an order is made under rule 6 in respect of the solicitor of a party; or
- (b) an order is made under rule 7 in respect of the solicitor of a party, and the solicitor has complied with rule 7(1),

the party's service details are to be taken to be party's geographical address stated on the most recently filed document until —

- (c) a notice is filed under rule 4 or 5; or
- (d) the Court orders otherwise on an *ex parte* application by the party,

in which case the party's service details are those stated in the notice or ordered by the Court.

*[Rule 9 inserted in Gazette 21 Feb 2007 p. 534-5.]*

*[10. Deleted in Gazette 21 Feb 2007 p. 534.]*

**11. Solicitor not to act for adverse parties**

No solicitor shall act in any cause or matter for plaintiff and defendant, or for any 2 or more defendants having adverse interests in a cause or matter.

**12. Practitioner or clerk not to be security**

No practitioner or articled or other clerk to a practitioner shall be security for any party in any court without the leave of a judge.

## **Order 9A — Interested non-parties**

*[Heading inserted in Gazette 12 Jun 2012 p. 2447.]*

### **1. Term used: interested non-party**

In this Order —

***interested non-party***, in relation to a party to a case, means a person, other than a practitioner for the party, who —

- (a) provides funding or other financial assistance to the party for the purposes of conducting the case; and
- (b) exercises direct or indirect control or influence over the way in which the party conducts the case.

*[Rule 1 inserted in Gazette 12 Jun 2012 p. 2447.]*

### **2. Parties to advise identity of interested non-parties**

- (1) A party to a case must notify the Principal Registrar and each other party to the case of the identity of any person who is an interested non-party in relation to the party to the case.
- (2) The notice is to be given in writing as soon as is reasonably practicable after the person becomes an interested non-party in relation to the party to the case.

*[Rule 2 inserted in Gazette 12 Jun 2012 p. 2447.]*

### **3. Duties of interested non-party**

The duties to the Court of an interested non-party in relation to a party to a case are the following —

- (a) not to engage in conduct which is misleading or deceptive, or to aid, abet or induce such conduct, in connection with the conduct of the case;
- (b) to cooperate with the parties and the Court in connection with the conduct of the case;

- (c) to use reasonable endeavours to ensure that the goal in Order 1 rule 4A and the objects in Order 1 rule 4B are attained.

*[Rule 3 inserted in Gazette 12 Jun 2012 p. 2447-8.]*

## **Order 9 — Service of originating process: general provisions**

### **1. Service of writ, general provisions**

- (1) Subject to the provisions of any Act and these rules, a writ must be served personally on each defendant by the plaintiff or his agent.
- (2) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.
- (3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to be duly served on him and to have been so served on the date on which he entered the appearance.
- (4) Where a writ is duly served on a defendant otherwise than by virtue of subrule (2) or (3), then subject to Order 10 rule 9(9), unless within 3 days after service the person serving it indorses on the sealed copy of the writ the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against the defendant in default of appearance or in default of defence.

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552.]*

### **2. Service of writ as to contract on agent of principal who is outside WA**

- (1) Where the Court is satisfied on an *ex parte* application that —
  - (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual

residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction; and

- (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate; and
- (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

- (2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.
- (3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction, if such address is known to the plaintiff.

**3. Serving writ in accordance with contract, effect of**

- (1) Where —
  - (a) a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Supreme Court has jurisdiction to hear and determine any such action; and
  - (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in

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the contract, in such manner or at such place (whether within or out of the jurisdiction), as may be so specified,

then if an action in respect of the contract is begun in the Supreme Court and the writ by which it is begun is served in accordance with the contract the writ shall, subject to subrule (2), be deemed to have been duly served on the defendant.

- (2) A writ served outside Australia in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of subrule (1) unless leave to serve the writ outside Australia has been granted under Order 10 rule 1 or 2.

*[Rule 3 amended in Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2448.]*

**4. Writ for possession of land where no person in possession, service of**

In an action claiming possession of land, the Court may —

- (a) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to the door of the dwelling house or to some conspicuous part of the land;
- (b) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to the door of the dwelling house or to some conspicuous part of the land shall be treated as good service on that defendant.

**5. Service of other originating process**

Rules 1 to 4 except rule 1(4) shall apply in relation to an originating summons to which an appearance is required to be



entered as they apply in relation to a writ, and rule 1(1) and (2) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

*[Rule 5 amended in Gazette 28 Jun 2011 p. 2553.]*

## **Order 10 — Service out of the jurisdiction**

### **1A. When leave to serve is required; application of r. 9 to 11**

- (1) A writ served on a person outside the State but in Australia has no effect unless the person was served under the *Service and Execution of Process Act 1992* (Commonwealth).
- (2) A writ served on a person outside Australia has no effect unless —
  - (a) the Court, under this Order, granted leave to serve the person; and
  - (b) the person was served —
    - (i) under rules 9 to 11; or
    - (ii) under Order 11A and the convention referred to in that Order.
- (3) Rules 9 to 11 do not apply to or in relation to the service of a writ on a person outside Australia under the convention referred to in Order 11A.

*[Rule 1A inserted in Gazette 3 Jul 2009 p. 2683-4; amended in Gazette 12 Jun 2012 p. 2448 and 2453.]*

### **1. When service out of jurisdiction is permissible**

- (1) The Court may grant leave to serve a person outside Australia with a writ, or notice of a writ, that begins an action if —
  - (a) the subject matter of the action, so far as it concerns the party to be served, is —
    - (i) land (with or without rents or profits) or other property situate within the State, or the perpetuation of testimony relating to land within the State; or
    - (ii) any shares or stock of a corporation or joint stock company having its principal place of business within the State;

- (b) any Act, deed, will, contract, obligation or liability affecting land or hereditaments situate within the State is sought to be construed, rectified, set aside or enforced in the action;
- (c) in the action relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
- (d) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Western Australia or if the action is for any relief or remedy which might be obtained in any such action as aforesaid;
- (e) the action is one brought to enforce, rescind, dissolve, annul, or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being in either case a contract —
  - (i) made within the jurisdiction; or
  - (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
  - (iii) which by its terms or implications is governed by the law of Western Australia;
- (f) the action is brought in respect of a breach committed within the jurisdiction of a contract wherever made and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (g) in the action an injunction is sought ordering the defendant to do or refrain from doing anything within

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the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed whether damages are or are not also sought in respect thereof;

- (h) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction;
  - (i) the action is for the recovery of taxes or duty (with or without interest or fines for default in payment thereof) which have been imposed or become due on or in respect of property situate within the jurisdiction;
  - (j) the action is by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee, but does not seek (unless and except so far as permissible under paragraph (e)) any personal judgment or order for payment of any moneys due under the mortgage;
  - (k) the action is founded on a tort committed within the jurisdiction;
  - (l) the action is properly brought under the *Civil Aviation (Carriers' Liability) Act 1959* of the Commonwealth.
- (2) In subrule (1)(j) the expression ***personal property situate within the jurisdiction*** means personal property, which on the death of an owner thereof intestate, would form subject matter for the grant of letters of administration to his estate in Western Australia; the expression ***mortgage*** means a mortgage charge or lien of any description; the expression ***mortgagee*** means a party for the time being entitled to or interested in a mortgage; and the expression ***mortgagor*** means a party for the time being entitled to or interested in property subject to a mortgage.

*[Rule 1 amended in Gazette 3 Jul 2009 p. 2684; 28 Jun 2011 p. 2552 and 2553; 12 Jun 2012 p. 2448 and 2453.]*

**2. Service out of jurisdiction of writ etc. as to contract**

Where it appears to the Court that a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may grant leave to serve a person outside Australia with a writ, or notice of a writ, that begins such an action.

*[Rule 2 amended in Gazette 3 Jul 2009 p. 2684; 12 Jun 2012 p. 2448 and 2453.]*

*[3. Deleted in Gazette 12 Jun 2012 p. 2448.]*

**4. Application for leave under r. 1 or 2**

- (1) An application for a grant of leave under rule 1 or 2 must be supported by an affidavit that states —
  - (a) that in the deponent's belief, the plaintiff has a good cause of action; and
  - (b) where, outside Australia, the person to be served is or probably may be.

- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

*[Rule 4 amended in Gazette 15 Jun 1973 p. 2247; 12 Jun 2012 p. 2448.]*

**5. Time for appearance**

- (1) An order made under this Order granting leave to serve a writ outside Australia must limit the time within which the person to be served can enter an appearance.
- (2) In fixing that limit, the Court must have regard to the place or country where the writ is to be served.
- (3) If the writ is to be served under the convention referred to in Order 11A, subrule (1) is subject to that Order.

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*[Rule 5 inserted in Gazette 12 Jun 2012 p. 2449.]*

[6.      Deleted in Gazette 12 Jun 2012 p. 2449.]

**7.      Other documents, service of outside Australia**

The Court may grant leave to serve a person outside Australia with any originating process, other than a writ, or with any summons, order or notice in any proceedings duly instituted, whether by writ of summons or otherwise, and rules 1A, 4 and 5, with any necessary changes, apply to such service.

*[Rule 7 inserted in Gazette 12 Jun 2012 p. 2449.]*

**8.      Saving of existing practice**

Nothing contained in this Order shall prejudice or affect any practice or power of the Court under which, when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without purporting to exercise jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings, with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.

**9.      Service abroad through foreign or diplomatic officials**

- (1) This rule does not apply to service in —
  - (a) the United Kingdom;
  - (b) any country listed in Schedule 3 to the *British Nationality Act 1981* (United Kingdom);
  - (c) any British possession.
- (2) If leave is granted to serve a writ on a person in a foreign country and a convention about such service applies to the country and to Australia or this State, the notice may be served —
  - (a) through the judicial authorities of that country; or

- (b) through a British or Australian diplomatic or consular agent in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (3) If leave is granted to serve a writ on a person in a country and there is no such convention, the notice may be served —
  - (a) through the government of that country, if the government is willing to effect service; or
  - (b) through a British or Australian diplomatic or consular agent in that country except where service through such an authority is contrary to the law of that country.
- (4) A person who wishes to serve a writ by a method described in subrule (2) or (3) must lodge in the Central Office a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.
- (5) Every copy of a writ lodged under subrule (4) shall be accompanied by a translation of the writ in the official language of the country in which service is to be effected, or if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected: Provided that this subrule does not apply where the copy of the writ is to be served in a country the official language of which is, or the official languages of which include English, or is to be served by a British or Australian diplomatic or consular agent on a British subject or an Australian citizen, unless the Convention expressly requires the copy to be accompanied by a translation.
- (6) Every translation required by subrule (5) shall be certified by the person making it to be a correct translation, and the certificate shall state his full name and address and his qualifications for making the translation.
- (7) The document to be served shall be sealed with the seal of the Supreme Court and shall be forwarded by the Principal

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Registrar to the Attorney General for Western Australia for transmission through the diplomatic channel to the foreign country.

- (8) An official certificate transmitted to the Court through the diplomatic channel by the British or Australian diplomatic or consular agent, or by the foreign government or judicial authorities establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of such service, and shall be filed of record and be equivalent to an affidavit of service within the requirements of these rules in that behalf. Any document purporting to be such a certificate shall, until the contrary is proved, be deemed to be such a certificate.
- (9) Where an official certificate is produced pursuant to subrule (8) in relation to the service of a writ under this rule, no indorsement of service under Order 9 rule 1(4) shall be required.

*[Rule 9 amended in Gazette 14 Dec 1979 p. 3869; 3 Jul 2009 p. 2685; 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2449-50.]*

**10. Service abroad, general and saving provisions**

- (1) Subject to rule 9(9), to the following provisions of this rule and to any direction given by the Court as to the manner in which the writ shall be served or brought to the notice of the person, Order 9 rule 1 and Order 72 rule 4 apply in relation to the service of a writ, notwithstanding it is to be served outside Australia.
- (2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (3) A writ to be served outside Australia —
- (a) need not be served personally on the person required to be served, if it is served on him in accordance with the law of the country in which service is effected; and



- (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 9.
- (4) Rule 9 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Supreme Court and which is not expressly excluded by the Convention.

*[Rule 10 amended in Gazette 12 Jun 2012 p. 2450.]*

**11. Undertaking to pay expenses of service**

Every request lodged under rule 9(4) must contain an undertaking by the person making the request to be responsible personally for all expenses incurred in respect of the service requested, and on receiving due notification of the amount of those expenses to pay that amount into the Central Office forthwith.

## **Order 11 — Service of foreign process**

[1A. Deleted in Gazette 3 Jul 2009 p. 2685.]

### **1. Terms used**

In this Order —

*official channel* includes a consular or other authority of the foreign country concerned;

*process* includes a citation.

### **2A. Application of this Order**

- (1) If the Court receives a letter of request for service of process on a person in this State from —
  - (a) a court or tribunal; or
  - (b) a consular or other authority,

of a Convention country (as defined in Order 11A rule 1), then, unless Order 11A Division 4 applies, rule 2 or 3, as the case requires, and rules 4 and 5 apply and Order 11A Division 4 does not.

- (2) If Order 11A Division 4 applies to a request referred to in subrule (1), rules 2 to 5 do not apply.

[Rule 2A inserted in Gazette 3 Jul 2009 p. 2685.]

### **2. Service pursuant to letter of request for service**

- (1) This rule applies to the service of any process required to be served in any civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal for service on a person in Western Australia of any such process sent with the letter is received by the Principal Registrar through an official channel.
- (2) In order that service may be effected under this rule the letter of request must be accompanied by a translation thereof in English,

by 2 copies of the process to be served and by 2 copies of a translation of the process in English.

- (3) Subject to rule 4 and to any Act which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.
- (4) The Principal Registrar shall transmit through the official channel to the tribunal making the request, a certificate establishing the fact, and the date of service, or stating the reasons for which it has not been possible to effect service, and in the certificate shall certify the amount properly payable for effecting or attempting to effect service. The certificate shall be sealed with the seal of the Supreme Court.

*[Rule 2 amended in Gazette 14 Dec 1979 p. 3869; 12 Jun 2012 p. 2450.]*

### **3. Service under Convention**

- (1) This rule applies to the service of any process required to be served in any civil or commercial proceedings pending before a court or other tribunal of a foreign country with which a Convention in that behalf has been or shall be made and extended to Australia or the State of Western Australia where a letter of request from a consular or other authority of that country requesting service on a person in Western Australia of any such process sent with the letter is received by the Principal Registrar.
- (2) In order that service may be effected under this rule the letter of request must be accompanied by a copy of a translation in English of the process to be served.
- (3) Subject to any Act which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the Convention, service of the process shall be effected by leaving the original process or a copy of it,

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as indicated in the letter of request, and a copy of the translation with the person to be served.

- (4) When service of the process has been effected or if attempts to effect service have failed, the process server shall leave with the Principal Registrar an affidavit made by the person who served or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting or attempting to effect service.
- (5) The Principal Registrar shall transmit to the consular or other authority by whom the request for service was made a certificate certifying that the process or a copy thereof as the case may be, was served on the person, at the time and in the manner specified in the certificate, or if such be the case, that service of the process could not be effected for the reason so specified, and certifying the amount properly payable for effecting or attempting to effect, service. The certificate shall be sealed with the seal of the Supreme Court.

*[Rule 3 amended in Gazette 14 Dec 1979 p. 3869; 12 Jun 2012 p. 2450 and 2453.]*

**4. Service to be through sheriff**

Service of process under the provisions of this Order shall be effected through the sheriff by the process server whom he may from time to time appoint for that purpose, or his authorised agent.

**5. Consequential orders**

Upon the application of the State Solicitor, with the consent of the Attorney General, the Court may make all such orders for substituted service or otherwise as are necessary to give effect to the rules of this Order.

*[Rule 5 amended in Gazette 19 Apr 2005 p. 1298.]*

## Order 11A — Service under the Hague Convention

*[Heading inserted in Gazette 3 Jul 2009 p. 2685.]*

### Division 1 — Preliminary

*[Heading inserted in Gazette 3 Jul 2009 p. 2685.]*

- Note 1.** This Order forms part of a scheme to implement Australia's obligations under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. Under the Convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under Article 2 of the Convention) and certain courts and government departments are, for certain purposes, designated as "other" or "additional" authorities (under Article 18 of the Convention).
- Note 2.** This Order provides (in Division 2) for service in overseas Convention countries of local judicial documents (documents that relate to proceedings in the Court) and (in Division 3) for default judgment in proceedings in the Court after service overseas of such a document. Division 4, on the other hand, deals with service by the Court or arranged by the Court in its role as an other or additional authority, of judicial documents emanating from overseas Convention countries.
- Note 3.** The Attorney-General's Department of the Commonwealth maintains a copy of the Convention, a list of all Convention countries, details of declarations and objections made under the Convention by each of those countries and the names and addresses of the Central and other authorities of each of those countries. A copy of the Convention can be found at <http://www.hcch.net>.

#### 1. Terms used

In this Order —

***additional authority***, for a Convention country, means an authority that is —

- (a) for the time being designated by that country, under Article 18 of the Hague Convention, to be an authority (other than the Central Authority) for that country; and
- (b) competent to receive requests for service abroad emanating from Australia;

***applicant***, for a request for service abroad or a request for service in this jurisdiction, means the person on whose behalf service is requested;

***Central Authority***, for a Convention country, means an authority that is for the time being designated by that country, under Article 2 of the Hague Convention, to be the Central Authority for that country;

***certificate of service*** means a certificate of service that has been completed for the purposes of Article 6 of the Hague Convention;

***certifying authority***, for a Convention country, means the Central Authority for the country or some other authority that is for the time being designated by the country, under Article 6 of the Hague Convention, to complete certificates of service in the form annexed to the Hague Convention;

***civil proceedings*** means any judicial proceedings in relation to civil or commercial matters;

***Convention country*** means a country, other than Australia, that is a party to the Hague Convention;

***defendant***, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served;

***foreign judicial document*** means a judicial document that originates in a Convention country and that relates to civil proceedings in a court of that country;

***forwarding authority*** —

- (a) for a request for service of a foreign judicial document in this jurisdiction — the authority or judicial officer of the Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that country to forward a request for service under Article 3 of the Hague Convention); or

- (b) for a request for service of a local judicial document in a Convention country — the registrar;

**Hague Convention** means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965;

**initiating process** means any document by which proceedings (including proceedings on any cross-claim or third party notice) are commenced;

**local judicial document** means a judicial document that relates to civil proceedings in the Court;

**request for service abroad** means a request for service in a Convention country of a local judicial document mentioned in rule 4(1);

**request for service in this jurisdiction** means a request for service in this jurisdiction of a foreign judicial document mentioned in rule 13(1);

**this jurisdiction** means Western Australia.

*[Rule 1 inserted in Gazette 3 Jul 2009 p. 2686-7.]*

## 2. Provisions of this Order to prevail

The provisions of this Order prevail to the extent of any inconsistency between those provisions and any other provisions of these rules.

*[Rule 2 inserted in Gazette 3 Jul 2009 p. 2687.]*

## Division 2 — Service abroad of local judicial documents

*[Heading inserted in Gazette 3 Jul 2009 p. 2687.]*

## 3. Application of this Division

- (1) Subject to subrule (2), this Division applies to service in a Convention country of a local judicial document.

- (2) This Division does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Convention.

*[Rule 3 inserted in Gazette 3 Jul 2009 p. 2687.]*

**4. Application for request for service abroad**

- (1) A person may apply to the registrar, in the registrar's capacity as a forwarding authority, for a request for service in a Convention country of a local judicial document.
- (2) The application must be accompanied by 3 copies of each of the following documents —
- (a) a draft request for service abroad, which must be in the form of Form 5A Part 1;
  - (b) the document to be served;
  - (c) a summary of the document to be served, which must be in the form of Form 5B;
  - (d) if, under Article 5 of the Hague Convention, the Central Authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, the official language or one of the official languages of that country, a translation into that language of both the document to be served and the summary of the document to be served.
- (3) The application must contain a written undertaking to the Court, signed by the practitioner on the record for the applicant in the proceedings to which the local judicial document relates or, if there is no practitioner on the record for the applicant in those proceedings, by the applicant —
- (a) to be personally liable for all costs that are incurred —
    - (i) by the employment of a person to serve the documents to be served, being a person who is



qualified to do so under the law of the Convention country in which the documents are to be served; or

- (ii) by the use of any particular method of service that has been requested by the applicant for the service of the documents to be served;

and

- (b) to pay the amount of those costs to the registrar within 28 days after receipt from the registrar of a notice specifying the amount of those costs under rule 6(3); and
- (c) to give such security for those costs as the registrar may require.

(4) The draft request for service abroad —

- (a) must be completed (except for signature) by the applicant; and
- (b) must state whether (if the time fixed for entering an appearance in the proceedings to which the local judicial document relates expires before service is effected) the applicant wants service to be attempted after the expiry of that time; and
- (c) must be addressed to the Central Authority, or to an additional authority, for the Convention country in which the person is to be served; and
- (d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority.

(5) Any translation required under subrule (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating —

- (a) that the translation is an accurate translation of the documents to be served; and
- (b) the translator's full name and address and his or her qualifications for making the translation.

*[Rule 4 inserted in Gazette 3 Jul 2009 p. 2687-9.]*

**5. How application to be dealt with**

- (1) If satisfied that the application and its accompanying documents comply with rule 4, the registrar —
  - (a) must sign the request for service abroad; and
  - (b) must forward 2 copies of the relevant documents —
    - (i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Convention country in which service of the document is to be effected — to the nominated additional authority; or
    - (ii) in any other case — to the Central Authority for the Convention country in which service of the document is to be effected.
- (2) The relevant documents mentioned in subrule (1)(b) are the following —
  - (a) the request for service abroad (duly signed);
  - (b) the document to be served;
  - (c) the summary of the document to be served;
  - (d) if required under rule 4(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).
- (3) If not satisfied that the application or any of its accompanying documents complies with rule 4, the registrar must inform the applicant of the respects in which the application or document fails to comply.

*[Rule 5 inserted in Gazette 3 Jul 2009 p. 2689.]*

**6. Procedure on receipt of certificate of service**

- (1) Subject to subrule (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the registrar —

- (a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and
  - (b) must send a copy of the certificate to —
    - (i) the practitioner on the record for the applicant in those proceedings; or
    - (ii) if there is no practitioner on the record for the applicant in those proceedings — the applicant.
- (2) For the purposes of subrule (1), a certificate of service is in due form if —
- (a) it is in the form of Form 5A Part 2; and
  - (b) it has been completed by a certifying authority for the Convention country in which service was requested; and
  - (c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority, it has been so countersigned.
- (3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), the registrar must send to the practitioner or applicant who gave the undertaking mentioned in rule 4(3) a notice specifying the amount of those costs.
- (4) For the purposes of subrule (3), a statement of costs is in due form if —
- (a) it relates only to costs of a kind mentioned in rule 4(3)(a); and
  - (b) it has been completed by a certifying authority for the Convention country in which service was requested.
- (5) Subrule (1) does not apply unless —
- (a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 4(3)(c); or

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- (b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which those costs exceed the security so given has been paid to the registrar.

*[Rule 6 inserted in Gazette 3 Jul 2009 p. 2689-90.]*

**7. Payment of costs**

- (1) On receipt of a notice under rule 6(3) in relation to the costs of service, the practitioner or applicant, as the case may be, must pay to the registrar the amount specified in the notice as the amount of those costs.
- (2) If the practitioner or applicant fails to pay that amount within 28 days after receiving the notice —
  - (a) except by leave of the Court, the applicant may not take any further step in the proceedings to which the local judicial document relates until those costs are paid to the registrar; and
  - (b) the registrar may take such steps as are appropriate to enforce the undertaking for payment of those costs.

*[Rule 7 inserted in Gazette 3 Jul 2009 p. 2690-1.]*

**8. Evidence of service**

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of rule 6(2)) that certifies that service of the document was effected on a specified date, is, in the absence of any evidence to the contrary, sufficient proof that —

- (a) service of the document was effected by the method specified in the certificate on that date; and
- (b) if that method of service was requested by the applicant, that method is compatible with the law in force in the Convention country in which service was effected.

*[Rule 8 inserted in Gazette 3 Jul 2009 p. 2691.]*

**Division 3 — Default judgment following service abroad of initiating process**

*[Heading inserted in Gazette 3 Jul 2009 p. 2691.]*

**9. Application of this Division**

This Division applies to civil proceedings for which an initiating process has been forwarded following a request for service abroad to the Central Authority (or to an additional authority) for a Convention country.

*[Rule 9 inserted in Gazette 3 Jul 2009 p. 2691.]*

**10. Restriction on power to enter default judgment if certificate of service filed**

(1) This rule applies if —

- (a) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of rule 6(2)) that states that service has been duly effected; and
- (b) the defendant has not appeared or filed a notice of address for service.

(2) In circumstances to which this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that —

- (a) the initiating process was served on the defendant —
  - (i) by a method of service prescribed by the internal law of the Convention country for the service of documents in domestic proceedings on persons who are within its territory; or
  - (ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to his or her residence) and that method is

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compatible with the law in force in that country,  
by that method; or

(iii) if the applicant did not request a particular  
method of service, in circumstances where the  
defendant accepted the document voluntarily;

and

(b) the initiating process was served in sufficient time to  
enable the defendant to enter an appearance in the  
proceedings.

(3) In subrule (2)(b) —

*sufficient time* means —

(a) 42 days from the date specified in the certificate of  
service in relation to the initiating process as the date on  
which service of the process was effected; or

(b) such lesser time as the Court considers, in the  
circumstances, to be a sufficient time to enable the  
defendant to enter an appearance in the proceedings.

[Rule 10 inserted in Gazette 3 Jul 2009 p. 2691-2.]

**11. Restriction on power to enter default judgment if certificate  
of service not filed**

(1) This rule applies if —

(a) a certificate of service of initiating process has not been  
filed in the proceedings; or

(b) a certificate of service of initiating process has been  
filed in the proceedings (being a certificate in due form  
within the meaning of rule 6(2)) that states that service  
has not been effected,

and the defendant has not appeared or filed a notice of address  
for service.

(2) If this rule applies, default judgment may not be given against  
the defendant unless the Court is satisfied that —

- (a) the initiating process was forwarded to the Central Authority, or to an additional authority, for the Convention country in which service of the initiating process was requested; and
- (b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date on which the initiating process was so forwarded; and
- (c) every reasonable effort has been made —
  - (i) to obtain a certificate of service from the relevant certifying authority; or
  - (ii) to effect service of the initiating process, as the case requires.

*[Rule 11 inserted in Gazette 3 Jul 2009 p. 2692-3.]*

**12. Setting aside judgment in default of appearance**

- (1) This rule applies if default judgment has been entered against the defendant in proceedings to which this Division applies.
- (2) If this rule applies, the Court may set aside the judgment on the application of the defendant if it is satisfied that the defendant —
  - (a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceedings; and
  - (b) has a prima facie defence to the proceedings on the merits.
- (3) An application to have a judgment set aside under this rule may be filed —
  - (a) at any time within 12 months after the date on which the judgment was given; or
  - (b) after the expiry of that 12-month period, within such time after the defendant acquires knowledge of the

judgment as the Court considers reasonable in the circumstances.

- (4) Nothing in this rule affects any other power of the Court to set aside or vary a judgment.

*[Rule 12 inserted in Gazette 3 Jul 2009 p. 2693.]*

**Division 4 — Local service of foreign judicial documents**

*[Heading inserted in Gazette 3 Jul 2009 p. 2693.]*

**13. Application of this Division**

- (1) This Division applies to service in this jurisdiction of a foreign judicial document in relation to which a due form of request for service has been forwarded to the Court —
- (a) by the Attorney-General's Department of the Commonwealth, whether in the first instance or following a referral under rule 14; or
  - (b) by a forwarding authority.
- (2) Subject to subrule (3), a request for service in this jurisdiction is in due form if it is in the form of Form 5A Part 1 and is accompanied by the following documents —
- (a) the document to be served;
  - (b) a summary of the document to be served, which must be in the form of Form 5B;
  - (c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);
  - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- (3) Any translation required under subrule (2)(d) must bear a certificate (in English) signed by the translator stating —
- (a) that the translation is an accurate translation of the document; and



- (b) the translator's full name and address and his or her qualifications for making the translation.

*[Rule 13 inserted in Gazette 3 Jul 2009 p. 2693-4.]*

**14. Certain documents to be referred back to Attorney-General's Department of Commonwealth**

If, after receiving a request for service in this jurisdiction, the registrar is of the opinion —

- (a) that the request does not comply with rule 13; or
- (b) that the document to which the request relates is not a foreign judicial document; or
- (c) that compliance with the request may infringe Australia's sovereignty or security; or
- (d) that the request seeks service of a document in some other State or Territory of the Commonwealth,

the registrar must refer the request to the Attorney-General's Department of the Commonwealth together with a statement of his or her opinion.

**Note.** The Attorney-General's Department of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

*[Rule 14 inserted in Gazette 3 Jul 2009 p. 2694.]*

**15. Service**

- (1) Subject to rule 14, on receipt of a request for service in this jurisdiction, the Court must arrange for the service of the relevant documents in accordance with the request.
- (2) The relevant documents mentioned in subrule (1) are the following —
  - (a) the document to be served;
  - (b) a summary of the document to be served;

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- (c) a copy of the request for service in this jurisdiction;
  - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- (3) Service of the relevant documents may be effected by any of the following methods of service —
- (a) by a method of service prescribed by the law in force in this jurisdiction —
    - (i) for the service of a document of a kind corresponding to the document to be served; or
    - (ii) if there is no such corresponding kind of document, for the service of initiating process in proceedings in the Court;
  - (b) if the applicant has requested a particular method of service and that method is compatible with the law in force in this jurisdiction, by that method;
  - (c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily, by delivery of the document to the person requested to be served.

*[Rule 15 inserted in Gazette 3 Jul 2009 p. 2694-5.]*

**16. Affidavit as to service**

- (1) If service of a document has been effected pursuant to a request for service in this jurisdiction, the person by whom service has been effected must lodge with the Court an affidavit specifying —
- (a) the time, day of the week and date on which the document was served; and
  - (b) the place where the document was served; and
  - (c) the method of service; and
  - (d) the person on whom the document was served; and

- (e) the way in which that person was identified.
- (2) If attempts to serve a document pursuant to a request for service in this jurisdiction have failed, the person by whom service has been attempted must lodge with the Court an affidavit specifying —
  - (a) details of the attempts made to serve the document; and
  - (b) the reasons that have prevented service.
- (3) When an affidavit as to service of a document has been lodged in accordance with this rule, the registrar —
  - (a) must complete a certificate of service, sealed with the seal of the Court, on the reverse side of, or attached to, the request for service in this jurisdiction; and
  - (b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.
- (4) A certificate of service must be —
  - (a) in the form of Form 5A Part 2; or
  - (b) if a form of certificate of service that substantially corresponds to Form 5A Part 2 accompanies the request for service, in that accompanying form.

*[Rule 16 inserted in Gazette 3 Jul 2009 p. 2695-6.]*

*[Orders 11B and 11C deleted in Gazette 3 Jul 2009 p. 2685.]*

## **Order 12 — Appearance**

### **1. Who may enter appearance**

- (1) Subject to subrule (2) and to Order 70 rule 2, a defendant to an action may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by a practitioner or in person.
- (2) Except as expressly provided by any Act, a defendant to such an action which is a body corporate may not enter an appearance in the action or defend it otherwise than by a practitioner.

*[Rule 1 amended in Gazette 7 Oct 1977 p. 3602; 22 Feb 2008 p. 634; 28 Jun 2011 p. 2552.]*

### **2. How to enter an appearance**

- (1) To enter an appearance, a defendant must file 2 copies of a Form No. 6 signed by —
  - (a) the practitioner who acts for the defendant; or
  - (b) if the defendant is self-represented, the defendant.
- (2) A memorandum of appearance must, in accordance with Order 71A, state —
  - (a) the defendant's geographical address; and
  - (b) the defendant's service details.
- (3) If one practitioner acts for 2 or more defendants in one action, a memorandum of appearance may relate to more than one of those defendants.

*[Rule 2 inserted in Gazette 22 Feb 2008 p. 634.]*

### **3. Procedure on receipt of requisite documents**

On receiving the requisite documents the proper officer must in all cases affix to the copy of the memorandum of appearance an

official stamp showing the date on which he received those documents, enter the appearance in the Cause Book, and then return the copy of the memorandum to the person entering the appearance and the copy memorandum so stamped shall be a certificate that the appearance was entered on the day indicated on the official stamp.

*[Rule 3 amended in Gazette 15 Jun 1973 p. 2247.]*

**4. Appearance to be served on plaintiff**

On the day on which a defendant enters an appearance to a writ, the defendant must comply with Order 72 rule 5 for the purposes of serving the stamped copy memorandum returned under rule 3 on the plaintiff in accordance with that Order.

*[Rule 4 inserted in Gazette 22 Feb 2008 p. 635.]*

**5. Late appearance**

- (1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.
- (2) Except as provided by subrule (1), nothing in these rules or any writ or order thereunder shall be construed as preventing a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

*[Rule 5 amended in Gazette 28 Jun 2011 p. 2552.]*

**6. Conditional appearance**

- (1) A defendant in any cause may enter a conditional appearance denying the jurisdiction of the Court or reserving the right to apply to the Court to set aside the originating process, or the notice thereof, or the service of the originating process, or notice thereof, on the ground of any informality or irregularity which

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renders the originating process or the service thereof invalid, and shall not thereby be deemed to have submitted to such jurisdiction, except as to the costs occasioned by the appearance or by any application under this rule.

- (2) The defendant shall forthwith apply to the Court to have the question raised by his conditional appearance decided, and if such an application is not made within 14 days from the entry of the conditional appearance, or if the application be dismissed, the conditional appearance shall, unless the Court otherwise orders, become and operate as an unconditional appearance.

**7. Setting aside writ etc. before appearance**

A defendant to an action, at any time before entering an appearance in it, may serve notice of motion to —

- (a) set aside the writ or service of the writ on the defendant; or
- (b) discharge any order that granted leave to serve the writ on the defendant outside Australia.

*[Rule 7 inserted in Gazette 12 Jun 2012 p. 2451.]*

**8. Person not named may defend action for possession of land**

Any person not named as a defendant in a writ for the recovery of land may, by leave of the Court, appear and defend on filing an affidavit showing that he has an interest in the land which would be prejudiced or frustrated if an order for recovery were made without his being a party.

**9. Person appearing under r. 8 to be named as defendant**

Where a person not named as a defendant in a writ for the recovery of land has obtained leave of the Court to appear and defend he shall in all subsequent proceedings be named as a party defendant to the action.

**10.        Limiting defence in action for possession of land**

- (1) Any person appearing to a writ for the recovery of land may limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the action and signed by him or his solicitor, and such notice shall be served within 4 days after appearance, and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.
- (2) The notice mentioned in subrule (1) shall be in accordance with Form No. 7.

*[Rule 10 amended in Gazette 28 Jun 2011 p. 2552.]*

## **Order 13 — Default of appearance to writ**

### **1. Prerequisites for judgment in default of appearance etc.**

- (1) Judgment shall not be entered against a defendant under this Order unless —
  - (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant and due indorsement of service in accordance with Order 9 rule 1(4); or
  - (b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.
- (2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

*[Rule 1 amended in Gazette 12 Jun 2012 p. 2451.]*

### **2. Claim for liquidated demand**

- (1) Where the writ is indorsed with a claim for a liquidated demand only, then, if a defendant fails to enter an appearance to the writ, the plaintiff may, after the time limited for appearance has expired, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand, and for costs.
- (2) For the purpose of this rule, a claim is not a claim other than for a liquidated demand by reason only that part of it is for interest under section 32 of the Act at a rate that is not higher than that payable on judgment debts at the date of the writ.

*[Rule 2 inserted in Gazette 30 Nov 1984 p. 3952.]*



**3. Claim for liquidated demand against several defendants, effect of final judgment on**

Where the writ is indorsed with a claim for a liquidated demand only, and there are several defendants of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may enter final judgment as in rule 2 against such as have not appeared and may issue execution upon such judgment without prejudice (except where the defendants are sued in the alternative) to his right to proceed with his action against such as have appeared.

**4. Claim in detinue**

(1) Where the writ is indorsed with a claim relating to the detention of goods only, then, if a defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either —

- (a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or
- (b) interlocutory judgment against him for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

(2) On an interlocutory judgment under this rule against a defendant or all the defendants, if more than one, the value of the goods shall be assessed by a master, unless the Court otherwise directs.

*[Rule 4 amended in Gazette 30 Nov 1984 p. 3951.]*

**5. Claim for possession of land**

(1) Where the writ is indorsed with a claim against a defendant for possession of land only, then if that defendant fails to enter an appearance within the time limited, the plaintiff may, on producing a certificate from his solicitor, or, if he sues in person an affidavit, stating that he is not claiming any relief in the

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action of the nature specified in Order 62A rule 1, enter judgment for possession of the land against that defendant and the costs, and proceed in the action against the other defendants if any.

- (2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

*[Rule 5 amended in Gazette 10 Jan 1975 p. 50.]*

**6. Writs for 2 or more claims in r. 2 to 5 and 7**

Where the writ is indorsed with 2 or more of the claims mentioned in rules 2, 3, 4, 5, and 7, and no other claim, then if a defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made by him against the defendant, and proceed with the action against the other defendants, if any.

*[Rule 6 amended in Gazette 15 Jun 1973 p. 2247.]*

**7. Claims for damages**

- (1) Where the writ is indorsed with a claim against a defendant for unliquidated damages only, and that defendant fails to enter an appearance within the time limited for appearing, the plaintiff shall be entitled to enter interlocutory judgment against that defendant and obtain an order for directions for the assessment of damages, and proceed with the action against the other defendants, if any.
- (2) The plaintiff shall at least 7 days before the day fixed for the assessment of the damages serve notice of the appointment for hearing on the party against whom the judgment has been given.

- (3) Notwithstanding anything in Order 72 rule 8 a notice under this rule must be served on the party against whom the judgment has been given, unless the writ was served on that party by substituted service, and his address is unknown to the plaintiff.

**8. Writs for other claims**

- (1) Where the plaintiff's claim against any defendant is of a description not mentioned in rules 2, 3, 4, 5, and 7, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, and upon filing an affidavit proving due service of the writ on that defendant, and where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, apply to the Court on motion for judgment.
- (1A) On an application under subrule (1) the applicant or his solicitor must produce a certificate issued by the proper officer on the day of the hearing stating that no appearance has been entered by the defendant against whom it is sought to enter judgment.
- (2) Where the plaintiff's claim is aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof, or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then if the defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs. The application for such leave shall be by summons which must unless the Court otherwise orders and notwithstanding anything in Order 72 rule 8, be served on the defendant against whom it is sought to enter judgment.

*[Rule 8 amended in Gazette 15 Jun 1973 p. 2247; 24 Jun 1977 p. 1914; 28 Jun 2011 p. 2552.]*

**9.          Reference to Court in case of doubt**

In any case in which the plaintiff claims to be entitled under the rules of this Order to enter final or interlocutory judgment in default of the defendant's appearance, a master may, if any doubt or difficulty arises, direct that the application for leave to enter judgment be brought before the Court on motion or by summons.

*[Rule 9 amended in Gazette 30 Nov 1984 p. 3952.]*

**10.        Setting aside judgment in default**

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

## Order 14 — Summary judgment

### 1. When plaintiff may apply for summary judgment

- (1) Where in an action to which this Order applies a statement of claim has been served on a defendant and that defendant has entered an appearance, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such claim, or has no defence to such a claim or part except as to the amount of any damages claimed, within 21 days after appearance or at any later time by leave of the Court, apply to the Court for judgment against that defendant.
- (2) This Order applies to every action begun by writ other than a probate or admiralty action.

*[Rule 1 amended in Gazette 5 Jun 1992 p. 2279; 28 Oct 1996 p. 5675.]*

### 2. Application under r. 1, how to make

- (1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the claim or the part of the claim to which the application relates is based, and stating that in the deponent's belief there is no defence to that claim or part thereof, as the case may be, or no defence except as to the amount of any damages claimed.
- (2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.
- (3) The summons and a copy of the affidavit in support and of any exhibits therein referred to shall be served on the defendant not less than 7 days before the return day of the summons.

*[Rule 2 amended in Gazette 3 Oct 1975 p. 3769.]*

**3. Judgment may be given for plaintiff**

- (1) On the hearing of an application under rule 1 unless the Court dismisses the application, or the defendant satisfies the Court with respect to the claim, or the part of the claim, to which the application relates that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against the defendant on that claim or part thereof as may be just, having regard to the nature of the remedy or relief claimed.
- (2) The Court may, by order and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

**4. Defendant may be given leave to defend**

- (1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.
- (2) Rule 2(2) applies mutatis mutandis for the purposes of this rule.
- (3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim to which the application relates, either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.
- (4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary, or other similar officer thereof, or any person purporting to act in such capacity —
  - (a) to produce any document; or
  - (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

[5.      *Deleted in Gazette 28 Oct 1996 p. 5675.*]

**6.      Summary judgment on counterclaim**

- (1)      Where a defendant in an action begun by writ has served a counterclaim on the plaintiff, then subject to subrule (3) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such claim, apply to the Court for judgment against the plaintiff on that claim or part.
- (2)      Rules 2, 3 and 4 apply in relation to an application under this rule as they apply in relation to an application under rule 1, but with the following modifications, that is to say —
  - (a)      references to the plaintiff and defendant shall be construed as references to defendant and plaintiff respectively; and
  - (b)      the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted; and
  - (c)      the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.
- (3)      This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

*[Rule 6 amended in Gazette 28 Jun 2011 p. 2552.]*

**7.      Court’s powers if leave to defend given etc.**

Where the Court —

- (a)      gives leave (whether conditional or unconditional) to defend any action or counterclaim, as the case may be, with respect to a claim or a part of a claim; or
- (b)      gives judgment for a plaintiff or a defendant on a claim or a part of a claim, but also orders that execution of the

judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29, and may direct that the affidavit filed by the defendant or the plaintiff, as the case may be, under this Order, shall serve in lieu of defence and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

**8.          Costs**

- (1) If the plaintiff makes an application under rule 1 and the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the Court may dismiss the application with costs, and may require the costs to be paid by the plaintiff forthwith.
- (2) The Court shall have the same power to dismiss an application under rule 6 as it has under subrule (1) to dismiss an application under rule 1, and that subrule shall apply accordingly with the necessary modifications.

*[Rule 8 amended in Gazette 15 Jun 1973 p. 2248; 28 Jun 2011 p. 2552.]*

**9.          Right to proceed with residue of action or counterclaim**

- (1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim, or as respects the remainder of the claim or against any other defendant.
- (2) Where on an application under rule 6 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as



respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

**10. Judgment for delivery of specific chattel**

Where the claim to which an application under rule 1 or rule 6 relates is for the delivery up of a specific chattel, and the Court gives judgment under this Order for the applicant, the Court shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

**11. Relief from judgment for recovery of land**

A tenant shall have the same right to relief after a judgment under this Order for the recovery of land on the ground of forfeiture as if the judgment had been given after trial.

**12. Summary judgment against absent party may be set aside or varied**

Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 6 may be set aside or varied by the Court on such terms as it thinks just.

*[Order 15 deleted in Gazette 28 Oct 1996 p. 5675.]*

## **Order 16 — Summary judgment on application of defendant**

### **1. Application by defendant for summary judgment**

- (1) Any defendant to an action may within 21 days after appearance or at any later time by leave of the Court, apply to the Court for summary judgment, and the Court, if satisfied that the action is frivolous or vexatious, that the defendant has a good defence on the merits, or that the action should be disposed of summarily or without pleadings, may order —
  - (a) that judgment be entered for the defendant with or without costs; or
  - (b) that the plaintiff shall proceed to trial without pleadings,or if all parties consent, may dispose of the action finally and without appeal in a summary manner.
- (2) An application under subrule (1) shall be made by summons supported by affidavit verifying the facts upon which the application is based.
- (3) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.
- (4) The summons and a copy of the affidavit in support and its annexures, if any, shall be served on the plaintiff not less than 7 days before the return day of the summons.

*[Rule 1 amended in Gazette 14 Dec 1979 p. 3869; 5 Jun 1992 p. 2279-80; 28 Jun 2011 p. 2552.]*

### **2. Plaintiff may show cause**

- (1) The plaintiff may show cause against such application by affidavit.

- (1a) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.
- (2) The Court may if it thinks fit, order the plaintiff or the defendant or in the case of a corporation any officer thereof to attend and be examined and cross-examined upon oath or to produce any papers, books, or documents, or copies of, or extracts therefrom.

*[Rule 2 amended in Gazette 14 Dec 1979 p. 3869; 5 Jun 1992 p. 2280; 28 Jul 2010 p. 3482.]*

**3. Court's powers if action to go to trial**

If the Court directs that the action shall proceed to trial, it may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29 and may order that the action be forthwith set down for trial.

*[Rule 3 amended in Gazette 14 Dec 1979 p. 3869.]*

**4. Summary judgment against absent party may be set aside or varied**

Any judgment given against a party who does not appear at the hearing of the application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

*[Rule 4 inserted in Gazette 5 Jun 1992 p. 2280.]*

## **Order 17 — Interpleader**

### **1. When interpleader relief may be granted**

Relief by way of interpleader may be granted by the Court —

- (a) where the person seeking relief (called the applicant) is under liability —
  - (i) to yield up or give possession of any land; or
  - (ii) to perform a contract; or
  - (iii) for any debt or money; or
  - (iv) to yield up goods or chattels or any document, muniment of title, or security,

in respect of which he is or expects to be sued by 2 or more parties (called the claimants) making adverse claims.

*[(b) deleted]*

*[Rule 1 amended in Gazette 21 Feb 2007 p. 536.]*

### **2. How to apply for interpleader relief**

- (1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.
- (2) No appearance need be entered to an originating summons under this rule.
- (3) Subject to subrule (4) a summons under this rule must be supported by evidence that the applicant —
  - (a) claims no interest in the subject-matter in dispute other than for charges and costs; and
  - (b) does not collude with any of the claimants to that subject-matter; and

(c) is willing to dispose of any property involved in such manner as the Court or a judge may direct.

*[Rule 2 amended in Gazette 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]*

**3. Time for application by defendant**

Where the applicant is a defendant, application for relief may be made at any time after the service of the writ.

**4. Stay of proceedings**

If the application is made by a defendant the Court may stay all further proceedings.

**5. Court's powers on application**

If the claimants appear in pursuance of the summons the Court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may give directions as to which of the claimants is to be plaintiff and which defendant, and as to the method of trial and such other directions as may be necessary in the circumstances.

**6. Summary determination**

The Court may, with the consent of both claimants or on the request of any claimant dispose of the merits of the claims and decide the same in a summary manner.

*[Rule 6 amended in Gazette 21 Feb 2007 p. 536.]*

**7. Where question of law only**

Where the question is one of law, and the facts are not in dispute, the Court may either decide the question without directing the trial of an issue, or order that a special case be

stated for the opinion of the Court. If a special case is stated Order 31 shall, as far as applicable, apply.

**8. Claimant failing to appear etc.**

If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court may make an order declaring him and all persons claiming under him barred against the applicant and persons claiming under him.

**9. Power to order sale of goods**

Whenever it appears desirable from the nature of the subject matter or the parties agree, the Court or a judge may order the sale of the whole or any part thereof and direct the application of the proceeds according to the rights of the parties as determined on the interpleader proceedings.

**10. Discovery etc. and trial**

The rules relating to discovery, interrogatories and inspection, and the trial of actions shall apply to interpleader issues with the necessary modifications.

**11. One order where several causes pending**

Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters, such order may be made by the Court before whom the proceedings may be taken, and shall be entitled in such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

*[12-14. Deleted in Gazette 21 Feb 2007 p. 536.]*

**15. Orders as to costs etc.**

Subject to rules 1 to 11, the Court may in and for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

*[Rule 15 amended in Gazette 28 Jun 2011 p. 2553.]*

## **Order 18 — Causes of action, counterclaims and parties**

### **1. Joinder of causes of action**

- (1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action —
  - (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action; or
  - (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others; or
  - (c) with the leave of the Court.
- (2) An application for leave under this rule must be made *ex parte* by affidavit before the issue of the writ and the affidavit must state the grounds of the application.

### **2. Counterclaim against plaintiff**

- (1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.
- (2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.



- (3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.
- (4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

**3. Counterclaim against additional parties**

- (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.
- (2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this subrule shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.
- (3) A defendant who is required by subrule (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which by virtue of Order 20 rule 4, he must serve on the plaintiff the defence to which the counterclaim is added.
- (4) Where by virtue of subrule (2) a copy of a counterclaim is required to be served on a person who is not already a party to

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the action, the following provisions of these rules, namely, Order 9 except rule 1(4), Order 10, Order 12 and Order 13 shall, subject to subrule (3), apply in relation to the counterclaim and the proceedings arising from it as if —

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
  - (b) the party making the counterclaim were a plaintiff and the party against who it is made a defendant in that action.
- (5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 10, addressed to that person.

*[Rule 3 amended in Gazette 22 Feb 2008 p. 635; 28 Jun 2011 p. 2552 and 2553; 12 Jun 2012 p. 2451.]*

**4. Joinder of parties**

- (1) Subject to rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —
- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
  - (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.
- (2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Act and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this subrule, be made a defendant.

This subrule shall not apply to a probate action.

- (3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2552.]*

**5. Court may order separate trials etc.**

- (1) If claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.
- (2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

**6. Misjoinder and nonjoinder of parties**

- (1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

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- (2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —
- (a) order that any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
  - (b) order that any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, be added as a party,
- but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.
- (3) An application by any person for an order under subrule (2) adding him as a defendant must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter.

*[Rule 6 amended in Gazette 28 Jun 2011 p. 2552.]*

**7. Change of parties by reason of death etc.**

- (1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.
- (2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first-mentioned party.

An application for an order under this subrule may be made *ex parte*.

- (3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but —
  - (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side; and
  - (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.
- (4) The person on whose application an order is made under this rule must procure the order to be noted in the Cause Book and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.
- (5) Any application to the Court by a person served with an order made *ex parte* under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

*[Rule 7 amended in Gazette 28 Jun 2011 p. 2552.]*

## **8. Order made under r. 6 or 7, consequences of**

- (1) Where an order is made under rule 6, the writ by which the action in question was begun must be amended accordingly and must be indorsed with —
  - (a) a reference to the order in pursuance of which the amendment is made; and

(b) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

- (2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the Cause Book.
- (3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the Cause Book.
- (4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until —
  - (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him; or
  - (b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the Cause Book,

and where by virtue of such an order a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the

old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new party.

[Rule 8 amended in Gazette 28 Jun 2011 p. 2553.]

**9. Failure to proceed after death of party**

- (1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.
- (2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

**10. Action for possession of land, joining non-party who is in possession**

- (1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.
- (2) An application by any person for an order under this rule may be made *ex parte*, supported by an affidavit showing that he is

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in possession of the land in question and if by a tenant, naming him.

- (3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

**11. Relator actions**

- (1) Before the name of any person is used in any action as a relator, that person must give to his solicitor a written authorisation so to use his name and the authorisation must be filed.
- (2) In all relator actions the plaintiff shall file with the writ or other originating process, the consent of the Attorney General to the action being brought.

**12. Representative proceedings**

- (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, 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 proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued, to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this subrule, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.



- (3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.
- (4) An application for the grant of leave under subrule (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.
- (5) Notwithstanding that a judgment or order to which any such application 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 such liability.
- (6) The Court hearing an application for the grant of leave under subrule (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

*[Rule 12 amended in Gazette 28 Jun 2011 p. 2552.]*

**13. Representation of interested persons who cannot be ascertained etc.**

- (1) In any proceedings concerning —
  - (a) the administration of the estate of a deceased person; or
  - (b) property subject to a trust; or
  - (c) the construction of a written instrument, including a statute or a regulation, rule or by-law made under a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in subrule (2) are satisfied,

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may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

- (2) The conditions for the exercise of the power conferred by subrule (1) are as follows —
- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
  - (b) that the person, class or some member of the class, though ascertained, cannot be found;
  - (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.
- (3) Where in any proceedings to which subrule (1) applies, the Court exercises the power conferred by that subrule, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.
- (4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but —
- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or
  - (b) the absent persons are represented by a person appointed under subrule (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this

power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

*[Rule 13 amended in Gazette 28 Jun 2011 p. 2552.]*

**14. Representation of beneficiaries by trustees etc.**

- (1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.
- (2) Subrule (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

*[Rule 14 amended in Gazette 28 Jun 2011 p. 2552.]*

**15. Representation of deceased person interested in proceedings**

- (1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

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- (2) 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. Declaratory judgment**

No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

**17. Conduct of proceedings**

The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

## **Order 19 — Third party and similar proceedings**

### **1. Third party notice**

- (1) Where in any action a defendant who has entered an appearance claims against any person not already a party to the action (in this Order called the third party) —
- (a) that he is entitled to contribution or indemnity; or
  - (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
  - (c) that any question or issue relating to or connected with the original subject-matter of the action is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party,

then, subject to subrule (2), the defendant may issue a notice in Form No. 11 or 12, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

- (2) A defendant to an action may not issue a third party notice without the leave of the Court unless he issues the notice before serving his defence on the plaintiff.
- (3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552.]*

**2. Application for leave to issue third party notice**

- (1) An application for leave to issue a third party notice may be made *ex parte* but the Court may direct a summons for leave to be issued.
- (2) An application for leave to issue a third party notice must be supported by an affidavit stating —
  - (a) the nature of the claim made by the plaintiff in the action; and
  - (b) the stage which proceedings in the action have reached; and
  - (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
  - (d) the name and address of the person against whom the third party notice is to be issued.

**3. Issue and service of, and entry of appearance to, third party notice**

- (1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.
- (2) There must be served with every third party notice a copy of the writ by which the action was begun and of the pleadings (if any) served in the action.
- (3) Subject to subrules (1) and (2), the following provisions of these rules, namely, Order 5 rules 7, 8 and 11, Order 9 except rule 1(4), Order 10 and Order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if —
  - (a) the third party notice were a writ and the proceedings begun thereby an action; and

- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

*[Rule 3 amended in Gazette 7 Oct 1977 p. 3602; 28 Jun 2011 p. 2553; 12 Jun 2012 p. 2451.]*

#### **4. Third party directions**

- (1) If the third party enters an appearance, the defendant who issued the third party notice must, within 10 days of the appearance of the third party, by summons to be served on all the other parties to the action, apply to the Court for directions.
- (2) If a summons is not served on the third party under subrule (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.
- (3) On an application for directions under this rule the Court may —
  - (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
  - (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
  - (c) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

- (4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to

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appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

- (5) The Court may at any time vary or rescind any order made or direction given under this rule.

*[Rule 4 amended in Gazette 26 Aug 1994 p. 4410; 28 Jun 2011 p. 2552.]*

**5. Default of third party etc.**

- (1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so —
- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and
  - (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.
- (2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.



- (3) The Court may at any time set aside or vary a judgment entered under subrule (1)(b) or subrule (2) on such terms (if any) as it thinks just.

*[Rule 5 amended in Gazette 28 Jun 2011 p. 2552.]*

**6. Setting aside third party proceedings**

Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

**7. Judgment between defendant and third party**

- (1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.
- (2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party except as to costs, without the leave of the Court until the judgment against the defendant has been satisfied at least to the extent of the third party liability which he claims to enforce under the judgment.

**8. Claims and issues between defendant and another party**

- (1) Where in any action a defendant who has entered an appearance —
- (a) claims against a person who is already a party to the action any contribution or indemnity; or
  - (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
  - (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff

and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to subrule (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

- (2) Where a defendant makes such a claim as is mentioned in subrule (1) and that claim could be made by him by counterclaim in the action, subrule (1) shall not apply in relation to the claim.
- (3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.
- (4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words “7 days after entering an appearance” there were substituted the words “14 days after service of the notice on him”.

*[Rule 8 amended in Gazette 28 Jun 2011 p. 2552.]*

## **9. Claims by third and subsequent parties**

- (1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in subrule (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order

applies as if he were a third party makes such a claim or requirement.

- (2) The modification referred to in subrule (1) is that subrule (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).
- (3) A third party may not issue a notice under rule 1 without the leave of the Court unless he issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against him.

*[Rule 9 amended in Gazette 28 Jun 2011 p. 2552.]*

**10. Offer of contribution**

If, before the trial of an action, a party to the action who, either as a third party or as one of 2 or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

**11. Counterclaim by defendant**

Where in any action a counterclaim is made by a defendant, rules 1 to 10 shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

*[Rule 11 amended in Gazette 28 Jun 2011 p. 2553.]*

**12.      Costs**

The Court may decide all questions of costs as between a third party and other parties to the action, and may order any one or more of them to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require.

## Order 20 — Pleadings

### 1. Statement of claim, service of

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant enters an appearance.

*[Rule 1 amended in Gazette 12 Jun 2012 p. 2451.]*

### 2. Statement of claim, content of

- (1) A statement of claim must state specifically the relief or remedy which the plaintiff claims, but costs need not be specifically claimed.
- (2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned.
- (3) Subject to subrule (2) a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.
- (4) Except when indorsed on the writ every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

### 3. Pleadings etc. to be filed before service

- (1) Subject to subrule (2) the original of every statement of claim, defence, set off, or counterclaim, and of every reply or subsequent pleading, and of any further particulars of any

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pleading, a copy of which is required by these rules to be served on one party by another, must be filed before the copy is served, and the copy must be served within one working day after the date of filing the original.

- (2) This rule does not apply where the statement of claim is indorsed on the writ.

*[Rule 3 amended in Gazette 28 Jul 2010 p. 3462; 28 Jun 2011 p. 2552.]*

**4. Defence, service of**

- (1) Subject to subrule (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

- (2) If a summons under Order 14 rule 1 is served on a defendant before he serves his defence, subrule (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the order or within such other period as may be specified therein.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2552.]*

**5. Reply and defence to counterclaim, service of**

- (1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 9, and if no reply is served, rule 15(1) will apply.
- (2) A plaintiff on whom the defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

- (3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.
- (4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

**6. Pleadings subsequent to reply etc., leave required for**

No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

**7. Pleadings, formal requirements of**

- (1) Every pleading in an action must bear on its face —
  - (a) the year in which the writ in the action was issued and the number of the action; and
  - (b) the title of the action; and
  - (c) the description of the pleading; and
  - (d) the date on which it was filed.
- (2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.
- (3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.
- (4) Every pleading of a party must be indorsed —
  - (a) where the party sues or defends in person, with his name and address for service;
  - (b) in any other case, with the name or firm and address for service of the solicitor by whom it was filed and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

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- (5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.
- (5A) It shall be a sufficient compliance with subrule (5) if the pleading is signed by a solicitor who —
  - (a) is employed by the party's solicitor; and
  - (b) has settled the pleading; and
  - (c) is authorised to sign the pleading on his principal's behalf; and
  - (d) adds his own signature after the name of his firm.
- (6) The date of service of a pleading must be stated on every copy which is served.

*[Rule 7 amended in Gazette 15 Jun 1973 p. 2248; 28 Jun 2011 p. 2552.]*

**8. Facts, not evidence, to be pleaded**

- (1) Subject to the provisions of this rule, and rules 11, 12 and 13 every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.
- (2) Without prejudice to subrule (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.
- (3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.
- (4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of



which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

*[Rule 8 amended in Gazette 28 Jun 2011 p. 2552.]*

**9. Matters which must be specifically pleaded**

- (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality —
  - (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
  - (b) which, if not specifically pleaded, might take the opposite party by surprise; or
  - (c) which raises issues of fact not arising out of the preceding pleading.
- (2) Without prejudice to subrule (1), a defendant to an action for possession of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.
- (3) A claim for exemplary damages or a claim for aggravated damages must be specifically pleaded together with the facts on which the party pleading relies.
- (4) Where the plaintiff intends to claim interest, he must claim it specifically; and the statement of claim must —
  - (a) identify that part of the claim or the components of the damages to which the claim for interest relates;
  - (b) where the claim for interest is founded on a contract, contain a statement in summary form of the material facts relied on;
  - (c) where the claim for interest is pursuant to a statute —
    - (i) identify the statutory provision; and
    - (ii) specify the rate claimed; and

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- (iii) state the date or dates from which interest is claimed.

*[Rule 9 amended in Gazette 3 Oct 1975 p. 3769; 31 Mar 1983 p. 1090; 28 Jun 2011 p. 2552.]*

**10. Matter may be pleaded whenever arising**

Subject to rules 8(1) and 11, a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

**11. Party's pleadings to be consistent**

- (1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.
- (2) Subrule (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

*[Rule 11 amended in Gazette 28 Jun 2011 p. 2552.]*

**12. Points of law may be pleaded**

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

**13. Particulars of claims etc.**

- (1) Subject to subrule (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words —
- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of

mind except knowledge, particulars of the facts on which the party relies.

- (2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.
- (3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.
- (4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of subrule (3), the Court may, on such terms as it thinks just, order that party to 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.
- (5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.
- (6) An order under this rule shall not be made unless a written request for the particulars required by the applicant has been filed and served within 30 days of the service of the pleadings or such other time as the Court may allow.
- (7) The party at whose instance particulars have been served under an order of the Court shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the

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order otherwise provides, operate as a stay of proceedings, or give any extension of time.

*[Rule 13 amended in Gazette 26 Aug 1994 p. 4410; 28 Jun 2011 p. 2552.]*

**13A. Particulars in defamation actions**

- (1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of that sense.
- (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
- (3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice; but where the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.
- (4) This rule applies in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made were the defendant.

*[Rule 13A inserted in Gazette 23 Sep 1983 p. 3797.]*

**14. Admissions, traverses etc.**

- (1) Subject to subrule (4), any 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 15 operates as a denial of it.
- (2) A traverse may be made either by a denial or by a statement of non-admission.
- (3) Subject to subrule (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement 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.

*[Rule 14 amended in Gazette 28 Jun 2011 p. 2552.]*

**15. Denial by joinder of issue**

- (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to subrule (3) —
  - (a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and
  - (b) a party may in his pleading expressly join issue on the next preceding pleading.
- (3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.
- (4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an

implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

*[Rule 15 amended in Gazette 28 Jun 2011 p. 2552.]*

**16. Defence of tender not available without payment into court**

Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 24 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

**17. Defence of set-off**

Where a claim by a defendant 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 the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

**18. Counterclaim and defence to counterclaim**

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically —

- (a) rule 2(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) rules 9(2), 16, and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

**19. Striking out pleadings etc.**

- (1) The Court may at any stage of the proceedings, subject to subrule (3), order to be struck out or amended any pleading, or the indorsement of any writ in the action, or anything in any pleading or in the indorsement on the ground that —
  - (a) it discloses no reasonable cause of action or defence, as the case may be; or
  - (b) it is scandalous, frivolous or vexatious; or
  - (c) it may prejudice, embarrass or delay the fair trial of the action; or
  - (d) it is otherwise an abuse of the process of the Court,and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
- (2) No evidence shall be admissible on an application under subrule (1)(a).
- (3) Subject to subrule (4) an application for an order under subrule (1) must —
  - (a) be made within 21 days of the service of any pleading, or amended pleading, or writ to which the application refers; and
  - (b) where the application is to strike out certain pleadings, specify —
    - (i) the paragraph of subrule (1) under which the application is made; and
    - (ii) those parts of the pleadings which the applicant seeks to have struck out;and
  - (c) where the application is to strike out the entire pleading, clearly indicate that intention in the application.

*[(4) deleted]*

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- (5) Unless special circumstances are shown, an application to amend pleadings consequent upon an order striking the pleadings out, in whole or in part, shall be accompanied by a minute of the proposed amendment.

*[Rule 19 amended in Gazette 26 Aug 1994 p. 4410-11; 24 Jan 1995 p. 270; 9 Aug 1996 p. 3949; 28 Jun 2011 p. 2552 and 2553.]*

**20. Close of pleadings**

- (1) Subject to subrule (2) the pleadings in an action are deemed to be closed —
- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or
  - (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.
- (2) Where the time for the service of a reply or defence to counterclaim or both is extended either by order of the Court or by written consent of the parties, or by the operation of rule 13(7), the pleadings are deemed to be closed at the expiration of 14 days after such extended time has expired.

*[Rule 20 amended in Gazette 28 Jun 2011 p. 2552.]*

**21. Trial without pleadings**

- (1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.
- (2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings



or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree to such a statement, may settle the statement itself.

- (3) If the Court makes an order under subrule (2), it must, and if it dismisses an application for such an order, it may, make such case management directions under Order 4A as to the further conduct of the action as it considers just.
- (4) This rule applies to every action begun by writ other than one which includes —
  - (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
  - (b) a claim by the plaintiff based on an allegation of fraud.

*[Rule 21 amended in Gazette 28 Jul 2010 p. 3466.]*

**22. Preparation of issues**

Where in any cause or matter it appears to the Court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court.

**23. Collision between vessels, content etc. of “Preliminary Act”**

- (1) In an action for damage by collision between vessels, unless the Court otherwise orders, the plaintiff or his solicitor must, within 7 days after the commencement of the action, and the defendant or his solicitor must, within 7 days after appearance and before any pleading is delivered, respectively file in the Central Office a document to be called a Preliminary Act.
- (2) Every Preliminary Act shall be sealed up and, unless the Court otherwise orders, shall not be opened until the pleadings are closed and a consent signed by the respective parties or their

solicitors that the Preliminary Acts shall be opened is filed in the Central Office.

- (3) The Preliminary Act shall contain a statement of the following particulars —
- (a) the names of the vessels which came into collision, the names of their masters, and their ports of registry;
  - (b) the date and time of the collision;
  - (c) the place of the collision;
  - (d) the direction and force of the wind;
  - (e) the state of the weather;
  - (f) the state, direction and force of the tidal or other current;
  - (g) the course and speed of the vessel when the other was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
  - (h) the lights (if any) carried by the vessel;
  - (i) the distance and bearing of the other vessel if and when her echo was first observed by radar;
  - (j) the distance, bearing and approximate heading of the other vessel when first seen;
  - (k) what light or combination of lights (if any) of the other vessel was first seen;
  - (l) what other lights or combination of lights (if any) of the other vessel were subsequently seen before the collision, and when;
  - (m) what alterations (if any) were made to the course and speed of the vessel after the earlier of the 2 times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;

- (n) the parts of each vessel which first came into contact and the approximate angle between the 2 vessels at the moment of contact;
  - (o) what sound signals (if any) were given, and when;
  - (p) what sound signals (if any) were heard from the other vessel, and when.
- (4) Where the Court orders the Preliminary Acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the Preliminary Acts.
- (5) Rule 1 shall not apply to an action in which Preliminary Acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the Preliminary Act of any party to the action is filed.

*[Rule 23 amended in Gazette 28 Jun 2011 p. 2553-4.]*

**24. Failure to lodge Preliminary Act**

- (1) Where in an action to which rule 23 applies, the plaintiff fails to lodge a Preliminary Act within the time prescribed for that purpose by that rule or by any order of the Court, any defendant who has lodged such an Act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.
- (2) Where in such an action, being an action in personam, a defendant fails to lodge a Preliminary Act within the period prescribed for that purpose by rule 23 or by any order of the Court, Order 22 rules 2 and 3 shall apply as if the defendant's failure to lodge the Preliminary Act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the

plaintiff may enter judgment against the defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

## Order 21 — Amendment

### 1. Amending writ without leave

- (1) Subject to subrule (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed by filing its amended writ before the closure.

*[(2) deleted]*

- (3) This rule shall not apply in relation to an amendment which consists of —
  - (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued; or
  - (b) the addition or substitution of a new cause of action; or
  - (c) without prejudice to rule 3, an amendment of the statement of claim, if any, indorsed on the writ.

*[Rule 1 amended in Gazette 28 Jul 2010 p. 3462; 28 Jun 2011 p. 2552.]*

### 2. Amending memorandum of appearance

A defendant may not amend his memorandum of appearance without the leave of the Court.

### 3. Amending pleadings without leave

- (1) A party may amend any of its pleadings, without the leave of the Court, by filing its amended pleading not later than 7 weeks before the date fixed for the start of the trial of the case.
- (2) A party served with a pleading amended under subrule (1) may make any amendment needed to any of its pleadings as a consequence of the amended pleading, without the leave of the Court, by filing its amended pleading within 10 working days after the date on which it is served with the amended pleading.

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- (3) A party served with a pleading amended under subrule (1) or (2) may apply to the case manager for any amendment in the pleading to be struck out.
- (4) A party's application under subrule (3) must be made within 7 working days after the date on which the party is served with the amended pleading.
- (5) If, on an application made under subrule (3), the case manager is satisfied that, had an application for leave to make the amendment in question been made under rule 5 at the date when the amended pleading was filed under this rule, leave to make the amendment or part of the amendment would have been refused, the manager must order the amendment or that part of it to be struck out.
- (6) An order made on an application under this rule may be made on such terms as to costs as the case manager considers just.

*[Rule 3 inserted in Gazette 28 Jul 2010 p. 3462-3.]*

*[4. Deleted in Gazette 28 Jul 2010 p. 3462.]*

**5. Amending writ or pleading with leave**

- (1) Subject to —
  - (a) Order 18 rules 6, 7 and 8; and
  - (b) Order 20 rule 19(2) to (5); and
  - (c) the following provisions of this rule,

the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as the court may direct.
- (2) Where an application to the Court for leave to make the amendment mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such

leave in the circumstances mentioned in that subrule if it thinks it just to do so.

- (3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued.
- (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.
- (5) An amendment may be allowed under subrule (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

*[Rule 5 amended in Gazette 24 Jan 1995 p. 270; 28 Jun 2011 p. 2552.]*

**6. Amending other originating process**

Rule 5 shall have effect in relation to an originating summons, and an originating motion as it has effect in relation to a writ.

**7. Amending other documents**

- (1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings on the application of any party to the

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proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

- (2) This rule shall not have effect in relation to a judgment or order.

**8. Failure to amend after order**

Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not file the document, amended 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, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

*[Rule 8 amended in Gazette 28 Jul 2010 p. 3463.]*

**9. How amendments to be made**

- (1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised and showing its original contents with the amendments written in red, or in such other manner as will distinguish the alterations from the original document or from any previous amendment, must be prepared, and in the case of a writ or originating summons re-issued.
- (2) Except as provided in subrule (1), and subject to any direction given under rule 5 or 7, the amendments so authorised shall be effected by writing the necessary alterations on the writ, pleading or other document in red or in such other manner as will distinguish the alterations from the original document or from any previous amendment, and in the case of a writ or



originating summons, causing it to be re-sealed and filing a copy thereof.

- (3) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the judge or master by whom the order (if any) authorising the amendment was made, and the date thereof, or if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

*[Rule 9 amended in Gazette 24 Jan 1995 p. 272; 28 Jul 2010 p. 3463; 28 Jun 2011 p. 2552.]*

**10. Clerical errors etc., correcting (slip rule)**

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

**11. Service of amended documents**

An amended writ, pleading or other document that is filed under this Order must be served on each other party within one working day after it is filed unless the Court orders otherwise.

*[Rule 11 inserted in Gazette 28 Jul 2010 p. 3463-4.]*

## **Order 22 — Default of pleadings**

### **1. Default in service of statement of claim**

If the plaintiff, being required by these rules to serve a statement of claim on a defendant fails to serve it on him within the time allowed by or under these rules for that purpose, the defendant may after the expiration of that time, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

### **2. Default of defence to claim for liquidated demand**

- (1) Where the plaintiff's claim is against a defendant for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand, and for costs, and proceed with the action against the other defendants, if any.
- (2) Order 13 rule 2(2) shall apply for the purpose of this rule as it applies for the purpose of that rule.

*[Rule 2 inserted in Gazette 30 Nov 1984 p. 3952-3; amended in Gazette 20 Jun 1986 p. 2040.]*

### **3. Default of defence to claim for unliquidated damages**

- (1) Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter interlocutory judgment against that defendant and obtain an order for directions for the assessment of damages, and proceed with the action against the other defendants, if any.

- (2) Order 13 rule 7(2) and (3) shall apply for the purposes of this rule as they apply for the purposes of that rule.

**4. Default of defence to claim in detinue**

Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter either —

- (a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or
- (b) interlocutory judgment for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

**5. Default of defence to claim for possession of land**

- (1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, on producing a certificate from his solicitor, or, if he sues in person an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 62A rule 1 after the expiration of the period fixed by or under these rules for service of the defence, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.
- (2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

*[Rule 5 amended in Gazette 10 Jan 1975 p. 50.]*

**6.          Default of defence to 2 or more claims in r. 2 to 5**

Where the plaintiff makes against a defendant 2 or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

**7.          Default of defence to other claims**

- (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or failed to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.
- (1A) On an application under subrule (1), the applicant or his solicitor must produce a certificate issued by the proper officer on the day of the hearing stating that no defence has been filed by the defendant against whom it is sought to enter judgment.
- (2) Where the plaintiff makes such a claim as is mentioned in subrule (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that subrule, the plaintiff may —
  - (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that subrule for judgment against that defendant, and proceed with the action against the other defendants; or

- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.
- (3) An application under subrule (1) must be by summons.  
*[Rule 7 amended in Gazette 15 Jun 1973 p. 2248; 28 Jun 2011 p. 2552.]*

**8. Default of defence to counterclaim**

A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively and as if references to the period fixed by or under these rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

**9. Reference to Court in case of doubt**

Order 13 rule 9 applies mutatis mutandis to a claim by the plaintiff to enter final or interlocutory judgment under the provisions of this Order.

**10. Setting aside judgment in default**

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

## **Order 23 — Discontinuance**

### **1.        Withdrawing appearance**

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

### **2.        Plaintiff may discontinue; defence etc. may be withdrawn**

- (1) The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other step in the action, by notice in writing, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.
- (2) The costs referred to in subrule (1) shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.
- (3) Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court, but the Court may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.
- (4) The Court may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence or counterclaim, or any part thereof, without such leave.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

**3. Costs**

Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within 4 days after taxation.

**4. Subsequent action stayed pending payment**

If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court may, if it thinks fit, order a stay of such subsequent action, until such costs shall have been paid.

**5. Withdrawal of summons**

A party who has taken out a summons in a cause or matter may not withdraw it except by leave of the Court.

## **Order 24 — Payment into court — offers to consent to judgment**

*[1-8. Deleted in Gazette 5 Apr 1991 p. 1398.]*

### **9. In certain cases no payment out without order**

- (1) Subject to subrule (2) money paid into court under an order of the Court, or certificate of a master or a registrar, shall not be paid out of court except in pursuance of an order of the Court.
- (2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14 —
  - (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the statement of claim or counterclaim, as the case may be, and specified in the notice; or
  - (b) if he makes a plea of tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered; and money appropriated in accordance with this rule shall be deemed to be money paid into court under rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

*[Rule 9 amended in Gazette 14 Dec 1979 p. 3869; 30 Nov 1984 p. 3951; 28 Jun 2011 p. 2552.]*

*[10. Deleted in Gazette 5 Apr 1991 p. 1398.]*

### **11. Intestate's estate, Court may direct some payments without administration**

Where the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court, not exceeding \$7 500 and it is proved to the satisfaction of the Court —



- (a) that no administration to such deceased person's estate has been taken out; and
- (b) that his assets do not exceed the value of \$7 500 including the amount of the fund or share to which the estate of such deceased person is entitled,

the Court may direct that such fund or share of a fund shall be paid, transferred or delivered to the person, who being the widower, widow, de facto partner of the deceased (immediately before the death), child, parent, brother or sister of the deceased would be entitled to take out administration.

*[Rule 11 amended in Gazette 30 Nov 1984 p. 3953; 30 Jun 2003 p. 2631.]*

**12. Regulations (Sch. 3)**

The manner of payment into and out of court and the manner in which money in court shall be dealt with shall be subject to the regulations contained in Schedule 3.

*[Rule 12 amended in Gazette 28 Jun 2011 p. 2554.]*

## **Order 24A — Offer of compromise**

*[Heading inserted in Gazette 5 Apr 1991 p. 1398.]*

### **1. How to make offer**

- (1) An offer of compromise is made to a party under this Order by serving a notice of the offer on the party.
- (2) A notice of offer shall —
  - (a) be in writing; and
  - (b) bear a statement to the effect that the offer is made under this Order.

*[Rule 1 inserted in Gazette 5 Apr 1991 p. 1398.]*

### **2. Parties entitled to make offer**

In any proceedings the plaintiff or the defendant may make to the other an offer to compromise any claim in the proceedings on the terms specified in the notice of offer.

*[Rule 2 inserted in Gazette 5 Apr 1991 p. 1399.]*

### **3. Time etc. for making, accepting etc. offer**

- (1) An offer may be made at any time before the time prescribed by subrule (8) in respect of the claim to which it relates.
- (2) A party may make more than one offer.
- (3) An offer may be expressed to be limited as to the time it is open to be accepted but the time expressed shall not be less than 28 days after it is made.
- (4) An offeree shall, within 3 days after service, serve a written acknowledgment of receipt on the offeror.

- (5) An offeree may accept the offer by serving notice of acceptance in writing on the offeror before —
- (a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified, the expiration of 28 days after the offer is made; or
  - (b) the time prescribed by subrule (8) in respect of the claim to which the offer relates,
- whichever is sooner.
- (6) An offer shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.
- (7) An offer is open to be accepted within the period referred to in subrule (5) notwithstanding that during that period the party to whom the offer (the *first offer*) is made makes an offer (the *second offer*) to the party who made the first offer whether or not the second offer is made in accordance with this Order.
- (8) The time prescribed for the purposes of subrules (1) and (5) is —
- (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 or master gives his decision or begins to give his reasons for decision on a judgment (except an interlocutory judgment).
- (9) Where an offer is accepted under this rule, any party to the compromise may apply to the Court for such judgment or order as he may be entitled to and on the hearing of the application the Court shall give such judgment or make such order as it thinks fit.

*[Rule 3 inserted in Gazette 5 Apr 1991 p. 1399; amended in Gazette 28 Feb 1992 p. 995; 30 Oct 1992 p. 5310; 28 Jun 2011 p. 2552-3.]*

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**4. Time for payment of sum offered**

An offer to pay a sum of money to a plaintiff shall, unless the notice of offer otherwise provides, be taken to be an offer to pay that sum within 28 days after acceptance of the offer.

*[Rule 4 inserted in Gazette 5 Apr 1991 p. 1399.]*

**5. Withdrawing acceptance of offer**

- (1) A party who accepts an offer may, by serving a notice of withdrawal on the offeror, withdraw the acceptance —
  - (a) where the offer provides for payment of a sum of money and the sum is not paid into Court within 28 days after acceptance of the offer; or
  - (b) where the Court gives leave so to do.
- (2) On withdrawal of an acceptance all steps in the proceedings 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 subrule (2); and
  - (b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and
  - (c) give directions for the further conduct of the proceedings.

*[Rule 5 inserted in Gazette 5 Apr 1991 p. 1399; amended in Gazette 28 Jun 2011 p. 2552.]*

**6. Offer without prejudice**

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

*[Rule 6 inserted in Gazette 5 Apr 1991 p. 1399.]*

**7. Disclosure of offer to Court**

- (1) No statement of the fact that an offer has been made shall be contained in any pleading or affidavit.
- (2) Where an offer has not been accepted, then, except as provided by rule 10(8), no communication with respect to the offer shall be made to the Court at the trial until after all questions of liability and the relief to be granted have been determined.
- (3) This rule shall not apply where a notice of offer provides that the offer is not made without prejudice.

*[Rule 7 inserted in Gazette 5 Apr 1991 p. 1399-400.]*

**8. Failure to comply with accepted offer**

- (1) Where a party to an accepted offer fails to comply with the terms of the offer, then unless for special cause the Court otherwise orders, the other party —
  - (a) shall be entitled to an order —
    - (i) where the party in default is the plaintiff, that the proceedings be dismissed; and
    - (ii) where the party in default is the defendant, that the defence be struck out,and in either case to judgment accordingly; or
  - (b) may apply to the Court for such judgment or order as he may be entitled to and on the hearing of the application the Court shall give such judgment or make such order as it thinks fit.
- (2) Where a party to an accepted offer fails to comply with the terms of the offer, and a defendant in the proceeding has made a cross-claim which is not the subject of the accepted offer, the Court may make such order or give such judgment under subrule (1) and make such order that the proceeding on the cross-claim be continued as it thinks fit.

*[Rule 8 inserted in Gazette 5 Apr 1991 p. 1400; amended in Gazette 28 Feb 1992 p. 995; 28 Jun 2011 p. 2552.]*

**9. Multiple defendants**

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a debt or damages and rights of contribution or indemnity appear to exist between the defendants, rule 8 shall not apply to an offer unless —

- (a) in the case of an offer made by the plaintiff — the offer is made to all defendants, and is an offer to compromise the claim against all of them;
- (b) in the case of an offer made to the plaintiff —
  - (i) the offer is to compromise the claim against all defendants; and
  - (ii) where the offer is made by 2 or more defendants — by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the plaintiff for the whole amount of the offer.

*[Rule 9 inserted in Gazette 5 Apr 1991 p. 1400.]*

**10. Costs**

- (1) Upon the acceptance of an offer of compromise in accordance with rule 3(5), the plaintiff may, unless the Court otherwise orders, tax his costs in respect of the claim against the defendant up to and including the day the offer was accepted and, if the costs are not paid within 4 days after the signing of a certificate of the taxation, enter judgment against that defendant for the taxed costs.
- (2) If a notice of offer contains a term which purports to negative or limit the operation of subrule (1), that term shall be of no effect for any purpose under this Order.
- (3) Subrules (4) to (6) apply to an offer which has not been accepted in the time prescribed by rule 3(8).

- (4) Where an offer is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains judgment on the claim to which the offer relates no less favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for his costs in respect of the claim from the date on which the offer was made, in addition to his costs incurred before that date, all such costs to be taxed on a party and party basis.
- (4a) Subrule (4) as it was before 1 March 2007 does not apply to an offer made by a plaintiff before 1 March 2007 unless the plaintiff obtains judgment on the claim to which the offer relates before 1 March 2007.
- (5) Where an offer is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for his costs in respect of the claim up to and including the day the offer was made, taxed on a party and party basis, and the defendant shall be entitled to an order against the plaintiff for his costs in respect of the claim thereafter, taxed on a party and party basis.
- (6) For the purpose of subrule (5), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim up to 11 a.m. on the day following the day on which the offer was made, taxed on a party and party basis, and the defendant shall be entitled to his costs in respect of the claim thereafter, taxed on a party and party basis.
- (7) Where a plaintiff obtains judgment for the payment of a debt or damages and —
  - (a) the amount for which judgment is given includes interest or damages in the nature of interest; or

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- (b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (5), the Court shall disregard so much of the interest as relates to the period after the day the offer was made.

- (8) For the purpose of subrule (7), the Court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.
- (9) Subrules (4) and (5) shall not apply unless the Court is satisfied by the party making the offer that the party was at all material times willing and able to carry out what the party offered.

*[Rule 10 inserted in Gazette 5 Apr 1991 p. 1400-1; amended in Gazette 28 Feb 1992 p. 996; 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552-3.]*



## **Order 25 — Security for costs**

### **1. Factors that are not grounds for ordering security for costs**

The Court may order security for costs to be given by a plaintiff, but no order shall be made merely on account of the poverty of the plaintiff or the likely inability of the plaintiff to pay any costs which may be awarded against him.

### **2. Grounds for ordering security for costs**

Without limiting the generality of rule 1 the Court may order security for costs to be furnished where the plaintiff —

- (a) is ordinarily resident out of the jurisdiction, notwithstanding that he may be temporarily within the jurisdiction;
- (b) is about to depart from the jurisdiction;
- (c) enjoys within the jurisdiction some privilege which renders him immune, wholly or partially, from the normal processes of execution;
- (d) is an undischarged bankrupt or a person who has suspended, or given notice of suspension of, his debts;
- (e) is a company in liquidation or under official management, or a company in respect of which a receiver of its property has been appointed;
- (f) is a relator suing for the enforcement or declaration of some public right or to have some public trust carried out or some charitable scheme settled;
- (g) is in default in respect of any costs ordered to be paid by him in any proceedings previously brought by him against the same defendant or another defendant for substantially the same cause of action or in relation to substantially the same subject matter;
- (h) is a person who has in the past vexatiously brought litigation against the same defendant or against any other defendant;

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- (i) is suing the sheriff in respect of anything done or omitted to be done by the sheriff or his officers in the execution of any judgment of the Court.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2554.]*

**3. Court has discretion**

The granting of security shall be in the discretion of the Court, and in determining whether an order should be made the Court shall take into consideration —

- (a) the prima facie merits of the claim;
- (b) what property within the jurisdiction may be available to satisfy any order for costs against the plaintiff;
- (c) whether the normal processes of the Court would be available within the jurisdiction for enforcement of any order for costs made against the plaintiff.

**4. Term used: plaintiff**

In this Order the term *plaintiff* shall include a defendant counterclaiming in respect of a claim not arising out of the claim made against him.

**5. Manner of giving security**

In fixing security the Court shall direct the form and manner in which the security is to be given and may from time to time vary the amount and form of the security.

**6. Action may be stayed**

Where security is ordered the action or other proceedings shall be stayed until the security is furnished, unless the Court otherwise orders.

**7. Payment out**

Where money has been paid into court as security for costs and the action has been finally disposed of, the amount of the

security shall be paid out to the party for whose security it was furnished to the extent *pro tanto* that costs are due from the securer to such party, and the Principal Registrar shall pay out the security accordingly unless the Court has otherwise ordered, and the balance (if any) shall be refunded to the securer without the necessity for any special order.

*[Rule 7 amended in Gazette 14 Dec 1979 p. 3869.]*

**8. Saving**

This Order is without prejudice to the provisions of any Act which empowers the Court to require security to be given for the costs of any proceedings.

## **Order 26 — Discovery and inspection**

### **1A. Terms used**

For the purposes of this Order —

**document** means any record of information and includes —

- (a) any disc, tape, sound-track or other device in which sounds or other means of transmitting data (not being visual images); and
- (b) any film, negative, disc, tape or other device in which one or more visual images,

are embodied so as to be capable, with or without the aid of some other device, of being reproduced therefrom;

**inspection**, in relation to a document which is not in writing or otherwise capable of being understood by visual means alone, includes the right to require the party making discovery to supply a copy of the document in a form in which it is in writing or otherwise capable of being understood by visual means alone.

*[Rule 1A inserted in Gazette 5 Jun 1992 p. 2280-1.]*

### **1B. Documents not wholly discoverable**

- (1) If under this Order a party in a cause or matter is required to give discovery of a document —
  - (a) the party must discover the document even if it contains —
    - (i) information that is not related to a matter in question in the cause or matter; or
    - (ii) information that the party objects to producing, as well as information relating to a matter in question in the cause or matter that the party may be required to produce; but

- (b) if the party has possession, custody or power of the document, the party may edit the document to hide the information referred to in paragraph (a)(i) and (ii).
- (2) If a party edits a document under subrule (1), the party must do the following —
- (a) in Part 1B of its list of documents (Form No. 17) —
    - (i) list the document; and
    - (ii) identify the document as one that contains hidden information; and
    - (iii) state why the information is hidden; and
    - (iv) if the party objects to producing any of the hidden information, state the grounds for objecting;
  - and
  - (b) modify Form No. 17 for the purposes of complying with paragraph (a); and
  - (c) if an affidavit verifying the list of documents is required, modify Form No. 18 for the purposes of complying with paragraph (a).
- (3) If a party edits a document under subrule (1), the party is not required —
- (a) to produce the hidden information to another party; or
  - (b) to allow another party to inspect or copy the hidden information,

unless the Court orders otherwise.

*[Rule 1B inserted in Gazette 28 Jul 2010 p. 3469-70.]*

## **1. Discovery without order**

- (1) Any party may give notice in writing to any other party in a cause or matter requiring him to give discovery of all documents

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which are or have been in his possession, custody or power relating to any matter in question therein.

- (2) Where the cause or matter has been entered for trial a notice of the kind mentioned in subrule (1) shall not be given without the leave of the Court.
- (3) The statements in the Form No. 17 (list of documents) filed by a party giving discovery of documents must —
  - (a) be verified by an affidavit of a person listed in rule 4(4); or
  - (b) if the party requiring discovery, in its notice given under subrule (1), so consents, be certified as correct by a person listed in rule 4(4) or the party's practitioner.

*[Rule 1 amended in Gazette 28 Oct 1996 p. 5675; 28 Jul 2010 p. 3470; 28 Jun 2011 p. 2552.]*

**2. Continuing obligation to give discovery**

- (1) A party that has been requested under rule 1 to give discovery shall, subject to any order made under rule 7, be under a continuing obligation until the conclusion of the trial to give discovery of any document relevant to any matter in question and not already discovered by that party.
- (2) A party that has been ordered under rule 7 to give discovery shall, subject to the order, be under a continuing obligation until the conclusion of the trial to give discovery of any document to which the order relates and not already discovered by that party.
- (3) Discovery under subrule (1) or (2) shall be given in accordance with subrules (4) and (5).
- (4) A party shall give discovery to another party forthwith after the party becomes aware of a discoverable document unless the document came into existence after discovery was given under rule 1 or under an order made under rule 7 and —

- (a) is a communication between 2 or more of the parties or their solicitors; or
  - (b) is privileged from production.
- (5) At least 21 days before the trial a party shall give discovery of any document that has not already been discovered by that party, including documents referred to in subrule (4)(a) and (b).
- (6) Discovery under this rule shall be given by filing and serving on the other parties a supplementary list in accordance with rule 4 showing the relevant documents together with a verifying affidavit.

*[Rule 2 inserted in Gazette 28 Oct 1996 p. 5675-6; amended in Gazette 28 Jun 2011 p. 2552-3.]*

*[2A. Deleted in Gazette 28 Oct 1996 p. 5675.]*

**3. Determination of issue relevant to right to discovery**

If the Court is satisfied that the right to discovery or inspection of documents depends on the determination of any issue or question in the cause or matter or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding such right the Court may order that the issue or question be determined first and may reserve an application under this Order for further consideration.

*[Rule 3 amended in Gazette 28 Oct 1996 p. 5676.]*

**4. List of documents and verifying affidavit, form, content and making of**

- (1) The list of documents made in compliance with rule 1 or with an order under rule 7 must be in Form No. 17, and must enumerate the documents in a convenient order and as shortly as possible, but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified, and must be filed within 10 days after

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the service of the requisition, or within the time directed by the order.

- (2) If it is claimed that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.
- (3) An affidavit verifying a list of documents must be in Form No. 18.
- (4) Any list of documents or affidavit verifying such list may be made —
  - (a) by the party;
  - (b) where the party is the State or an officer of the State sued or suing in his official capacity — by an officer of the State;
  - (c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person — by a member or officer of the corporation or body,

and in the case of an order against any party to which paragraph (b) or (c) applies the order must specify the person who is to comply with the order on behalf of the party.

*[Rule 4 amended in Gazette 30 Nov 1984 p. 3953; 28 Oct 1996 p. 5676; 19 Apr 2005 p. 1298.]*

**5. Defendant entitled to copy of co-defendant's list etc.**

- (1) Any defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under rule 1, 2 or 7 on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.



- (2) On request made by a party entitled to a copy of a list of documents, the party required by subrule (1) to supply the same must supply it free of charge.
- (3) In this rule *list of documents* includes an affidavit verifying a list of documents.

*[Rule 5 amended in Gazette 28 Oct 1996 p. 5676; 28 Jun 2011 p. 2552.]*

**6. Order for information as to particular documents**

- (1) Subject to rule 7 the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document specified or described is, or has at any time been, in his possession custody or power, and if not then in his possession custody or power when he parted with it and what has become of it.
- (2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 1 or rule 7.
- (3) An application under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document or class of document specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

*[Rule 6 amended in Gazette 28 Oct 1996 p. 5676.]*

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**7. Orders as to discovery**

- (1) An application for an order under this rule may be made at any time by —
  - (a) a party whose request under rule 1 for discovery has not been satisfied; or
  - (b) a party who has been requested under rule 1 to give discovery, whether or not the party has complied with the request.
- (2) An affidavit in support of the application is not necessary.
- (3) On an application, or at any time of its own motion in any proceedings, the Court, having regard to Order 1 rule 4B, may —
  - (a) order any or all of the parties to give discovery at that stage or at some specified future stage of the action;
  - (b) as to the documents to be discovered by any party —
    - (i) order that discovery be given of only those specified documents or specified classes of document;
    - (ii) order that discovery be given of only those documents that are directly relevant to any specified matter in question or to all matters in question;
    - (iii) order that discovery be given of all documents relating to any specified matter in question or to all matters in question;
  - (c) make orders as to which parties are to be given discovery by any specified party;
  - (d) order that any or all of the parties not give discovery at that stage of the action, or at all;
  - (e) order any or all parties to make, file and serve an affidavit verifying the party's list of documents discovered.

- (4) For the purposes of this rule if a party is ordered to give discovery, the party shall, subject to the order, make and serve, a list of the documents that are or have been in the party's possession, custody or power.

*[Rule 7 inserted in Gazette 28 Oct 1996 p. 5677-8.]*

**8. Inspection of documents in list**

- (1) A party who has served a list of documents on any other party in compliance with rule 1 or with an order under rule 7 must allow the other party to inspect the documents mentioned in the list, other than any which he objects to produce, and must when serving the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at the place specified in the notice.
- (2) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for inspection by the party giving the notice.
- (3) The party on whom a notice is served under subrule (2) must within 4 days after service of the notice serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents or such of them as he does not object to produce, may be inspected at the place specified in the notice, and stating which, if any, of the documents he objects to produce and the grounds of his objection.
- (4) Subject to rule 9, inspection under this rule shall be made at the office of the solicitor for the party producing the documents or if the party appears in person at a place that is reasonable for the purpose or in the case of bankers' books or other books of account or books in constant use for the purpose of any trade or business, at their usual place of custody.

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- (5) The party making the inspection shall be entitled to make copies of any documents produced for inspection under this rule.

*[Rule 8 amended in Gazette 7 Dec 1973 p. 4489; 28 Oct 1996 p. 5678; 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]*

**8A. Procedure on discovery**

- (1) Documents delivered or produced under these rules are —
- (a) to be —
    - (i) in bundles, files, folders or receptacles; and either
    - (ii) grouped according to topic, class, category, allegation in issue or otherwise; or
    - (iii) in an order or sequence,  
making the documents readily accessible to and capable of convenient inspection by the party to whom they are delivered or produced; and
  - (b) to be so identified or indexed by number, description or otherwise as to enable particular documents to be readily retrieved on later occasions.
- (2) The party producing the documents must provide facilities for inspection and copying of the documents and make available a person able to —
- (a) explain the arrangement used; and
  - (b) assist in locating and identifying particular documents or classes of documents.
- (3) An existing arrangement of documents already in use by a party —
- (a) is not to be disturbed more than is necessary to achieve substantial compliance with subrule (1)(a); and
  - (b) if the party so requires, is not to be disturbed at all.

*[Rule 8A inserted in Gazette 26 Aug 1994 p. 4411-12; amended in Gazette 28 Jun 2011 p. 2552.]*

**9. Order for inspection of documents**

- (1) Where a party who is required by rule 8(1) to serve the notice therein mentioned, or who is served with a notice under rule 8(3) —
- (a) fails to serve the notice under rule 8(1) or as the case may be rule 8(3); or
  - (b) objects to produce any document for inspection; or
  - (c) offers inspection at a time or place which in the opinion of the Court is unreasonable for such purpose,

the Court may on the application of the party entitled to inspection make an order for production of the documents in question for inspection at such time and place, and in such manner as it thinks fit.

- (2) Without prejudice to subrule (1) but subject to rule 11 the Court may on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.
- (3) An application under subrule (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that such documents are in the possession, custody or power of the other party, and relate to a matter in question in the cause or matter.

*[Rule 9 amended in Gazette 28 Jun 2011 p. 2552.]*

**10. Order for production to Court**

At any stage of the proceedings in any cause or matter the Court may subject to rule 11 order any party to produce to the Court any document in his possession, custody or power, relating to

any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

**11. Order for production etc. only if necessary**

No order for production of any documents for inspection or to the Court shall be made unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

**11A. Costs of preparing document to facilitate inspection**

Unless the Court otherwise orders for the purposes of inspection the reasonable costs of supplying a copy of a document in a form in which it is capable of being understood by visual means alone shall be included in the party and party costs in the proceedings.

*[Rule 11A inserted in Gazette 5 Jun 1992 p. 2281.]*

**12. Claim of privilege**

- (1) Where —
  - (a) on an application for production of a document for inspection or to the Court; or
  - (b) in any list of documents supplied on discovery,a party claims privilege the party requiring production or discovery may traverse the claims to privilege by adducing evidence either that the claim to privilege is unfounded or mistaken, but in the absence of any evidence to that effect the claim to privilege shall be sustained.
- (2) In determining any objection on the ground of privilege to the production or discovery of any document or class of document the Court may inspect the document.

**13. Inspection of copies of business books**

Where inspection of any business books is applied for the Court may instead of ordering inspection of the original books order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

*[Rule 13 amended in Gazette 14 Dec 1979 p. 3870.]*

**14. Public interest immunity not affected**

The provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

**15. Non-compliance with requirements for discovery etc.**

- (1) If any party who is required by any of the rules of this Order or by any order made thereunder, to give discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provisions of that rule or with that order, as the case may be, then without prejudice, in the case of a failure to comply with any such provision, to rules 7 and 9(1) the Court may make such order as it thinks just including in particular, an order that the action be dismissed or as the case may be, an order that the defence be struck out and judgment entered accordingly.
- (2) If any party fails to comply with an order for discovery or production of documents then, without prejudice to subrule (1) he shall be liable to attachment.
- (3) Service of an order for discovery or production of documents on the solicitor for the party against whom the order has been made

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shall be sufficient service to found an application to enforce the order, but it shall be an answer to the application if the party shows that he had no notice or knowledge of the order.

- (4) A solicitor on whom an order against his client for discovery or production of documents is served under subrule (3) who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

*[Rule 15 amended in Gazette 28 Oct 1996 p. 5678; 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]*

*[15A. Deleted in Gazette 28 Jul 2010 p. 3471.]*

**16A. Certificate by practitioner**

The practitioner of a party giving discovery must —

- (a) sign a certificate addressed to the Court that —
- (i) states that the duty of discovery has been fully explained to the party; and
  - (ii) if the party is a corporation, identifies the individual, or individuals, to whom the duty was explained;

and

- (b) file the certificate when or immediately after the party's list of documents is served.

*[Rule 16A inserted in Gazette 28 Jul 2010 p. 3471.]*

**16. Revocation and variation of orders**

Any order which has been made under this Order, including an order made on appeal, may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in relation to which the original order was made.



## **Order 26A — Discovery etc. from non-parties and potential parties**

*[Heading inserted in Gazette 28 Oct 1996 p. 5678.]*

### **1. Terms used**

In this Order, unless the contrary intention appears —

***description***, in relation to person who is or may be a potential party, includes the person's name, sex, age, occupation, place of residence, place of business and whether the person is an individual, a body corporate or an unincorporated body of persons;

***document*** has the same definition as in Order 26 rule 1A;

***possession*** includes custody or power.

*[Rule 1 inserted in Gazette 28 Oct 1996 p. 5678.]*

### **2. Public interest immunity not affected**

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

*[Rule 2 inserted in Gazette 28 Oct 1996 p. 5679.]*

### **3. Discovery etc. to identify a potential party**

- (1) This rule applies if a person who appears to have a cause of action against a person (the ***potential party***) wants —
- (a) to commence proceedings against the potential party; or
  - (b) to take proceedings against the potential party in the course of an action to which the person is a party,

but the person, after reasonable enquiries, has not been able to ascertain a description of the potential party sufficient for the purposes of doing so.

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- (2) If there are reasonable grounds for believing that another person (the *non-party*) had, has, or is likely to have had or to have, possession of information, documents or any object that may assist in ascertaining the description of the potential party, the person may apply for an order under this rule.
- (3) The application shall be supported by an affidavit and a copy of both shall be served on the non-party.
- (4) On the application the Court may order the non-party, and if the non-party is a body corporate, a person having the management of the body to do either or both of the following:
  - (a) to give discovery to the applicant of all documents that are or have been in the non-party's possession relating to the description of the potential party;
  - (b) to personally attend the Court to be examined in relation to the description of the potential party.
- (5) If the Court orders a person to personally attend the Court, it may order the person to produce to the Court any document or object in the non-party's possession that relates to the description of the potential party.
- (6) The Court may direct that the examination of the person be by a registrar.
- (7) A person required to personally attend the Court shall be entitled to the like conduct money and payment for expenses and loss of time as on an attendance at a trial in Court.

*[Rule 3 inserted in Gazette 28 Oct 1996 p. 5679-80.]*

**4. Discovery from potential party**

- (1) This rule applies if a person who may have a cause of action against a person whose description has been ascertained (the *potential party*) wants —
  - (a) to commence proceedings against the potential party; or

- (b) to take proceedings against the potential party in the course of an action to which the person is a party,

but the person, after reasonable enquiries, has not been able to obtain sufficient information to enable a decision to be made as to whether to commence or take the proceedings.

- (2) If there are reasonable grounds for believing that the potential party had, has, or is likely to have had or to have, possession of documents that may assist in making the decision, the person may apply for an order under this rule.
- (3) The application shall be supported by an affidavit and a copy of both shall be served on the potential party.
- (4) On the application the Court may order the potential party to give discovery of all documents that are or have been in the potential party's possession and that may assist the applicant in making the decision.

*[Rule 4 inserted in Gazette 28 Oct 1996 p. 5680.]*

## **5. Discovery from non-party**

- (1) If there are reasonable grounds for believing that a person who is not party to an action (the **non-party**) had, has, or is likely to have had or to have, possession of documents that relate to any matter in question in the action, a party to the action may apply for an order under this rule.
- (2) The application shall be supported by an affidavit and a copy of both shall be served on the non-party and the other parties to the action.
- (3) On the application the Court may order the non-party to give discovery of all documents that are or have been in the non-party's possession and that relate to any matter in question in the action.

*[Rule 5 inserted in Gazette 28 Oct 1996 p. 5680-1.]*

**6. Order 26 applies to discovery ordered under this Order**

- (1) A court making an order for discovery under this Order may exercise any of the powers in Order 26 rule 7(3).
- (2) Order 26 applies in relation to any discovery that under this Order is ordered to be given as if it had been ordered under Order 26 rule 7.

*[Rule 6 inserted in Gazette 28 Oct 1996 p. 5681.]*

**7. Costs**

- (1) An order made under this Order may be made on the condition that the applicant give security for the costs and expenses of the person against whom the order is made, both in respect of the application and of complying with the order and with this Order.
- (2) On an application under this Order the Court may make orders as to the costs and expenses —
  - (a) of any person in respect of the application; and
  - (b) of a person against whom an order is made in respect of complying with the order and with this Order.

*[Rule 7 inserted in Gazette 28 Oct 1996 p. 5681.]*

**8. Certificate by practitioner for non-party or potential party**

- (1) This rule applies to these practitioners —
  - (a) the practitioner (if any) who drafts the list of documents, or the affidavit verifying the list, for a non-party who has been ordered under rule 3 or 5 to give discovery;
  - (b) the practitioner (if any) who drafts the list of documents, or the affidavit verifying the list, for a potential party who has been ordered under rule 4 to give discovery.
- (2) This rule does not limit the operation of rule 6(2).

- (3) A practitioner to whom this rule applies must —
- (a) sign a certificate addressed to the Court that —
    - (i) states that the duty of discovery has been fully explained to the non-party or potential party (as the case requires); and
    - (ii) if that party is a corporation, identifies the individual, or individuals, to whom the duty was explained;
  - and
  - (b) file the certificate when or immediately after the list of documents is served.

*[Rule 8 inserted in Gazette 28 Jul 2010 p. 3471-2.]*

## **Order 27 — Interrogatories**

### **1. Notice of and answers to interrogatories**

- (1) Subject to this rule any party may with the leave of the Court serve notice on any other party requiring him to answer specified interrogatories relating to any matter in question between the party interrogating and the party served.
- (2) If the party interrogating so elects in the notice the answers may take the form of a statement signed by the person answering, but otherwise the answers to the interrogatories shall be by a statement verified by affidavit.

*[(3) deleted]*

- (4) A party or person who wilfully makes a false statement in answer to an interrogatory shall be guilty of contempt of court and shall be punishable accordingly.

*[Rule 1 amended in Gazette 24 Jan 1995 p. 270; 28 Oct 1996 p. 5681; 28 Jul 2010 p. 3472.]*

### **2. Answers, time for and manner of giving**

A party required under rule 1 to answer interrogatories shall answer the interrogatories by filing within 14 days of the day on which the interrogatories were served the statement referred to in rule 1(2) and the verifying affidavit, if required, and serving on the interrogating party within the same time a copy of the document, or, as the case may be of each such document filed.

### **3. Interrogatories given to 2 or more parties etc., who has to answer**

Interrogatories served on 2 or more parties or which are required to be answered by an agent or servant of a party shall have a note at the end thereof stating which of such interrogatories each of such persons is required to answer.

**4. Content of answers**

The statement in answer to interrogatories required by or under this Order must deal with each interrogatory specifically, by answering its substance without evasion, or objecting to answer on one or more of the grounds specified in rule 5 and stating briefly the facts on which the objection is taken.

**5. Grounds for objecting to answer**

- (1) A party may object in his statement in answer to interrogatories to answer any interrogatory on one or more of the following grounds —
  - (a) that it is scandalous or irrelevant, not bona fide for the purpose of the proceeding, unreasonable, prolix, oppressive or unnecessary;
  - (b) that the matters inquired into are not sufficiently material at that stage;
  - (c) privilege;
  - (d) any other ground on which objection may be taken.
- (2) Where on an application under rule 7 the Court decides that an objection by the party interrogated to answering an interrogatory is not sufficient or the party interrogated does not object to answering an interrogatory, that party shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

*[Rule 5 amended in Gazette 15 Jun 1973 p. 2248.]*

**6. Answers, who can make**

- (1) A statement or an affidavit verifying a statement in answer to interrogatories may be made as follows —
  - (a) by the party;
  - (b) where the party is the State or an officer of the State sued or suing in his official capacity — by an officer of the State;

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- (c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person — by a member or officer of the corporation or body.
- (2) In the case of an order against any party to which subrule (1)(b) or (c) applies the order shall specify the person who is to comply with the order on behalf of the party.
- (3) Subject to subrule (2) a party to which subrule (1)(b) or (c) applies shall in relation to each interrogatory choose a person to make the statement (and verifying affidavit, if required) who is qualified under subrule (1)(b) or (c), as the case may be, and has knowledge of the facts.

*[Rule 6 amended in Gazette 19 Apr 2005 p. 1298; 28 Jun 2011 p. 2552 and 2554.]*

**7. Failing to answer or to answer sufficiently**

If any person on whom interrogatories have been served fails, within the prescribed time or within such other time as the Court may allow, to answer the interrogatories or answers any of them insufficiently, the Court may make an order requiring him to answer or answer further as the case may be, by a statement verified by affidavit or may order him or any of the persons mentioned in rule 6(1)(b) or (c) as the case may require to attend for oral examination.

**8. Non-compliance with order under r. 7**

- (1) If any party against whom an order is made under rule 7 fails to comply with it, the Court may make such order as it thinks just including in particular an order that the action be stayed or dismissed, or as the case may be, an order that the defence be struck out and that judgment be entered accordingly.
- (2) Any party who fails to comply with an order made against him under rule 7 shall, without prejudice to subrule (1), be liable to attachment.



- (3) Service of an order to answer interrogatories or to make a further answer, on the solicitor for the party against whom the order has been made shall be sufficient service to found the application to enforce the order, but it shall be an answer to the application if the party shows that he had no notice or knowledge of the order.
- (4) A solicitor on whom an order to answer interrogatories or make further answer is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

*[Rule 8 amended in Gazette 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]*

**9. Use of answers in evidence**

At the trial of a cause or matter or of any issue therein, a party may tender as evidence some only of the answers to interrogatories, or part only of such an answer without tendering the others or the whole of such answer: provided that the Court may look at the whole of the answers and if of opinion that any other answer or any other part of an answer is so connected with an answer or part of an answer which has been tendered, that the matter tendered ought not to be used without that other answer or part, the Court may reject the matter tendered unless the other answer or part is also tendered.

**10. Revoking and varying orders**

Any order which has been made under this Order including an order made on appeal, may on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in relation to which the original order was made.

## **Order 28 — Medical examination: Inspection of physical objects**

### **1. Medical examination of a party**

- (1) Where it becomes material in any cause or matter before the Court to consider the question of the physical or mental condition of any party, any opposing party may serve on such first-mentioned party a notice to submit himself for examination at a specified time and place by a medical practitioner provided and paid by the party requiring the examination. At any such examination a medical adviser chosen by the party to be examined shall be entitled to be present if the party so desires.
- (2A) Where the party objects to complying with the notice, or in default of agreement as to the time and place of the examination, or if any matter shall arise in relation to such examination, either party may apply to the Court for an order as to whether or not the objecting party shall submit himself for examination, or as to when and where such examination may be made, or as to any other matters to facilitate the examination.
- (2B) If the Court is of opinion that either party has been unreasonable in the matter it may order that party to pay the costs of the application and any other costs unnecessarily incurred in consequence.
- (2) A reasonable sum to cover the travelling and other expenses of the party to be examined of and incidental to the examination, including the expenses of having the medical adviser chosen by him attend the examination, shall on demand be paid to the party to be examined by the party requiring the examination.
- (3) If any party fails to submit himself for examination as required by this rule, or in any way obstructs the examination, the Court may order that the proceedings be stayed, either wholly or in part, until the examination has taken place, or that any pleading be struck out.

- (4) The examining medical practitioner shall make a written report of his examination to the party who required the examination and that party shall serve on the party who has been examined a full and true copy of such report.
- (5) If default be made for one week in serving the copy mentioned in subrule (4) or if the party examined alleges that the report is insufficient or incomplete, such party may obtain an order for service of the report or of a further and better report and the Court may direct that if the order be not complied with within a time to be therein specified the claim or defence be struck out or the proceedings be stayed. Unless otherwise directed the costs of obtaining such order shall be borne by the party in default.
- (6) In this rule the expression *party* includes a person for whose benefit an action is brought pursuant to the *Fatal Accidents Act 1959*.

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552 and 2554.]*

## **2. Inspection of physical objects**

- (1) Where one party alleges that another party to any cause or matter has in his possession or control some physical object, not in the nature of a document, the inspection of which is material for the proper presentation of his case such first-mentioned party may by notice in writing require the other to permit inspection by the party requiring it with, or without, his solicitor or expert adviser.
- (2) The party required to permit inspection shall nominate a time and place for inspection. In default of agreement as to the time and place, or if any matter shall arise in relation to such inspection, either party may apply to the Court for an order specifying how and when and where such inspection may be made.
- (3) If the Court is of opinion that either party has been unreasonable in relation to the matter it may order that party to pay the costs

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of the application, and any other costs unnecessarily incurred in consequence.

## Order 29 — Directions

*[Heading inserted in Gazette 28 Jul 2010 p. 3464.]*

### 1. Summons for directions

- (1) Any party in a cause or matter may apply for directions —
  - (a) at any time before entry for trial; or
  - (b) with the leave of the Court, after entry for trial.
- (2) If the defendant in a cause or matter is required to appear in the proceedings, an application for directions cannot be made before the defendant has entered an appearance.
- (3) An application for directions must —
  - (a) be made by summons; and
  - (b) specify the directions or orders sought.
- (4) So far as practicable, a party applying for directions must apply for any direction or order the party thinks is necessary in relation to any matter capable of being dealt with on an interlocutory application in the cause or matter.
- (5) An application for directions must not apply for directions that amend or cancel or are inconsistent with a case management direction made under Order 4A.
- (6) A party applying for directions must give each other party 2 clear days' notice specifying any directions and orders which differ from the directions or orders sought in the application.
- (7) An application made under this rule is called a summons for directions.

*[Rule 1 inserted in Gazette 28 Jul 2010 p. 3464-5.]*

### 2. Directions hearings

- (1) At the hearing of a summons for directions, the parties and their advisers must give such information and produce such

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documents as the Court may reasonably require, unless the information or documents are subject to privilege.

- (2) The Court shall adjourn the hearing from time to time until the conclusion of the cause or matter.
- (3) At any time after the hearing of a summons for directions is adjourned and before judgment, a party may ask for the hearing to be relisted and —
  - (a) for any direction or order capable of being made on an interlocutory application;
  - (b) for a case management direction to be made under Order 4A;
  - (c) to have a case management direction made under Order 4A amended or cancelled.
- (4) The request must be made by giving a letter that —
  - (a) asks for the hearing to be relisted; and
  - (b) details the direction or order sought,

to the associate to the case manager of the case or, if the case manager is not known, the Principal Registrar.

*[Rule 2 inserted in Gazette 28 Jul 2010 p. 3465.]*

**[3-6.**    *Deleted in Gazette 28 Jul 2010 p. 3464.]*

*[Order 29A deleted in Gazette 28 Jul 2010 p. 3465.]*

## **Order 30 — Admissions**

### **1. Admission of other party's case**

Without prejudice to Order 20 rule 14 any party to a cause or matter may give notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of any other party.

### **2. Notice to admit facts**

- (1) A party to a cause or matter may by notice in writing at any time not later than 7 days before the day for which notice of trial has been given or which has otherwise been appointed for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, a fact or facts specified in the notice.
- (2) Any admission made in pursuance of a notice to admit facts shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made, or in favour of any person other than the person by whom the notice was given.
- (3) The Court may at any time allow a party to amend or withdraw an admission made under this rule on such terms as may be just.

### **3. Judgment on admissions**

- (1) Where admissions of fact have been made on the pleadings or otherwise, any party may at any stage of a cause or matter apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may on such application make such order or give such judgment as the Court thinks just.
- (2) An application under this rule may be made on motion or by summons.

**4. Admissions as to and production of documents**

- (1) A party on whom a list of documents is served in pursuance of any provision of Order 26 (which relates to the discovery and inspection of documents) shall unless the Court otherwise orders, and without prejudice to his right to object to the admission in evidence of any document, be deemed to admit —
  - (a) that a 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 a document if described in the list as a copy, is a true copy.
- (2) Subrule (1) does not apply —
  - (a) to a document the authenticity of which has been denied by a party in his pleading; or
  - (b) to a document concerning which a party within 14 days after the time limited under Order 26 for inspection serves on the party giving inspection, a notice that he disputes the authenticity of that document.
- (3) Where a party serves on any other party a list of documents in pursuance of Order 26 the party serving the list shall be deemed to have been served on the date of service of the list, with a notice requiring production by him at the trial of the cause or matter, of such of the documents specified in the list as are in his possession, custody or power.
- (4) Subrules (1), (2) and (3) apply in relation to an affidavit made in compliance with an order under Order 26 rule 6, as they apply to a list of documents served under that Order.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2552.]*



**5. Notice to admit authenticity of documents; notice requiring production of documents at trial**

- (1) A party to any proceedings may serve on any other party a notice requiring him to admit for the purpose of those proceedings only, the authenticity of the documents specified in the notice, and the notice must specify a reasonable time and place for inspection.
- (2) If, in relation to any document specified in the notice, the party on whom a notice under subrule (1) is served does not within 7 days after the time limited for inspection serve on the party giving the notice, a notice disputing the authenticity of the document, its authenticity shall, unless the Court otherwise orders, be deemed to be admitted by the party on whom the notice under subrule (1) is served.
- (3) Except where rule 4(3) applies, a party to any proceedings may serve on any other party a notice requiring him to produce at the trial or hearing the documents specified in the notice.

*[Rule 5 amended in Gazette 28 Jun 2011 p. 2552.]*

## **Order 31 — Special cases and stated cases**

### **1. Questions of law, stating of in special case**

- (1) The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court or of the Court of Appeal.
- (2) The special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised by the special case.
- (3) Upon the argument of the case the Court and the parties may refer to the whole contents of the documents stated.

*[Rule 1 amended in Gazette 15 Jun 1973 p. 2248; 29 Apr 2005 p. 1795.]*

### **2. Preliminary question of law, orders as to**

- (1) If it appears to the Court that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court may deem expedient.
- (2) All such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

### **3. Preparing special case**

- (1) Every special case shall be prepared by the plaintiff or the party having the carriage of the proceedings and shall be signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff or the party having carriage of the proceedings.

- (2) At least 14 days before the day appointed for argument the plaintiff or the party having the carriage of the proceedings shall lodge at the Central Office copies of the special case for the use of the judge or judges hearing the argument, and in default thereof the other party may on the day following, lodge such copies.

**4. Special case affecting person under disability, leave needed to enter for argument**

- (1) A special case in any cause or matter to which a person under disability is a party shall not be set down for argument without the leave of the Court.
- (2) An application for leave under subrule (1) shall be supported by sufficient evidence that the statements contained in the special case, so far as they affect the interest of the party under disability, are true.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2552.]*

**5. Entering special case for argument**

- (1) Either party may enter a special case for argument before the Court, by filing a memorandum of entry, and if a person under disability is a party, by producing an office copy of the order giving leave to enter the same for argument.
- (2) On the day on which a special case is entered for argument the party entering it shall serve notice of the entry on all other parties.

**6. Agreement as to payment of money and costs**

- (1) The parties to a special case may, if they think fit, enter into an agreement in writing that, on the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court or in such manner as

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the Court may direct, shall be paid by a party to another party, either with or without costs of the cause or matter.

- (2) The judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

**7. Reference of case to Court of Appeal (Act s. 58(1)(d))**

A judge may order that a special case which has been set down for hearing before the Court shall be argued before the Court of Appeal.

*[Rule 7 amended in Gazette 29 Apr 2005 p. 1795.]*

**8. Cases stated to Court (not Court of Appeal) by other courts etc.**

- (1) This rule applies to cases not stated in the Court and to cases stated by any tribunal which is empowered or may be required to state a case on a question of law for determination by or the opinion of the Court.
- (1a) This rule does not apply to a case stated by a tribunal which is empowered or may be required to state a case on a question of law for determination by or the opinion of the Court of Appeal.
- (2) Every case to which this rule applies shall be entered for argument before the Court, and any party may file the memorandum of entry, and the party making the entry shall on the same day serve on all other parties a copy of the case and notice of the entry.
- (3) Rule 1(3), rule 3(2) and rule 7 shall apply to cases under this rule as they apply to special cases stated in the Court.
- (4) On the hearing of the case, the Court may order it to be sent back to the tribunal for amendment with such directions (if any) as the Court thinks fit.

- (5) The proper officer shall notify the tribunal of the decision of the Court on the case, and of any directions given by that Court thereon.
- (6) In this rule *tribunal* includes any authority or person which or who is empowered or may be required to state a case for determination by or the opinion of the Court.

*[Rule 8 amended in Gazette 29 Apr 2005 p. 1791-2.]*

*[Order 31A deleted in Gazette 28 Jul 2010 p. 3466.]*

## **Order 32 — Place and mode of trial**

### **1. Trial in circuit town**

Where the plaintiff proposes that the action be tried elsewhere than in Perth, he shall name in his writ the circuit town at which he proposes that it shall be tried and the action shall, unless the Court otherwise orders, be tried at sittings of the Court at that town.

*[Rule 1 inserted in Gazette 27 Aug 1976 p. 3223.]*

### **2. Application for trial by jury**

The application for an order for the trial by a jury of any cause or matter, or of any issue of fact, shall be made not later than 7 days after the cause, matter, or issue has been entered for trial.

### **3. Usual mode of trial, other modes**

In every cause or matter, unless an order for trial with a jury has been made, the mode of trial shall be by a judge without a jury, but in any such case the Court may at any time order that any cause, matter, or question or issue of fact shall be tried by a judge with a jury, or by a judge sitting with assessors, or by a referee with or without assessors.

### **4. Time of trial of questions or issues**

The Court may order that any question or issue arising in a cause or matter whether of law or fact or partly of law and partly of fact, and whether raised by the pleadings or by agreement of the parties or otherwise be tried separately from any other question or issue whether before at or after the trial or further trial of the proceedings, and may direct that a case and the question or issue for decision be stated.

**5. Issues may be tried differently**

In any cause or matter the Court may at any time, or from time to time, order that different questions or issues arising therein be tried at different places or by different modes of trial, and that one or more questions or issues be tried before the others.

**6. Trial with jury to be by single judge**

A trial of a question or issue of fact with a jury shall be by a single judge.

**7. Disposal of action**

Where the decision of a question or issue under this Order —

- (a) substantially disposes of the cause or matter; or
- (b) renders unnecessary the trial or further trial of the cause or matter,

the Court may dismiss the cause or matter or give such judgment or make such other order as the nature of the case requires.

**8. Trial by jury, precepts for etc.**

If an order for trial by jury is made, Part 13 of the *Criminal Procedure Rules 2005*, with any necessary changes, applies for the purposes of the *Juries Act 1957* and its application to the trial.

*[Rule 8 inserted in Gazette 29 Apr 2005 p. 1801.]*

## **Order 33 — Entry for trial**

### **1. When cause etc. can be entered for trial**

Subject to rule 8, a cause, matter or issue may be entered for trial by the plaintiff —

- (a) when the pleadings are closed; or
- (b) at any time after the issues of fact have been stated; or
- (c) in the case of trial on affidavit, after the time for closing the evidence has expired.

### **2. If plaintiff does not enter cause etc. for trial, other party may act**

- (1) Where the plaintiff neglects to enter the cause, matter or issue for trial, any party on the record who is entitled to be heard generally or on any issue may —
  - (a) subject to rule 8, enter the cause, matter or issue for trial; or
  - (b) apply to the Court for an order dismissing the cause or matter for want of prosecution so far as concerns the plaintiff's claim or the issue raised by the plaintiff against the party so applying.
- (2) On an application to dismiss the cause or matter for want of prosecution, the Court may make such order as may be just either dismissing the claim or striking out the issue or permitting it to go to trial with or without the imposition of terms.
- (3) For the purpose of this rule, the plaintiff has neglected to enter a cause, matter or issue for trial where he does not make the entry within 4 weeks after the requirements of rule 1(a), (b) or (c) (whichever shall be applicable) have been satisfied.

### **3. Notice of entry**

- (1) A party who has entered a cause, matter or issue for trial shall on the day of entry give notice thereof in writing to every party



on the record who is entitled to be heard generally or on any issue.

- (2) This rule does not affect the provisions of Order 13 rule 7(2) and (3).

**4. Form of entry for trial**

- (1) The entry for trial and notice of trial shall state whether it is for the trial of the cause or matter or of an issue therein and shall state the place of trial.
- (2) Entry for trial and notice of trial shall be in such form and contain such information as the Chief Justice shall direct from time to time.

**5. Time to elapse before hearing**

A cause, matter or issue shall not be tried before the expiration of 14 days from the day of entry unless the party to whom notice of trial is given has consented or is under terms to accept shorter notice of trial, or the Court otherwise orders.

**6. Trial dates for Perth**

Entry for trial at the civil sittings in Perth shall not operate for any particular sittings, but shall be deemed to be for the day fixed by the proper officer, or by order of the Court.

**7. Trial dates for circuit courts**

Entry for trial in a circuit court shall be for the first sittings to be held 28 days next after the entry is made, unless the Court otherwise orders.

*[Rule 7 amended in Gazette 24 Jun 1977 p. 1914.]*

**8. Certificate of readiness for trial required**

- (1) A party shall not enter a cause or issue for trial unless he is ready for trial and has filed a certificate of readiness.

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- (2) The certificate referred to in subrule (1) —
- (a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and
  - (b) shall be signed personally and in his own name by the solicitor for the party making the entry or by that party where he is not represented by a solicitor.
- (3) A copy of the certificate shall be served with the notice of trial.  
*[Rule 8 amended in Gazette 28 Jun 2011 p. 2552.]*

**8A. Affidavit of service of notice of entry for trial**

Within 7 days of filing a notice of entry for trial, the party entering the cause, matter or issue for trial shall file an affidavit of service of the notice of entry on all the other parties on the record, unless all the other parties have filed a certificate acknowledging receipt of the notice of entry.

*[Rule 8A inserted in Gazette 29 Jun 1993 p. 3167.]*

**8B. Application for adjournment of trial etc. after entry**

- (1) After a cause, matter or issue has been entered for trial an application for —
- (a) adjournment of the trial; or
  - (ab) an order under rule 9 countermanding the entry; or
  - (b) amendment of pleadings; or
  - (c) an interlocutory application,

must only be made to the judge in charge of the Civil List or his or her nominee unless the cause, matter or issue is on the CMC List under Order 4A, in which case the application must only be made to the case manager of the cause, matter or issue.

*[(2) deleted]*

*[Rule 8B inserted in Gazette 29 Jun 1993 p. 3167; amended in Gazette 28 Oct 1996 p. 5694; 28 Jul 2010 p. 3466.]*

**9. Countermanding entry**

- (1) Within 14 days after a party has entered a cause, matter or issue for trial and has served notice of trial, any other party on the record who is entitled to be heard generally or on any issue may apply by summons on 2 clear days' notice to the party who has made the entry for an order countermanding the entry.
- (2) Unless otherwise ordered, the summons filed should be supported by affidavit or affidavits.
- (3) A party entitled to apply for an order under subrule (1) who has failed to apply successfully for such an order within the time limited thereby shall be deemed to be ready for trial.
- (4) Where a party (whether applicant or respondent) is represented by a solicitor, that solicitor, or another solicitor who is conversant with the matter, shall attend personally on the return of the summons. It shall not be sufficient for a clerk in the solicitor's employment to attend on his behalf.
- (5) On the return of the summons the Court may countermand the entry or allow it to stand, or direct that the entry take effect upon the happening of certain events or at the expiration of such period as it may fix; or it may make such other order or give such other direction as it thinks proper.
- (6) Unless otherwise ordered the costs of the summons shall be costs in the cause.
- (7) This rule does not affect the provisions of rule 11(1).

*[Rule 9 amended in Gazette 9 Nov 1973 p. 4164; 30 Nov 1984 p. 3951; 29 Jun 1993 p. 3167; 28 Oct 1996 p. 5695; 28 Jun 2011 p. 2552.]*

**10. After entry no interlocutory applications without leave**

- (1) Where a cause, matter or issue has been entered for trial, no further interlocutory applications shall be made by a party for or in relation to any of the following matters —

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- (a) amendment of pleadings or filing of further pleadings; or
- (b) joinder or substitution of parties; or
- (c) particulars; or
- (d) interrogatories, discovery or inspection or the disclosure or non-disclosure of expert evidence; or
- (e) taking of evidence before a special examiner or on commission,

without the leave of the Court.

- (2) Subrule (1) does not limit the power of the judge at the trial to make orders for or in relation to any of the matters referred to in that subrule.

*[Rule 10 amended in Gazette 13 Oct 1978 p. 3698; 28 Jun 2011 p. 2552.]*

**11. No withdrawal from list after date fixed except by leave**

- (1) At any time before a date of trial has been fixed, entry for trial may be countermanded by leave of the Court on terms as to costs or otherwise as may appear just.
- (2) Once a date of trial has been fixed, no withdrawal from the list or adjournment shall be made except by order of the Court; but an action that has been settled may be withdrawn from the list upon production to the proper officer before the trial commences of a consent in writing signed by the parties.

*[Rule 11 amended in Gazette 29 Jun 1993 p. 3167.]*

**12. Fixing dates of trial**

- (1) Subject to any order of the Court, dates of hearing of all causes, matters and issues shall be fixed by the proper officer in accordance with the practice of the Court.

*[(2) deleted]*

- (3) Nothing in this Order shall prejudice any powers of the Chief Justice to give directions —
- (a) specifying the lists in which causes, matters or issues or causes, matters or issues of any class or description, are to be entered for trial; and providing for the keeping and publication of the lists; and
  - (b) providing for the fixing of a date for the trial of any cause, matter or issue that has been entered; and
  - (c) as to the making of applications (whether to a Court or a judge or to an officer of the Court) to fix, vacate or alter any such date and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information; and
  - (d) providing for the holding of callovers of causes, matters and issues which have been entered for trial but in respect of which dates of hearing have not been fixed.

*[Rule 12 amended in Gazette 15 Jun 1973 p. 2248; 9 Nov 1973 p. 4164; 28 Jul 2010 p. 3482.]*

**13. Re-listing adjourned trial**

- (1) Any trial adjourned for further consideration may be re-listed for hearing on the written request of the party having the conduct thereof or of any other party entitled to bring the same on for hearing, or on the order of a judge.
- (2) Where the further consideration is requested by a party he shall on the day of making such request obtain an appointment for further consideration not less than 10 days ahead and on the same day shall give notice thereof to the other parties on the record.
- (3) Any such request may be in Form No. 19 and any such notice may be in Form No. 20 with such variations as the circumstances may require.

**14. Papers for the judge**

- (1) The party making an entry for trial shall deliver to the proper officer 2 copies in book form (one of which shall be for the use of the judge at the trial) of each of the following documents —
  - (a) the pleadings and any affidavits ordered to stand as pleadings; and
  - (b) any request or order for particulars and the particulars given; and
  - (c) any order for directions made under Order 19 rule 4; and
  - (d) where an issue in an action is being entered, any order relating to the trial of that issue.
- (2) Where the pleadings are amended after entry for trial but before trial then, subject to any order of the Court the party who made the entry shall forthwith after the filing of the amended pleading, or of any further pleading filed in consequence of the first amendment, file 2 further copies of the whole of the pleadings as amended.
- (3) Where the pleadings are amended at trial a party shall, if so ordered, file 2 further copies of the whole of the pleadings as amended.
- (4) All copies of pleadings required by this rule to be delivered or filed must be clear copies of the pleadings as amended, with a suitable notation of the date or dates of any amendments.
- (5) The party filing copies of pleadings (including copies of the pleadings as amended) shall on the day of filing or on the next following day serve a copy thereof on each of the other parties on the record.
- (6) The costs of preparation, filing and serving of further copies of pleadings shall be in the discretion of the judge at trial and shall not be allowed without a certificate of the judge.

*[Rule 14 amended in Gazette 10 Jan 1975 p. 50.]*

## **Order 34 — Proceedings at trial**

### **1. Absence of both parties at trial**

If, when the trial of an action is called on, neither the plaintiff nor the defendant appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

### **2. Absence of one party at trial**

If, when a trial is called on, one party does not appear the judge may proceed with the trial of the action or of any counterclaim in the absence of that party.

### **3. Setting aside judgment given in absence of party**

Any judgment, order, or verdict obtained where one party does not appear at the trial may be set aside by the Court upon such terms as the Court thinks just upon application made within 14 days after the trial.

### **4. Adjournment of trial**

The judge may if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

### **5. Conduct of trial**

- (1) The Court (whether the trial is with or without a jury) may give directions as to the party who is to begin and the order of addresses at the trial, and subject to any such directions, the party to begin and the order of addresses shall be as provided by the following subrules.
- (2) Except in cases where the burden of proof of all issues rests with the defendant, the plaintiff shall open his case and adduce evidence.

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- (3) If at the conclusion of the evidence for the party who begins, the opposite party elects to adduce no evidence, the party who begins may make an address closing his case, and the opposite party may make an address stating his case.
- (4) If at the conclusion of the evidence for the party who begins, the opposite party elects to adduce evidence, he may open his case, and after adducing his evidence, he may make a second address closing his case, and the party who begins may then make an address closing his case.
- (5) At the conclusion of all the evidence at a trial, the Court may direct the parties to submit written submissions instead of or as adjuncts to their closing addresses.

*[Rule 5 amended in Gazette 28 Oct 1996 p. 5695; 28 Jun 2011 p. 2552-3.]*

**5A. Time etc. limits at trial**

- (1) A judge may at any time by direction —
  - (a) limit the time to be taken in examining, cross-examining or re-examining a witness;
  - (b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;
  - (c) limit the time to be taken in making any oral submission;
  - (d) limit the time to be taken by a party in presenting its case;
  - (e) limit the time to be taken by the trial;
  - (f) amend any such limitation.
- (2) In deciding whether to make any such direction, a judge shall have regard to these matters in addition to any other matters that may be relevant:
  - (a) the time limited for a trial must be reasonable; and
  - (b) any such direction must not detract from the principle that each party is entitled to a fair trial; and



- (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses; and
- (d) the complexity or simplicity of the case; and
- (e) the number of witnesses to be called by the parties; and
- (f) the volume and character of the evidence to be led; and
- (g) the state of the Court lists; and
- (h) the time expected to be taken for the trial; and
- (i) the importance of the issues and the case as a whole.

*[Rule 5A inserted in Gazette 28 Oct 1996 p. 5695-6.]*

**6. Evidence in mitigation of damages in libel or slander**

In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

**7. Inspection by judge or jury**

- (1) The judge before whom any cause or matter is heard or tried may inspect any property, place or thing concerning which a question arises in the cause or matter.
- (2) Where a cause or matter is tried with a jury, and the judge inspects any property, place or thing under subrule (1), he may authorise the jury to inspect it also.

*[Rule 7 amended in Gazette 28 Jun 2011 p. 2552.]*

**8. Judgment at or after trial**

The judge may, at or after trial, direct that judgment be entered as he shall think right, or he may adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after trial without the order of a Court or judge.

**9. Record of proceedings**

The associate or other officer present at any hearing or trial shall maintain and complete a record of proceedings at the trial in a form providing for such particulars as the Chief Justice may from time to time direct.

**10. Where time occupied by trial excessive**

- (1) The judge may, if he considers the time occupied at a hearing or trial has been excessive, certify what time should have been so occupied, and that certificate shall be final.
- (2) The certificate of a judge under subrule (1) shall be communicated to the taxing officer by the associate or other officer as the case may be.

*[Rule 10 amended in Gazette 28 Jun 2011 p. 2552.]*

**11. Entry of findings of fact on trial**

Upon every hearing or trial the associate or other officer shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

**12. Certificate for entry of judgment**

- (1) If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate or other officer to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in such

form and contain such information as the senior master may direct.

- (2) If the judge directs that a judgment be entered for a party subject to leave to move, judgment shall be entered accordingly upon the filing of the certificate of the associate or other officer.

*[Rule 12 amended in Gazette 13 Oct 1978 p. 3698; 30 Nov 1984 p. 3952.]*

### **13. Exhibits**

- (1) The associate shall take charge of and mark every document or object put in as an exhibit during the trial of an action, and shall make a list of the exhibits which shall form part of the record.
- (2) A bundle of documents put in evidence may be treated and marked as one exhibit.

*[Rule 13 amended in Gazette 13 Oct 1978 p. 3698.]*

### **14. Return of exhibits**

- (1) This rule does not apply to or in respect of any record or thing that forms part of the Court's record.
- (2) After judgment in an action is given, a registrar must, unless the Court has ordered otherwise —
  - (a) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and
  - (b) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court.
- (3) A registrar must not act under subrule (2) until —
  - (a) the time for commencing an appeal against the judgment expires; and

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- (b) any appeal commenced before that time expires is decided, dismissed or discontinued.
- (4) Despite subrule (3), a registrar —
  - (a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or
  - (b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —
    - (i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or
    - (ii) it is necessary for that person to have use of the record or thing.
- (5) If under subrule (4)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to give a written undertaking to the Court as to the care, maintenance and custody of it and its re-delivery to the Court.
- (6) If a record or thing remains in the possession of the Court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a judge may order a registrar to destroy it or dispose of it in some other way.

*[Rule 14 inserted in Gazette 21 Feb 2007 p. 539.]*

*[15. Deleted in Gazette 21 Feb 2007 p. 539.]*

**15A. Return of document etc. to non-party who produced it under subpoena**

- (1) A party to an action who subpoenas a document or object, belonging to a person not a party to the action, which was —
  - (a) marked for identification but not tendered; or
  - (b) neither marked nor tendered,

in the action must, at the completion of the hearing of the action, uplift the document or object forthwith and return it to the person named in the subpoena.

*[Rule 15A inserted in Gazette 1 Mar 1994 p. 785.]*

*[15B. Deleted in Gazette 21 Feb 2007 p. 539.]*

**16. Death of party before judgment is given**

- (1) Where a party dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given and entered notwithstanding the death of that party.
- (2) Subrule (1) does not affect the power of the Court to make orders under Order 18 rule 7(2).

*[Rule 16 amended in Gazette 28 Jun 2011 p. 2552.]*

**17. Impounded documents**

Impounded documents while in the custody of the Court are not to be parted with and are not to be inspected, except on the order of a judge or in case of documents impounded on the order of the Court of Appeal by an order of that Court. Such documents shall not be delivered out of the custody of the Court except upon an order made on motion in open court.

*[Rule 17 amended in Gazette 29 Apr 2005 p. 1795.]*

**18. Assessment of damages by master**

- (1) This rule applies where the Court orders that the amount of damages for which final judgment is to be entered shall be assessed by a master.
- (2) The attendance of witnesses and the production of documents before the master may be compelled by subpoena.
- (3) The master may adjourn the inquiry from time to time.

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- (4) The master shall certify by indorsement upon the order by which the question is referred to him, the amount of damages found by him and shall deliver the order with such indorsement to the person entitled to the damages.
- (5) Such and the like proceedings may thereupon be had as to entering judgment, taxation of costs, and otherwise, as upon the finding of a jury upon an issue.
- (6) The directions as to service on the defendant of notice of the day fixed for the assessment of damages contained in Order 13 rule 7 shall apply mutatis mutandis to an assessment or inquiry under this rule.

*[Rule 18 amended in Gazette 9 Nov 1973 p. 4162; 30 Nov 1984 p. 3951.]*

**19. Damages to time of assessment**

- (1) Where damages are to be assessed in respect of —
  - (a) any continuing cause of action;
  - (b) repeated breaches of recurring obligations;
  - (c) intermittent breaches of a continuing obligation,

the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the proceedings were begun.

- (2) Subrule (1) applies to the assessment of damages under this Order or otherwise.

*[Rule 19 amended in Gazette 28 Jun 2011 p. 2552.]*

**20. Writ of inquiry not to be used**

No writ of inquiry as to damages shall be issued in any cause or matter.

## **Order 35 — Assessors and referees**

**1. Trial with assessors**

Trials with assessors shall take place in such manner and upon such terms as the Court shall direct.

**2. Trial before referee**

Where any cause or matter, or any question or issue of fact in any cause or matter, is referred to a referee for trial, he may, subject to the order of the Court, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court, proceed with the trial from day to day, in a similar manner as in actions tried with a jury.

**3. Evidence before referee**

Subject to any order by the Court ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner as nearly as circumstances will admit, as trials are conducted before a judge.

**4. Authority of referee**

Subject to any such order as is mentioned in rule 3, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a judge of the Court.

**5. Referee cannot order imprisonment**

Nothing in these rules contained shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise.

**6. Referee may submit question to Court**

The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

**7. Notice of referee's report**

Whenever a report is made by a referee he shall cause notice thereof to be served forthwith on all parties to the trial or reference.

**8. Adoption etc. of referee's report in adjourned case**

Where the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court to adopt the report, or without leave of the Court to give not less than 4 days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

**9. Adoption etc. of referee's report where case not adjourned**

Where the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, any party may, by an 8 days' notice of motion, apply



to the Court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

**10. Costs**

Where the whole of any cause or matter is referred to a referee under an order of the Court, he may, subject to any directions in the order, exercise the same discretion as to costs as the Court could have exercised.

**11. Application of this Order to other references**

- (1) Subject to this rule, rules 2 to 10 apply where a cause or matter or a question or issue of fact therein is referred to a master, a registrar, or to a special referee or arbitrator.
- (2) Rule 9 does not apply in relation to a reference to a master.
- (3) The provisions of rule 2 as to sitting from day to day do not apply where the reference is to a master or to a registrar.

*[Rule 11 inserted in Gazette 2 Jul 1982 p. 2316; amended in Gazette 30 Nov 1984 p. 3951.]*

## **Order 36 — Evidence: General**

### **1. Facts to be proved usually by oral evidence in open court**

Subject to these rules and to the provisions of the *Evidence Act 1906*, and any other Act relating to evidence, any fact required to be proved at the trial of any action by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

### **2. Evidence by affidavit**

- (1) The Court may, before or at the trial or hearing of an action, order that all or any of the evidence therein shall be given by affidavit if the Court thinks that in the circumstances of the case it is reasonable so to order.
- (2) An order under subrule (1) may be made on such conditions as the Court may think reasonable and in particular may give directions as to the filing and serving of the affidavits and the production of the deponents for cross-examination, but subject to such directions and any subsequent order of the Court, the deponents shall not be subject to cross-examination.
- (3) Subject to these rules, evidence may be given by affidavit upon any originating summons, originating motion or petition, and on any application made by motion or summons, but the Court may order the attendance for cross-examination of the person making any such affidavit, and if such person fails to attend his affidavit shall not be used in evidence without the leave of the Court.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

### **3. Evidence of children etc. (*Evidence Act 1906 s. 106S*)**

- (1) This rule applies to applications pursuant to section 106S of the *Evidence Act 1906*.
- (2) Except with leave of the Court any application for an order or direction pursuant to section 106S of the *Evidence Act 1906*

shall be made by summons returnable in chambers at least 14 days before trial.

- (3) The summons shall set out the order or the direction sought and shall be supported by an affidavit deposing to the grounds upon which the order or directions are sought.

*[Rule 3 inserted in Gazette 30 Oct 1992 p. 5310-11.]*

**4. Reception of plans etc. in evidence**

Unless before or at the trial the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the trial the parties, other than the party who intends to produce it, are given the opportunity to inspect it and to agree to its admission without further proof.

**5. Orders under r. 2 or 4 may be revoked or varied**

An order under rules 2 and 4, including an order made on appeal, may on sufficient cause being shown be revoked or varied by a subsequent order of the Court made before or at the trial.

*[Rule 5 amended in Gazette 13 Oct 1978 p. 3698.]*

**6. Trials of issues etc., evidence in**

Rules 1 to 5 apply to trials of issues or questions of fact or law, and assessments of damages as they apply to the trial of actions.

*[Rule 6 amended in Gazette 28 Jun 2011 p. 2554.]*

**7. Depositions as evidence**

- (1) A deposition taken in any cause or matter shall not be received in evidence at the trial or hearing of the cause or matter unless the deposition was taken pursuant to an order under Order 38 rule 1, and —

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- (a) the party against whom the deposition is tendered consents; or
  - (b) the deponent is dead or beyond the jurisdiction of the Court or is unable through sickness or other infirmity to attend the trial.
- (2) Where a party intends to use a deposition in evidence at the trial of a cause or matter, he must notify the other party of his intention a reasonable time before the trial begins.
- (3) A deposition purporting to be certified under the hand of the person before whom it was taken shall be receivable in evidence without proof that the signature is the signature of that person.

**8. Court documents admissible in evidence**

- (1) Office copies of writs, records, pleadings and documents filed in the Court shall be admissible in evidence in any cause or matter, and between all persons and parties to the same extent as the original would be admissible.
- (2) Subject to the provisions of any Act every document purporting to be sealed with a seal of the Central Office shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in or issued out of the Court, shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

**9. Evidence at trial may be used in subsequent proceedings**

All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

**10. Evidence in another cause**

An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court, to be obtained at the time of making any such

application, and in any other case upon the party desiring to use such evidence giving 2 days' previous notice to the other parties of his intention to read such evidence.

**11. Production of documents**

The Court may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court may think fit to be produced: provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

*[12-15, 15A, 16, 16A, 17-19. Deleted in Gazette 21 Feb 2007 p. 540.]*

**20. Interest for purposes of Act s. 32**

When computing interest for the purposes of section 32 of the Act, subject to any evidence adduced, the Court may use, as a guide, the rate of interest prescribed from time to time for the purposes of section 8 of the *Civil Judgments Enforcement Act 2004*.

*[Rule 20 inserted in Gazette 26 Aug 1994 p. 4412; amended in Gazette 21 Feb 2007 p. 540.]*

## **Order 36A — Expert evidence**

*[Heading inserted in Gazette 13 Oct 1978 p. 3699.]*

### **1. Terms used**

In this Order —

***action for personal injuries*** means proceedings in which a claim is made in respect of personal injuries to a person (including any illness suffered by him and any impairment of his physical or mental condition) or in respect of a person's death;

***medical evidence*** means expert evidence on medical matters;

***medical report*** means a report containing medical evidence;

***privilege*** means privilege as defined in section 32A of the *Evidence Act 1906*.

*[Rule 1 inserted in Gazette 13 Oct 1978 p. 3699.]*

### **2. Medical evidence in actions for personal injuries**

- (1) This rule applies to medical evidence in actions for personal injuries.
- (2) Unless the Court otherwise directs, a party must serve on the other parties, in accordance with this rule, copies of all medical reports the substance of which that party intends to rely on at the trial or hearing.
- (3) Copies of the medical reports mentioned in subrule (2) shall be served not later than the following times —
  - (a) where the report is in existence before the action is entered for trial —
    - (i) if the report is that of the party entering the action — the time of entry;
    - (ii) if the report is that of another party — the expiration of the time limited by Order 33 rule 9 for an application to countermand the entry or

such later time as may be fixed by an order made on any such application;

- (b) where the report comes into existence after the action is entered for trial, as soon as practicable thereafter.
- (4) Where the Court gives a direction under subrule (2), the Court, if satisfied that it is desirable to do so, may direct that, in lieu of serving a copy of any medical report, the substance of all or any medical evidence that a party intends to rely on at the trial or hearing be disclosed in writing to such other parties and within such period as the Court may specify.
- (5) Except with leave of the Court, or pursuant to a direction of the Court, or where all other parties agree, no witness may give medical evidence at the trial or hearing of a cause or matter unless the substance of that evidence has been disclosed in writing to all other parties within the time limited by a direction under subrule (4) or, where no such direction has been given, a reasonable time before trial.
- (6) Subrule (5) does not apply where a party has in accordance with subrule (2) and subrule (3) served a copy of a medical report containing the substance of the evidence.
- (7) The Court may, if it thinks fit, treat the fact that a medical report contains statements by the party against whose interest the evidence is to be led or hearsay evidence as to the manner in which the personal injuries were sustained, or that it contains other evidence that would not be admissible at the trial, as a sufficient reason for giving a direction under subrules (2) or (4) or granting leave under subrule (5).
- (8) Where a party applies for a direction under subrule (2), the Court may inspect the report the subject of the application without disclosing its contents to any other party; and an affidavit in support of any such application shall not be required.

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- (9) Nothing contained in this rule requires evidence to be disclosed to a defendant who has not entered an appearance.

*[Rule 2 inserted in Gazette 13 Oct 1978 p. 3699-700; amended in Gazette 28 Jun 2011 p. 2552-3.]*

**3. Other expert evidence**

- (1) This rule applies to expert evidence other than medical evidence in actions for personal injuries.
- (2) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of a cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under this rule and has complied with any direction given on the application.
- (3) The application shall be made —
- (a) if by the party entering the action for trial — before the action is entered; or
  - (b) if by another party — not later than the expiration of the time limited by Order 33 rule 9 for an application to countermand the entry or at such later time as may be fixed by an order made on any such application.
- (4) Where an application has been made under this rule the Court, if satisfied that it is desirable to do so, may direct that —
- (a) copy of a report of an expert witness the substance of which a party intends to rely on at the trial or hearing of a cause or matter be served on; or
  - (b) the substance of all or any expert evidence that a party intends to adduce at the trial or hearing be disclosed in writing to,
- such other parties and within such period as the Court may specify.



*[Rule 3 inserted in Gazette 13 Oct 1978 p. 3700; amended in Gazette 14 Dec 1979 p. 3870.]*

**4. Exceptions to r. 2(5) and 3(2)**

Rule 2(5) and rule 3(2) shall not apply to evidence that is permitted to be given by affidavit or shall affect the enforcement under any other provisions of these rules of a direction given under this Order, but such a direction shall not be enforceable by writ of attachment or order of committal.

*[Rule 4 inserted in Gazette 13 Oct 1978 p. 3700.]*

**5. Court may limit expert evidence**

The Court may, at or before the trial or hearing of a cause or matter, direct that the number of medical or other expert witnesses who may be called at the trial or hearing shall be limited as specified by the direction.

*[Rule 5 inserted in Gazette 13 Oct 1978 p. 3700.]*

**6. Disclosure of part of expert evidence**

The Court may give a direction under rule 2 or rule 3 relating to part only of the report or evidence of an expert witness.

*[Rule 6 inserted in Gazette 13 Oct 1978 p. 3700.]*

**7. Derogation of privilege**

Where a party is required by rule 2 or by a direction given under that rule or under rule 3 to disclose any expert evidence, that party may not, after the expiration of the time fixed for disclosure by the rule or direction, as the case may be, object, on the ground of privilege, to the evidence being disclosed.

*[Rule 7 inserted in Gazette 13 Oct 1978 p. 3700.]*

**8.      Mode of application**

An application under this Order, if made before trial, shall be made by summons.

*[Rule 8 inserted in Gazette 13 Oct 1978 p. 3700.]*

**9.      Revoking and varying directions**

A direction given under this Order may on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the trial or hearing of the cause or matter.

*[Rule 9 inserted in Gazette 13 Oct 1978 p. 3700.]*

## Order 36B — Subpoenas

[Heading inserted in Gazette 21 Feb 2007 p. 540.]

### 1. Terms used

- (1) In this Order, unless the contrary intention appears —
  - addressee** means the person who is the subject of the order expressed in a subpoena;
  - conduct money** means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;
  - issuing officer** means an officer empowered to issue a subpoena on behalf of the Court;
  - issuing party** means the party at whose request a subpoena is issued;
  - subpoena** means an order in writing requiring the addressee —
    - (a) to attend to give evidence; or
    - (b) to produce the subpoena or a copy of it and a document or thing; or
    - (c) to do both of those things.
- (2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a **subpoena to attend to give evidence**.
- (3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a **subpoena to produce**.
- (4) If a subpoena is to be served under the *Service and Execution of Process Act 1992* of the Commonwealth, this Order is subject to that Act and, with any necessary changes, applies to and in respect of the subpoena.

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- (5) Unless the Court orders otherwise, this Order is subject to Order 34 rule 15A.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 540; amended in Gazette 22 Feb 2008 p. 636; 28 Jul 2010 p. 3477.]*

**2. Issuing subpoenas**

- (1) The Court may, in any proceeding, by subpoena order the addressee —
- (a) to attend to give evidence as directed by the subpoena; or
  - (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
  - (c) to do both of those things.
- (2) An issuing officer must not issue a subpoena —
- (a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena —
    - (i) not be issued; or
    - (ii) not be issued without the leave of the Court and that leave has not been given;or
  - (b) requiring the production of a document or thing in the custody of the Court or another court.
- (3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.
- (4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in accordance with subrule (3).

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 541.]*

**3. Form of subpoena**

- (1) A subpoena must be in accordance with Form No. 22, unless it is a subpoena for which leave to serve the subpoena in New Zealand is to be sought pursuant to Order 39A in which case the subpoena must be in accordance with Form No. 23 and must be accompanied by a notice in accordance with Form No. 23A.
- (2) A subpoena must not be addressed to more than one person.
- (3) Unless the Court otherwise orders, a subpoena must identify the addressee by name or by description of office or position.
- (4) A subpoena to produce must —
  - (a) identify the document or thing to be produced; and
  - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence must specify the date, time and place for attendance.
- (6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court.
- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.
- (8) The last date for service of a subpoena —
  - (a) is the date falling 5 days before the earliest date on which the addressee is required to comply with the subpoena or an earlier or later date fixed by the court; and
  - (b) must be specified in the subpoena.
- (9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 541-2; amended in Gazette 22 Feb 2008 p. 636-7.]*

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**3A. Altering date for attendance or production**

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
- (2) The notice need not be served personally.
- (3) Where notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena, despite rule 3(5) and (6).

*[Rule 3A inserted in Gazette 28 Jul 2010 p. 3477.]*

**4. Setting aside subpoena or other relief**

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

*[Rule 4 inserted in Gazette 21 Feb 2007 p. 542.]*

**5. Service**

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

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 542.]*

**6. Compliance with subpoena**

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

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- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) The copy of a document may be —
  - (a) a photocopy; or
  - (b) in PDF format on a CD-ROM.

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 542-3; amended in Gazette 28 Jul 2010 p. 3477-8.]*

**7. Production otherwise than upon attendance**

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

*[Rule 7 inserted in Gazette 21 Feb 2007 p. 543.]*

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

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



*[Rule 8 inserted in Gazette 21 Feb 2007 p. 543-4.]*

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

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

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- (8) The registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.
- (9) The registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.
- (10) A solicitor who signs an application under subrule (9) and removes a document or thing from the Registry, undertakes to the Court by force of this rule that —
  - (a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and
  - (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the registrar.
- (11) The registrar may, in the registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

*[Rule 9 inserted in Gazette 21 Feb 2007 p. 544-5.]*

**10. Disposal of documents and things produced**

- (1) Unless the Court otherwise orders, the registrar may, in the registrar's discretion, return to the addressee any document or thing produced in response to the subpoena.
- (2) Unless the Court otherwise orders, the registrar must not return any document or thing under subrule (1) unless the registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.
- (3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration in accordance with Form 22A.

- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the Court under the subpoena.
- (5) Subject to subrule (6), the registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents, produced in the proceedings in compliance with a subpoena, that were declared by the addressee to be copies.
- (6) The registrar may cause to be destroyed those documents, declared by the addressee to be copies, that have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

*[Rule 10 inserted in Gazette 21 Feb 2007 p. 545; amended in Gazette 28 Jul 2010 p. 3478.]*

**11. Costs and expenses of compliance**

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

*[Rule 11 inserted in Gazette 21 Feb 2007 p. 545.]*

**12. Failure to comply with subpoena is contempt of court**

- (1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.
- (2) Despite rule 5(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

*[Rule 12 inserted in Gazette 21 Feb 2007 p. 546.]*

**13. Documents and things in custody of court**

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

- (i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or
- (ii) as the Court directs.

*[Rule 13 inserted in Gazette 21 Feb 2007 p. 546.]*

## **Order 37 — Affidavits**

### **1. Title of affidavits**

- (1) Subject to subrules (2) and (3) every affidavit must be entitled in the cause or matter in which it is sworn and bear the number of the cause or matter.
- (2) Where a cause or matter is entitled in more than one matter it is sufficient to state the first matter followed by the words “and other matters”.
- (3) Where a cause or matter is entitled in a matter or matters and between parties, so much of the title as consists of the matter or matters may be omitted.
- (4) An affidavit may be sworn for use in proceedings which are yet to be commenced and must be entitled in the intended cause or matter.

*[Rule 1 amended in Gazette 17 Sep 1993 p. 5054; 28 Jun 2011 p. 2552-3.]*

### **2. Form of affidavits**

- (1) Every affidavit must be expressed in the first person and must state the place of residence and occupation of the deponent, and if he has no occupation his description must be stated. Vague occupations or descriptions must not be used.
- (2) If the deponent is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state so.
- (3) Every affidavit must be divided into paragraphs numbered consecutively, and each paragraph must be confined, as far as possible to a distinct portion of the subject.
- (4) Dates, sums, and other numbers must be expressed in an affidavit in figures and not in words.

*[(5) deleted]*

(6) Where an affidavit —

- (a) consists of more than one page; or
- (b) has attachments,

each page of the affidavit and attachments must be numbered consecutively in the upper right hand corner.

(7) If an affidavit has one or more attachments, an index which refers to the affidavit and lists each attachment, its page numbers and a short description of it, must be bound with the affidavit.

(8) Subject to rule 9(1), a document that is to be used in conjunction with an affidavit must be attached to the affidavit and be referred to in the affidavit as being attached.

(9) Subject to rule 9(1), attachments to an affidavit must be bound with it in one or more volumes as may be necessary.

(10) Except in a case where the Court allows otherwise, the thickness of a volume of an affidavit and its attachments must not exceed 40 mm.

*[Rule 2 amended in Gazette 16 Nov 1990 p. 5698-9;  
23 Jan 2001 p. 562; 21 Feb 2007 p. 550.]*

### **3. Affidavits by 2 or more deponents**

In every affidavit made by 2 or more deponents the names of the persons making the affidavit must be inserted in the jurat, except that, if the affidavit of all the deponents is taken at one time by the same person it shall be sufficient to state that it was sworn by both (or all) of the “above-named” deponents.

*[4, 4A. Deleted in Gazette 21 Feb 2007 p. 550.]*

**5. Irregularity**

- (1) Unless the Court otherwise orders, an affidavit may be filed notwithstanding any irregularity in the form thereof.
- (2) An affidavit may, with the leave of the Court be used in evidence notwithstanding any irregularity in the form thereof.

**6. Contents of affidavits**

- (1) An affidavit must be confined to such facts as the deponent is able of his or her own knowledge to prove.
- (2) Despite subrule (1), an affidavit may contain statements of information or belief if —
  - (a) the affidavit is made under, and for the purposes of proceedings under, a written law that permits it to contain such statements; or
  - (b) the affidavit is made under a provision of these rules that permits it to contain such statements; or
  - (c) the affidavit is made for the purposes of interlocutory proceedings; or
  - (d) the Court has made an order permitting the affidavit to contain such statements.
- (3A) An affidavit containing statements of information or belief must set out the sources or grounds of that information or belief unless —
  - (a) the affidavit is made under, and for the purposes of proceedings under, a written law that —
    - (i) prevents the deponent from disclosing those sources or grounds or information material to them; or
    - (ii) does not permit those sources or grounds or information material to them to be made public;or



- (b) the Court has made an order permitting the affidavit to omit the sources or grounds.
- (3) The costs of an affidavit which unnecessarily sets forth matters of hearsay, argumentative matter or copies of or extracts from documents, shall be paid by the party filing the affidavit.

*[Rule 6 amended in Gazette 5 Jun 1992 p. 2281; 26 Aug 1994 p. 4415; 13 Sep 1996 p. 4568; 28 Oct 1996 p. 5698; 16 Jul 1999 p. 3189; 28 Jul 2010 p. 3482-3.]*

**7. Scandalous matter**

The Court may order to be struck out from an affidavit any matter which is scandalous, irrelevant or otherwise oppressive, or may order that the affidavit containing such matter be taken off the file.

*[8. Deleted in Gazette 21 Feb 2007 p. 550.]*

**9. Exhibits**

- (1) A bound register, an account book or other book or any document of an unusual size must not be attached to the affidavit or referred to therein as being attached, but must be referred to as an exhibit.
- (2) An exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn or taken, and the certificate must have indorsed on it the short title of the cause or matter and its number, if any.

*[Rule 9 amended in Gazette 16 Nov 1990 p. 5699; 21 Feb 2007 p. 551.]*

*[10-12. Deleted in Gazette 21 Feb 2007 p. 551.]*

**13. Affidavits to be filed**

- (1) Every affidavit must be filed before it is used unless otherwise directed by the Court.

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- (2) There must be indorsed on every affidavit a note stating the name of the deponent, the dates of swearing and filing and on whose behalf it is filed.

**14. Affidavits not to be filed out of time without leave**

Where a special time is limited for filing affidavits, an affidavit filed after that time shall not be used except by leave of the Court.

**15. Alterations in accounts**

Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the person before whom the affidavit is sworn, and such alterations shall not be made by erasure.

*[Rule 15 amended in Gazette 21 Feb 2007 p. 551.]*

**16. This Order additional to Oaths, Affidavits and Statutory Declarations Act 2005**

This Order is in addition to the *Oaths, Affidavits and Statutory Declarations Act 2005*.

*[Rule 16 inserted in Gazette 21 Feb 2007 p. 551.]*

## **Order 38 — Evidence by deposition**

### **1. Power to order depositions to be taken**

- (1) The Court may in any cause or matter, if it appears necessary for the purposes of justice, make an order in Form No. 25 for the examination of any witness or person upon oath before a judge, or an officer of the Court, or any other person, at any place in the State.
- (2) An order under subrule (1) may be made on such terms as the Court thinks fit.
- (3) The Court may give directions as to the procedure to be followed in and in relation to the examination.

*[Rule 1 amended in Gazette 8 Feb 1991 p. 582; 28 Jun 2011 p. 2552.]*

*[2, 3. Deleted in Gazette 8 Feb 1991 p. 582.]*

### **4. Enforcing attendance of witness**

- (1) In this rule and in rules 5 to 17 the judge, officer of the Court, or person before whom the examination of any person pursuant to an order under rule 1 takes place, is referred to as the *examiner*.
- (2) When an order has been made under rule 1 —
  - (a) for the examination of any person before the examiner;  
or
  - (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by subpoena in like manner as his attendance, or the production by him of a document at a trial may be enforced.

*[Rule 4 amended in Gazette 21 Feb 2007 p. 551.]*

**5. Refusal of witness to attend or be sworn**

- (1) If any person duly summoned by subpoena to attend before the examiner refuses or fails to attend, or refuses to be sworn for the purpose of the examination, or to answer any lawful question or produce any document therein, a certificate of such refusal or failure signed by the examiner must be filed, and upon the filing of the certificate the party requiring the attendance of the witness may apply to the Court *ex parte* for any order requiring the witness to attend, be sworn, or answer any question or produce any document, as the case may be.
- (2) The Court may order any person against whom an order is made under this rule to pay any costs occasioned by his refusal or failure.
- (3) Any person wilfully disobeying any order made against him under subrule (1) is guilty of contempt of court.

*[Rule 5 amended in Gazette 28 Jun 2011 p. 2552.]*

**6. Time and place of examination, notice of**

- (1) On production to him of the order for examination or a duplicate thereof, the examiner must give to the party who obtained the order a notice in writing appointing the time and place at which, subject to any application by the parties, the examination shall be taken.
- (2) In fixing the time appointed under subrule (1) the examiner shall have regard to the reasonable convenience of the persons to be examined and all the circumstances of the case, but subject thereto such time shall be as soon as practicable after the making of the order.

*[Rule 6 amended in Gazette 28 Jun 2011 p. 2552.]*

**7. Documents to be given to examiner**

The party who obtained the order for examination before an examiner must supply to the examiner copies of all such

documents in the cause or matter as are necessary to inform the examiner of the questions at issue between the parties.

**8. Practice on examination**

- (1) Subject to any direction contained in the order for examination, the person examined before the examiner may be cross-examined and re-examined and the practice with reference to the examination, cross-examination and re-examination of witnesses at the trial of a cause or matter shall extend and be applicable to the evidence of any person so examined.
- (2) The examiner may put questions to any person examined before him as to the meaning of any answer made by that person, or as to any matter arising in the course of the examination.
- (3) The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, or such of them as choose to attend.
- (4) The examiner may, if necessary, adjourn the examination from time to time or from place to place.

**9. Expenses of witnesses**

Any person required to attend for the purpose of being examined or of producing any document before the examiner shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

**10. Additional witnesses may be examined with parties' consent**

The examiner may, with the consent in writing of all parties, take the examination of any witnesses or persons in addition to those named or provided for in the order, and shall annex such consent to the original depositions.

**11. How depositions to be taken**

- (1) The deposition of any person examined before the examiner must —
  - (a) be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner; or
  - (b) be recorded in the presence of the examiner on tape or by other mechanical means.
- (2) Subject to subrule (3) a deposition taken pursuant to subrule (1)(a) need not set out every question and answer, but must contain as nearly as may be the statement of the person examined.
- (3) The examiner may direct that the exact words of any question and answer thereto be set out in the deposition.
- (4) A deposition taken pursuant to subrule (1)(a) must be read to the person examined and, if any party so requests, the person examined must be asked to sign his deposition.
- (5) The examiner must authenticate the deposition by his signature.
- (6) Where the deposition is taken pursuant to subrule (1)(b) it must be transcribed under the supervision of the examiner who must authenticate the transcript by his signature.
- (7) The transcript authenticated by the examiner constitutes the deposition of the person examined, and it is not necessary that the deposition be read to or signed by him.
- (8) The examiner must indorse on the deposition a note signed by him of the time occupied in taking the examination and the fees received by him in respect thereof.
- (9) The deposition authenticated by the examiner shall be sent by him to the Central Office and shall be filed therein.

*[Rule 11 amended in Gazette 28 Jun 2011 p. 2552.]*

**12.      Objection to questions**

- (1) When any person being examined before an examiner objects to answer any question, or objection is taken to any question put to him, that question, the ground for objection, and the answer (if any) to the question objected to, must be set out in the deposition of the person being examined or in a statement annexed to the deposition.
- (2) The Court shall decide the validity of the ground for the objection.
- (3) If the Court decides against the objector it may order him to pay the costs occasioned by the objection.

**13.      Examiner may give Court special report**

The examiner may make a special report to the Court touching any examination taken before him, and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken or make such order, on the report as it thinks fit.

**14.      Oaths**

Any officer of the Court or other person directed or authorised to take the examination of any witness or person may administer oaths.

*[Rule 14 amended in Gazette 8 Feb 1991 p. 582.]*

**15.      Perpetuating testimony**

- (1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for that purpose.
- (2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot be brought to trial by him before the happening of

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such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

- (3) No action to perpetuate the testimony of witnesses shall be set down for trial.

**16. Examiner's fees**

- (1) An examiner is entitled to charge the fees set forth in the following table —

**Table of examiner's fee**

	\$
(a) Upon giving an appointment to take an examination .....	21.00
(b) for the examination —	
for the first hour .....	28.00
for every hour after the first .....	17.00
(2) The party prosecuting the order or his solicitor shall also pay all reasonable travelling and other expenses including charges for the room (other than the examiner's office) where the examination is taken and an allowance of \$17 an hour for the time occupied by the examiner in travelling.	
(3) The fee on appointment may be retained by the examiner whether the examination is taken or not.	
(4) The other fees and the travelling or other expenses shall be paid as soon as the examination has been concluded.	
(5) A judge or a master may authorise the charging of fees at a higher hourly rate than the hourly rate specified in the Table to subrule (1).	



- (6) If any dispute arises as to the amount of fees or expenses payable under this rule it shall be referred to a master for his decision which shall be final.

*[Rule 16 inserted in Gazette 21 Mar 1980 p. 960-1; amended in Gazette 30 Nov 1984 p. 3951-3; 28 Jun 2011 p. 2554.]*

**17. Payment of examiner's fees**

- (1) An examiner shall not be required to transmit any deposition, to be filed at the Central Office, until all fees and expenses due to him in respect of that deposition have been paid.
- (2) The Court may, on the application of an examiner, order the payment to him by the party prosecuting the order of the fees and expenses payable to him on account of any examination, but without prejudice to any question on the taxation of costs as to the party by whom the costs of such examination should eventually be borne.

*[18. Deleted in Gazette 21 Feb 2007 p. 551.]*

## **Order 38A — Examination of witnesses outside the State**

*[Heading inserted in Gazette 8 Feb 1991 p. 582; amended in Gazette 22 Feb 2008 p. 637.]*

### **1. Terms used**

In this Order —

- (a) the *Act* means the *Evidence Act 1906*; and
- (b) words and expressions have the same definitions as in section 109 of the Act.

*[Rule 1 inserted in Gazette 8 Feb 1991 p. 582.]*

### **2. Order applies to Act s. 110 and 111**

This Order applies to applications made under section 110 or 111 of the Act.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 551.]*

### **3. Applications under Act s. 110 and 111 in civil proceedings**

- (1) An application under section 110 of the Act in relation to civil proceedings before the Court must be made by summons supported by an affidavit.
- (2) An application under section 111 of the Act in relation to civil proceedings before an inferior court must be made by originating summons supported by an affidavit.
- (3) The affidavit in support of an application must —
  - (a) address the matters referred to in section 110(2) of the Act; and
  - (b) exhibit all such documents in the proceedings as are necessary to inform the Court of the questions at issue between the parties.

- (4) Where the application is for an order for the issue of a letter of request the affidavit must exhibit a draft of the letter (in Form No. 28) and, if the language of the country outside the State is not English, a translation of the letter into the language of the country together with a certificate by the translator stating his name, address and qualifications for making the translation and stating that the translation is correct.

*[Rule 3 inserted in Gazette 8 Feb 1991 p. 583.]*

**4. Application under Act s. 110 and 111 in criminal proceedings**

- (1) Criminal proceedings are to be taken as being before the Court for the purposes of section 110(1) of the Act where a person has been committed to take his trial before the Court.
- (2) An application under section 110 of the Act in relation to criminal proceedings before the Court must be made by motion supported by an affidavit.
- (3) An application under section 111 of the Act in relation to criminal proceedings before an inferior court must be made by originating summons supported by an affidavit which must exhibit the complaint in the inferior court.
- (4) Rules 3(3) and 3(4) apply to applications under this rule.

*[Rule 4 inserted in Gazette 8 Feb 1991 p. 583.]*

**5. Orders under Act s. 110 and 111**

An order under section 110 or 111 of the Act —

- (a) may require the filing of an undertaking by any party (in Form No. 29) as to the costs of examining or taking the evidence of the person outside the State; and
- (b) must be in Form No. 26 or in such form as the Court may approve.

*[Rule 5 inserted in Gazette 8 Feb 1991 p. 583.]*

**6. Manner of examination**

In the absence of specific directions in an order made under section 110 or 111 of the Act as to the procedure to be followed in and in relation to the examination, Order 38 rules 6, 8, 11, 12, 13 and 14 apply.

*[Rule 6 inserted in Gazette 8 Feb 1991 p. 583.]*

**7. Examiner's remuneration**

In the absence of specific directions in an order made under section 110 or 111 of the Act as to the remuneration of the examiner, Order 38 rules 16 and 17 apply.

*[Rule 7 inserted in Gazette 8 Feb 1991 p. 583.]*

## **Order 39 — Taking of evidence for foreign and Australian courts**

*[Heading inserted in Gazette 8 Feb 1991 p. 586; amended in Gazette 22 Feb 2008 p. 637.]*

### **1. Terms used**

In this Order —

- (a) the *Act* means the *Evidence Act 1906*; and
- (b) words and expressions have the same definitions as in section 115 of the Act.

*[Rule 1 inserted in Gazette 8 Feb 1991 p. 586.]*

### **2. Applications under Act s. 116**

- (1) An application under section 116 of the Act may be made by the person nominated for that purpose by the requesting court, or, if no person is so nominated, by the Attorney General.
- (2) The application must be made *ex parte* and must be supported by an affidavit that exhibits the request and, where the request is not in English, a translation into English.
- (3) When an application has been made under section 116 of the Act any application for a further order or direction in relation to the same matter must be made by summons.

*[Rule 2 inserted in Gazette 8 Feb 1991 p. 586.]*

### **3. Orders under Act s. 117**

- (1) An order made under section 117 of the Act must be in Form No. 30 or in such form as the Court may approve and —
  - (a) may order any fit and proper person nominated by the applicant, or any officer of the Court, or such other qualified person as to the Court seems fit, to obtain the evidence;

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- (b) may give such directions about the manner of obtaining the evidence as the Court thinks fit, including directions that the evidence be obtained —
    - (i) in the manner specified in the request; or
    - (ii) in accordance with the practice of the requesting court; or
    - (iii) in the manner requested by the applicant;
  - (c) may give such directions as the Court thinks fit about the transmission of the evidence obtained.
- (2) In the absence of any special directions in the order, the examination of a witness must be taken in the manner prescribed by Order 38 rule 11(1) to (8).

*[Rule 3 inserted in Gazette 8 Feb 1991 p. 586.]*

**4. Examiner's remuneration**

Order 38 rule 17 applies mutatis mutandis in the case of an examination under this Order and the Court may make an order thereunder for the fees and expenses due to a person who obtains evidence pursuant to an order made under section 117 of the Act.

*[Rule 4 inserted in Gazette 8 Feb 1991 p. 586; amended in Gazette 26 Aug 1994 p. 4415.]*

**4A. Examiner's power to administer oaths**

A person appointed to obtain evidence may administer oaths.

*[Rule 4A inserted in Gazette 8 Feb 1991 p. 586.]*

**5. Transmission of depositions**

- (1) Unless the order for examination of a witness otherwise directs, the examiner before whom the examination is taken must send the deposition of the witness to the Principal Registrar.

- (2) On receiving a deposition taken under this Order the Principal Registrar shall give a certificate in Form No. 31 sealed with the seal of the Court annexing thereto and identifying the request, the order for examination, and the deposition.
- (3) The Principal Registrar shall send the certificate referred to in subrule (2) with the documents annexed thereto to the Attorney General for transmission direct to the requesting court: provided that if the request was sent direct to the Principal Registrar by some other person pursuant to the provisions of a Convention, the Principal Registrar shall send the certificate and annexures to that person for transmission to the requesting court.

*[Rule 5 amended in Gazette 14 Dec 1979 p. 3870; 8 Feb 1991 p. 586-7; 28 Jun 2011 p. 2552.]*

**6. Procedure where witness claims privilege**

- (1) This rule applies where a person claims to be exempt from giving evidence under section 118(1)(b) of the Act and the claim is not supported or conceded as mentioned in section 118(2) of the Act.
- (2) The examiner may require the person to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so on the *ex parte* application of the applicant who obtained the order under section 117 of the Act.
- (3) If the evidence is taken —
  - (a) it must be contained in a document separate from the remainder of the deposition of the person;
  - (b) the examiner shall send to the Principal Registrar with the deposition and the document, a statement signed by the examiner setting out the claim and the ground on which it is made;

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- (c) the Principal Registrar shall not send the document to the requesting court but shall send the items mentioned in rule 5, the statement and a request that it determine the claim;
- (d) the Principal Registrar shall —
  - (i) if the requesting court dismisses the claim, send it the document; or
  - (ii) if the requesting court upholds the claim, send the document to the person,and notify the person of the requesting court's determination.

*[Rule 6 inserted in Gazette 8 Feb 1991 p. 587.]*



## **Order 39A — Trans-Tasman proceedings**

*[Heading inserted in Gazette 16 Jul 1999 p. 3189.]*

### **1. Term used: Act**

(1) In this Order, unless the contrary intention appears —  
*Act* means the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth.

(2) Unless the contrary intention appears, an expression used in this Order and in the Act has the same meaning as in the Act.

*[Rule 1 inserted in Gazette 16 Jul 1999 p. 3189.]*

### **2. Application of this Order**

(1) This Order applies to proceedings to which the Act applies.

(2) Subject to this Order, unless the contrary intention appears, these rules apply to proceedings referred to in this Order.

*[Rule 2 inserted in Gazette 16 Jul 1999 p. 3190.]*

### **3. Leave to serve subpoena**

(1) Leave to serve a subpoena in New Zealand must be sought by filing —

(a) if the subpoena was issued by the Court, a motion in that proceeding; or

(b) if the subpoena was issued by an inferior court, an originating motion to be heard *ex parte*.

(2) The motion must be supported by an affidavit annexing a copy of the subpoena and setting out —

(a) the name, designation or occupation, and address of the person named and whether that person is over 18 years of age; and

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- (b) the nature and significance of the evidence required from the person named, or of the document or thing required to be produced by the person; and
  - (c) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person named; and
  - (d) the date by which it is intended to serve the subpoena; and
  - (e) details of —
    - (i) the calculation of the sum sufficient to meet reasonable expenses in complying with the subpoena; and
    - (ii) how those expenses are to be paid, or tendered, to the person named, in money or in vouchers;and
  - (f) where the subpoena requires the person named to give evidence, an estimate of the time that the person will be required to attend to give evidence; and
  - (g) details of any facts or matters known to the deponent which may provide cause for the subpoena to be set aside under section 14(2) or (3) of the Act.
- (3) Before granting leave under the Act to serve a subpoena, a judge may require the applicant for leave to undertake to meet the expenses reasonably incurred by the person named, not being a party to the proceeding, in complying with the subpoena, if those expenses exceed the allowances and travelling expenses to be provided to that person at the time of service of the subpoena.
- (4) No document relating to an application under this rule is to be searched, inspected or copied without leave of a judge.

*[Rule 3 inserted in Gazette 16 Jul 1999 p. 3190-1.]*

**4.      Setting aside subpoena (Act s. 13)**

- (1) An application to the Court under section 13 of the Act must be made in accordance with Form No. 31A.
- (2) The application must be supported by an affidavit setting out the facts and grounds on which the application is based.
- (3) The application must —
  - (a) be headed with the heading on the copy order of the Court granting leave to serve the subpoena; and
  - (b) be filed, by lodgment or by fax, at the Central Office.
- (4) The application must set out the applicant's address for service in Australia or New Zealand, telephone number and, if applicable, fax number.
- (5) If the application is filed by fax, the Principal Registrar must acknowledge, by fax, the receipt of a clear and legible copy of the application and accompanying affidavit.
- (6) The Principal Registrar must deliver a copy of the application and accompanying affidavit, by mail, or fax, to the address for service of the party who obtained leave to serve the subpoena.
- (7) An application made under this rule is to be determined at a date, time and place and in a manner directed by the Court.
- (8) An objection under section 14(4) of the Act must be made by filing a notice in accordance with Form No. 31B not later than 7 days after —
  - (a) if the objection is made by the person named in the subpoena, the date on which the application was filed; or
  - (b) otherwise, the date on which the application is served on the party who obtained leave to serve the subpoena.
- (9) A request under section 14(6) of the Act that is not made in the application must be made by filing a form in accordance with Form No. 31C.

*[Rule 4 inserted in Gazette 16 Jul 1999 p. 3191-2.]*

**5. Failure to comply with subpoena (Act s. 16)**

- (1) A certificate under section 16 of the Act, in accordance with Form No. 31D, may be issued on the motion of the court out of which the subpoena was issued or on the application of a party.
- (2) Application for the issue of a certificate may be made —
  - (a) if the proceeding in which the certificate is brought is then before the court, orally, accompanied by a draft certificate in accordance with Form No. 31D; or
  - (b) by motion.
- (3) An application made by motion for the issue of a certificate must be supported by —
  - (a) an affidavit of service of the subpoena, the order and the notice referred to in section 10(3) of the Act; and
  - (b) an affidavit stating —
    - (i) particulars of the order granting leave to serve the subpoena; and
    - (ii) whether application was made to set aside the subpoena and, if so, particulars of the application and any orders made; and
    - (iii) that the subpoena was not complied with.

*[Rule 5 inserted in Gazette 16 Jul 1999 p. 3192.]*

**6. Evidence by video link or telephone (Act s. 25)**

- (1) An application for a direction under section 25 of the Act may be made orally or by summons.
- (2) The application must be supported by an affidavit stating —
  - (a) the reasons why such a procedure is desirable; and
  - (b) the nature of the evidence to be taken; and
  - (c) the number of witnesses to be examined; and

- (d) the expected duration of the evidence; and
  - (e) whether issues of character are likely to be raised; and
  - (f) in the case of submissions, the expected duration of the submissions; and
  - (g) the facilities available for such a procedure or that can reasonably be made available; and
  - (h) that the requirements of section 26 or 27 of the Act can be met.
- (3) In deciding whether to grant the application, the Court may take account of the matters set out in the applicant's affidavit in addition to any other matters considered to be material, including cost and convenience to witnesses and all parties.
- (4) If the Court determines that it is appropriate to hear evidence or receive submissions by video link or telephone, the Principal Registrar may be directed to arrange and coordinate the appropriate facilities in Australia and New Zealand.
- (5) Without limiting the generality of subrule (4), the Court may direct that —
- (a) the Principal Registrar arrange for the evidence to be given, or the submissions to be made, at the High Court of New Zealand or at another place approved by the High Court of New Zealand; or
  - (b) an officer of the High Court of New Zealand, or another person approved by the Court, be requested to be present to assist in the transmission of the evidence or submissions, and, in particular to —
    - (i) introduce witnesses to be called and legal representatives; and
    - (ii) assist with the administration of oaths, if necessary; and

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- (iii) assist with the implementation of any directions or requests given or made by the judge or other person presiding in the proceeding.

*[Rule 6 inserted in Gazette 16 Jul 1999 p. 3192-3.]*

**7. Fax copies**

If a fax of a document is adduced in evidence under Part 6 of the Act, the party adducing that evidence must file in the Central Office a copy of the fax —

- (a) on paper of durable quality measuring about 295 mm in length and 210 mm in width; and
- (b) on which the writing is permanent,

unless the fax meets those specifications.

*[Rule 7 inserted in Gazette 16 Jul 1999 p. 3193.]*

## Order 40 — Court experts

### 1. Terms used

In this Order unless the contrary intention appears —

***Court expert*** means an independent expert appointed under rule 2 to inquire into and report upon a question of fact or opinion;

***expert*** in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on that question would be admissible in evidence.

### 2. Court expert, appointment of etc.

- (1) In any cause or matter which is to be tried without a jury and which involves a question for an expert witness the Court may at any time —
  - (a) on the application of any party, on terms, appoint an independent expert, or if more than one such question arises, 2 or more such experts to inquire into and report upon any question of fact or opinion not involving questions of law or of construction; and
  - (b) direct a Court expert to make a further or supplemental report or inquiry and report; and
  - (c) give such instructions in relation to the inquiry and report of a Court expert as the Court thinks fit.
- (2) Instructions pursuant to subrule (1)(c) may make provision concerning any experiment or test necessary to enable the Court expert to make a satisfactory report.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

**3. Report of Court expert**

- (1) The Court expert must send his report to the Court with such copies thereof as the Court requires and the proper officer must send a copy of the report to each party or his solicitor.
- (2) Any part of a Court expert's report which is not accepted by all parties shall be treated as information furnished to the Court, and shall be given such weight as the Court thinks fit.

**4. Cross-examination of Court expert**

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

- (a) before the Court at the trial or at some other time; or
- (b) before an examiner at such time and place as the Court directs.

**5. Remuneration of Court expert**

- (1) The remuneration of the Court expert shall be fixed by the Court and shall include —
  - (a) a fee for making the report and a fee for making any supplementary report; and
  - (b) a proper sum for each day during which his presence is required either in Court or before an examiner.
- (2) The parties shall be jointly and severally liable to pay the Court expert's remuneration, without prejudice to the question by whom it shall be paid as part of the costs of the cause or matter.
- (3) Where any party opposes the appointment of a Court expert, the Court may, as a condition of making the appointment require the party seeking the appointment to give such security for the Court expert's remuneration as the Court thinks fit.



**6. Further expert witnesses**

- (1) Where a Court expert has made a report pursuant to this Order on any question, any party who gives to the other interested parties a reasonable time before the trial or hearing, notice of his intention to do so, may call one other expert witness to give evidence on the question reported on by the Court expert.
- (2) Except as provided by subrule (1) no other expert witness shall be called by any party without the leave of the Court, and such leave shall not be granted unless the Court considers the circumstances of the case to be exceptional.

*[Rule 6 amended in Gazette 28 Jun 2011 p. 2552.]*

## **Order 41 — Motion for judgment**

### **1. Judgment to be on motion**

Except where by any Act, or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court must be obtained by motion for judgment.

### **2. When motion for judgment may be set down after trial etc.**

- (1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined.
- (2) If the plaintiff does not set down such a motion, and give notice thereof to the other parties within 7 days after his right so to do has arisen, then after the expiration of such 7 days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

### **3. Motion for judgment before trial etc. of all issues**

- (1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court for leave to set down a motion for judgment, without waiting for such trial or determination.
- (2) The Court may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

**4. Motion for judgment to be set down within one year**

A motion for judgment shall not, except by leave of the Court, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

**5. Court may draw inferences and determine questions**

Upon motions for judgment the Court may draw all inferences of fact, not inconsistent with the finding of the jury, if the trial was with a jury, and if satisfied that it has before it all the material necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it is of opinion that it has not sufficient material before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it thinks fit.

## **Order 42 — Entry of judgment**

### **1. Mode and form of entry**

- (1) Every judgment shall be entered by the Principal Registrar in the book to be kept for that purpose in the Central Office.
- (2) If a form of judgment is prescribed in Schedule 2 the judgment must be in that form.
- (3) The party entering a judgment shall be entitled to have recited therein a statement of the manner and place in and at which the service of the writ or other originating process by which the cause or matter was begun, was effected.

*[Rule 1 amended in Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]*

### **2. Date from which judgment or order takes effect**

- (1) A judgment or order of the Court takes effect from the day of its date.
- (2) Such judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders that it be dated as of some earlier or later day, in which case it shall be dated as of that other day.

### **3. Orders to do an act, time for obeying to be specified**

Every judgment or order requiring any person to do any act, other than the payment of money, shall state the time, or the time after service of the judgment or order, within which the act is to be done.

### **4. Entering judgment on filing of affidavit etc.**

Where under the Act or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the proper officer shall examine the affidavit or document produced, and if the same be

regular and contain all that is by law required, he shall enter judgment accordingly.

**5. Entering judgment pursuant to order etc.**

Where by the Act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the proper officer to enter judgment accordingly.

**6. Entering judgment on certificate of master or registrar**

Where reference is made to a master or a registrar to ascertain the amount for which final judgment is to be entered, the certificate of the master or registrar shall be filed in the Central Office when judgment is entered.

*[Rule 6 amended in Gazette 14 Dec 1979 p. 3870; 30 Nov 1984 p. 3951.]*

**7. Entering judgment by consent when party appears by solicitor**

In any cause or matter where the defendant has appeared by a solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

**8. Entering judgment by consent where defendant has not appeared or is self-represented**

Where the defendant has not appeared or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, or solicitor.

**9. Satisfaction of judgments**

- (1) A memorandum of satisfaction of a judgment may be entered upon a consent to the entry being filed in the Central Office.
- (2) The consent to the entry must be signed by the party entitled to the benefit of the judgment and must be attested, and verified by the affidavit of the attesting witness.
- (3) If the attesting witness is not a barrister or solicitor the entry must not be filed without the leave of a master, which leave may be indorsed on the affidavit.

*[Rule 9 amended in Gazette 30 Nov 1984 p. 3951.]*

## **Order 43 — Drawing up judgments and orders**

### **1. Drawing up etc. judgments etc.**

- (1) Subject to these rules and to any order of the Court all judgments or orders whether given or made in Court or in chambers or by default, shall be drawn up under the direction of the registrar or other officer to whom such duty may be assigned.
- (2) A party having the carriage of the judgment or order shall have the first option to enter or extract it, but any other party affected may do so if such first-mentioned party fails to take steps within 3 days from the making thereof to have the judgment or order approved, or having taken such steps does not in the opinion of the registrar diligently proceed to have the judgment or order approved and entered or extracted.

*[Rule 1 amended in Gazette 14 Dec 1979 p. 3870.]*

### **2. When order need not be drawn up**

- (1) An order which neither imposes any special terms nor includes any special directions other than a direction as to costs, but only —
  - (a) extends the period within which a person is required or authorised by these rules, or by any judgment, order or direction, to do any act; or
  - (b) gives leave to do any of the acts mentioned in subrule (2),need not be drawn up unless the Court otherwise directs.
- (2) The acts referred to in subrule (1)(b) are —
  - (a) the issue of any writ, other than a writ of summons for service out of Australia, or a writ of attachment;
  - (b) the amendment of a writ of summons or other originating process or pleading;

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- (c) the filing of a document or the taking of a document off the file;
  - (d) any act to be done by an officer of the Court other than a solicitor;
  - (e) the correction of a clerical mistake or error appearing in a judgment or order.
- (3) When under subrule (1) it is not necessary to draw up an order —
- (a) the person or solicitor of the person on whose application the order is made shall forthwith give notice in writing of the order to the person, if any, who, if this rule had not been made, would have been required to be served with the order; and
  - (b) a note or memorandum of such order signed by a judge or a master or registrar shall be sufficient authority for the extension of time, issue, amendment, filing or other act.

*[Rule 2 amended in Gazette 30 Nov 1984 p. 3951; 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2451.]*

**3. Authentication of judgments and orders**

- (1) Every judgment or order shall be marked to show by whom it was made.
- (2) An order is sufficiently authenticated if signed by the registrar and sealed with a seal of the Court.

**4. Judgments and orders to be court record; issue and use of duplicates**

- (1) Every judgment and order shall be kept in the Registry of the Court as a record.
- (2) A duplicate of an order shall, on the day it has been entered, be sealed by the registrar without fee and delivered to the party extracting the order.



- (3) When a rule or Order or the practice of the Court requires the production of an order, it is sufficient to produce the duplicate.
- (4) A further duplicate may be issued at any time, with the sanction of the registrar, and on payment of the prescribed fee, on the registrar being satisfied of the loss of the duplicate, or that there is other sufficient reason for the issue of a further duplicate, and that the person applying is properly entitled to it.

*[Rule 4 amended in Gazette 1 Aug 1980 p. 2558.]*

**5. Amending orders**

An order shall not be amended except on production of the duplicate or the duplicate last issued, which shall, after the original order has been amended and under the direction of the registrar, be amended in accordance with the amendment of the original order. The amendment in the duplicate shall be sealed under the direction of the registrar.

**6. Draft judgment or order etc. to be lodged**

- (1) The party bespeaking a judgment or order shall lodge a draft thereof in the Central Office unless the registrar dispenses with the draft and permits lodgment of the engrossment in the first instance, and, if so required by the registrar, the party shall leave with the registrar his counsel's brief and any other documents which the registrar may require for the purpose of drawing up, or settling such judgment or order.
- (2) If the judgment or order is not bespoken and the draft and any documents required by the registrar lodged within 7 days after the judgment or order is finally pronounced or disposed of by the Court, the registrar may decline to settle or pass the judgment or order without the leave of the Court.

*[Rule 6 amended in Gazette 14 Dec 1979 p. 3870.]*

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**7. Appointment to settle draft**

- (1) When the registrar is of the opinion that any judgment or order should be settled in the presence of the parties, he shall appoint a time and place for settling the same, and notify the party bespeaking the judgment or order thereof.
- (2) Such party shall not less than 2 clear days before the time so appointed, serve notice of the appointment, together with a copy of the draft judgment or order on every other party on the record.

*[Rule 7 amended in Gazette 14 Dec 1979 p. 3870.]*

**8. Attendance on settling draft**

- (1) The party bespeaking the judgment or order and all parties served with notice under rule 7 shall attend on the settlement of the judgment or order and shall, if required by the registrar so to do, produce to the registrar their briefs and such other documents as he may consider necessary to enable him to settle the judgment or order.
- (2) Before settling and passing the judgment or order the registrar shall satisfy himself in such manner as he shall think fit that the provisions of rule 7(2) have been complied with.
- (3) The registrar may adjourn any such appointment as he may think fit, and the parties shall attend such adjournment without further notice.

*[Rule 8 amended in Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]*

**9. Default of attendance on settling draft**

- (1) If any party fail to attend the registrar's appointment for settling the draft of a judgment or order, or fail to produce his counsel's brief or such other document as may be required by the registrar, the registrar may proceed to settle and pass the judgment or order in his absence.

- (2) Where the registrar proceeds under subrule (1) he may dispense with the production of counsel's brief or with the production of such documents, and may act upon such evidence as he may think fit, or may require the matter to be mentioned to the Court.

*[Rule 9 amended in Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]*

**10. Dispensing with appointment**

Notwithstanding rules 1 to 9, the registrar shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the judgment or order without making any appointment for either purpose, and without notice to any party.

*[Rule 10 amended in Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]*

**11. Registrar's and Court's powers to settle judgments etc.**

- (1) When settling a draft judgment or order the registrar shall have power to make variations to the draft in matters of detail or for the purpose of carrying out the substance or intent of the judgment or order.
- (2) In case of dispute or doubt, the registrar shall at the request of a party refer the matter to the Court giving the judgment or making the order, and the Court may settle the whole of the terms of the judgment or order or such part thereof as may call for special direction.
- (3) On the reference the Court will hear argument covering only what judgment or order was given or made, and if there is any reasonable doubt, leave may be given to relist the cause or action for rehearing. On any such reference the Court may vary or amend any minute, record, or fiat in order to give expression to the intent of the judgment or order and also to include any ancillary details which may have been omitted, and may finally settle the draft.

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- (4) Nothing herein contained shall derogate from any power or authority of the Court to reconsider any judgment or order before it has been drawn up, passed and entered.

*[Rule 11 amended in Gazette 14 Dec 1979 p. 3870.]*

**12. Party to engross settled judgment or order**

A judgment or order when settled and passed shall be engrossed by the party entering or extracting it.

**13. Certificate for special allowance on taxation of costs**

The registrar shall at the time of any attendance before him for the purpose of settling and passing any judgment or order, if requested by any party so to do on the ground that it is of a special nature or of unusual length or difficulty, certify for the information of the taxing officer whether in his opinion any special allowance ought to be made on taxation of costs in respect thereof.

*[Rule 13 amended in Gazette 14 Dec 1979 p. 3870.]*

**14. Entry of judgments and orders**

- (1) A judgment or order, when settled and passed, shall be filed in the Central Office by the party entering or extracting it and an entry of the filing shall be made in books to be kept for that purpose.
- (2) A judgment or order when filed shall be deemed to be duly entered, and the date of the filing shall be deemed the date of entry.
- (3) An order which is not required to be formally drawn up before being acted upon need not be entered unless it becomes necessary to serve the order for any purpose.

**15. Application to vary**

A party may, within 7 days after a draft judgment or order has been settled by the registrar, apply to the Court to add to or alter it for the purpose of making it correspond with the judgment or order as pronounced.

*[Rule 15 amended in Gazette 14 Dec 1979 p. 3870.]*

**16. Consent orders**

- (1) The parties to proceedings or their practitioners may file a written consent to the making of an order in those proceedings, other than an order that amends, cancels or is inconsistent with an interlocutory order made by a case manager under Order 4A.
- (2) Upon the written consent being filed, the registrar may settle, sign and seal the order without any other application being made in any case in which in his opinion the Court would make such an order upon consent of the parties or may bring the matter before the Court which may, if it thinks fit and without any other application being made, direct the registrar to settle, sign, and seal the order in accordance with the terms of consent.
- (3) The order shall state that it is made by consent and shall be of the same force and validity as if it had been made after a hearing by the Court.

*[Rule 16 inserted in Gazette 3 Oct 1975 p. 3769; amended in Gazette 26 Mar 1993 p. 1845; 28 Oct 1996 p. 5699; 28 Jul 2010 p. 3466-7.]*

*[Order 44 deleted in Gazette 21 Feb 2007 p. 551.]*

**Order 44A — *Foreign Judgments Act 1991*  
(Commonwealth) rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 637.]*

**1. Terms used**

In this Order unless the contrary intention appears —

- (a) the *Act* means the *Foreign Judgments Act 1991* of the Commonwealth; and
- (b) words used in this Order have, in relation to proceedings taken under the Act, the same meaning in this Order as they have in the Act.

*[Rule 1 inserted in Gazette 26 Aug 1994 p. 4414.]*

**2. Application of this Order**

This Order applies to the registration and enforcement of judgments to which Part 2 of the Act applies.

*[Rule 2 inserted in Gazette 26 Jan 1993 p. 824.]*

**3. Application for registration (Act s. 6)**

- (1) An application under section 6 of the Act, to have a judgment to which Part 2 of the Act applies registered in the Supreme Court may be made on motion *ex parte* to the Court.
- (2) The motion paper shall be entitled “In the Matter of the *Foreign Judgments Act 1991* of the Commonwealth and regulations thereunder made relating to (country) and in the matter of a judgment of the (describing court) obtained in (describing the cause or matter) and dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ ”.
- (3) Where the judgment is in respect of different matters, and some, but not all of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the

motion paper shall state the provisions in respect of which it is sought to register the judgment.

*[Rule 3 inserted in Gazette 26 Jan 1993 p. 824.]*

**4. Evidence in support of application**

- (1) An application for registration shall be supported by an affidavit of the facts —
  - (a) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal and where the judgment is not in the English language a translation of the judgment certified by a notary public or authenticated by affidavit; and
  - (b) stating to the best of the information and belief of the deponent —
    - (i) that the applicant is entitled to enforce the judgment; and
    - (ii) as the case may require, either that at the date of the application the judgment has not been complied with, or if the judgment has been complied with in part, the amount in respect of which it remains unsatisfied; and
    - (iii) that at the date of the application the judgment is capable of enforcement in the country of the original court; and
    - (iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 7 of the Act;
- and
- (c) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration,

and shall be accompanied by such other evidence with respect to the enforceability of the judgment in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the regulations extending the Act to the country of the original court.

- (2) Where a sum payable under the judgment is expressed in a currency other than the currency of Australia, the affidavit shall also state the amount which that sum represents in the currency of Australia calculated at the rate of exchange prevailing at the date of the judgment.
- (3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

*[Rule 4 inserted in Gazette 26 Jan 1993 p. 825; amended in Gazette 12 Jun 2012 p. 2453.]*

**5. Security for costs**

The Court may, in respect to an application for registration, order the judgment creditor to find security for the costs of the application and of any proceedings which may thereafter be brought to set aside the registration.

*[Rule 5 inserted in Gazette 26 Jan 1993 p. 825.]*

**6. Order for registration**

- (1) An order for registration of a judgment shall be drawn up by, or on behalf of, the judgment creditor.
- (2) The order need not be served on the judgment debtor.
- (3) The order shall state the period after service of the notice prescribed by rule 8 within which an application may be made to set aside the registration.



- (4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

*[Rule 6 inserted in Gazette 26 Jan 1993 p. 825.]*

**7. Register of judgments registered**

There shall be kept in the Central Office of the Supreme Court a register of the judgments ordered to be registered under the Act.

*[Rule 7 inserted in Gazette 26 Jan 1993 p. 825.]*

**8. Notice of registration**

- (1) Notice in writing of the registration of a judgment shall be served on the judgment debtor in the following manner —

- (a) if within the jurisdiction, by personal service as in the case of a writ of summons, unless some other mode of service is ordered by the Court;
- (b) if out of the jurisdiction, in accordance with Order 10 and the *Service and Execution of Process Act 1992* of the Commonwealth.

- (2) The notice of registration shall state —

- (a) full particulars of the judgment registered and the order for registration; and
- (b) the name and address of the judgment creditor or his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served; and
- (c) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside; and
- (d) in accordance with the term of the order giving leave to register, the period of time from the date of service of the notice within which an application to set aside the registration, may be made; and

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- (e) that no step for the enforcement of the judgment shall be taken until after the expiration of that period.

*[Rule 8 inserted in Gazette 26 Jan 1993 p. 826; amended in Gazette 1 Mar 1994 p. 787.]*

**9. Indorsement of service**

- (1) Within 3 days from the day of service or within such extended period as may, in special circumstances, be allowed by order of the Court, the notice or a copy or duplicate of the notice shall be indorsed by the person serving it with the date of the month and the day of the week on which service was effected, and, if the notice is not so indorsed, the judgment creditor shall not be at liberty to issue execution on the judgment without the leave of the Court.
- (2) Every affidavit of service of a notice referred to in subrule (1) shall state the date on which the indorsement was made.

*[Rule 9 inserted in Gazette 26 Jan 1993 p. 826.]*

**10. Application to set aside registration**

- (1) An application to set aside the registration of a judgment shall be made by summons supported by affidavit.
- (2) A summons shall be served not less than 7 clear days before the return day.
- (3) On any such application the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial of such issue as may be necessary.

*[Rule 10 inserted in Gazette 26 Jan 1993 p. 826.]*

**11. Enforcing registered judgment**

- (1) No step shall be taken to enforce a registered judgment until after the expiration of the period which, in accordance with the provisions of rule 6(3), is specified in the order giving leave to

register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

- (2) If an application is made to set aside the registration of a judgment, enforcement of the judgment shall be stayed until the application has been disposed of.
- (3) The party desirous of enforcing a registered judgment shall produce to the proper officer an affidavit of the service of the notice of registration and of any order made by the Court in relation to the judgment registered.

*[Rule 11 inserted in Gazette 26 Jan 1993 p. 827.]*

## **12. Determination of certain questions**

If, whether under the Act or under these rules, any question arises whether a judgment can be enforced in the country of the original court, or whether and if so what interest is payable under the judgment under the law of that country, that question shall be determined in accordance with the provisions, if any, in that behalf, as are contained in the regulations extending the Act to that country.

*[Rule 12 inserted in Gazette 26 Jan 1993 p. 827.]*

## **13. Certified copy of judgment obtained in this State**

- (1) An application under section 15 of the Act for a certified copy of a judgment obtained in the Supreme Court shall be made *ex parte* to the Principal Registrar on an affidavit made by the judgment creditor or his solicitor.
- (2) An affidavit for the purposes of this rule shall —
  - (a) give particulars of the proceedings in which the judgment was obtained; and
  - (b) contain a statement of the grounds on which the judgment was based; and

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- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, the grounds of such objection; and
  - (d) show that the judgment is not subject to any stay of enforcement and that no notice of appeal against it has been entered, and whether the time for appealing has expired; and
  - (e) state the rate at which the judgment carries interest.
- (3) Where an application for a certified copy of a judgment is duly made under this rule, there shall be issued a copy of the judgment sealed with the seal of the Supreme Court and certified by the Principal Registrar as follows —

“

I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of Western Australia and this copy is issued in accordance with section 15 of the *Foreign Judgments Act 1991* of the Commonwealth.

(Signed)

Principal Registrar of the Supreme Court of  
Western Australia.

”.

together with a certificate as to such one or more as may be asked for of the following matters, also under the seal of the Supreme Court and certified by the Principal Registrar —

- (a) particulars of the proceedings in which the judgment was obtained having annexed to it a copy of the writ of summons or originating summons, by which the proceedings were instituted;
- (b) the manner in which the writ or summons was served or that the defendant appeared thereto;
- (c) the objections made to the jurisdiction, if any;

- (d) the pleadings, if any, in the proceedings;
- (e) the causes of action upon which the judgment was based;
- (f) the rate at which the judgment carried interest;
- (g) such other particulars as it may be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment.

*[Rule 13 inserted in Gazette 26 Jan 1993 p. 827-8.]*

## **Order 45 — Accounts and inquiries**

### **1. Summary order for account to be taken**

- (1) Where the statement of claim claims an account or involves the taking of an account the plaintiff may, at any time after the defendant has entered an appearance, or after the time limited for appearing, apply for an order under this rule.
- (2) An application under this rule must be made by summons and must, unless the Court otherwise directs, be supported by affidavit or other evidence.
- (3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

### **2. Direction for accounts etc. may be made at any stage**

The Court may at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be taken or made.

### **3. Directions to be numbered**

Where by any judgment or order, whether made in court or in chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number.

### **4. Directions as to mode of taking account**

The Court may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the

account, the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

**5. Account to be verified**

- (1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by affidavit to which the account must be exhibited.
- (2) The items on each side of the account must be numbered consecutively.
- (3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account at the Central Office, and must notify the other parties forthwith that he has so lodged the account, and of the filing of the affidavit verifying the account, and any supporting affidavit.

**6. Vouchers and contested etc. items, directions as to**

Upon the taking of any account the Court may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged, shall be brought before the judge in chambers.

**7. Surcharge or error, notice of**

Any party seeking to charge an accounting party with an amount beyond that which he has by his account admitted to have received, or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof, stating so far as he is able, the amount sought to be charged with brief particulars thereof, or as the case may be, the grounds for alleging that the item is erroneous.

**8. Allowances that can be made without direction**

In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

**9. Expediting proceedings**

- (1) In any case in which there has been undue delay in the proceedings before him, the registrar shall report to the Court the fact of such delay in such proceedings, and shall state in his opinion the cause thereof.
- (2) If it shall appear to the Court on the report of the registrar or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings, or any other party to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and for costs, as the circumstances of the case may require.
- (3) For the purposes aforesaid the Court may direct any party or the proper officer to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions that may be given, and the Court may make such order as it thinks fit as to the payment of the proper officer's costs.

*[Rule 9 amended in Gazette 2 Jul 1982 p. 2316.]*

**10. Distributing fund before all persons entitled are ascertained**

Where some of the persons entitled to share in property are ascertained and there is, or is likely to be, difficulty in ascertaining the remaining persons entitled, the Court may authorise immediate payment of the shares of the persons ascertained without reserving any part of their shares to answer the costs subsequently to be incurred in ascertaining the remaining persons entitled.



**11. Master etc. may be ordered to take accounts or make inquiries**

- (1) If under this Order the Court orders that an account be taken or that an inquiry be made, the Court may order that it be taken or made by a master, or by a registrar or other proper officer.
- (2) The Court may, in respect of any order made under subrule (1), make any ancillary orders and give any directions that may be necessary.

*[Rule 11 inserted in Gazette 21 Feb 2007 p. 551-2.]*

**12. Right to adjournment from registrar etc.**

If a registrar or other proper officer, but not a master, is taking an account or making an inquiry, a party has the right to have the proceedings adjourned to a judge in person without any further summons for that purpose.

*[Rule 12 inserted in Gazette 21 Feb 2007 p. 552.]*

**Order 46 — *Civil Judgments Enforcement Act 2004*  
rules**

*[Heading inserted in Gazette 21 Feb 2007 p. 552.]*

**1. Terms used**

In this Order, unless the contrary intention appears —  
*Act* means the *Civil Judgments Enforcement Act 2004*;  
*section* means a section of the Act.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 552.]*

**2. Applications that may be dealt with by registrar**

- (1) Each of the following applications, if made to the Court, may be dealt with by a registrar —
- (a) an application made under a section listed in the Table to this subrule;
  - (b) an application for an order under section 10, 15(5)(a) or 20(3);
  - (c) an application for leave under section 13(1)(a).

**Table**

s. 15(1)	s. 41(2)	s. 59(1)
s. 27	s. 42(1)	s. 95(1)
s. 28	s. 49(1)	s. 101(1)
s. 32	s. 55(2)	s. 102(2)
s. 33	s. 56(1)	s. 103(2)
s. 35(1)	s. 58(1)	

- (2) A registrar who is dealing with an application or request may exercise any power conferred by the Act on the Court in respect of the application.

- (3) A registrar may conduct a means inquiry under section 30 and for that purpose exercise any power in section 30 or 31.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 552.]*

**3. Enforcing judgment in action between partners**

- (1) Proceedings under the Act to enforce a judgment in an action described in Order 71 rule 9 cannot be commenced without the leave of the Court.
- (2) On an application for such leave such accounts and inquiries may be directed to be taken and made, and such directions given, as may be just.

*[Rule 3 inserted in Gazette 22 Feb 2008 p. 637.]*

*[Order 47. Rules 1-8 and 10-15 deleted in Gazette 21 Feb 2007 p. 553; Rule 9 deleted in Gazette 15 Jun 1973 p. 2248.]*

*[Orders 48-50 deleted in Gazette 21 Feb 2007 p. 553.]*

## **Order 51 — Receivers**

### **1. Application for receiver and injunction**

- (1) An application for the appointment of a receiver may be made by summons (Form No. 60) or motion.
- (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for an order under subrule (1).
- (3) In special circumstances the application for such injunction may be made *ex parte* on affidavit.
- (4) On the hearing of an application under subrule (3) the Court may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver, and may direct that such summons be issued, returnable on a date fixed by the Court (Form No. 61 or No. 62).

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552.]*

*[2. Deleted in Gazette 21 Feb 2007 p. 553.]*

### **3. Security to be given by receiver**

- (1) Where a judgment is given or order made, directing the appointment of a receiver, then unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.
- (2) Where a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

- (3) The security referred to in subrule (2) shall, unless the Court otherwise directs, be by recognisance in Form No. 63 taken before a person authorised to administer oaths for the purposes of the Court, or if the amount for which security is to be given does not exceed \$7 500, by an undertaking.
- (4) The recognisance or undertaking must be filed in the Central Office, and shall be kept as of record until duly vacated.

*[Rule 3 amended in Gazette 30 Nov 1984 p. 3953; 28 Jun 2011 p. 2552.]*

**4. Remuneration of receiver**

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

**5. Accounts by receiver**

- (1) A receiver must file accounts at such intervals or on such dates as the Court may direct, and each such account must be verified by affidavit.
- (2) The receiver on filing an account must thereupon obtain an appointment from a registrar for the purpose of passing such account, and serve the account with a note of the appointment on each party interested who has an address for service in the proceedings.
- (3) A certificate of the registrar stating the result of a receiver's account shall from time to time be taken.

*[Rule 5 amended in Gazette 2 Jul 1982 p. 2316.]*

**6. Payment of balances by receiver**

The Court shall fix the days upon which the receiver must pay into court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him.

**7. Default by receiver**

- (1) Where a receiver fails —
- (a) to file an account or affidavit; or
  - (b) to attend for the passing of any account of his; or
  - (c) to make any payment; or
  - (d) to perform any duty,

he, and any or all of the parties to the cause or matter in which he was appointed, may be required on a summons taken out by the registrar or any party, to attend before a judge to show cause for the failure, and the judge may, either in chambers or after adjournment into court, give such directions as he thinks proper including, if necessary, the discharge of the receiver, and the appointment of another and the payment of costs.

- (2) Without limiting subrule (1) where a receiver fails to attend for the passing of any account of his, or fails to file any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account, and may where he has failed to pay any such sum into court charge him with interest at the prescribed rate on that sum while in his possession as receiver.
- (3) In this rule, *prescribed rate* means the rate of interest prescribed from time to time for the purposes of the *Civil Judgments Enforcement Act 2004* section 8.

*[Rule 7 amended in Gazette 2 Jul 1982 p. 2316; 21 Feb 2007 p. 553; 28 Jun 2011 p. 2552.]*

**8. Books of accounts to be deposited with Court**

When a receivership has been completed, the book containing the accounts shall be deposited in the Central Office.

**9. Compensation to party restrained**

Unless the Court otherwise orders, the making of an application for the appointment of a receiver shall be deemed to include an undertaking by the applicant for that relief that he will pay to any party affected by that order such compensation as the Court may in its discretion consider in the circumstances to be just, such compensation to be assessed by the Court, or in accordance with such directions as the Court may make and to be paid in such manner as the Court may direct.

*[Rule 9 inserted in Gazette 5 Jun 1992 p. 2282.]*

**10. Compensation by applicant to party restrained**

If upon the hearing of an application for the appointment of a receiver a restraint is imposed upon a party by an interlocutory undertaking to the Court, unless the Court otherwise orders there is a corresponding undertaking to the Court by the party having the benefit of the undertaking that he will pay to any party restrained or affected by the restraints imposed by the interlocutory undertaking such compensation that the Court may in its discretion consider in the circumstances to be just, such compensation to be assessed by the Court, or in accordance with such directions as the Court may make and to be paid in such manner as the Court may direct.

*[Rule 10 inserted in Gazette 5 Jun 1992 p. 2282.]*

**11. Application to *Civil Judgments Enforcement Act 2004***

Unless the Court orders otherwise, this Order, with any necessary changes, applies to and in respect of the appointment of a receiver under the *Civil Judgments Enforcement Act 2004* Part 4 Division 7.

*[Rule 11 inserted in Gazette 21 Feb 2007 p. 553.]*

## **Order 52 — Interlocutory injunctions, interim preservation of property**

### **1. Application for injunction**

- (1) An application for the grant of an injunction may be made by any party to a cause or matter either before at or after the hearing of the cause or matter, whether or not the injunction was claimed in the party's writ, originating summons, counterclaim or third party notice, as the case may be.
- (2) If the case is one of urgency the plaintiff may make the application *ex parte* on affidavit, but otherwise the application must be made by motion or summons.
- (3) In the case of urgency a person who intends to begin proceedings may make an application for the grant of an injunction before the issue of the writ or originating summons by which the cause or matter is to be begun, and the Court may grant the application on terms providing for the issue of the writ or originating summons, and such other terms, if any, as the Court thinks fit.

### **2. Detention etc. of property; securing funds in dispute**

- (1) The Court may, on the application of any party to a cause or matter, make an order for the detention, custody, preservation or inspection of any property which is the subject-matter of a cause or matter, or as to which any question may arise therein.
- (2) For the purpose of enabling an order under subrule (1) to be carried out the Court may by order authorise a person to enter upon or into any land or building in the possession of any party to the cause or matter.
- (3) Where the right of any party to a fund is in dispute in a cause or matter, the Court may order that the fund be paid into court or otherwise secured.



- (4) An order under this rule shall be subject to such terms, if any, as the Court thinks just.

*[Rule 2 amended in Gazette 26 Aug 1994 p. 4415; 28 Oct 1996 p. 5699; 28 Jun 2011 p. 2552.]*

**3. Power to order taking of samples etc.**

- (1) The Court may for the purpose of enabling the proper determination of any cause or matter or of any question arising therein, make orders on terms for —
- (a) the taking of samples of any property; or
  - (b) the making of any observation of any property; or
  - (c) the trying of any experiment on or with any property; or
  - (d) the observation of any process.

- (2) An order under subrule (1) may authorise any person to enter upon or into any land or building in the possession of any party, or to do any other thing for the purpose of getting access to the property.

*[Rule 3 amended in Gazette 28 Oct 1996 p. 5699; 28 Jun 2011 p. 2552.]*

**4. Disposal of perishable property etc.**

- (1) The Court may on the application of a party make an order for the sale or other disposal by a person named in the order and in such manner and on such terms (if any), as the Court thinks fit, of —
- (a) any property of a perishable nature; or
  - (b) any shares or securities which appear likely to depreciate in value; or
  - (c) any personal property whatever which for any just and sufficient reason it is desirable to sell at once.

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- (2) This rule applies to goods, wares, merchandise, shares, securities, and personal property which are the subject of a cause or matter or as to which a question arises in a cause or matter.

*[Rule 4 amended in Gazette 26 Aug 1994 p. 4415; 28 Oct 1996 p. 5699.]*

**5. Order for early trial on application for receiver, injunction etc.**

Where on the hearing of an application made before the trial of a cause or matter, for an injunction, or appointment of a receiver, or an order under rule 2, 3 or 4, it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly, and may direct that such trial be held at such place and time as the Court thinks fit, and as respects the period before trial, may make such order as the justice of the case requires.

**6. Recovering personal property subject to lien**

Where —

- (a) the plaintiff, or the defendant by way of counterclaim, seeks to recover specific property other than land; and
- (b) the party from whom the recovery is sought does not dispute the title of the party making the claim, but claims to be entitled to retain the property by virtue of a lien, or otherwise as security for a sum of money,

the Court at any time after the claim to be so entitled appears from the pleadings (if any), or by affidavit or otherwise to its satisfaction, order that the party seeking to recover the property be at liberty to pay into court to abide the event of the action, the amount of money in respect of which the security is claimed, and such further sum (if any), for interest and costs as the Court

directs, and that upon such payment being made, the property claimed be given up to the party claiming it.

**7. Directions**

- (1) The Court, on the hearing of an application made under any of rules 1 to 6, may give directions as to the further proceedings in the cause or matter.
- (2) Where the application is in an action begun by writ the Court may order that the action be before the Court for directions under Order 29 either forthwith, or upon such date as the Court may appoint, and, if it thinks fit, may dispense with the issuing of a summons under that Order.

*[Rule 7 amended in Gazette 28 Jun 2011 p. 2554.]*

**8. Allowance of income or transfer of property during case**

Where —

- (a) any real or personal property forms the subject-matter of any proceedings in the Court; and
- (b) the Court is satisfied that it will be more than sufficient to answer all the claims on it which ought to be provided for in the proceedings,

the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein, or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

**9. Injunction to include undertaking as to compensation to party restrained**

Unless the Court otherwise orders upon the grant of an interlocutory injunction the order shall include an undertaking to the Court on the part of the applicant that he will pay to any party restrained or affected by restraints imposed by the

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interlocutory injunction or by any interim continuation of the interlocutory injunction, such compensation as the Court may in its discretion consider in the circumstances to be just and such compensation shall be —

- (a) assessed —
  - (i) by the Court; or
  - (ii) in accordance with such directions as the Court may make;
- and
- (b) paid in such manner as the Court may direct.

*[Rule 9 inserted in Gazette 28 Feb 1992 p. 996-7.]*

**10. Compensation to party restrained by undertaking**

Where upon the hearing of an application for an interlocutory injunction a restraint is imposed upon a party by an interlocutory undertaking to the Court, unless the Court otherwise orders there shall be a corresponding undertaking to the Court by the party having the benefit of the undertaking that he will pay to any party restrained or affected by the restraints imposed by the interlocutory undertaking such compensation as the Court may in its discretion consider in the circumstances to be just and such compensation shall be —

- (a) assessed —
  - (i) by the Court; or
  - (ii) in accordance with such directions as the Court may make;
- and
- (b) paid in such manner as the Court may direct.

*[Rule 10 inserted in Gazette 28 Feb 1992 p. 997.]*

## Order 52A — Freezing orders

*[Heading inserted in Gazette 21 Feb 2007 p. 554.]*

### 1. Terms used

In this Order, unless the contrary intention appears —

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

**another court** means a court outside Australia, or a court in Australia other than the Supreme Court of Western Australia;

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

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

**judgment** includes an order;

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

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 554.]*

### 2. Freezing order

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

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 554.]*

### 3. Ancillary order

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

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

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 554-5.]*

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

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

*[Rule 4 inserted in Gazette 21 Feb 2007 p. 555.]*

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

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

- (3) This subrule applies to a cause of action if —
- (a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and
  - (b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.
- (4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because any of the following might occur —
- (a) the judgment debtor, prospective judgment debtor or another person absconds; or
  - (b) the assets of the judgment debtor, prospective judgment debtor or another person are —
    - (i) removed from Australia or from a place inside or outside Australia; or
    - (ii) disposed of, dealt with or diminished in value.
- (5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a *third party*) if the Court is satisfied, having regard to all the circumstances, that —
- (a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because —
    - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
    - (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor;

or

- (b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.
- (6) Nothing in this rule affects the power of the Court to make a freezing order or ancillary order if the Court considers it is in the interests of justice to do so.

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 555-6.]*

**6. Court's other jurisdiction not affected**

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

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 556.]*

**7. Service outside Australia of application for order**

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

*[Rule 7 inserted in Gazette 21 Feb 2007 p. 556.]*

**8. Costs**

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

*[Rule 8 inserted in Gazette 21 Feb 2007 p. 556-7.]*



## Order 52B — Search orders

*[Heading inserted in Gazette 21 Feb 2007 p. 557.]*

### 1. Terms used

In this Order, unless the contrary intention appears —

***applicant*** means an applicant for a search order;

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

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

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

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

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 557.]*

### 2. Search order

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

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 557.]*

### 3. Requirements for making of search order

The Court may make a search order if it is satisfied that —

- (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

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- (c) there is sufficient evidence in relation to a respondent that —
  - (i) the respondent possesses important evidentiary material; and
  - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 557.]*

**4. Court's other jurisdiction not affected**

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

*[Rule 4 inserted in Gazette 21 Feb 2007 p. 558.]*

**5. Terms of search order**

- (1) In this rule —  
**record** includes a copy, photograph, film or sample.
- (2) A search order may direct each person who is named or described in the order —
  - (a) to permit, or arrange to permit, such other persons as are named or described in the order —
    - (i) to enter premises specified in the order; and
    - (ii) to take any steps that are in accordance with the terms of the order;
  - and
  - (b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order; and
  - (c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order; and

- (d) not to disclose any information about the order, for up to 3 days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
  - (e) to do or refrain from doing any act as the Court considers appropriate.
- (3) Without limiting the generality of subrule (2)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include —
- (a) searching for, inspecting or removing the thing; and
  - (b) making or obtaining a record of the thing or any information it may contain.
- (4) A search order may contain such other provisions as the Court considers appropriate.

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 558.]*

**6. Independent solicitors, appointment of etc.**

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

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 558-9.]*

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**7.      Costs**

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

*[Rule 7 inserted in Gazette 21 Feb 2007 p. 559.]*

## **Order 53 — Sales of land by the Court**

**1. Term used: land**

In this Order *land* includes any interest in, or right over, land.

**2. Power to order sale of land**

If in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, shall deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

**3. Manner of sale**

- (1) Where an order is made directing that land be sold the Court may appoint a party or some other person to have the conduct of the sale and may permit that party or person to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under rule 4 direct for the best price that can be obtained.
- (2) The Court may direct any party to join in the sale and conveyance or transfer, or in any other matter relating to the sale.

**4. Directions**

- (1) The Court may either on the making of the order for sale, or on a subsequent application give such further directions as it thinks fit for the purpose of effecting the sale, including directions —
  - (a) appointing the party or person who is to have the conduct of the sale;
  - (b) fixing the manner of sale, that is to say, whether the sale is to be by contract conditional on the approval of the

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Court, by private treaty, by public auction, by tender, or by some other manner;

- (c) fixing a reserve or minimum price;
  - (d) requiring payment of the purchase money into court or to trustees or other persons;
  - (e) for settling the particulars and conditions of sale;
  - (f) for obtaining evidence of value;
  - (g) fixing the remuneration to be allowed to any auctioneer, real estate agent, or other person.
- (2) An application under subrule (1) which is made subsequent to the order for sale may be made by summons.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2552.]*

**5. Certificate of sale**

- (1) Where land is sold pursuant to this Order the result of the sale must be certified —
- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
  - (b) in any other case, by the solicitor of the party or person having the conduct of the sale,

unless in either case the Court otherwise orders.

- (2) The Court may require that the certificate be verified by the affidavit of the auctioneer or solicitor, as the case may be.
- (3) The solicitor of the party or person having the conduct of the sale must file the certificate and any affidavit verifying it.

**6. Mortgage, exchange or partition**

Rules 3, 4 and 5 apply so far as applicable and with the necessary modifications, to the mortgage, exchange or partition of any land under an order of the Court, as they apply to a sale of any land pursuant to this Order.

**7. Reference of matters to counsel**

The Court may refer to counsel —

- (a) any matter relating to the investigation of the title to any land with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof; and
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement, conditions of sale or other instrument; and
- (c) any other matter the Court thinks fit,

and may act upon the opinion given by counsel in the matter referred.

**8. Objection to counsel's opinion**

Any party may object to any opinion given by counsel on a reference under rule 7, and thereupon the point in dispute shall be determined by the judge either in chambers or in Court as he thinks fit.

## **Order 54 — Originating and other motions**

### **1. Application of this Order**

This Order applies to all motions, subject however, to any special provisions contained in these rules or made by or under any Act.

### **2. Which applications to be made by motion**

Where by these rules any application is authorised to be made to the Court, such application if made in Court, must be made by motion.

### **3. Notice of motion**

- (1) Except where an application by motion may properly be made *ex parte*, a motion shall not be made without previous notice to the party to be affected thereby, but the Court, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court thinks just.
- (2) Any party affected by such an order may apply to the Court to set it aside.

### **4. Time of notice of motion**

Unless upon application, which may be made *ex parte*, the Court otherwise orders, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

### **5. Form of notice of motion**

- (1) The form of the notice of an originating motion must be in Form No. 64 and the notice of any other motion in Form No. 65.



- (2) Where leave has been given under rule 4 to serve short notice of motion, that fact must be stated in the notice.
- (3) The notice of a motion must contain a concise statement of the nature of the claim made or the relief or remedy sought.

**6. Issue of notice of motion**

- (1) The notice of motion by which proceedings are begun must be issued out of the Central Office.
- (2) The notice is issued upon its being sealed by the proper officer.
- (3) Every other notice must be filed before service.

**7. Service of notice of motion with writ etc.**

- (1) The plaintiff may serve a notice of a motion to be made in an action upon a defendant with the writ or other originating process, or at any time after service of such writ or other originating process, whether or not the defendant has entered an appearance in the action.
- (2) Where notice of a motion is to be served on a person who has not entered an appearance, and is not in default of appearance the notice must be served personally.

**8. Adjournment etc.**

- (1) If on the hearing of a motion or other application the Court is of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court may think fit to impose.
- (2) The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court shall think fit.

*[Rule 8 amended in Gazette 9 Nov 1973 p. 4164.]*

## **Order 55 — Committal and attachment**

**1. Term used: contemnor**

In this Order —

*contemnor* means a person guilty or alleged to be guilty of contempt of court.

**2. Committal for contempt of court**

Subject to the Act, the power of the Court to punish for contempt of court may be exercised by an order of committal made by a judge, or judge of appeal, sitting alone.

*[Rule 2 inserted in Gazette 29 Apr 2005 p. 1792.]*

**3. Contempt in face of Court**

- (1) When 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 presiding judge may, by oral order, direct that the contemnor be arrested and brought before the Court as soon thereafter as the business of the Court permits, or may issue a warrant under his hand for the arrest of the contemnor.
- (2) When the contemnor is brought before the Court, the Court shall —
  - (a) cause him to be informed orally of the contempt with which he is charged; and
  - (b) require him to make his defence to the charge; and
  - (c) after hearing him proceed, either forthwith or after adjournment, to determine the matter of the charge; and
  - (d) make an order for the punishment or discharge of the contemnor.

- (3) The Court may, pending disposal of the charge —
  - (a) direct that the contemnor be detained in such custody as the Court directs; or
  - (b) direct that the contemnor be released on bail.
- (4) The powers given by this rule are exercisable, *mutatis mutandis*, by a judge sitting in chambers except that the contemnor must be brought before the Court sitting in court, and the Court shall hear and determine the charge and make the order.

**4. Other cases of contempt**

- (1) In a case to which rule 3 does not apply, and subject to subrule (2), application for punishment for contempt of court must be made by motion on notice to the contemnor, for an order that he be committed to prison for his contempt.
- (2) Applications for committal for contempt of court consisting of disobedience to judgments or orders of the Court made by a judge, or orders of the Court made by the master, may be made by summons to a judge in chambers.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2552 and 2554.]*

**5. Form and service of notice or summons**

- (1) The notice of motion or summons (as the case may be) must specify the contempt of which the contemnor is alleged to be guilty, and be entitled in the proceeding, if any, with reference to which the contempt is alleged to have been committed or if it is not alleged to have been committed with reference to a particular proceeding, shall be entitled “The State of Western Australia against” the contemnor (naming him) *ex parte* the applicant.
- (2) Unless the Court otherwise orders, the notice of motion or summons accompanied by a copy of the affidavit in support of the application must be served personally on the contemnor.

*[Rule 5 amended in Gazette 19 Apr 2005 p. 1299.]*

**6. Arresting contemnors**

Where —

- (a) notice of motion for punishment for contempt of court has been filed, or proceedings for punishment of a contempt have been commenced; and
- (b) it appears to the Court that the contemnor 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 contemnor 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 submit to the judgment or order of the Court.

**7. Punishing contemnors**

- (1) The Court may punish contempt of court by committal of the contemnor to prison, or by imposing a fine on him, or by both committal and fine.
- (2) When the Court imposes a fine, it may order that the contemnor be imprisoned, or further imprisoned, until the fine is paid.
- (3) Where the contemnor is a corporation the Court may punish contempt of court by sequestration, or fine or both.
- (4) An order of committal may be in Form No. 66.

**8. Execution of committal order may be suspended**

The Court making an order of committal may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as the Court thinks fit.

**9. Discharge from committal**

- (1) The Court may, on the application of any person committed to prison for contempt of court, discharge him, notwithstanding that the term for which he may have been ordered to be committed has not expired.
- (2) An application for the discharge of a person committed to prison for contempt, and any order made thereon, shall be served on the sheriff by the person making the application.

*[Rule 9 amended in Gazette 14 Dec 1979 p. 3870.]*

**10. Saving for other powers**

- (1) Nothing in rules 1 to 9 shall be taken as affecting the power of the Court —
  - (a) on an application for an order that a contemnor be required to pay a fine or give security, to make such an order; or
  - (b) to enforce orders and judgments by writ of attachment in the cases provided for in the Act.
- (2) The provisions of this Order so far as applicable, and with the necessary modifications apply in relation to an application for an order that a contemnor pay a fine or give security, as they apply in relation to an application for an order of committal.

*[Rule 10 amended in Gazette 28 Jun 2011 p. 2554.]*

**11. Court may make peremptory order in first instance**

Where there has been non-performance of an undertaking given to the Court, the Court may, in the first instance, instead of directing the issue of a writ of attachment or ordering committal, make a peremptory order for the performance of the act undertaken to be done.

*[Rule 11 amended in Gazette 9 Nov 1973 p. 4164.]*

**12.      Application of r. 6 to 9 to attachment etc.**

Rules 6 to 9 of this Order apply in the case of applications for attachment or committal for disobedience to judgments or orders, or for failure to perform or observe any such undertaking as is mentioned in rule 11.

## **Order 56 — Mandamus, certiorari, prohibition, *quo warranto***

### **Division 1 — General**

*[Heading inserted in Gazette 21 Feb 2007 p. 559.]*

#### **1. Application *ex parte***

(1) An application for —

- (a) a writ of mandamus, certiorari or prohibition, or for leave to exhibit an information of *quo warranto*; or
- (b) relief of like nature to mandamus or *quo warranto*,

may be made *ex parte* to the Court, and must be supported by affidavit.

(2) The motion for an order to show cause and all subsequent proceedings shall be entitled —

“

In the matter of an application for (description of the writ or order sought, e.g., a writ of prohibition) against (name of every person or authority against whom the relief is sought)  
**EX PARTE** (name of the applicant) applicant

”.

(3) Where a writ of mandamus, certiorari or prohibition is sought against a judicial or public authority or officer, the authority or officer shall be described by his or their name, and the name of his or their office.

(4A) In all other cases a party respondent may be described in the title by his name or the name of his office or both, or, in the case of a magistrate or justice in a court of summary jurisdiction, as the magistrate or justice at the place where the court is held.

(4) The applicant shall in all cases of applications under this rule be called the ***applicant***.

- (5) Subject to subrule (6) the application shall, in the first instance, be for an order calling upon the parties interested in resisting the application to show cause why the writ should not be issued, or the information filed, or the relief of like nature to mandamus or *quo warranto* given.
- (6) Where it appears necessary for the advancement of justice, the Court may in its discretion, grant an order absolute in the first instance for a writ of mandamus, certiorari, or prohibition, or for leave to exhibit an information of *quo warranto*.

*[Rule 1 amended in Gazette 9 Nov 1973 p. 4164; 28 Jun 2011 p. 2552 and 2554.]*

**2. Application for order to show cause, procedure on**

- (1) An application for an order to show cause shall be first listed before a judge in chambers.
- (2) The judge may —
  - (a) refuse the application; or
  - (b) make an order to show cause and order that it shall be heard by —
    - (i) a judge in chambers or in court; or
    - (ii) the Court of Appeal,

and, unless an order to show cause is made, may do any or all of the following —

- (c) direct that the application be decided by a judge sitting in court;
  - (d) direct that notice of the application be served on such persons as the judge directs;
  - (e) adjourn the hearing of the application.
- (3) If an order to show cause is made that is to be heard by the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.



*[Rule 2 inserted in Gazette 21 Feb 2007 p. 559-60.]*

**3. Order to show cause, terms of**

- (1) An order to show cause may include terms as to costs, and as to giving security, or otherwise.
- (2) The Court may order that an order to show cause why a writ of certiorari or prohibition should not issue operates as a stay of the proceedings in question until such time as the Court specifies in the order or orders otherwise.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 560.]*

**4. Service of order to show cause or notice of motion**

- (1) The order to show cause, or notice of motion must be served on such persons and in such manner as the Court directs, and unless the Court otherwise directs, there must be at least 7 clear days between service of the order to show cause or the notice, and the date named therein for the hearing of the application.
- (2) Where the application relates to any proceedings in or before a court, and the object is either to compel the court or an officer of the court to do an act in relation to the proceedings or to quash the proceedings or any order made therein, the order to show cause or notice of motion must be served on the clerk or registrar of the court, the other parties to the proceedings, and where an objection to the conduct of the judge or magistrate or justices constituting the court is to be made, on the judge, magistrate or justices.
- (3) An affidavit of service must be filed before the order to show cause or notice of motion is placed in the list for hearing, and if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason why service has not been effected.
- (4) If on the application for the order absolute or the hearing of the motion, the Court is of opinion that any person who ought to

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have had notice of the application has not been served, whether or not he is a person who ought to have been served under or pursuant to subrules (1), (2) or (3), the Court may direct service on that person, and adjourn the hearing in the meantime on such terms, if any, as it or he may direct.

*[Rule 4 amended in Gazette 9 Nov 1973 p. 4164; 28 Jun 2011 p. 2554.]*

[5. Deleted in Gazette 21 Feb 2007 p. 560.]

**6. Applicant's grounds etc. to be in order nisi**

- (1) The grounds of the application and the relief sought must be set out in the order nisi or notice of motion, if any, and if the applicant intends to ask for any amendment at the hearing he must give notice of his intention and of the proposed amendment.
- (2) The Court may allow any amendment which it thinks necessary for the advancement of justice, but except by leave of the Court a ground shall not be relied on or relief sought on the hearing other than a ground set out or relief sought in the order nisi or notice of motion.

*[Rule 6 amended in Gazette 9 Nov 1973 p. 4164.]*

**7. Right to be heard in opposition**

- (1) On the hearing of the application the Court shall hear any person who desires to oppose it, and appears to the Court to be a proper person to be heard, notwithstanding that he has not been served with the order nisi or notice of motion.
- (2) A person who is served with the order nisi or notice of motion or who is heard under this rule, may, in the discretion of the Court, be ordered to pay costs.

*[Rule 7 amended in Gazette 9 Nov 1973 p. 4164.]*

**8. Additional affidavits, determination of issue etc.**

- (1) On the hearing of the application the Court may allow the applicant to use further affidavits upon such terms as to adjournment or costs as the Court thinks fit.
- (2) Where the applicant intends to ask to be allowed to use further affidavits, he must give reasonable notice of his intention to every other party.
- (3) When any question or issue of fact arises upon the affidavits the Court may give such directions as it thinks fit for the determination of the question or issue by trial or inquiry.

*[Rule 8 amended in Gazette 9 Nov 1973 p. 4164; 2 Apr 1976 p. 1041.]*

**9. Order absolute, costs**

- (1) An order absolute must be served.
- (2) When an order nisi is made absolute the Court may dispose of the costs of the proceedings either by the final judgment or by a separate order.

*[Rule 9 amended in Gazette 9 Nov 1973 p. 4164.]*

**10. Issue and filing of writs**

- (1) A writ issued in proceedings to which this Order relates must —
  - (a) be prepared by the party seeking to issue it; and
  - (b) in accordance with Order 71A, state —
    - (i) the party's geographical address; and
    - (ii) the party's service details;and
  - (c) be issued out of the Central Office.
- (2) Upon presentation of every such writ for sealing, a copy thereof signed by or on behalf of the solicitor for the party issuing it, or by the party, if he is proceeding in person, must be filed.

- (3) Every such writ must be filed in the Central Office together with the return thereto and a copy of any order made thereon.

*[Rule 10 amended in Gazette 21 Feb 2007 p. 560-1.]*

### **Division 2 — Certiorari**

*[Heading inserted in Gazette 21 Feb 2007 p. 560.]*

#### **11. Time for application**

- (1) An order nisi for a writ of certiorari to remove a judgment, order, conviction or other proceeding of an inferior court or tribunal, or of a magistrate or justices, for the purpose of its being quashed, shall not be granted unless the application for the order is made within 6 months after the date of the judgment, order, conviction or other proceeding, or within such other period as may be prescribed by any enactment, or except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court to which the application is made.
- (2) Where the judgment, order, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court may adjourn the application for the order nisi until the appeal is determined or the time for appealing has expired.

*[Rule 11 amended in Gazette 9 Nov 1973 p. 4165.]*

#### **12. Copy of warrant, order etc. to be produced**

An order nisi for a writ of certiorari to remove any proceedings for the purpose of their being quashed, shall not be granted unless a copy of the warrant, order, conviction, inquisition or record, verified by affidavit has been filed, or the failure of the applicant to do so is accounted for to the satisfaction of the Court hearing the application.

*[Rule 12 amended in Gazette 9 Nov 1973 p. 4165.]*

**13. Order to quash in first instance**

Where on the return of any order nisi the Court directs a writ of certiorari to issue, or where an order absolute for a writ of certiorari is granted in the first instance, the Court may by the same order, direct that the judgment, order, conviction or decision of the inferior court or tribunal shall be quashed on the return without further order, and in that case the judgment, order, conviction, or decision is quashed upon the return without further order.

**14. Forms**

A writ of certiorari must be in Form No. 67 with such variations as the circumstances may require.

*[Rule 14 amended in Gazette 28 Jul 2010 p. 3483.]*

**Division 3 — Mandamus**

*[Heading inserted in Gazette 21 Feb 2007 p. 560.]*

**15. Applicant to show interest etc.**

- (1) An order nisi for a writ of mandamus, or for relief of a like nature shall be granted only on the application of a person who is interested in the relief sought.
- (2) Subject to subrule (3), the applicant must state by affidavit that the application is made at his instance as applicant.
- (3) When the applicant is a corporation an officer or agent of the corporation must state by affidavit that the application is to be made by the corporation as applicant.

*[Rule 15 amended in Gazette 28 Jun 2011 p. 2552.]*

**16. Form of writ**

- (1) Unless otherwise ordered by the Court, a writ of mandamus shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it.

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- (2) The Court may direct that the command shall be peremptory in the first instance.
- (3) A writ of mandamus must be in Form No. 69 with such variations as the circumstances may require.

*[Rule 16 amended in Gazette 9 Nov 1973 p. 4165.]*

**17. Time for return of writ**

Unless otherwise ordered by the Court, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

*[Rule 17 amended in Gazette 9 Nov 1973 p. 4165.]*

**18. Service**

Unless the Court otherwise directs —

- (a) where a writ of mandamus is directed to one person only, the original writ shall be personally served upon him by delivering it to him; and
- (b) where the writ is directed to 2 or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of a writ of summons, and shall be served upon the remaining one by delivering the original writ to him.

*[Rule 18 amended in Gazette 9 Nov 1973 p. 4165.]*

**19. Service on corporate body, or justices**

Unless otherwise directed by the Court, when a writ of mandamus is directed to justices, or to a corporation, or a company, or a public authority, it shall be served on so many of the justices, or of the officers or members of the corporation or company or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

*[Rule 19 amended in Gazette 9 Nov 1973 p. 4165.]*

**20. Return, content etc. of**

- (1) The persons to whom a writ of mandamus is directed shall, within the time allowed by the writ, file the writ or a copy of the writ in the Central Office, together with a certificate indorsed thereon or annexed thereto and signed by them, stating that they have done the act commanded by the writ, or stating the reason why they have not done so.
- (2) A copy of the return must be served on the applicant on the day on which it is filed.

**21. Pleading to return**

If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time as if the return were a defence in an action in which the applicant was the plaintiff, and the persons to whom the writ is directed were the defendants and had pleaded the return as their defence.

**22. No motion for judgment needed in some cases**

When a point of law is raised in answer to a return or another pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party without a motion for judgment being made or required.

**23. Peremptory writ**

If the questions of fact and law, if any, raised by the return are determined in favour of the applicant by judgment of the Court or otherwise, the applicant shall be entitled to a peremptory writ of mandamus commanding the persons to whom the first writ was directed to do the act commanded therein and the peremptory writ shall be awarded by the judgment or if there is no judgment, by a separate order.

**24. Costs**

- (1) Where a peremptory writ is awarded in the first instance, the Court shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.
- (2) Where a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time within one month after the return is filed.
- (3) The application shall be made to the Court and, if it is reasonably possible, to the judge by whom the writ was awarded.

*[Rule 24 amended in Gazette 9 Nov 1973 p. 4165.]*

**25. Proceedings in nature of interpleader**

When upon an application for a writ of mandamus it appears that some person other than the applicant claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the applicant claims to have done, the person to whom the order nisi or writ is directed may apply to the Court for an order that the last-named person be substituted for him or joined with him in all subsequent proceedings up to the issue of a peremptory writ of mandamus, and the Court may make such order on the application as is just.

*[Rule 25 amended in Gazette 9 Nov 1973 p. 4165.]*

**26. Proceedings not to abate due to death etc.**

Proceedings upon an application for a writ of mandamus shall not abate or be discontinued by reason of the death, resignation, retirement or removal from office of the person to whom the notice of motion, order nisi or writ is directed, but may be continued and carried on either in his name or otherwise, and if



a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

**27. Time for application for writ**

An application for a writ of mandamus, or an order in the nature of mandamus, to a judicial tribunal to hear and determine a matter must be made within 2 months after the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court.

*[Rule 27 amended in Gazette 9 Nov 1973 p. 4165.]*

**28. Mandamus by order**

In any case in which the Court directs the issue of a peremptory writ of mandamus in the first instance, the command may be expressed in an order of the Court without the issue of a writ, and the order shall have the same effect as a peremptory writ of mandamus.

**29. No action against party obeying writ or order**

An action or proceeding shall not be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus or an order of the Court for relief of the like nature issued by the Court.

*[Rule 29 amended in Gazette 9 Nov 1973 p. 4165.]*

**Division 4 — Prohibition**

*[Heading inserted in Gazette 21 Feb 2007 p. 560.]*

**30. Court may direct service of statement of claim instead of issuing prohibition**

The Court may in any case, instead of directing the issue of a writ of prohibition, direct the applicant to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded, and thereupon the same

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proceedings shall be had and taken in all respects as in an action.

*[Rule 30 amended in Gazette 9 Nov 1973 p. 4165.]*

**31. Proceedings on judgment**

If judgment is given for the applicant, the judgment shall include a direction that a writ of prohibition shall issue.

**32. Writ of *procedendo***

- (1) Where a writ of prohibition has been issued and it is afterwards made to appear to the Court that relief ought to be given against the judgment or order by which the writ was awarded on a ground on which relief might be given against a judgment in an action, the Court may direct that a writ of *procedendo* shall be issued commanding the judicial tribunal to which the writ of prohibition was issued to proceed to hear or determine the matter in question or otherwise proceed therein as if the writ of prohibition had not been issued.

- (2) A writ of *procedendo* shall be in Form No. 70.

*[Rule 32 amended in Gazette 9 Nov 1973 p. 4165.]*

**33. Prohibition by order**

- (1) The prohibition may be expressed in an order of the Court without the issue of a writ, and such order shall have the same effect as a writ of prohibition.
- (2) A writ of prohibition shall be in Form No. 71.

**Division 5 — *Quo warranto***

*[Heading inserted in Gazette 21 Feb 2007 p. 560.]*

**34. Rules of court applicable**

Subject to this Order, and to any direction as to practice or procedure given by the Court, the rules of the Supreme Court

apply, so far as they are relevant, to informations of  
*quo warranto*.

*[Rule 34 amended in Gazette 9 Nov 1973 p. 4165.]*

**35. Signature and service of information**

- (1) The information shall be in the name of the Attorney General or the applicant, as the case may be, on behalf of the State, and shall be signed by the Attorney General or the applicant.
- (2) A copy of the information must be served upon the defendant, or, if at the return of the order nisi he appeared by solicitor, then upon his solicitor.

*[Rule 35 amended in Gazette 19 Apr 2005 p. 1299.]*

## **Order 56A — Review orders under the *Magistrates Court Act 2004***

*[Heading inserted in Gazette 29 Apr 2005 p. 1797.]*

### **1. Terms used**

(1) In this Order —

***review order*** means an order that may be made under section 36;

***section*** means a section of the *Magistrates Court Act 2004*.

(2) A term defined in the *Magistrates Court Act 2004* has the same meaning in this Order as it has in that Act, unless the contrary intention appears.

*[Rule 1 inserted in Gazette 29 Apr 2005 p. 1797.]*

### **2. Application for review order, making**

(1) An application to the Court for a review order —

(a) must be made *ex parte*; and

(b) must be titled “In the matter of an application under the *Magistrates Court Act 2004* section 36 for a review order against [*name of the Court officer*], [*title of office held*] of the [*name of court*] at [*place*] *EX PARTE* [*name of applicant*], or as the case requires; and

(c) must be supported by an affidavit.

(2) The application must be for an order that requires the Court officer, and any person who will be affected by the Court officer’s act, order or direction that is in question, to satisfy the Supreme Court at a hearing that the act, order or direction should or should not be done or made or set aside, as the case requires.

*[Rule 2 inserted in Gazette 29 Apr 2005 p. 1798.]*

**3. Application for review order, procedure on**

(1) An application for a review order shall be first listed before a judge in chambers.

(2) The judge may —

- (a) refuse the application; or
  - (b) make a review order and order that it shall be heard by —
    - (i) a judge in chambers or in court; or
    - (ii) the Court of Appeal;
- or
- (c) make an order under section 36(5),

and, unless the judge acts under paragraph (b) or (c), may do any or all of the following —

- (d) direct that the application be decided by a judge sitting in court;
- (e) direct that notice of the application be served on such persons as the judge directs;
- (f) adjourn the hearing of the application.

(3) If a judge makes a review order, whether under section 36(6) or on an application made under rule 2 —

- (a) it may include an order as to who, apart from the Court officer named in the application, must be served with the review order;
- (b) it must include an order as to how the review order must be served;
- (c) it may include an order as to costs, and as to giving security for costs, or otherwise;
- (d) it may include an order that the review order operates as a stay of the proceedings in question until such time as the Court specifies in the order or orders otherwise.

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- (4) If a review order is made that is to be heard by the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

*[Rule 3 inserted in Gazette 29 Apr 2005 p. 1798-9.]*

**4. Review order, service of**

If a review order is made, it must be served in the manner specified in the order on —

- (a) the registrar of the court at the place where the Court officer concerned was at the relevant time; and
- (b) any other person who the review order requires to be served,

at least 7 clear days before the hearing date set for the review order.

*[Rule 4 inserted as rule 3 in Gazette 29 Apr 2005 p. 1799; renumbered as rule 4 in Gazette 21 Feb 2007 p. 561.]*

**5. Review order, hearing of**

- (1) At the hearing of a review order any person who wants to oppose the making of an order under section 36(4) or (5) is entitled to be heard, even if he or she has not been served with the review order.
- (2) The Court may order any person who is served with a review order, or who is heard at the hearing of a review order, to pay costs.
- (3) A person who wants to adduce affidavit evidence at the hearing of a review order must give reasonable notice of the fact to each other party.

*[Rule 5 inserted as rule 4 in Gazette 29 Apr 2005 p. 1799; renumbered as rule 5 in Gazette 21 Feb 2007 p. 561.]*

**6. Final order, making and service of**

- (1) If the Court makes an order under section 36(4), the Court may include an order as to costs or may adjourn the question.
- (2) If the Court makes an order under section 36(4), the order must be served on —
  - (a) the Court officer concerned; and
  - (b) any other person who the Court orders to be served.

*[Rule 6 inserted as rule 5 in Gazette 29 Apr 2005 p. 1799;  
renumbered as rule 6 in Gazette 21 Feb 2007 p. 561.]*

## **Order 57 — Habeas corpus**

### **1. Application for writ**

- (1) An application for a writ of *habeas corpus ad subjiciendum* may be made in the first instance to a judge sitting in Court or in chambers, unless the application is made on behalf of an infant, in which case it must be made in the first instance to a judge sitting in chambers.
- (2) The application may be made *ex parte*, and subject to subrule (3) must be supported by an affidavit by the person restrained showing that the application is made at his instance and setting out the nature of the restraint.
- (3) The requirement that an application be supported by an affidavit does not apply —
  - (a) to an application made on behalf of an infant; or
  - (b) when the person restrained is unable to make the affidavit.
- (4) Where the person restrained is unable to make the affidavit required by subrule (2) the affidavit may be made by some other person on his behalf and must state that the person restrained is unable to make the affidavit himself and for what reason.

*[Rule 1 amended in Gazette 9 Nov 1990 p. 5526; 29 Apr 2005 p. 1795; 21 Feb 2007 p. 561; 28 Jun 2011 p. 2552.]*

### **2. Power of Court when *ex parte* application made**

- (1) The judge to whom an application is made under rule 1 *ex parte* may —
  - (a) refuse the application; or
  - (b) order that the writ be issued immediately,and, unless an order is made for the writ to issue immediately, may do any or all of the following —



- (c) if the judge is not sitting in court, direct that the application be decided by a judge sitting in court;
  - (d) direct that notice of the application be served on the person against whom the issue of the writ is sought;
  - (e) adjourn the hearing of the application.
- (2) The notice of motion must be served on the person against whom the issue of the writ is sought, and on such other persons as the Court or judge may direct, and unless the Court or judge otherwise directs, there must be at least 4 clear days between the service of the notice and the date named therein for the hearing of the application.

*[Rule 2 amended in Gazette 9 Nov 1990 p. 5526; 29 Apr 2005 p. 1795; 21 Feb 2007 p. 561.]*

**3. Copies of affidavits to be supplied**

Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges, copies of the affidavits which he proposes to use at the hearing of the application.

**4. Court may order release of person restrained**

Without prejudice to rule 2(1) the Court or judge hearing an application for a writ of *habeas corpus ad subjiciendum* may, in its or his discretion, order that the person restrained be released, and such order shall be a sufficient warrant to any gaoler, constable or other person for the release of the person under restraint.

*[Rule 4 amended in Gazette 9 Nov 1990 p. 5526.]*

**5. Signed copy of writ to be filed**

When a writ of habeas corpus is presented for sealing, the person presenting it must at the same time file a copy of the writ signed by or on behalf of the solicitor for the party issuing it, or by the party himself if he is proceeding in person.

**6. Order for issue of writ, contents of**

- (1) If a judge orders that a writ of habeas corpus be issued, the order must state —
  - (a) the date on which the writ is returnable; and
  - (b) whether the writ is returnable before a judge or the Court of Appeal.
- (2) If a writ is made returnable before the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 561.]*

**7. Service of writ and notice**

- (1) Subject to subrules (2) and (3) a writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.
- (2) If it is not possible to serve such writ personally, or if it is directed to the superintendent or keeper of a prison, or other government official, it must be served by leaving it with a servant, officer, or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.
- (3) If the writ is directed to more than one person, the writ must be served in the manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

*[Rule 7 amended in Gazette 28 Jul 2010 p. 3484; 28 Jun 2011 p. 2552-3.]*

**8. Return to writ of habeas corpus**

- (1) The person to whom a writ of *habeas corpus ad subjiciendum* is directed must at the time and place specified in the writ, make his return to the writ.

- (2) The return must be indorsed on or attached to the writ and must state all the causes of the detention of the person restrained.
- (3) The return must be filed.
- (4) The return may be amended, or another return substituted for it, by leave of the Court or a judge.

**9. Procedure on hearing**

- (1) Upon the return of a writ of *habeas corpus ad subjiciendum*, the return shall first be read, and a motion shall then be made for discharging or remanding the person restrained or for amending or quashing the return.
- (2) Where the person restrained is brought up in accordance with the writ, he or his counsel shall first be heard, then the person denying his right to be discharged, or his counsel, and then the person restrained, or his counsel in reply.

**10. Form of writ**

A writ of habeas corpus must be in Form No. 73.

## **Order 58 — Proceedings by originating summons**

### **Division 1 — Introductory**

*[Heading inserted in Gazette 22 Feb 2008 p. 638.]*

#### **1. Which proceedings to be commenced by originating summons**

Subject to the provisions of any Act and of these rules, civil proceedings between parties, which may be heard in chambers, must be commenced by originating summons.

### **Division 2 — Administration and trusts**

*[Heading inserted in Gazette 22 Feb 2008 p. 638.]*

#### **2. Executors etc. seeking certain relief without administration**

The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee or next of kin of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in chambers for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require (that is to say) the determination, without an administration of the estate or trust, of any of the following questions or matters —

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin or cestui que trust;
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others;

- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;
- (d) the payment into court of any money in the hands of the executors or administrators or trustees;
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f) the approval of any sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising in the administration of the estate or trust.

**3. Executors etc. applying for administration**

Any of the persons named in rule 2 may in like manner apply for and obtain an order for —

- (a) the administration of the estate of the deceased;
- (b) the administration of the trust.

*[Rule 3 amended in Gazette 28 Jun 2011 p. 2554.]*

**4. Service of summons issued under r. 2 or 3**

The persons to be served with the summons under rules 2 and 3 in the first instance shall be the following (that is to say) —

- (a) where the summons is taken out by an executor or administrator or trustee —
  - (i) for the determination of any question, under rule 2(a), (e), (f), or (g), the persons, or one of the persons, whose rights or interests are sought to be affected;
  - (ii) for the determination of any question, under rule 2(b), any member or alleged member of the class;

- (iii) for the determination of any question, under rule 2(c), any person interested in taking such accounts;
  - (iv) for the determination of any question, under rule 2(d), any person interested in such money;
  - (v) for relief under rule 3(a), the residuary beneficiaries, or next of kin, or some of them;
  - (vi) for relief under rule 3(b), the cestuis que trustent, or some of them;
  - (vii) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur;
- (b) where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

*[Rule 4 amended in Gazette 28 Jun 2011 p. 2554.]*

**5. Decision without judgment for administration**

It shall not be obligatory on the Court to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

**6. Orders which may be made on application for administration etc. of trusts**

Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court may, in addition to the powers already existing —

- (a) order that the application shall stand over for a certain time and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper

statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;

- (b) when necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the judge in person.

**7. Interference with discretion of trustee etc.**

The issue of a summons under rule 2 shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

**8. Conduct of sale of trust property**

Where in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court shall otherwise direct.

*[Heading deleted in Gazette 10 Jan 1975 p. 51.]*

- [9. *Deleted in Gazette 10 Jan 1975 p. 51.]*

**Division 4 — Declaration on originating summons**

*[Heading inserted in Gazette 22 Feb 2008 p. 638.]*

**10. Construction of written instruments**

Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the

instrument, and for a declaration of the rights of the persons interested.

**11. Construction or validity of legislation**

- (1) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of a statute, or of a regulation, rule, by-law or instrument made or purporting to be made under a statute, or of the validity of any such regulation, rule, by-law, or instrument, may apply by originating summons for the determination of such question of construction or validity, and for a declaration as to the right claimed.
- (2) This rule is subject to any special statutory provision for the determination of any such matters.

**12. Court may refuse to determine summons in some cases**

The Court shall not be bound to determine any such question of construction if in the opinion of the Court it ought not to be determined on originating summons.

**13. Effect of contracts for sale etc. of land**

A vendor or purchaser of land or any interest in land or their personal representatives may apply to the Court by originating summons in respect of any requisitions or objections or any claim for compensation or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract) and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incidental to the application are to be borne and paid.



### **Division 5 — General**

*[Heading inserted in Gazette 22 Feb 2008 p. 638.]*

#### **14. Form and issue of originating summons**

- (1) An originating summons must be in Form No. 74 or 75 as the case may require and must be prepared by the applicant or his solicitor.
- (2) The party taking out an originating summons shall be described as a plaintiff, and the other parties shall be described as defendants.
- (3) Issue of an originating summons takes place upon its being sealed in the Central Office.
- (4) The person presenting the summons for sealing must file a copy thereof at the time the summons is issued.
- (5) An originating summons shall be entitled in the matter of the Act (if any) and the section thereof, under which the application is made and of the estate or trust, or of the property, person or matters, to which or to whom it relates.
- (6) Where appearance to an originating summons is not required, the summons must state the persons upon whom it is intended to be served, or that it is not intended to be served on any person.

#### **15. Order 7 applies to originating summonses**

Order 7 applies in relation to an originating summons as it applies in relation to a writ.

#### **16. Time for appearance**

Unless otherwise directed by the Court, the time to be limited for appearance to an originating summons to which an appearance is required to be entered shall be calculated in accordance with the table contained in Order 5 rule 11 as if the writ were an originating summons.

*[Rule 16 inserted in Gazette 3 Oct 1975 p. 3769.]*

**17. Entry of appearance**

- (1) Except as otherwise provided, a party served with an originating summons must before he is heard enter an appearance and give notice thereof to the other parties.
- (2) A party served with an originating summons may appear at any time before the hearing of the summons.
- (3) If the party served appears at any time after the time limited by the summons for appearance he shall not, unless the Court otherwise orders, be entitled to any further time for any purpose, than if he had appeared according to the summons.
- (4) The Court, if it sees fit so to do, may permit a party served with an originating summons to be heard on the summons although that party has not entered an appearance, on the undertaking of the solicitor of that party, or of the party himself, if he appears in person, to enter an appearance forthwith.
- (5) The provisions of Order 12 apply, with the necessary modifications, in relation to an originating summons to which an appearance is required to be entered, as they apply in relation to a writ.

**18. When appearance not required**

A respondent shall not be required to enter an appearance to an originating summons —

- (a) for the taxation and delivery of bills of costs or for the delivery by any solicitor of a cash account or deeds, documents or papers, or for a solicitor to pay money; or
- (b) under the *Commercial Arbitration Act 1985*; or
- (c) under Order 17 for interpleader relief; or
- (d) for an extension of time or for leave to institute an appeal or other proceeding; or

- (e) to transfer an appeal or other proceeding from another court; or
- (f) in any other case where it is so provided by these rules.

*[Rule 18 amended in Gazette 13 Oct 1978 p. 3701; 20 Jun 1986 p. 2040.]*

**18A. Time for service where appearance not required**

- (1) Unless otherwise directed by the Court, the plaintiff must serve an originating summons to which an appearance is not required to be entered, and a copy of every affidavit in support thereof, at least 10 clear days before the return day of the summons.
- (2) Where the originating summons is not heard on the return day, a further day and time for the hearing may be fixed on the application of the plaintiff or, the applicant, as the case may be.

*[Rule 18A inserted in Gazette 3 Oct 1975 p. 3770.]*

**19. Fixing time for hearing summons**

- (1) Where any defendant served with an originating summons to which an appearance is required to be entered, has entered, or, within the time limited for appearing has failed to enter, an appearance, the plaintiff may, subject to the following subrules, obtain an appointment for the attendance of the parties for the hearing of the summons and a day and time shall be fixed by a notice in Form No. 76 which shall be sealed in the Central Office.
- (2) At least 14 days before the time fixed for the hearing of the originating summons, the plaintiff must serve upon each defendant who has entered an appearance a copy of every affidavit in support thereof, not being an affidavit in reply to an affidavit filed by a defendant.
- (3) A plaintiff shall not obtain a date of hearing under this rule unless he is ready to proceed and has filed a certificate of readiness.

- (4) The certificate referred to in subrule (3) —
- (a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and
  - (b) shall be signed personally by the plaintiff's solicitor, or by the plaintiff where he is not represented by a solicitor.
- (5) A copy of the certificate shall be served with the notice of appointment.
- (6) Where a plaintiff fails to apply for an appointment under subrule (1), any defendant who has entered an appearance may, with the leave of the Court, and on such terms as the Court may order, obtain an appointment for the hearing of the originating summons.

*[Rule 19 inserted in Gazette 3 Oct 1975 p. 3770; amended in Gazette 28 Jun 2011 p. 2552-3.]*

**20. Notice of hearing of summons**

At least 10 days before the day fixed under rule 19 for the hearing of an originating summons, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance, and if the first-mentioned party is a defendant, on the plaintiff.

*[Rule 20 inserted in Gazette 3 Oct 1975 p. 3770.]*

**21. Evidence at hearing to be by affidavit**

Unless the Court otherwise orders, evidence at the hearing of an originating summons shall be adduced by affidavit.

*[Rule 21 inserted in Gazette 3 Oct 1975 p. 3770.]*

**22. Hearings in absence of party**

- (1) Where any party to an originating summons fails to attend at the first or any resumed hearing thereof, the Court may proceed in

his absence if, having regard to the nature of the application, it thinks it expedient so to do.

- (2) Before proceeding in the absence of any party the Court may require to be satisfied that the originating summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.
- (3) Where the Court hearing an originating summons has proceeded in the absence of a party, then provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may rehear the originating summons.
- (4) Where an application made by originating summons has been dismissed without a hearing by reason of the failure of the party who took out such summons to attend the hearing, the Court if satisfied that it is just to do so, may allow such summons to be restored to the list, and again brought on for hearing.

**23. Order made *ex parte* may be set aside**

The Court may set aside any order which has been made *ex parte*.

**24. Costs thrown away by non-attendance of party**

Where a proceeding in chambers fails by reason of the non-attendance of any party, and the Court does not think it expedient to proceed in his absence, the Court may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

*[Rule 24 amended in Gazette 9 Nov 1973 p. 4165.]*

**25. Hearings not completed on hearing date**

Where matters in respect of which an originating summons has been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further

summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

**26. Other matters that may be included in one summons**

In every cause or matter where any party thereto makes any application at chambers, either by way of originating summons, summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court, and upon the hearing of such application it shall be lawful for the Court to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Court thinks fit, be adjourned from chambers into court, or from court into chambers.

*[Rule 26 amended in Gazette 9 Nov 1973 p. 4165.]*

**27. Directions as to hearings, evidence etc.**

- (1) If an originating summons is not disposed of altogether on the first hearing thereof, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to securing the just, expeditious, and economical disposal thereof.
- (2) The Court shall, as early in the proceedings as appears to it to be practicable, consider whether there is or may be a dispute as to fact, and whether it is expedient to hear the summons on oral evidence or mainly on oral evidence, and if it thinks fit may order that no further affidavits shall be filed and that the summons shall be heard on oral evidence, or partly on oral evidence and partly on evidence by affidavit with or without cross-examination of any deponent, as it may direct.

**28. Adjourning hearings**

- (1) The Court may from time to time adjourn the hearing of an originating summons, either generally or to a particular date, as

may appear to it to be appropriate, and the powers of the Court under rules 26 and 27 may be exercised at any resumed hearing.

- (2) Where the hearing of an originating summons is adjourned generally, the party who obtained the appointment for the hearing, may bring the summons on for further hearing on 2 days' notice in writing to the registrar and to all the other parties, and any of those parties may bring the matter on with the leave of the Court.
- (3) Notice under subrule (2) need not be given to a party who is in default as to appearance.

*[Rule 28 amended in Gazette 3 Oct 1975 p. 3771; 28 Jun 2011 p. 2552.]*

## **29. Court's powers and procedure at hearings**

Upon every application by originating summons —

- (a) the Court may direct such persons to be served with the summons or with a notice in lieu of service of the summons as it may think fit;
- (b) the Court may appoint representative defendants;
- (c) all persons served shall be entitled to adduce evidence either for or against the application;
- (d) directions may be given as the Court thinks just for the trial of any questions arising out of the evidence;
- (e) it shall be lawful for the Court upon such summons to pronounce such judgment as the nature of the case may require;
- (f) the Court may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as it may think just.

**30. *Transfer of Land Act 1893* s. 129C applications, directions as to**

- (1) Where on an application under section 129C of the *Transfer of Land Act 1893* inquiries or notices are pursuant to subsection (4) of that section directed to be made or given, the applicant or his solicitor shall after making the inquiries and giving the notices attend before a master on a day to be appointed by him and the master —
  - (a) shall ascertain whether the inquiries were duly made and what the results of the inquiries were and whether the notices were duly given in the manner and to the persons directed; and
  - (b) shall state the results of his inquiry in a certificate signed by him, and an order shall not be made on an application in which a direction is given pursuant to that subsection until a certificate in accordance with this paragraph has been obtained from the master and filed.
- (2) Where it appears that the application will not be opposed, the master, if he is satisfied that all directions have been complied with, may proceed to deal with the application forthwith and without a certificate being given and filed.
- (3) Where the powers of the Court under section 129C of the *Transfer of Land Act 1893* are exercised by a registrar, references in this rule to the master shall include references to the registrar.

*[Rule 30 inserted in Gazette 24 Jun 1977 p. 1914-15; amended in Gazette 30 Jul 1982 p. 2946; 30 Nov 1984 p. 3951.]*



## **Order 59 — Applications and proceedings in chambers**

### **1. Business to be dealt with in chambers**

- (1) The business to be disposed of in chambers shall consist of —
- (a) applications for time to plead, for leave to amend pleadings, for discovery and inspection of documents, and generally all applications relating to the conduct of any cause or matter;
  - (b) subject to rule 2, civil proceedings commenced by originating summons;
  - (c) applications which by these rules or any Act may be heard in chambers;
  - (d) any application that may be made to the Court or a judge under a written law of the State or a law of the Commonwealth except —
    - (i) an appeal, or an application to review a decision; and
    - (ii) an application that the law says cannot be heard in chambers;
  - (e) applications for the leave of the Court;
  - (f) applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter;
  - (g) applications for the investment or change of investment of any funds in court;
  - (h) applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise;
  - (i) applications for interim and permanent investment and for payment of dividends under any Act, whereby the purchase money of any property sold is directed to be paid into court;

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- (j) applications on behalf of an infant where the infant is a ward of Court, or where the administration of the estate of an infant, or the maintenance of an infant, is under the direction of the Court;
  - (k) applications for the settlement of any property of any infant on marriage;
  - (l) applications as to the guardianship, custody, maintenance or advancement of infants;
  - (m) applications connected with the management of property;
  - (n) applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into court and investment of the purchase money;
  - (o) applications for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers;
  - (p) applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of the estate of an intestate, or for the distribution of a fund among creditors;
  - (q) such other matters as the judge may think fit to dispose of at chambers.
- (2) All proceedings before a registrar are to be conducted in chambers unless a judge orders, or a written law provides, otherwise.

*[Rule 1 amended in Gazette 28 Oct 1996 p. 5699; 21 Feb 2007 p. 562; 28 Jun 2011 p. 2555.]*

**2. Hearings may be in open court or chambers**

- (1) Where in any cause or matter commenced by originating summons it appears to the Court at any stage of the proceedings, that the proceedings should for any reason be heard in open

court, the Court may order that the hearing or further hearing of the proceedings shall be so held, and may give all necessary directions for the further conduct of the cause or matter.

- (2) Proceedings commenced by originating summons which are brought on for hearing or further hearing in open court, may, if the Court thinks fit, be adjourned into chambers.

**3. Applications in chambers, form of**

- (1) An application in chambers, other than an application made by originating summons, shall be made —
- (a) if it is *ex parte*, by motion;
  - (b) in any other case by summons,

unless these rules require or authorise it to be made otherwise.

- (2) An application to a case management registrar in chambers under Order 4A shall be made in accordance with Order 4A rule 17.
- (3) An application in chambers shall state the orders that the applicant seeks and the grounds for the application.
- (4) The Court may direct notice of a motion made *ex parte* to be served on any person the Court thinks fit.

*[Rule 3 inserted in Gazette 28 Oct 1996 p. 5699-700; amended in Gazette 28 Jul 2010 p. 3467.]*

**4. Summons, form and issue of**

- (1) A summons other than an originating summons must be in Form No. 77 and must be addressed to all the persons on whom it is to be served.
- (2) A summons is issued by being sealed in the Central Office.
- (3) At the time the summons is issued the person presenting it for sealing must file a copy of the summons.

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- (4) A summons shall not be amended after issue except with the leave of the Court.

**5. Summons, service of**

- (1) Subject to subrule (2) a summons (other than an originating summons) must be served 7 days before the return day of the summons, unless the Court or these rules allow a shorter period of service.
- (2) A summons asking only for the extension or abridgement of any period of time may be served on the day previous to its return.
- (3) Unless the Court otherwise orders —
- (a) an affidavit in opposition to a summons must be filed and a copy served upon the applicant not less than 2 days before the return day of the summons; and
  - (b) a party who wishes to bring on for further hearing a summons that has been adjourned must give 2 days' written notice to the registrar and to all other parties.

*[Rule 5 amended in Gazette 3 Oct 1975 p. 3771; 28 Jun 2011 p. 2552.]*

**6. Experts, assistance of**

- (1) The Court may, if it thinks it expedient in order to enable it the better to determine any matter arising in any proceedings in chambers, obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.
- (2) The Court may make such order as to the costs of obtaining such assistance as it shall think fit.

**7. Application of O. 58 r. 22 to 28**

Order 58 rules 22 to 28, with any necessary changes, apply in relation to an application in chambers under this Order in the same way as they apply to an application made by originating summons.

*[Rule 7 inserted in Gazette 28 Oct 1996 p. 5700.]*

**8. Stay of proceedings, ordering**

A judge may, if under special circumstances he thinks fit, order that a summons shall operate as a stay of proceedings from the time of service of the summons, and the summons shall be drawn up accordingly and shall be signed by the judge.

**9. Parties to confer before making application**

- (1) No order shall be made on an application in chambers unless the application was filed with a memorandum stating —
  - (a) that the parties have conferred to try to resolve the matters giving rise to the application; and
  - (b) the matters that remain in issue between the parties.
- (2) The Court may waive the operation of subrule (1) in a case of urgency or for other good reason.

*[Rule 9 inserted in Gazette 28 Oct 1996 p. 5700; amended in Gazette 28 Jun 2011 p. 2552.]*

**10. Orders, form of**

- (1) Subject to subrule (2), an order shall be in accordance with Form No. 78 or with such other form as is applicable in the circumstances, and shall be prepared by the party entitled to the order.
- (2) Notwithstanding the provisions of the prescribed forms, it shall not be necessary for an order to recite any affidavit filed in support of the summons on which the order is made.

*[Rule 10 inserted in Gazette 10 Jan 1975 p. 51; amended in Gazette 28 Jun 2011 p. 2552.]*

## **Order 60 — Masters' jurisdiction**

*[Heading inserted in Gazette 21 Feb 2007 p. 562.]*

### **1. Masters' general jurisdiction**

- (1) A master has the same jurisdiction that a judge sitting in chambers has under the *Supreme Court Act 1935* or these rules, unless it is expressly stated otherwise.
- (2) A master has jurisdiction to hear and determine any action, application or proceeding that the Chief Justice or the judge in charge of the civil list directs is to be heard and determined by a master, even if it cannot be heard and determined by a judge sitting in chambers.
- (3) Despite subrules (1) and (2) a master does not have jurisdiction in respect of any of the following —
  - (a) proceedings relating to the liberty of a person;
  - (b) proceedings for contempt of court;
  - (c) proceedings seeking prerogative relief;
  - (d) proceedings seeking a review order under the *Magistrates Court Act 2004* section 36;
  - (e) proceedings seeking leave to appeal;
  - (f) proceedings under a written law, other than these rules, that must be heard and determined by a judge;
  - (g) proceedings under Order 65C.
- (4) Despite subrule (3), a master has jurisdiction to hear and determine any proceeding, not otherwise within a master's jurisdiction —
  - (a) if the parties to the proceeding consent; or
  - (b) if the terms of any order made in the proceeding are agreed between the parties to the proceeding,

but a party's failure to seek or give consent does not prejudice the party's right to costs on a summons before a judge.

- (5) For the purposes of any proceedings before him or her, a master may exercise the powers of the Court under any of the following enactments —
  - (a) *Evidence Act 1906* section 16(1)(b), 51 or 52;
  - (b) *Prisons Act 1981* section 22.
- (6) For the purposes of any proceedings before him or her, a master has the same jurisdiction as a judge would have if the proceedings were before a judge.
- (7) For the purpose of any proceedings before a master, these rules apply to and in respect of any person who is summoned to appear or who appears in the proceedings as if the proceedings were before a judge.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 562-3.]*

**2. Master may refer matter to judge or Court of Appeal**

- (1) A master may refer an application or proceeding to a judge or the Court of Appeal for determination and may make an order pending the determination.
- (2) The power in subrule (1) may be exercised by a master —
  - (a) on his or her own initiative;
  - (b) in the absence of the parties;
  - (c) before the hearing date of the application or proceeding.
- (3) The judge or Court of Appeal may hear and determine the application or proceeding or may refer it back to the master with or without directions.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 563.]*

## **Order 60A — Jurisdiction of registrars and appeals from registrars' decisions**

*[Heading inserted in Gazette 28 Oct 1996 p. 5701.]*

### **1. Registrars' powers**

A registrar may exercise these powers of the Court:

- (aa) under Order 36A, the powers of the Court in relation to expert evidence;
- (a) under Order 42 rule 8, to obtain the consent of a defendant in person;
- (b) under Order 46 rule 3A, to grant leave to issue a writ of possession;
- (c) under Order 62A rule 4, to grant leave in a mortgage action begun by a writ to enter judgment in default of appearance or in default of defence;
- (d) under section 129C(4) of the *Transfer of Land Act 1893* and, where the application is not opposed, under the other provisions of that section;
- (e) under Part 5.9 Division 1 of the *Corporations Act 2001* of the Commonwealth to conduct an examination ordered by the Court but, in doing so, not to exercise a power referred to in Order 81G rule 74;
- (f) under Part 5 Division 2 of the *Criminal Property Confiscation Act 2000* to conduct an examination ordered by the court under section 58 of that Act.

*[Rule 1 inserted in Gazette 28 Oct 1996 p. 5701; amended in Gazette 16 Jul 1999 p. 3194; 23 Jan 2001 p. 562; 27 Sep 2002 p. 4829; 21 May 2004 p. 1712.]*



**2. Case management registrars' powers**

- (1) For the purposes of Order 4A Division 4, a case management registrar may exercise the powers of the Court under these rules:

Order 2	Order 28
Order 3	Order 30 rules 2 and 5
Order 7	Order 33 rule 2
Order 8	Order 37
Order 18	Order 41
Order 19	Order 52 rules 2 to 5
Order 20	Order 58 rules 22 to 27 and 29
Order 21	Order 66
Order 22	Order 73
Order 23	Order 75 rules 4, 5, 6 and 7
Order 26	Order 83
Order 26A	
Order 27	

- (2) The powers in subrule (1) are in addition to any other powers conferred on case management registrars.
- (3) A case management registrar cannot order the attachment or committal of any person.
- (4) An interlocutory order made by a case management registrar is not enforceable by a writ of attachment or order of committal.

*[Rule 2 inserted in Gazette 28 Oct 1996 p. 5701-2; amended in Gazette 16 Jul 1999 p. 3194; 28 Jul 2010 p. 3467; 28 Jun 2011 p. 2552.]*

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**2A. Applications within registrar's jurisdiction to be made to registrar**

An application in relation to a power of the Court that is exercisable by a registrar or case management registrar shall be made to a registrar or case management registrar, as the case requires, unless —

- (a) the application or matter has been referred under rule 3 to a master or to the Court; or
- (b) a judge or registrar has granted leave for the application to be made to a master or to a judge.

*[Rule 2A inserted in Gazette 16 Jul 1999 p. 3194.]*

**3. Registrar may refer matter to higher judicial officer**

- (1) A case management registrar may refer a matter arising in a hearing under Order 29 to a master who may either dispose of the application or matter or refer it back to the registrar with such directions as the master thinks fit.
- (2) A case management registrar may —
  - (a) with or without hearing it, refer an application made under Order 4A rule 17; or
  - (b) refer a matter arising in a case management conference under Order 4A,  
  
to a master who may either dispose of the application or matter or refer it back to the registrar with such directions as the master thinks fit.
- (3) A registrar may refer any other application or matter to the Court and the Court may either dispose of the application or matter or refer it back to the registrar with such directions as it thinks fit.
- (4) When a registrar refers an application or a matter under —
  - (a) subrule (3); or

(b) Order 43 rule 11(2); or

*[(c) deleted]*

(d) Order 66 rule 45 or 52,

the referral shall be by memorandum containing short background notes, the reason or reasons for the referral and the registrar's preliminary views on the issue or issues upon which the referral is sought.

*[Rule 3 inserted in Gazette 28 Oct 1996 p. 5702; amended in Gazette 29 Apr 2005 p. 1792; 28 Jul 2010 p. 3467; 28 Jun 2011 p. 2552.]*

#### **4. Appeals from registrars' decisions**

- (1) Subject to subrule (6), a person affected by an order or decision of a registrar may appeal from it.
- (2) The appeal must be made to a master unless a judge orders otherwise.
- (3) The decision of a master on an appeal from a procedural decision of a registrar is final.
- (4) The decision of a judge on an appeal from a decision of a registrar is final.
- (5) A procedural decision means —
  - (a) a case management direction made under Order 4A; or
  - (b) a decision as to the time for compliance with an interlocutory order; or
  - (c) an enforcement order made under Order 4A other than a self-executing order for judgment, striking out pleadings, or otherwise.
- (6) This rule does not apply to an order or decision of a registrar —
  - (a) made or given in relation to a cause, matter, question or issue referred to or tried by the registrar under section 50 or 51 of the Act; or

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- (b) made or given in proceedings to which Order 61 applies;  
or
- (c) when acting as a taxing officer.

*[Rule 4 inserted in Gazette 28 Oct 1996 p. 5703; amended in Gazette 28 Jul 2010 p. 3467-8 and 3484; 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2451.]*

**5. Appeal procedure**

- (1) An appeal from a registrar shall be commenced within 3 days after the date of the decision concerned by filing a notice of appeal.
- (1a) The appeal shall be commenced and proceed on the file in which the action was commenced.
- (2) The notice of appeal shall state —
  - (a) the order or direction appealed against; and
  - (b) briefly, but specifically, the grounds of the appeal; and
  - (c) the orders or directions to be sought at the appeal.
- (3) All parties shall file written submissions within 3 days after the filing of the notice of appeal.
- (4) No appeal books are required for the appeal.
- (5) The appeal shall be entered for hearing within 7 days after it is commenced and if not so entered shall be taken to have been discontinued.
- (6) Within 24 hours after filing a document under this rule a copy of it shall be served on the other parties.

*[Rule 5 inserted in Gazette 28 Oct 1996 p. 5703-04; amended in Gazette 16 Jul 1999 p. 3194.]*

**6. Powers of judge or master on appeal**

- (1) An appeal from a registrar shall be by way of rehearing.

- (2) The judge or master hearing an appeal has the powers and duties of the Court of Appeal on an appeal and may cancel or amend any interlocutory order or case management direction made by the registrar.

*[Rule 6 amended in Gazette 29 Apr 2005 p. 1795.]*

**7. This Order not to apply to Court of Appeal Registrar**

This Order does not apply to or in respect of the Court of Appeal Registrar or any decision made by that registrar.

*[Rule 7 inserted in Gazette 29 Apr 2005 p. 1792.]*

## **Order 61 — Proceedings under judgments and orders**

### **Division 1 — Application of order**

*[Heading inserted in Gazette 22 Feb 2008 p. 638.]*

#### **1. Application to proceedings under orders**

This Order applies with the necessary modifications to proceedings under an order as it applies in relation to proceedings under a judgment, and references therein to a judgment include references to an order; but this Order does not apply to a question or issue of fact in a cause or matter.

*[Rule 1 amended in Gazette 2 Jul 1982 p. 2317.]*

### **Division 2 — Summons to proceed**

*[Heading inserted in Gazette 22 Feb 2008 p. 639.]*

#### **2. Summons to proceed, requirement for and proceedings on**

- (1) Where in order to carry out any directions contained in a judgment given in any cause or matter it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the judgment, take out a summons to proceed under the judgment.
- (2) If the party entitled to prosecute the judgment fails to comply with subrule (1) any other party to the cause or matter shall thereupon, unless the Court otherwise directs, become entitled to prosecute the judgment.
- (3) On the return of the summons to proceed the Court shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to —
  - (a) the manner in which any account or inquiry is to be prosecuted; and
  - (b) the evidence to be adduced in support thereof; and

- (c) the parties who are required to attend all or any part of the proceedings; and
  - (d) the time within which each proceeding is to be taken, and the Court may fix a day or days for the further attendance of the parties.
- (4) The Court may revoke or vary any directions given under this rule.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

**3. Notice of judgment, Court may order service of in some cases**

- (1) Where in any cause or matter the Court has tried or determined any issue relating to —
- (a) the administration of the estate of a deceased person; or
  - (b) the execution of any trust; or
  - (c) any transaction or proposed transaction relating to property,

and has given or proposes to give, a judgment which appears to affect the rights or interests of persons not parties to the action, or directs any account to be taken or inquiry made, the Court may, when giving judgment, or directing that the minutes of the proposed judgment stand for further consideration, or at any stage of the proceedings under the judgment, direct that notice of the judgment or proposed judgment be served on any person interested in the estate, or under the trust, or in the property, as the case may be.

- (2) Any person duly served with notice of a judgment or proposed judgment in accordance with this rule shall, subject to subrule (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the cause or matter.

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- (3) The notice of a judgment or proposed judgment to be served pursuant to subrule (1) must be indorsed with a memorandum in Form No. 80.
- (4) Where the Court dispenses with service of a notice on any person it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.
- (5) A person served with notice of a judgment or proposed judgment may within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge the notice to him or to discharge, vary, or add to the judgment.
- (6) A person served with notice of a judgment or proposed judgment may, after entering an appearance to the notice, attend the proceedings in the same manner and subject to the same provisions as a defendant entering an appearance.
- (7) Order 12 rules 1 to 4 shall apply in relation to the entry of an appearance to a notice of judgment or proposed judgment as if the notice were a writ and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

*[Rule 3 amended in Gazette 28 Jun 2011 p. 2552.]*

**4. Settling deed if parties differ, procedure for**

Where by a judgment a deed is directed to be settled by the judge in chambers or by the master, in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within



8 days, or within such period as a judge may direct, after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of 8 days.

**5. When service of notice of judgment may be dispensed with**

Where, upon the hearing of the summons to proceed, it appears to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment upon any party cannot be made or ought to be dispensed with, the judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

**6. Judgment for accounts etc., power to bind persons in some cases**

Where service of notice of a judgment for accounts and inquiries is dispensed with, the judge in person may, if he thinks fit, order that the persons as to whom service is dispensed with, shall be bound as if served, and they shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.

**7. Procedure where some parties not served etc.**

If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment, directions may be given for advertisement for creditors, and for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

**8. Course of proceedings in chambers**

The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the judge, and where so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the judge shall otherwise direct.

**Division 3 — Attendances**

*[Heading inserted in Gazette 22 Feb 2008 p. 639.]*

**9. Classifying interests of parties**

- (1) Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment, it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him.
- (2) Where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

**10. Judge may require distinct solicitor to represent parties**

Whenever in any proceeding before a judge in chambers the same solicitor is employed for 2 or more parties, such judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

**11. Attendance of parties not directed to attend**

Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

**12. Order stating parties directed to attend**

An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the master's certificate.

**Division 4 — Claims of creditors and other claimants**

*[Heading inserted in Gazette 22 Feb 2008 p. 639.]*

**13. Advertisements for creditors etc., power to direct**

Where a judgment is given, whether in Court or in chambers directing an account of debts, claims or liabilities, or an inquiry for heirs, next of kin or other unascertained persons, the judge or the master may direct an advertisement for creditors or other claimants to be issued, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

**14. Advertisements, preparation etc. of**

Every such advertisement shall be prepared by the party prosecuting the judgment, and —

- (a) in the case of an advertisement for creditors shall be signed by the party's solicitor, or, if he has no solicitor, by the master; and
- (b) in the case of an advertisement for other claimants, shall be submitted to the master and, if approved by the master, shall be signed by him,

and such signature shall be sufficient authority to the printer of the *Government Gazette* to print the same.

**15. Advertisements, contents of**

- (1) The Court shall fix the time within which, and the person to whom each claimant is to send his name and address and full particulars of his claim, and that time and the name and address of that person must be stated in the advertisement.
- (2) Such advertisement must be in one of the Forms Nos. 81 and 82 with such variations as the circumstances of the case may require.

**15A. Claims to state claimant's contact details**

A claim made under this Order by a claimant must, in accordance with Order 71A, state —

- (a) the claimant's geographical address; and
- (b) the claimant's service details.

*[Rule 15A inserted in Gazette 21 Feb 2007 p. 564.]*

**16. Failure to claim within specified time**

A claimant who does not send full particulars of his claim to the person named in the advertisement within the time therein specified shall not be entitled to prove his claim except with the

leave of the Court, and in granting such leave the Court may impose such terms as to costs and otherwise as it thinks just.

**17. Examination and verification of claims**

- (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must —
  - (a) examine the claims of persons claiming to be creditors of the estate and determine, as far as he is able, to which of such claims the estate is liable; and
  - (b) at least 7 clear days before the time appointed for adjudicating on claims make an affidavit verifying lists of —
    - (i) claims sent in pursuance of any advertisement; and
    - (ii) claims received by any of the personal representatives otherwise than in pursuance of an advertisement; and
    - (iii) debts of the deceased at the time of his death in respect of which no claim has been received, but which are or may still be due and which have come to the knowledge of any of the personal representatives.
- (2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must —
  - (a) examine the claims and determine, so far as he is able, which of them are valid claims; and
  - (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of —
    - (i) claims sent in pursuance of any advertisement; and

- (ii) claims received by any of the personal representatives or trustees, otherwise than in pursuance of an advertisement, or which have come to his knowledge.
- (3) The affidavit referred to in subrules (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed in whole or in part, and in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.
- (4) Where the personal representatives or trustees are not the parties directed by the Court to examine claims they must join with the party directed to examine them in making the affidavit required by this rule.

*[Rule 17 amended in Gazette 28 Jun 2011 p. 2552-3.]*

**18. Adjudicating on claims**

- (1) When adjudicating on the claims the Court —
  - (a) may allow any of such claims without proof thereof;
  - (b) may direct all or any of such claims to be investigated in such manner as it thinks fit;
  - (c) may require any claimant to attend and prove his claim or to furnish further particulars, information or evidence of it.
- (2) Where the Court exercises the power conferred on it by subrule (1)(c) in relation to any claimant such party as the Court may direct must serve on that claimant a notice requiring him —
  - (a) to file an affidavit in support of his claim within such time, being not less than 7 days after service of the notice, as may be specified in the notice, and to attend

before the Court for adjudication on the claim at such time as may be specified in such notice; or

- (b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.
- (3) If a claimant does not comply with a notice served on him under subrule (2) his claim may be disallowed.
- (4) A claimant who files an affidavit in compliance with a notice served on him under subrule (2) must serve notice of the filing on the party by whom the first-mentioned notice was served.
- (5) Unless he has been served with a notice under subrule (2)(a) a person claiming to be a creditor need not make an affidavit or attend in support of his claim, except to produce any documents which he is required to produce.
- (6) Unless the Court otherwise directs, a person claiming to be a secured creditor must produce his security to the master.
- (7) In this rule references to a claim include references to a part of a claim.

*[Rule 18 amended in Gazette 28 Jun 2011 p. 2552.]*

**19. Adjourning adjudications; fixing time for filing evidence etc.**

Where upon the day appointed for adjudicating upon the claims, any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

**20. Service of notice of judgment on certain claimants**

- (1) Where a claimant other than a creditor has established his claim then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

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- (2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5) as applied by subrule (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.
- (3) Where the Court directs under subrule (1) that notice of a judgment shall not be served on a person, the Court may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and unless the judgment has been obtained by fraud or non-disclosure of material facts, he shall be bound accordingly.
- (4) Rule 3(5), (6) and (7) apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

*[Rule 20 amended in Gazette 28 Jun 2011 p. 2552.]*

**21. Notice of claims allowed or disallowed**

- (1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of such allowance or disallowance.
- (2) Such party as the Court shall direct must make out a list of the creditors' claims, and a list of any other claims, allowed and file it in the Central Office.

*[Rule 21 amended in Gazette 30 Nov 1984 p. 3954.]*

*[22. Deleted in Gazette 21 Feb 2007 p. 564.]*

**Division 5 — Interest**

*[Heading inserted in Gazette 22 Feb 2008 p. 639.]*



**23. Interest on debts**

- (1) Where a judgment directs an account of the debts of a deceased person then, unless the Court otherwise orders, interest shall be allowed —
  - (a) on any such debt as carries interest, at the rate it carries; and
  - (b) on any other debt, at the rate of 5% per annum from the date of the judgment.
- (2) A creditor who has established his debt under the judgment, and whose debt does not carry interest, shall be entitled to interest upon his debt at the rate of 5% per annum from the date of the judgment out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest on such of those debts as by law carry interest.

**24. Interest on legacies**

Where a judgment directs an account of legacies then, subject to any directions contained in the will or codicil in question, and to any order made by the Court, interest shall be allowed on each legacy at the rate of 5% per annum beginning at the expiration of one year after the death of the testator.

**Division 6 — Masters' and registrars' certificates**

*[Heading inserted in Gazette 22 Feb 2008 p. 639.]*

**25. Master's certificate**

- (1) The result of proceedings before a master under a judgment shall be stated in a certificate signed by the master.
- (2) The certificate of the master shall refer to so much of the judgment, to such documents or parts thereof, and to such of the evidence as will make it clear upon what the result stated in the certificate is founded.

- (3) Where the judgment requires the taking of an account the certificate must state the result of the account, and not set the same out by way of schedule, but must refer to the account verified by filed affidavit, and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed, or varied, and the additions, if any, which have been made by way of surcharge or otherwise.
- (4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in subrule (3) to the account so verified shall be construed as a reference to the fresh account.

*[Rule 25 amended in Gazette 30 Nov 1984 p. 3952; 28 Jun 2011 p. 2552.]*

**26. Settling and filing master's certificate**

- (1) A draft of the master's certificate shall be drawn up in the master's chambers unless the master directs that it be drawn up by a party to the proceedings.
- (2) The draft shall be settled by the parties before the master on an appointment given by him for such purpose.
- (3) The certificate signed by the master and any account referred to therein shall be sent by the master to the Central Office and filed there.

**27. Judge may determine questions in proceedings before master**

- (1) Any party may, before the proceedings before the master are concluded, apply to the judge for the determination of any question arising in the course of the proceedings.
- (2) Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under subrule (1).

- (3) The order or directions made or given by the judge on the determination of such question need not be drawn up, except in the event of an appeal to the Court of Appeal, but the master shall refer to such order or directions in his certificate under rule 25.
- (4) If the judge so directs or is not available, the question may be determined by any judge who is for the time being sitting in chambers.

*[Rule 27 amended in Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552.]*

## **28. Appeal against master's certificate**

- (1) Where proceedings under a judgment have been heard by a master, a party to the proceedings may, not later than —
  - (a) 21 days after the filing of the master's certificate therein; or
  - (b) if the certificate is to be acted upon by the Accountant without further order, 2 clear days after the filing thereof,

appeal to the Court of Appeal which may vary or discharge the certificate.

- (2) An appeal under subrule (1) must be commenced and conducted in accordance with the *Supreme Court (Court of Appeal) Rules 2005*.
- (3) If the master's certificate is to be acted upon by the Accountant, a copy of the appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005* must be served on the Accountant as soon as practicable after it is filed.

*[Rule 28 inserted in Gazette 2 Jul 1982 p. 2317; amended in Gazette 30 Nov 1984 p. 3952; 29 Apr 2005 p. 1792-3.]*

**28A. Judge may discharge or vary registrar's certificate**

- (1) Where proceedings under a judgment have been heard by a registrar, a party to the proceedings may, not later than —
  - (a) 8 clear days after the filing of the registrar's certificate therein; or
  - (b) if the certificate is to be acted upon by the Accountant without further order, or is a certificate passing a receiver's account, 2 clear days after the filing thereof,apply by summons for an order of a judge discharging or varying the certificate.
- (2) A copy of a summons to discharge or vary a certificate to be acted upon by the Accountant without further order must be served on the Accountant as soon as practicable after the issue thereof.
- (3) Subject to subrule (4) the registrar's certificate shall, upon the expiry of the period specified in relation to it in subrule (1) be binding on the parties to the proceedings unless discharged or varied by order under subrule (1).
- (4) A judge may, in special circumstances, upon application by summons or motion, by order discharge or vary the certificate of a registrar, notwithstanding that the certificate has become binding on the parties.

*[Rule 28A inserted in Gazette 2 Jul 1982 p. 2317; amended in Gazette 28 Jun 2011 p. 2552.]*

**Division 7 — Further consideration**

*[Heading inserted in Gazette 22 Feb 2008 p. 639.]*

**29. Summons to have matter in chambers further considered**

- (1) Where any matter originating in chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in chambers, such matter may, after the expiration

of 8 days and within 14 days from the filing of the master's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such 14 days by a summons, to be taken out by any other party. Such summons shall be in the form following: — "That this matter, the further consideration whereof was adjourned by the order of the ..... day of ..... 20....., may be further considered," and shall be served 6 clear days before the return.

- (2) This rule does not apply to any matter the further consideration whereof is, at the original or any subsequent hearing, adjourned into court.

## **Order 62 — Trustees Act 1962 rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 640.]*

### **1. Making applications under Act**

- (1) Subject to subrule (2) and these rules, applications under the *Trustees Act 1962* (in this Order referred to as the *said Act*) shall be made by originating summons or originating motion.
- (2) Such applications under the said Act as the Chief Justice may from time to time direct as being proper to be made by summons, may be made by summons.
- (3) The Chief Justice may vary or revoke any direction given under subrule (2).

*[Rule 1 amended in Gazette 15 Jun 1973 p. 2249; 28 Jun 2011 p. 2552.]*

### **2. Title of proceedings**

All applications under the said Act not made in any pending cause or matter, must be entitled in the matter of the said Act, and in the matter of the trust, described so as to identify it.

### **3. Payment into court under Act s. 99**

A trustee wishing to pay money or securities into court under section 99 of the said Act, must make and file an affidavit entitled in the manner specified in rule 2, setting out —

- (a) a short description of the trust and of the instrument creating it, or, as the case may be, of the circumstances in which the trust arose; and
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him; and

- (c) his submission to answer all such inquiries relating to the application of the money or securities paid into court, as the Court may make or direct; and
- (d) in accordance with Order 71A —
  - (i) the trustee's geographical address; and
  - (ii) the trustee's service details.

*[Rule 3 amended in Gazette 21 Feb 2007 p. 564.]*

**4. Notice of payment in etc.**

The person who has made the payment into court under the said Act must forthwith give notice thereof by pre-paid letter through the post, to the several persons whose names and addresses are stated in his affidavit as interested in or entitled to the moneys or securities paid into court.

**5. Applications in respect of money etc. paid into court**

- (1) A summons relating to money or securities paid into court under the said Act or the dividends of them must, in accordance with Order 71A, state —
  - (a) the applicant's geographical address; and
  - (b) the applicant's service details.
- (2) Any application in respect of money or securities paid into court under the said Act must, unless otherwise directed by the Court, be served on the trustee, and on the person named in his affidavit as interested in or entitled to the same, and on such other persons as the Court may direct.

*[Rule 5 amended in Gazette 21 Feb 2007 p. 564.]*

## **Order 62A – Mortgage actions**

*[Heading inserted in Gazette 10 Jan 1975 p. 51.]*

### **1. Application of this Order and terms used**

- (1) This Order applies to any proceedings (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being proceedings in which there is a claim for relief of any of the following kinds, namely —
  - (a) payment of moneys secured by the mortgage; or
  - (b) sale of the mortgaged property; or
  - (c) foreclosure; or
  - (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property; or
  - (e) redemption; or
  - (f) reconveyance of the property or its release from the security; or
  - (g) delivery of possession by the mortgagee.
- (2) In this Order *mortgage* includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.
- (3) In this Order *mortgage* and *charge* also include mortgages and charges registered under the provisions of the *Transfer of Land Act 1893*; but nothing in the Order extends or affects the powers of sale or foreclosure conferred by Division 3 of Part IV of that Act, and proceedings claiming possession of land pursuant to such a mortgage or charge shall be commenced by writ of summons and not otherwise.



- (4) Proceedings to which this Order applies are referred to in this Order as a mortgage action.
- (5) These rules apply to mortgage actions subject to the following provisions by this Order.

*[Rule 1 inserted in Gazette 10 Jan 1975 p. 51-2.]*

**2. Claim for possession etc., no appearance by defendant**

- (1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.
- (2) This rule does not affect rule 20 or rule 28(2) of Order 58 in so far as either of those rules require any document to be served on, or notice given to, a defendant who has entered an appearance in the action.
- (3) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.
- (4) Where the plaintiff claims delivery of possession there must be indorsed on the first sheet of the copy of the affidavit served on the defendant, directly following the information referred to in Order 69 rule 2(1)(h), a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.
- (5) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the

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appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

- (6) A copy of any affidavit served under subrule (5) must be indorsed in accordance with subrule (4).
- (7) Service under subrule (3) or (5) and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.
- (8) A certificate of the kind mentioned in subrule (7) may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.
- (9) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under subrule (3) or (5).
- (10) Where the plaintiff gives notice to the defendant under Order 3 rule 7 of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in subrules (7) and (8).

*[Rule 2 inserted in Gazette 10 Jan 1975 p. 52-3; amended in Gazette 5 Apr 1991 p. 1398; 28 Jun 2011 p. 2552-3.]*

**3. Claim for possession etc., affidavit in support of**

- (1) This rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.
- (2) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.
- (3) The affidavit must exhibit the original mortgage or a true copy of it.

- (4) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of —
  - (a) the amount of the advance; and
  - (b) the amount of the repayments; and
  - (c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit; and
  - (d) the amount remaining due under the mortgage.
- (5) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.
- (6) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.
- (7) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in subrule (4).
- (8) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

*[Rule 3 inserted in Gazette 10 Jan 1975 p. 53-4; amended in Gazette 28 Jun 2011 p. 2552.]*

#### **4. Action by writ, judgment in default in**

- (1) Notwithstanding anything in Order 13 or Order 22, in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

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- (2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 72 rule 8, be served on the defendant.
- (3) Where a summons for leave under this rule is issued, rule 2(3) to (10) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in subrule (3) to the notice of appointment, there shall be substituted references to the summons.
- (4) Where a summons for leave under this rule is issued in an action to which rule 3 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

*[Rule 4 inserted in Gazette 10 Jan 1975 p. 54; amended in Gazette 28 Jun 2011 p. 2552.]*

**5. Foreclosure in redemption action**

Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

*[Rule 5 inserted in Gazette 10 Jan 1975 p. 54.]*

*[Orders 63, 63A and 64 deleted in Gazette 29 Apr 2005 p. 1793.]*

## **Order 65 — Appeals to the General Division**

*[Heading inserted in Gazette 21 Feb 2007 p. 564.]*

### **Division 1 — Preliminary matters**

*[Heading inserted in Gazette 21 Feb 2007 p. 564.]*

#### **1. Terms used**

In this Order, unless the contrary intention appears —

***appeal*** means an appeal or application to which this Order applies;

***appeal notice*** means a notice in the form of Form No. 83;

***concluded***, in relation to an appeal, means decided, dismissed or discontinued;

***interim order*** in an appeal, means —

- (a) an order staying the proceedings in the primary court or the execution of the primary court's decision;
- (b) an urgent appeal order;
- (c) an order that an appellant provide security for a respondent's costs;
- (d) an order extending or shortening the time for obeying a requirement of these rules, other than the time for commencing an appeal;
- (e) any other order that the Court may make before the appeal is concluded, other than an order giving or refusing to give leave to appeal;

***primary court***, in relation to an appeal, means the court, tribunal, body or person that made the decision being appealed;

***primary court's transcript*** means —

- (a) the transcript of the proceedings in the primary court; or

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- (b) if there is no electronic recording of the proceedings that can be transcribed —
  - (i) the notes made by the judicial officer who presided at the proceedings; and
  - (ii) one or more affidavits of people who were present at the proceedings about what happened in the proceedings.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 564-5.]*

**2. Application of this Order**

- (1) This Order applies to any appeal, or application for leave to appeal, that may be made to the General Division of the Court, other than an appeal under the *Criminal Appeals Act 2004* Part 2.
- (2) In respect of an appeal, or application for leave to appeal, to which this Order applies, this Order is subject to the written law under which the appeal or application is made.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 565.]*

**Division 2 — General matters**

*[Heading inserted in Gazette 21 Feb 2007 p. 565.]*

**3. Hearings by telephone**

- (1) A judge may conduct a hearing with one or more of the parties to an appeal by telephone.
- (2) A hearing conducted by telephone is to be taken to be a hearing in the presence of the judge.
- (3) A registrar must confirm in writing any order made at such a hearing.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 565-6.]*

**4. Judge's general jurisdiction**

- (1) For the purposes of dealing with an appeal, a judge has jurisdiction to make any order that the judge considers will or may facilitate the appeal being conducted and concluded efficiently, economically and expeditiously.
- (2) Without limiting subrule (1), a judge has jurisdiction —
  - (a) to make a decision on the judge's own initiative or on an application by a party;
  - (b) to decide an application on the basis of the documents filed and without listing it for hearing;
  - (c) to make a decision on the judge's own initiative on the basis of the documents filed and without requiring the parties to attend a hearing;
  - (d) to hear and decide any application made during the appeal in the absence of any party other than the applicant;
  - (e) to hear and decide the appeal in the absence of any party other than the applicant;
  - (f) to order some or all of the parties to do one or more of the following in respect of the appeal, or any aspect of it specified by the judge —
    - (i) to file, before a date set by the judge, any document specified by the judge;
    - (ii) to appear and make oral submissions on a date set by the judge;
  - (g) to order a party to file and serve an appeal book;
  - (h) to order any or all of the parties to file and serve —
    - (i) written submissions;
    - (ii) a chronology of events relevant to the appeal;
    - (iii) a list of the principal legal authorities on which the party relies;

- (i) to limit the time a party has to make oral submissions at a hearing before a judge.
- (3) If a judge makes a decision on the basis of the documents filed without requiring the parties to attend a hearing, rule 7 applies.  
*[Rule 4 inserted in Gazette 21 Feb 2007 p. 566; amended in Gazette 22 Feb 2008 p. 640.]*

**5. Non-attendance by party, consequences of**

- (1) If a hearing before a judge is adjourned because a party who has been notified of it does not attend, the judge may order the party or the party's lawyer to pay the costs of any party who attended.
- (2) If a party who has been notified of a hearing does not attend the hearing before a judge, the judge may proceed in the party's absence.  
*[Rule 5 inserted in Gazette 21 Feb 2007 p. 567.]*

**6. Decisions made in absence of party**

- (1) If in a party's absence a judge makes an order, whether or not at a hearing, the judge may subsequently, but before the order is carried out, set aside the order and again deal with the matter that gave rise to the order.
- (2) If in a party's absence a judge makes a decision in an appeal, whether or not at a hearing, a registrar must notify the party of the decision.  
*[Rule 6 inserted in Gazette 21 Feb 2007 p. 567.]*

**7. Decisions made on the papers**

- (1) This rule applies if another rule in this Order says it applies.
- (2) If a decision is made under the other rule on the basis of the documents filed without requiring the parties to attend a hearing (the *provisional decision*), a registrar must serve the parties with written notice of the provisional decision.



- (3) If a party wants a hearing of the matter that gave rise to the provisional decision, the party must file a Form No. 88 (Request for a hearing) within 5 working days after the date on which the party is served with the notice of the provisional decision.
- (4) If no party files a Form No. 88 under subrule (3), the provisional decision becomes the final decision on the matter.
- (5) If any party files a Form No. 88 under subrule (3), a registrar must list the matter for hearing by the judge who made the provisional decision or, if he or she is absent, before another, and notify the parties.
- (6) At the hearing the provisional decision may be confirmed, amended or set aside.
- (7) The decision made at the hearing is the final decision on the matter.
- (8) Any right to appeal against, or to make an application as a result of or in respect of, a final decision on a matter cannot be exercised in relation to a provisional decision until it becomes a final decision.

*[Rule 7 inserted in Gazette 21 Feb 2007 p. 567.]*

### **Division 3 — Procedure on appeals**

*[Heading inserted in Gazette 21 Feb 2007 p. 568.]*

#### **8. Nature of appeals**

An appeal will be by way of rehearing unless another written law provides otherwise.

*[Rule 8 inserted in Gazette 21 Feb 2007 p. 568.]*

#### **9. Time for appealing**

An appeal against a decision must be commenced within 21 days after the date of the decision.

*[Rule 9 inserted in Gazette 21 Feb 2007 p. 568.]*

**10. Appeal, how to commence**

- (1) To —
  - (a) commence an appeal within time; or
  - (b) apply for an extension of time within which to commence an appeal,the appellant must file —
  - (c) a Form No. 83 (Appeal notice) that sets out the grounds for the appeal in accordance with subrule (2); and
  - (d) any document required by subrule (3) or (4); and
  - (e) a copy of the relevant records filed with the primary court in respect of the case in which the decision being appealed was made; and
  - (f) a copy of the primary court's transcript; and
  - (g) a copy of every other record that the Court will need to decide the appeal.
- (2) The grounds of appeal must not merely allege —
  - (a) that the primary court erred in fact or in law; or
  - (b) that the primary court's decision is against the evidence or the weight of evidence or is unreasonable and cannot be supported having regard to the evidence; or
  - (c) that the primary court's decision is unsafe or unsatisfactory.
- (3) If the Form No. 83 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.
- (4) A Form No. 83 may be filed together with an application, made in accordance with rule 13, for an interim order.

- (5) If an appellant requires leave to appeal, a Form No. 83 filed in accordance with this rule is to be taken to be an application for leave to appeal.
- (6) Any document filed under this rule must be served on the respondent.
- (7) As soon as practicable after serving the respondent the appellant must file a Form No. 84 (Service certificate).

*[Rule 10 inserted in Gazette 21 Feb 2007 p. 568-9.]*

**11. Primary court to be notified and to supply records**

- (1) In this rule —  
*primary court case* means the case in the primary court.
- (2) As soon as practicable after an appeal notice is filed, a registrar must give the primary court concerned —
  - (a) a copy of the appeal notice; and
  - (b) a notice that specifies —
    - (i) the records or things held by the primary court in relation to the primary court case that the primary court must give to the Court for the purposes of the appeal; and
    - (ii) the date by which the primary court must provide the records or things.
- (3) Any copy of a document given by the primary court to the Court need not be certified by the primary court.
- (4) If any record given to the Court contains information to which access by any person is or should be restricted, the primary court must advise the Court.

*[Rule 11 inserted in Gazette 21 Feb 2007 p. 569.]*

**12. Respondent's options**

- (1) On being served with an appeal notice, a respondent may file a Form No. 85 (Notice of respondent's intention).
- (2) If the respondent files a Form No. 85, it must be filed within 7 days after the date on which the respondent is served with the appeal notice.
- (3) A Form No. 85 may be filed together with an application, made in accordance with rule 13, for an interim order.
- (4) If a respondent does not file a Form No. 85 within the 7 days or any extension of that period ordered by the court, the respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal for the purposes of these rules.

*[Rule 12 inserted in Gazette 21 Feb 2007 p. 569.]*

**13. Interim order, applying for**

- (1) At any time after an appeal is commenced and before it is concluded a party may apply for an interim order or an order amending or cancelling an interim order.
- (2) To make such an application, the party must file a Form No. 86 (Application in an appeal) with —
  - (a) an affidavit by the applicant or the applicant's lawyer or both explaining why the interim order is wanted; and
  - (b) a document setting out the proposed order,

unless a judge orders otherwise.

*[Rule 13 inserted in Gazette 21 Feb 2007 p. 570.]*

**14. Urgent appeal order, nature of**

- (1) An urgent appeal order in relation to an appeal is an order that the appeal is an urgent appeal that must be heard as quickly as practicable consistent with the proper administration of justice.

- (2) An urgent appeal order must include an order setting a timetable for the various requirements of these rules and may include —
- (a) an order dispensing with or modifying any such requirement;
  - (b) any order that will or may facilitate the appeal being heard as quickly as practicable consistent with the proper administration of justice.

*[Rule 14 inserted in Gazette 21 Feb 2007 p. 570.]*

**15. Consenting to orders**

The parties to an appeal may consent to an interim or other order, other than an urgent appeal order, being made by filing a Form No. 87 (Consent notice).

*[Rule 15 inserted in Gazette 21 Feb 2007 p. 570.]*

**16. Appeal books not needed unless ordered**

An appeal book containing the documents needed to decide the appeal is not required unless it has been ordered under rule 4.

*[Rule 16 inserted in Gazette 21 Feb 2007 p. 570.]*

**Division 4 — Concluding an appeal**

*[Heading inserted in Gazette 21 Feb 2007 p. 570.]*

**17. Discontinuing an appeal**

- (1) The appellant may discontinue an appeal by filing and serving a Form No. 89 (Discontinuance notice).
- (2) If it appears to the court that the appellant is a person under disability (as defined in Order 70 rule 1), the Form No. 89 does not have effect unless it is approved by a judge.
- (3) An application for the approval of a judge must be filed with an affidavit and, unless a judge orders otherwise, an opinion by an independent lawyer.

- (4) Unless a judge orders otherwise, an appellant who discontinues an appeal must pay the respondent's costs in respect of the appeal which must be taxed if they are not agreed.
- (5) In an appeal where the respondent also appeals against the primary court's decision, subrules (1) to (4) and Form No. 89 apply with any necessary changes.
- (6) The discontinuance of an appeal by the appellant does not affect any appeal by a respondent who also appeals against the primary court's decision.

*[Rule 17 inserted in Gazette 21 Feb 2007 p. 570-1.]*

**18. Settling an appeal**

- (1) The parties to an appeal may file a Form No. 87 (Consent notice), modified as necessary, stating the final order that the parties consent to being made in the appeal.
- (2) When a consent notice is filed, the registrar must refer it to a judge who may direct the registrar —
  - (a) to issue a final order in accordance with the notice; or
  - (b) to notify the parties that the judge will decide the final orders at a hearing.
- (3) A settlement or compromise of an appeal to which a person who appears to the court to be under disability (as defined in Order 70 rule 1) is a party has no effect unless it is approved by a judge.
- (4) An application for the approval of a judge must be filed with an affidavit and, unless a judge orders otherwise, an opinion by an independent lawyer.

*[Rule 18 inserted in Gazette 21 Feb 2007 p. 571; amended in Gazette 28 Jun 2011 p. 2551.]*

**19. Return of exhibits**

- (1) This rule does not apply to or in respect of any record or thing that forms part of the Court's record.
- (2) After an appeal is concluded, a registrar must, unless the Court has ordered otherwise —
  - (a) return any record or thing given to the Court by the primary court to the primary court; and
  - (b) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and
  - (c) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court.
- (3) A registrar must not act under subrule (2) until —
  - (a) the time for commencing proceedings in the Court of Appeal in relation to the appeal has expired; or
  - (b) if proceedings in the Court of Appeal in relation to the appeal are commenced before that time expires, the proceedings are concluded.
- (4) Despite subrule (3), a registrar —
  - (a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or
  - (b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —
    - (i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or
    - (ii) it is necessary for that person to have use of the record or thing.
- (5) If under subrule (4)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of

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being given it, to give a written undertaking to the Court as to the care, maintenance and custody of it and its re-delivery to the Court.

- (6) If a record or thing remains in the possession of the Court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a judge may order a registrar to destroy it or dispose of it in some other way.

*[Rule 19 inserted in Gazette 21 Feb 2007 p. 571-2.]*

*[Orders 65A and 65B deleted in Gazette 29 Apr 2005 p. 1800.]*



## **Order 65C — *Electoral Act 1907* section 62N rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 640.]*

### **1. Term used: Electoral Commissioner**

In this Order, unless the contrary intention appears —

***Electoral Commissioner*** means the Electoral Commissioner appointed under the *Electoral Act 1907*.

*[Rule 1 inserted in Gazette 2 Feb 2001 p. 698.]*

### **2. Application of this Order**

This Order applies to reviews by the Court of decisions referred to in section 62N(1) of the *Electoral Act 1907*.

*[Rule 2 inserted in Gazette 2 Feb 2001 p. 698.]*

### **3. Application for review**

- (1) An application for review to which this Order applies must be instituted within one month or such further period as the Court allows after the decision comes to the notice of the applicant.
- (2) A copy of the notice of originating motion must be served on the Electoral Commissioner.
- (3) If the Electoral Commissioner wishes to be heard at the hearing of the review, the Commissioner must enter an appearance.

*[Rule 3 inserted in Gazette 2 Feb 2001 p. 698.]*

### **4. Title of proceedings**

The notice of originating motion and all subsequent proceedings on reviews to which this Order applies, must be entitled “In the Supreme Court of Western Australia”, “On review of a decision of the Electoral Commissioner, and in the matter of the *Electoral Act 1907*, and in the matter of the application or other proceeding in which such decision was given”.

*[Rule 4 inserted in Gazette 2 Feb 2001 p. 698.]*

**5. Hearing the review**

- (1) Subject to subrules (2) and (3) and the provisions of the *Electoral Act 1907*, the review must be heard by a judge sitting in Court.
- (2) A judge may, at any time before the hearing of a review, direct that the review is to be heard by a judge sitting in chambers.
- (3) The judge hearing a review in Court may direct that the further hearing of the review be adjourned into chambers.
- (4) A review directed under subrules (2) and (3) to be heard or further heard in chambers may be adjourned from chambers into Court.

*[Rule 5 inserted in Gazette 2 Feb 2001 p. 698-9.]*

**6. Date of hearing**

- (1) Unless the Court otherwise orders, a review to which this Order applies must not be heard before the expiration of 21 days from the date when the review was instituted.
- (2) Any party may apply to the Court for an order fixing the date for hearing the review.
- (3) Unless an order under subrule (2) has been made, the day for hearing the review must be fixed by the proper officer in accordance with the practice of the Court.
- (4) The proper officer must send to the applicant and to the Electoral Commissioner, notice of the day fixed for the hearing of the review.
- (5) If the day for hearing the review is fixed by the proper officer it must not be earlier than 7 days after notice has been sent to the applicant and to the Electoral Commissioner under subrule (4).

*[Rule 6 inserted in Gazette 2 Feb 2001 p. 699.]*

**7. Review book**

- (1) The applicant must, not less than 6 clear days immediately preceding the day fixed for hearing the review —
  - (a) prepare to the satisfaction of the registrar a review book containing all material relevant to the hearing of the review; and
  - (b) lodge at the Central Office 2 copies of the review book so prepared, for the use of the judge upon the hearing; and
  - (c) serve upon the Electoral Commissioner one copy of the review book.
- (2) Unless the Court otherwise orders, the costs of complying with this rule are to be costs in the cause.

*[Rule 7 inserted in Gazette 2 Feb 2001 p. 699.]*

**8. Applicant limited to grounds in originating motion**

- (1) If the applicant intends to ask for any amendment at the hearing the applicant must give notice of the applicant's intention and of the proposed amendment.
- (2) The Court may allow any amendment which it thinks necessary for the advancement of justice, but except by leave of the Court a ground must not be relied on at the hearing other than a ground set out in the notice of originating motion.

*[Rule 8 inserted in Gazette 2 Feb 2001 p. 699-700.]*

**9. Right to be heard in opposition**

- (1) On the hearing of the application the Court must hear any person who wants to oppose it, and appears to the Court to be a proper person to be heard, notwithstanding that the person has not been served with the notice of originating motion.

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- (2) A person who is heard under this rule, may, in the discretion of the Court, be ordered to pay costs.

*[Rule 9 inserted in Gazette 2 Feb 2001 p. 700.]*

**10. Additional affidavits, determination of issue etc.**

- (1) On the hearing of the application the Court may allow the applicant to use further affidavits upon such terms as to adjournment or costs as the Court thinks fit.
- (2) If the applicant intends to ask to be allowed to use further affidavits, the applicant must give reasonable notice of the applicant's intention to the Electoral Commissioner.
- (3) If any question or issue of fact arises upon the affidavits the Court may give such directions as it thinks fit for the determination of the question or issue by trial or inquiry.

*[Rule 10 inserted in Gazette 2 Feb 2001 p. 700.]*

**11. Order as to result of review**

- (1) The result of the review must be embodied in a formal order, which must be filed in the Central Office.
- (2) Except where the formal order is filed by or on behalf of the Electoral Commissioner, the registrar must send to the Electoral Commissioner, a memorandum of the result of the review.

*[Rule 11 inserted in Gazette 2 Feb 2001 p. 700.]*

**12. Application of rules of court**

In so far as the ordinary practice of the Court and the rules of court are not inconsistent with the provisions of this Order, they apply to proceedings under this Order with such modifications as the circumstances require.

*[Rule 12 inserted in Gazette 2 Feb 2001 p. 700.]*

## Order 66 — Costs

### Division 1 — General

*[Heading inserted in Gazette 22 Feb 2008 p. 640.]*

#### 1. General rules as to costs

- (1) Subject to the express provisions of any statute and of these rules the costs of and incidental to all proceedings including the administration of estates and trusts shall be in the discretion of the Court but, without limiting the general discretion conferred on the Court by the Act, and subject to this Order, the Court will generally order that the successful party to any action or matter recover his costs.
- (2) If the Court is of opinion that the conduct of a party either before or after the commencement of the litigation or that a claim by a party for an unreasonably excessive amount has resulted in costs being unnecessarily or unreasonably incurred it may deprive that party of costs wholly or in part, and may further order him to pay the costs of an unsuccessful party either wholly or in part.
- (3) Where a party though generally successful in an action has, by the introduction of some issue or issues on which he has failed, increased the costs the Court may order such party to pay the costs of such issue or issues.
- (4) Where a plaintiff obtains a judgment or order against a defendant who has been joined in order that all parties interested in the *lis* shall be bound by the judgment or order, no order for costs shall be made against such defendant if he is not in default, or if he does not contest the plaintiff's claim, and has not made any claim or asserted any right in the *lis*, but in such case the Court may grant that defendant such sum for costs as will compensate him for expenses necessarily incurred by him and may in doing so exercise the powers hereinafter conferred

on it to order costs out of any property or fund with or without a right of recourse against any other party to the action or matter.

**2. Costs where several causes of action, defendants etc.**

In the absence of any special order —

- (a) where the statement of claim contains more than one cause of action and the plaintiff succeeds on one or more causes of action and the defendant succeeds on another or others, costs shall be allowed to the plaintiff on the cause or causes of action on which he succeeds and to the defendant on that or those on which he succeeds, in the same manner as if separate actions had been brought;
- (b) where there is judgment for one party on the claim with costs and judgment for the other party on the counterclaim with costs, the costs shall be assessed as if each party had succeeded in an independent action and charges which cover without discrimination, work referable to the claim and work referable to the counterclaim, shall be divided between the claim and the counterclaim in the proportion in which the work covered by such charge is properly attributable to the claim and to the counterclaim;
- (c) where a party succeeds on both the claim and the counterclaim, the costs of the counterclaim shall be the amount only by which the costs of the proceedings have been increased by the counterclaim, and in the absence of directions by the Court as to the manner in which those costs are to be assessed such amounts shall be allowed as the taxing officer considers reasonable;
- (d) where several defendants defend an action separately and it appears that the defendants or any of them might have joined in their defence, the Court may allow only one set of costs to those defendants as to whom it appears a joint defence might have been conducted and

separate costs to any other or others who in the opinion of the Court were properly separately represented;

- (e) if there are several defendants and the plaintiff has a verdict against them, each of them shall be liable to the plaintiff for the entire costs although they defend separately: Provided that the Court may from time to time make an order or orders as between several defendants apportioning the liability as between themselves and the recovery of contribution;
- (f) a plaintiff suing in a representative character shall personally be liable to pay costs to the defendant in case of a non-suit or of a judgment for the defendant.

**3. Costs of amendment without leave or where facts or documents not admitted**

- (1) The costs of and occasioned by any amendment made without leave in the writ or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.
- (2) If a party on whom a notice to admit facts is served under Order 30 rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.
- (3) If a party —
  - (a) on whom a list of documents is served in pursuance of any provision of Order 26; or
  - (b) on whom a notice to admit documents is served under Order 30 rule 5,

gives notice of non-admission of any of the documents in accordance with Order 30 rule 4(2) or 5(2), as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

**4.        Action as to property, ordering costs out of property**

- (1) Where property is the subject of any action or matter, or where any question arising therein will affect any right or claim to property, the Court may make an order that the costs of any party may be recovered out of the property with or without recourse against any other party: Provided that no such order shall be made unless the Court is satisfied that the party seeking the order had a genuine interest to protect, or that it was reasonable in the circumstances that he should appear.
- (2) Where the Court orders payment of costs out of any property it shall direct out of what portion or portions the costs shall be paid.
- (3) The costs of inquiries to ascertain the person entitled to any share or interest in property shall be paid from such share or interest unless the Court shall otherwise direct.

**5.        Lawyer may be ordered to pay costs etc.**

- (1) Where in any proceedings costs are incurred by a party —
  - (a) as a result of any improper, unreasonable, or negligent act or omission; or
  - (b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it is unreasonable to expect that party to pay,the Court may order any practitioner whom it considers to be responsible (whether personally or through a servant or agent) —
  - (c) to pay those costs personally or to indemnify any party who has been ordered to pay those costs; or
  - (d) not to claim any relevant costs or fees; or
  - (e) to refund any relevant costs or fees which may have been paid already.



- (2) No order under this rule shall be made against a practitioner unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made —
- (a) because of the failure of the practitioner to attend in person or by a proper representative; or
  - (b) because of the failure of the practitioner to deliver any document for the use of the Court which ought to have been delivered, or to be prepared with any proper evidence or account, or otherwise to proceed.
- (3) The Court may before making an order under this rule refer the matter to the taxing officer for inquiry and report.
- (4) The Court may direct that notice of any proceedings or order against a practitioner under this rule shall be given to his client in such manner as may be specified in the direction.

[Rule 5 amended in Gazette 23 Jan 2001 p. 562-3.]

**6. Solicitor guardian *ad litem*, costs of**

- (1) Where the Court appoints a solicitor to be guardian *ad litem* of a person under disability, in any cause or matter, the Court may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties, or by some one or more of the parties, to the cause or matter, or out of any fund in court in which the person under disability is interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.
- (2) When a solicitor acts as guardian *ad litem* without an order of the Court appointing him as such guardian, the costs incurred in the performance of the duties of such office shall be in the discretion of the Court.

**7.        Set-off may be allowed despite solicitor's lien**

A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular action in which the set-off is sought.

**8.        State solicitors, costs of**

In all actions or matters in which a law officer or other solicitor employed by the State or any instrumentality of the State shall act in his official capacity the party for whom he acts shall be entitled to recover costs in the same manner and to the same extent as if the law officer or other solicitor were a private practitioner engaged by such party.

*[Rule 8 amended in Gazette 19 Dec 1975 p. 4571; 19 Apr 2005 p. 1299.]*

**8A.      Lawyer acting pro bono, costs in case of**

- (1) In an action or matter in which a practitioner provides free legal services to a party, the party shall be entitled to recover costs in the same manner and to the same extent as if the services were provided for reward.
- (2) If an order is made for the payment of the party's costs, the practitioner may recover the amount ordered to be paid in respect of —
  - (a) fees for the practitioner's services; and
  - (b) disbursements incurred by the practitioner on behalf of the party.

*[Rule 8A inserted in Gazette 22 Feb 2008 p. 641.]*

**9.        Restriction of discretion to order costs in some cases**

- (1) In a probate action to which Order 73 rule 15 applies a party who only cross-examines the witnesses produced to support the will shall not be liable to pay the costs of the party propounding

the will unless the Court considers that there was no reasonable ground for opposing the will.

- (2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably, or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

**10. Stage at which costs may be dealt with**

- (1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings, and any order of the Court for the payment of costs may require the costs to be paid forthwith notwithstanding that the proceedings are not concluded.
- (2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and where proceedings have been transferred or removed to the Court from any other court or tribunal the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court or tribunal ordering the transfer or removal) be dealt with by the Court.
- (3) Where on an appeal or in proceedings transferred or removed to the Court, the Court makes an order as to the costs of proceedings before another court or tribunal, the Court may —
  - (a) specify the amount of the costs to be allowed; or
  - (b) order that the costs be taxed by the taxing officer; or

- (c) order that the costs be ascertained by taxation or otherwise in that other court or tribunal.

**11. Scale of costs**

- (1) For the purposes of this Order —  
*any relevant scale* means any costs determination, as defined in the *Legal Profession Act 2008* section 252, that relates to the costs that may be charged by law practices in respect of business before the Court carried out by practitioners.
- (2) Except when otherwise ordered, solicitors are, subject to these rules, entitled to charge and be allowed the fees set forth in any relevant scale in respect of the matters referred to in that scale and higher fees shall not be allowed in any case, except such as are by this Order otherwise provided for.
- (3) Subject to the provisions of the *Legal Profession Act 2008* permitting legal practices to make costs agreements with their clients, and to the provisions of these rules, the fees allowed under any relevant scale shall apply both as between party and party, and solicitor and client; but where additional costs (including expenses and counsel fees) have been incurred which in the opinion of the taxing officer are not properly recoverable against the party liable under the judgment or order to pay costs, but have nevertheless been properly incurred, or where costs have been incurred at the special request of the client, or in contesting and reducing a claim, those costs shall be recoverable from the client; and the taxing officer is hereby authorised to fix such sum as he thinks reasonable to cover the additional costs.
- (4) Subject to the provisions of this Order, and to any order made by the Court and the terms of any relevant scale, the fees prescribed by any relevant scale cover all work done, whether by the solicitor or by counsel.
- (5) An allowance to a witness for his attendance at a trial or hearing shall be calculated in accordance with the scale of witness fees in force at the time of the trial or hearing.

*[Rule 11 inserted in Gazette 7 Feb 1992 p. 686-7; amended in Gazette 19 Apr 2005 p. 1299; 3 Jul 2009 p. 2699.]*

*[12. Deleted in Gazette 21 Feb 2007 p. 575.]*

**13. Costs where scale does not apply**

In any matter or case to which any relevant scale does not apply, the Court may —

- (a) award a lump sum by way of costs;
- (b) direct the taxing officer to tax or allow costs analogous to those allowable under the said scale;
- (c) direct the taxing officer to tax and allow reasonable costs.

*[Rule 13 amended in Gazette 7 Feb 1992 p. 687.]*

**14. Lump sum award for costs, interim award as to**

- (1) Where it appears to the Court making a lump sum award for costs that some item or section of costs incurred by a party may be justified, but that it cannot be substantiated in detail or in quantum without considerable delay, the Court may make an interim award, and reserve the item or section in question for later consideration.
- (2) Such interim award may be enforced as a judgment of the Court, and any award made on further consideration shall be enforceable in like manner.
- (3) This rule shall apply to any cause or matter in which the question of costs has not been disposed of, whether commenced before or after these rules come into force.

*[15. Deleted in Gazette 19 Dec 1975 p. 4572.]*

*[16. Deleted in Gazette 7 Feb 1992 p. 687.]*

**17. Cases that Magistrates Court could have decided, costs in**

- (1) If an action is brought in the Supreme Court which could have been brought in the Magistrates Court without the special consent of the defendant, the plaintiff shall recover no greater sum by way of costs than he could have recovered had the action been brought in the Magistrates Court, unless the Court certifies that by reason of some important principle of law being involved, or of the complexity of the issues or of the facts, the action was properly brought in the Supreme Court.
- (2) Where this rule applies a solicitor acting for a plaintiff shall not be entitled to charge his client any sum by way of costs in excess of that properly payable on a party and party basis in the Magistrates Court, unless the client has agreed in writing, before the proceedings are commenced, to pay on a higher scale, or the Court has certified that the action was properly brought in the Supreme Court.

*[Rule 17 amended in Gazette 29 Apr 2005 p. 1800.]*

**18. Matters not provided for in scale**

- (1) In any matter not specially provided for in any relevant scale, the Court or the taxing officer may allow costs by way of analogy according to the item in the scale which is most nearly applicable thereto; or if in the opinion of the Court or the taxing officer, there is no such item, the costs shall be fixed at such sum as in the opinion of the Court or the taxing officer is adequate in the circumstances.
- (2) Without limiting the generality of subrule (1), the taxing officer may allow such fees as he considers reasonable —
  - (a) in connection with the compromise of a claim by or against a person under a disability; or

- (b) for a conference or consultation where and to the extent that the conference or consultation was necessary.

*[Rule 18 inserted in Gazette 19 Dec 1975 p. 4572-3; amended in Gazette 14 Dec 1979 p. 3871; 7 Feb 1992 p. 687; 28 Jun 2011 p. 2552.]*

**19. Disbursements etc. allowable on taxation**

Any of the following items, disbursements, expenses, payments, or charges are allowable on taxation —

- (a) items of costs allowable under any relevant scale and such counsel fees as may be allowed;
- (b) disbursements for fees of court;
- (c) disbursements for fees of officers of the Court;
- (d) witness expenses paid or to be paid under any relevant scale of allowances fixed in that regard;
- (e) agency charges, if specially allowed by the Court or by the taxing officer;
- (f) the reasonable expenses as fixed by the taxing officer of the typing, printing, and binding of appeal books;
- (g) other necessary disbursements or payments made in the conduct of the litigation;
- (h) any other necessary expense incurred in the conduct of the litigation, whether or not it has been paid before the taxation of that expense takes place.

*[Rule 19 inserted in Gazette 30 Jun 2000 p. 3418.]*

**20. Basis for calculating costs**

- (1) Where the claim is for a liquidated sum costs are to be calculated on the amount recovered by the plaintiff if he succeeds, and on the amount claimed if the defendant succeeds.
- (2) Where relief other than a liquidated sum is claimed, either alone or in addition to a liquidated sum, the Court in giving judgment

shall fix the value of the subject matter for the purpose of determining the basis on which the party and party costs and the solicitor and client costs of each party shall be calculated. The value so fixed need not necessarily be the same for each party.

- (3) If judgment is entered before trial without application to a judge or a master, the taxing officer shall determine the value of the subject matter for the purpose of this rule, or may fix a lump sum for costs, and in the case of difficulty may refer the matter to a judge.
- (4) The costs of the solicitor for the unsuccessful party as against his client shall be on the same basis as the costs of the successful party unless the judge at the trial or in chambers orders otherwise: Provided that the client or the solicitor may, at any time within 6 calendar months from the date of judgment, apply to a judge for an order that such costs be fixed on some other basis.

*[Rule 20 amended in Gazette 30 Nov 1984 p. 3952.]*

**21. No substantial trial, costs in case of**

Where for any reason there is no substantial trial, the judge or the taxing officer may make such allowance in lieu of the fees prescribed by any relevant scale as he considers to be merited in the circumstances.

*[Rule 21 amended in Gazette 19 Dec 1975 p. 4573; 7 Feb 1992 p. 687.]*

*[22. Deleted in Gazette 19 Dec 1975 p. 4573.]*

**23. Certain fees in scales may be increased if inadequate**

If it is shown to the satisfaction of the taxing officer that by reason of special circumstances, a fee in any relevant scale which includes the drawing or settling of a pleading or other document is inadequate, the taxing officer may allow such additional sum as he thinks proper, whether the pleading or



document has been drawn or settled by counsel or by the solicitor.

[Rule 23 amended in Gazette 19 Dec 1975 p. 4573; 7 Feb 1992 p. 687.]

**24. Judgment for person under disability, solicitor's costs in case of**

- (1) In this rule the term *person under disability* has the same meaning as in Order 70.
- (2) This rule applies to —
  - (a) any proceedings (including an action under the *Fatal Accidents Act 1959*) in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability or in which money paid into court is accepted by or on behalf of such a person; and
  - (b) any proceedings before the Court of Appeal on an application or appeal made in connection with any proceedings to which this rule applies by virtue of paragraph (a).
- (3) Except as provided by subrule (4) the costs payable to his solicitor by or on behalf of a plaintiff who is a person under disability or from any money recovered by or on behalf of a person under disability in any proceedings to which this rule applies being the costs of or incidental to those proceedings or consequent thereon, must be taxed; and no costs shall be charged or retained by the solicitor of any plaintiff in respect of those proceedings except the amount of such taxed costs.
- (4) This rule does not apply where the plaintiff's solicitor does not claim additional costs against his client over and above the party and party costs, as ascertained by taxation or the agreement of the defendant, payable to the client in the proceedings.
- (5) Subrule (3) applies in relation to any proceedings to which this rule applies by virtue of subrule (2)(b) as if for references to a

plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings in the court below.

- (6) Nothing in subrules (1) to (5) shall prejudice a solicitor's lien for costs.
- (7) Subrules (1) to (6) apply in relation to a counterclaim by or on behalf or for the benefit of a person under disability, as if for references to a plaintiff there were substituted references to a defendant.

*[Rule 24 amended in Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552 and 2555.]*

*[25-31. Deleted in Gazette 19 Dec 1975 p. 4573.]*

### **Division 2 — Taxation of costs**

*[Heading inserted in Gazette 22 Feb 2008 p. 640.]*

#### **32. Bills of costs to be taxed**

- (1) Unless the Court in a particular case otherwise directs, bills of costs and fees which are payable to practitioners admitted and entitled to practise in the Court in respect of business transacted by them in the Court or its offices, and which have been directed by judgment or order to be taxed, shall be taxed, allowed and certified by the taxing officer who shall appoint a time for taxation on the application of the party claiming taxation.
- (2) Where an action, summons or other proceeding is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under these rules to tax his costs, then subject to rule 49, those costs may be taxed without any order in that behalf being made.

**33. Indorsements on bill of costs**

Every bill of costs which is left for taxation shall have indorsed therein a notice of appointment, and the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor (if any) for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be taxed.

**34. When notice of taxation need not be given**

Notice of taxing costs need not be given to any party who has not entered an appearance or taken any part in the proceedings to which the costs relate.

**35. Notice of taxation**

- (1) Where notice is required 2 clear days' notice of taxing costs together with a copy of the bill of costs, and of any affidavit of increase which may be necessary, shall be given to the other party by the party whose costs are to be taxed.
- (2) In cases of urgency the taxing officer may direct that one clear day's notice only shall be given.

**36. Vouchers as to disbursements to be lodged**

A party leaving a bill of costs for taxation must lodge with the bill vouchers for the payment of all disbursements (other than court fees) included in the bill; and where the vouchers are numerous they must be marked with the corresponding number in the bill.

*[Rule 36 inserted in Gazette 19 Dec 1975 p. 4573.]*

**37. Solicitor delaying taxation**

Where any solicitor fails to leave his bill with the necessary papers and vouchers within the time or extended time fixed by the taxing officer, or in any way delays or impedes the taxation he shall, unless the taxing officer otherwise directs, forfeit the

fees to which he would be entitled for preparing his bill of costs and attending on taxation.

**38. Appointment to tax costs to be peremptory**

The appointment made by the taxing officer shall be peremptory, and he shall proceed thereon *ex parte* on proof that due notice has been given to the opposite party, unless sufficient cause appears for postponement.

**39. Taxing officer may direct bills of costs to be brought in**

When an order directing the taxation of any costs in a proceeding has been made, the taxing officer may of his own motion give notice to a party to carry in his bills of costs for taxation and may limit a time for that purpose.

**40. Default by party in taxing costs**

When a party entitled to costs refuses or neglects to bring in his costs for taxation within any period limited under rule 39, the taxing officer may —

- (a) certify the costs of the other parties and the refusal or neglect; or
- (b) allow a nominal or other sum to the party refusing or neglecting, for his costs.

**41. If costs payable out of property, notice to clients may be directed**

Where in any action or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, previously to completing the taxation, require the solicitor to deliver or send to his clients, or any of them free of charge, a copy of such bill or any part thereof, accompanied by any statement such officer may direct and by a letter informing such client that the bill of costs has been referred to the taxing officer for taxation and that the taxation will be proceeded with at the time the taxing officer

shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

**42. Bills of costs, content of**

- (1) A bill of costs for taxation shall be prepared so as to show clearly —
  - (a) items consecutively numbered, together with a reference to the item in the scale to which the item in the bill relates; and
  - (b) dates of items (specifying years, months and days); and
  - (c) where necessary, particulars of the services charged for; and
  - (d) disbursements; and
  - (e) professional charges.
- (2) Professional charges and disbursements shall be entered in separate columns and each column shall be added before the bill is filed.

*[Rule 42 inserted in Gazette 30 Aug 1974 p. 3242; amended in Gazette 19 Dec 1975 p. 4573.]*

**43. Taxing officer's decisions on fact are final**

The decision of the taxing officer on all questions of fact shall be final.

**44. Taxing officer's powers**

The taxing officer may, for the purposes 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;
- (g) exercise all the powers of the Court in relation to the admission of evidence;
- (h) where a solicitor is not on the record for a party which is a body corporate permit a person who is not a solicitor to represent the body corporate on the taxation.

*[Rule 44 amended in Gazette 26 Mar 1993 p. 1845-6;  
26 Aug 1994 p. 4415.]*

**45. Taxing officer may refer taxation question to Court**

The taxing officer may, of his own motion, refer any question arising in the course of a taxation for the direction of the Court.

**46. Where proceedings adjourned into court**

Where a judge directs that any matter shall be adjourned into court the same fees shall, if the judge so orders, be payable and the same costs shall be allowed in respect of proceedings subsequent to the adjournment as would have been payable if the matter had been commenced in court.

**47. Interrogatories and discovery, costs of**

- (1) The costs of interrogatories shall be reserved for consideration of the judge at the trial. Where there is no trial such costs shall be in the discretion of the taxing officer.
- (2) In considering whether any order or allowance should be made for the costs of interrogatories, the judge or the taxing officer shall consider whether the party requesting answers to interrogatories has by his conduct in connection with the request, unnecessarily increased the costs and whether the results achieved have justified wholly or in part the additional costs involved.

- (3) The party against whom an order for discovery or to answer or further answer interrogatories is made must pay the costs of the application, unless the Court otherwise orders.
- (4) Subject to these rules, and to any order of the Court, the costs of obtaining discovery including inspection of documents is in the discretion of the taxing officer, but no allowance shall be made if it is shown to his satisfaction that there were not good and sufficient grounds for obtaining discovery and making the inspection.

**48. Costs of motion etc. follow event**

- (1) Unless the Court otherwise orders, the costs of a motion or application in an action shall be deemed to be part of the costs of the action of the party in whose favour the motion or application is determined unless the motion or application is unopposed.
- (2) When the motion or application is unopposed, the costs of both parties shall be deemed to be part of their costs of the action, unless the Court otherwise orders.

**49. Motion etc. stood over to trial and no order made as to costs, costs in case of**

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 action.

**50. Costs reserved**

When the costs of a motion, application, or other proceeding are reserved by the Court or a judge, costs of the motion, application, or proceedings shall not be allowed to a party without an order of the Court or a judge.

**51.        When Court may fix costs**

- (1) Where in any action or matter taxation of costs is not ordered, or any special costs are by these rules or by any order reserved for the consideration of the Court at trial, the Court may fix the amount of costs payable, or the amount of such special costs, and in every judgment or order of the Court where the question of costs is not specifically dealt with there shall be deemed to be reserved to any party interested liberty to apply within 30 days.
- (2) Where under these rules a party is required to obtain some special certificate for costs, there shall be deemed to be reserved to such party liberty to apply within 30 days.

**52.        Taxing officer may refer question to judge if costs to be apportioned etc.**

Where taxation of costs is ordered and by the terms of the order or by the effect of the order, the costs are to be apportioned as between the parties, or a party is entitled to receive the costs applicable to any part of the action or matter, or where the costs of a counterclaim are concerned, then in case of any doubt or difficulty arising on taxation there shall be deemed to be reserved in every such order an authority to the taxing officer or any party to refer the question to a judge.

**Division 3 — Review of taxation**

*[Heading inserted in Gazette 22 Feb 2008 p. 641.]*

**53.        Party dissatisfied with taxation may object and apply for review**

- (1) A party who contends that the taxing officer has made an error in principle in allowing or disallowing any item or part of an item in a bill of costs taxed by him may, at any time before a certificate of taxation dealing finally with that item is signed, or at such earlier time as may, in any case, be fixed by the taxing officer —



- (a) deliver to the other party interested in the allowance or disallowance and carry in before the taxing officer, an objection in writing to the allowance or disallowance specifying in the objection by a list, in a short and concise form, the items or parts of items objected to, and the grounds and reasons for the objections; and
  - (b) thereupon apply to the taxing officer to review the taxation in respect of those items or parts.
- (2) Pending the consideration and determination of the objection, the taxing officer may if he thinks fit issue a certificate of taxation for or on account of the remainder or of part of the bill of costs. Any further certificate which may be necessary shall be issued by the taxing officer after his decision upon the objections.

**54. Review of taxation by taxing officer**

- (1) Upon an application under rule 53 to review the taxation, the taxing officer shall reconsider and review his taxation in relation to the objections, and he may, if he thinks fit, receive further evidence in respect of the objections.
- (2) If so required by a party, the taxing officer shall state in his certificate of taxation or by reference to the objection, the ground and reason of his decision on the objection, and any special facts or circumstances relating to his decision.
- (3) The taxing officer may tax the costs of the objections and add them to or deduct them from, any sum payable by or to a party to the taxation.
- (4) Except as provided by this rule, the taxing officer shall not, after a certificate of taxation is signed, review his taxation or amend his certificate, except to correct a clerical or manifest error before payment or process issued for recovery of the costs.
- (5) If a party fails to appear on the taxation the taxing officer may, upon an application in that behalf made in writing within 7 days,

set aside or vary his certificate of taxation on such terms as he thinks just.

*[Rule 54 amended in Gazette 7 Feb 1992 p. 687; 28 Jun 2011 p. 2555.]*

**55. Review of taxation by judge**

- (1) If a party is dissatisfied with the certificate of the taxing officer as to any item or part of an item objected to under rule 53 of this Order, he may, within 14 days from the date of the certificate, or such other time as the Court, or the taxing officer at the time he signs his certificate, allows, apply to a judge in chambers for an order to review the taxation as to that item or part of an item.
- (2) The judge, if of opinion that the taxing officer has made an error in principle, may thereupon make such order to rectify the error as the judge thinks just.
- (3) The certificate of the taxing officer is final and conclusive as to all matters which have not been objected to in accordance with these rules.

**56. No further evidence on review except with leave**

An application under rule 55 to a judge to review the taxation shall be heard and determined by the judge upon the evidence which has been brought in before the taxing officer, and further evidence shall not be received upon the hearing of the application unless the judge otherwise directs.

*[Rule 56 amended in Gazette 28 Jun 2011 p. 2555.]*

**Division 4 — Miscellaneous**

*[Heading inserted in Gazette 22 Feb 2008 p. 641.]*

**57. Taxing officer's certificate enforceable as judgment**

The costs allowed by the taxing officer on any interim or final certificate of taxation shall be deemed to be a judgment of the Court, and shall be recoverable accordingly.

**58. Stay on review**

A party who has required the taxing officer to state the ground and reason of his decision on an objection for the purpose of applying to a judge to review the taxation, may request the taxing officer to grant a stay of proceedings either wholly or limited to the item or part of an item which is the subject of the objection, and in the event of the taxing officer refusing such stay may apply to a judge.

**59. Party liable to be paid and to pay costs, taxing officer's powers in case of**

Where a party who is entitled to be paid costs is also liable to pay costs, the taxing officer may, subject to any direction of the Court —

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate of taxation for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

**60. Taking of accounts, taxing officer's duties and powers on**

- (1) Where on the taking of accounts, the accounts consist in part of a bill of costs, the taxing officer shall assist in settling the costs, not being the ordinary costs of passing the accounts of a receiver.
- (2) On a bill of costs being referred under this rule, the taxing officer shall proceed to tax the costs, and shall have the same powers, and the same fees shall be payable in respect of the

taxation, as if those costs had been referred to the taxing officer for taxation by an order.

- (3) The taxing officer shall report and certify the costs to the master or to the registrar or other officer taking the accounts.

*[Rule 60 amended in Gazette 14 Dec 1979 p. 3871.]*

**61. Interim certificate in matters of account**

If, during the taxation of any bill of costs or the taking of any account between solicitor and client, it shall appear to the taxing officer that there must in any event be moneys due from the solicitor to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the solicitor. Upon the filing of such certificate the Court may order the moneys so certified to be forthwith paid to the client or brought into Court.

## **Order 67 — Central Office, officers**

### **1. Superintendence of Central Office**

The senior master shall superintend the business of the Central Office and shall give any directions that may be required on questions of practice and procedure.

*[Rule 1 inserted in Gazette 14 Dec 1979 p. 3871; amended in Gazette 30 Nov 1984 p. 3952.]*

### **2. Ministerial acts of registrar**

Where under these rules a registrar (including the Principal Registrar) is required or empowered to do an act of a ministerial nature, it is sufficient if that act is done by another officer of the Court or by a clerk in the Central Office.

*[Rule 2 inserted in Gazette 14 Dec 1979 p. 3871.]*

### **3. Taking of oaths and affidavits**

The masters and the registrars shall, by virtue of their offices, have authority to take oaths and affidavits in the Supreme Court.

*[Rule 3 inserted in Gazette 14 Dec 1979 p. 3871; amended in Gazette 30 Nov 1984 p. 3952.]*

### **4. Seals**

The official seals to be used in the Central Office shall be such as the Chief Justice from time to time directs.

### **5. Abuse of process etc., procedure in case of**

- (1) If any writ, process, motion, application or commission, which is presented for filing, issue or sealing appears to the registrar to be an abuse of the process of the Court or a frivolous or vexatious proceeding, the registrar shall refuse to file or issue such writ, process, motion, application or commission without

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the leave of a judge or a master first had and obtained by the party seeking to file or issue it.

- (2) In the case of a motion or an application ordinarily returnable before a master in chambers, an application for leave to file or issue such motion or application shall be made to a master in chambers.
- (3) In all other cases, an application or commission shall be made to a judge in chambers.
- (4) Applications for leave under subrules (2) and (3) shall be made *ex parte* and shall be supported by affidavit.

*[Rule 5 inserted in Gazette 24 Jan 1995 p. 271; amended in Gazette 28 Jun 2011 p. 2552-3.]*

**6. Sealed documents, evidentiary status of**

All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

**7. Petition, award etc. to be filed before judgment etc. passed**

No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read, shall be passed, until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed, and a note thereof made on the judgment or order by the proper officer.

**8. Indexes to documents etc. in Central Office**

Proper indexes or calendars to the files or bundles of all documents filed at the Central Office shall be kept, so that the same may be conveniently referred to when required.

**9. Date of filing to be marked etc.**

- (1) All documents filed in the Central Office in any proceedings must be sealed with a seal showing the date on which the document was filed and, if the document was filed under rule 20, a record of the fact that it was filed electronically.
- (2) There shall be entered in records kept in the Central Office for the purpose particulars of the date of delivery or receipt at the Central Office of every document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record.

*[Rule 9 amended in Gazette 26 Mar 1993 p. 1846; 22 Feb 2008 p. 650.]*

**10. Custody and searches of records in Central Office**

- (1) The Principal Registrar shall have the custody of all records and other documents kept or filed, or ordered to be deposited for safe custody, or impounded, in the Central Office.
- (2) The Principal Registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes in his custody, and issue a certificate of the result of the search.

*[Rule 10 inserted in Gazette 14 Dec 1979 p. 3871; amended in Gazette 1 Aug 1980 p. 2559.]*

**11. Inspection of documents in Central Office**

- (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any

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of the following documents filed in the Central Office, namely —

- (a) the copy of any writ, and the statement of claim (if any) indorsed thereon under Order 6 rule 3; and
  - (b) any originating application made under the *Corporations Act 2001* of the Commonwealth; and
  - (ba) any appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005*; and
  - (c) any judgment or order given or made in court or the copy of any such judgment or order; and
  - (d) with the leave of the Court or a registrar, any other document.
- (2) An application under subrule (1)(d) may be made *ex parte*.
  - (3) Nothing contained in this rule shall be construed as preventing any party to a cause or matter searching for, inspecting, and taking or bespeaking a copy of any affidavit or other document filed in the Central Office in that cause or matter or filed therein before the commencement of that cause or matter, but made with a view to its commencement.
  - (4) This rule does not entitle a person to search, inspect or take a copy of any part of a document that contains information that the person is prevented by an Act from possessing.

*[Rule 11 amended in Gazette 14 Dec 1979 p. 3871; 1 Dec 1993 p. 6452; 16 Jul 1999 p. 3195; 15 Aug 2003 p. 3691; 29 Apr 2005 p. 1793; 28 Jul 2010 p. 3484; 28 Jun 2011 p. 2552.]*

**12. Deposit of documents**

Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers, or otherwise, the same shall be left or deposited in the Central Office, and shall be subject to such directions as may be given for the production thereof.



**13. Restriction on removal of documents**

- (1) No document filed in or in the custody of any office of the Supreme Court shall be taken out of that office without leave of the Court or a registrar unless the document is to be sent to a circuit court.
- (2) No subpoena for the production of any such document shall be issued.

*[Rule 13 amended in Gazette 14 Dec 1979 p. 3871.]*

**14. Deposit for officer's expenses**

Any officer being required to attend with any record or document at any court or place out of the Supreme Court, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

**15. Admissions, awards etc. to be filed**

All petitions and written admissions of evidence whereon any order is founded, and all awards on submissions to arbitration made orders of the Court, shall be transmitted to and left at the Central Office, to be there filed or preserved, and all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within 48 hours after the same shall have been bespoken.

**16. New forms**

The senior master may from time to time prescribe the use in or for the purpose of the Central Office of such additional forms to those contained in Schedule 2, or of such modified forms, as may be deemed expedient.

*[Rule 16 amended in Gazette 30 Nov 1984 p. 3952; 28 Jun 2011 p. 2555.]*

**17.      Accounts etc. to be taken by registrar, rules applying to**

Where an account or inquiry is directed to be taken or made by, or a matter is referred to, a registrar or other officer of the Court, the provisions of Orders 35, 45, 51, 60 and 61 shall apply, in so far as they are relevant and with the necessary modifications, to and in relation to any such account, inquiry or matter.

*[Rule 17 inserted in Gazette 14 Dec 1979 p. 3872; amended in Gazette 1 Aug 1980 p. 2559.]*

**18.      Reference in judgment etc. to registrar, effect of**

A reference in any judgment, decree or order to the registrar shall, unless otherwise directed by the Court, include a reference to the Principal Registrar, a registrar or a deputy registrar.

*[Rule 18 inserted in Gazette 14 Dec 1979 p. 3872.]*

**19.      Some documents may be filed by fax**

- (1) Subject to this rule, a document may be filed by fax.
- (2) A person wanting to file a document by fax must use the published fax number for the Central Office.
- (3) A document that, with any attachments and a cover page, is more than 20 pages long, must not be filed by fax and any such document received by the Central Office is to be taken not to have been filed.
- (4) A document that is sent by fax to the Central Office must have a cover page stating —
  - (a) the sender's name, postal address, document exchange number (if any), telephone number and fax number; and
  - (b) the number of pages (including the cover page) being sent by fax.

- (5) A person that files a document by fax must —
  - (a) endorse the first page of the original document with —
    - (i) a statement that the document is the original of a document sent by fax; and
    - (ii) the date and time the document was sent by fax; and
  - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
  - (c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.
- (6) A document filed by fax is to be taken to have been filed —
  - (a) if the whole document is received before 4.00 p.m. on a day when the Central Office is open for business, on that day;
  - (b) otherwise, on the next day when the Central Office is open for business.
- (7) A person who files a document by fax must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document by fax to file the paper version of the document.

*[Rule 19 inserted in Gazette 22 Feb 2008 p. 650-1.]*

**20. Some documents may be filed using Court's website**

- (1) Subject to the requirements of the Court's website and this rule, a person may file a document in the Central Office electronically by filing an electronic version of it by means of the Court's website.

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- (2) If these rules require a document to be signed by a person who is not, or who is not acting on behalf of, the person filing it, the document cannot be filed electronically unless it is an affidavit.
- (3) If these rules require a document, before it is filed, to be signed by or on behalf of the person filing it and the document is being filed electronically —
  - (a) the document need not be signed by that person; and
  - (b) the person filing the document electronically must ensure that the electronic version of the document, instead of showing a signature at any place where a signature is required, states the name of the person whose signature is required at the place.
- (4) A person who files an affidavit electronically must either file an electronic version of it that includes the signatures on it or —
  - (a) file an electronic version of it that does not include the signatures on it; and
  - (b) ensure that the electronic version, instead of showing a signature at any place where a signature appears in the paper version, states the name of the person whose signature it is; and
  - (c) also file an undertaking that the person —
    - (i) has possession of the paper version signed according to law; and
    - (ii) will retain the paper version subject to any order of the Court.
- (5) A document filed electronically is to be taken to have been filed —
  - (a) if the whole document is received by the Central Office before 4.00 p.m. on a day when it is open for business, on that day; or
  - (b) otherwise, on the next day when the Central Office is open for business.

- (6) A document that is sent electronically to the Court but not in accordance with the requirements of the Court's website and this rule is to be taken not to have been filed.
- (7) A person who files a document electronically must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document electronically to file the paper version of the document.

*[Rule 20 inserted in Gazette 22 Feb 2008 p. 652-3.]*

*[21. Deleted in Gazette 28 Oct 1996 p. 5708.]*

## **Order 68 — Sittings, vacations and office hours**

### **1. Civil sittings**

- (1) The civil sittings of the Court shall be held at times fixed by rule of court, from year to year.
- (2) If the day appointed for the commencement of sittings is a day on which the offices of the Court are closed, the sittings shall commence upon the next day on which the offices are open.

*[Rule 1 amended in Gazette 29 Apr 2005 p. 1793.]*

### **2. Criminal sittings**

The criminal sittings of the Supreme Court to be held at Perth, shall commence in each month on a day to be fixed, from year to year, by rule of court; provided that the day of commencement of any such monthly sittings may, at any time prior to such date, be altered to any other day in the month of such sittings by order of the Chief Justice published in the *Government Gazette*.

### **3. Court vacations**

The vacations to be observed in the Supreme Court shall be the Christmas Vacation, the Easter Vacation, and the Winter Vacation. The Christmas Vacation, shall commence on 24 December and terminate on the second Monday in the January next following; the Easter Vacation shall commence on Good Friday and terminate on Easter Monday, and the Winter Vacation shall commence on a day in June, July or August fixed by rule of court, from year to year, and terminate on a day 14 days after the day so fixed.

*[Rule 3<sup>2</sup> amended in Gazette 23 Sep 1983 p. 3798; 26 Aug 1994 p. 4413.]*

**4. Days included in sitting and vacation**

The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

**5. When Court's offices are open**

The several offices of the Supreme Court shall be open on every day of the year, except Saturdays and Sundays, Good Friday and Monday in Easter week, Christmas Day and all Public Service holidays.

*[Rule 5 amended in Gazette 9 Nov 1973 p. 4165; 26 Aug 1994 p. 4413.]*

**6. Office hours**

The office hours of the several offices of the Court shall be from 9 a.m. to 4 p.m.; provided that the Chief Justice may direct that the offices or any office of the Court shall not be open between 1 p.m. and 2 p.m.

*[Rule 6 amended in Gazette 10 Nov 1995 p. 5247.]*

**7. Vacation Judge**

- (1) One or more of the judges shall be selected before the commencement of each vacation for the hearing during the vacation of all such applications as may require to be heard.
- (2) Any other judge may sit in vacation for the transaction of judicial business in addition to, or in substitution for, the Vacation Judge.

## **Order 69 — Paper, printing, notice, and copies**

### **1. Printing of documents, rules as to**

- (1) Where by any provisions of these rules a document is required or allowed to be printed, that document must be produced, subject to the provisions of rule 2, by means of printing or typewriting (otherwise than by means of a carbon).
- (2) For the purpose of these rules a document shall be deemed to be printed if it is produced by lithography, stencil duplicating or any other mechanical means, except typewriting or photography, giving uniform facsimile pages of clear sharp and legible type.
- (3) Any document produced by a photographic or similar process giving a positive, clear, and permanent representation free from blemishes, shall to the extent that it contains a facsimile of any printed or typewritten matter be treated for the purpose of these rules as if it were printed.

### **2. Documents prepared by parties, requirements as to**

- (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court shall, subject to any directions given from time to time by the senior master —
  - (a) be legibly and clearly typewritten or printed without blotting, erasure or such alterations as cause material disfigurement; and
  - (b) have a space of not less than 6 mm between each line; and
  - (c) be upon white paper of good and durable quality and capable of receiving ink writing and of such size as the senior master from time to time directs; and



- (d) be on either —
  - (i) one side only of the paper with a margin of not less than 40 mm on the left hand side of each sheet; or
  - (ii) both sides of the paper with a margin of not less than 40 mm on the left hand side of the front of each sheet and not less than 40 mm on the right hand side of the back of each sheet;
- and
- (da) commence on a fresh sheet; and
- (e) have each page numbered; and
- (f) have the sheets fastened only at the top left hand corner; and
- (g) not have the sheets folded; and
- (h) have shown on the first sheet, immediately following each other —
  - (i) at the top across the full width from the left hand margin, the heading and title of the proceeding; and
  - (ii) a short description of the document (including, in the case of an affidavit, the name of the deponent and the purpose for which the affidavit is filed),
- and in a space not longer than 50 mm —
  - (iii) the date of the document; and
  - (iv) the name of the party; and
  - (v) if the document is required to state it, the party's geographical address in accordance with Order 71A; and
  - (vi) the party's service details in accordance with Order 71A.

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- (1a) Except in the case of —
- (i) an originating process; or
  - (ii) a document to be served on a person who is not a party to a proceeding; or
  - (iii) a final judgment or order,
- a document may show an abbreviation of the title of the proceeding which is sufficient to identify the proceeding.
- (2) The registrar may refuse to file or accept a document to which subrule (1) applies if it does not comply with the provisions of that subrule, and the costs of the document may be disallowed upon taxation.
- (3) A typewritten copy of a document to which subrule (1) applies shall not be filed, registered or marked as an office copy unless it is a first black ink copy.
- (4) Any notice, request or consent required or allowed by these rules may not be given orally except with the leave of the Court.
- (5) The Court may require any document required for use in the Supreme Court to be printed or otherwise produced in any particular manner that it thinks fit.

*[Rule 2 amended in Gazette 7 Dec 1973 p. 4489; 30 Nov 1984 p. 3952; 15 Dec 1989 p. 4520; 24 Oct 1995 p. 4919; 21 Feb 2007 p. 575-6; 28 Jun 2011 p. 2552.]*

**3. Cost of printing, shorthand or recording, orders as to**

Where, by any order of the Court any document is ordered to be printed or typewritten or otherwise produced, or where any part of the proceedings is taken in shorthand or is recorded, the Court may order the expense thereof to be borne and allowed and copies or transcripts thereof to be furnished, by and to such parties and upon such terms as shall be thought fit.

**4. Copies of documents for other parties**

- (1) Where a document prepared by a party for use in the Court is printed the party by whom it was prepared must, on receiving a request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof not exceeding 10, as may be specified in the request.
- (2) The proper charges for printed copies shall be calculated at the rate of fifty cents (\$0.50) per page.
- (3) Where a document prepared by a party for use in the Court is typewritten the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it or the relevant extract therefrom.
- (4) The copy must be ready for delivery within 48 hours after a request for it, together with an undertaking to pay the proper charges, is received, and must be supplied thereafter on payment of those charges.

**5. Requirements as to copies**

- (1) A party who supplies a copy of a document under this Order must indorse the copy with the party's service details before supplying it.
- (2) The party by whom a copy is supplied under this Order, or if he sues or appears by a solicitor, his solicitor shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

*[Rule 5 amended in Gazette 21 Feb 2007 p. 576.]*

**6. Copies of affidavits on certain *ex parte* applications**

- (1) Where upon an *ex parte* application an order is made against or affecting the rights of a person, that person may obtain a copy of

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the affidavits filed by the applicant in support of his application upon making a written application to the party by whom the copies are to be furnished or his solicitor, with an undertaking to pay the proper charges.

- (2) The party who made the application must furnish the copies upon payment of the proper charges forthwith after receiving the written request and undertaking mentioned in subrule (1) or within such time as may be specified in the request or may be directed by the Court.

*[Rule 6 amended in Gazette 28 Jun 2011 p. 2552.]*

## Order 70 — Disability

### 1. Terms used

In this Order unless the contrary intention appears —

*Act* means the *Guardianship and Administration Act 1990*;

*person under disability* means —

- (a) a person who is an infant; or
- (b) a represented person; or
- (c) a person not being a person referred to in paragraphs (a) or (b), who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing his affairs in respect of any proceedings to which the declaration relates;

*represented person* means a represented person within the meaning of the Act.

[Rule 1 inserted in Gazette 22 Jul 1994 p. 3746.]

### 2. Persons under disability suing or defending

- (1) Subject to subrule (4) a person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on him, except by his guardian *ad litem*.
- (2) Subject to the provisions of these rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.
- (3) A next friend or guardian *ad litem* of a person under disability must act by a solicitor.

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- (4) A judge may by order permit an infant to sue or defend or take part in any proceedings to which the order relates, without a next friend or guardian *ad litem* on being satisfied that in the circumstances of the case it is proper to do so.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

**3. Next friend or guardian *ad litem*, appointment of**

- (1) This rule does not apply in relation to a probate action.
- (2) Save as provided by subrules (5) and (6) or by rule 5, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.
- (3) If a person under a disability is a represented person in respect of whom —
- (a) a plenary guardianship or administration order has been made under the Act; or
  - (b) a limited guardianship or administration order has been made under the Act, which authorises the guardian or administrator, as the case may be, to conduct legal proceedings in the name of the person under a disability or on his behalf,

the guardian or administrator shall act as next friend or guardian *ad litem*, as the case may be, of the represented person in any proceedings unless, in a case to which subrule (5) or (6) or rule 6 applies, some other person is appointed by the Court to be the next friend or guardian *ad litem*, as the case may be, of the represented person in those proceedings.

- (4) In respect of a represented person within the meaning of the *Public Trustee Act 1941*, the Public Trustee shall be the next friend or guardian *ad litem* as the case may be.
- (5) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case

may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

- (6) Where, after the commencement of any proceedings, a party thereto becomes a person under a disability, an application shall be made to the Court for the appointment of a next friend or guardian *ad litem*, as the case may be, of that party.
- (7) Unless the next friend or guardian *ad litem* of a person under disability has been appointed by the Court, is a guardian or administrator referred to in subrule (3), or is the Public Trustee —
  - (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability; and
  - (b) an appearance shall not be entered in a cause or matter for a person under disability; and
  - (c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion, which, or notice of which has been served on him,

unless and until the documents specified in subrule (8) have been filed.

- (8) The documents referred to in subrule (7) are as follows —
  - (a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability, signed by the person proposing to act as such friend or guardian; and
  - (b) where the person proposing to be the next friend or guardian *ad litem*, as the case may be, of a represented person is authorised under Part 5 or Part 6 of the Act to conduct proceedings in the cause or matter in question in the name of the represented person or on his behalf, a

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copy of the order made under Part 5 or Part 6 of the Act giving such authority; and

- (c) except where the person proposing to be such friend or guardian of a represented person is so authorised under Part 5 or Part 6 of the Act, an affidavit by the solicitor for the represented person deposing —
- (i) that he knows or believes, as the case may be, that the person to whom the affidavit relates is an infant or a represented person, stating (in the case of a represented person) the grounds of his knowledge or belief; and
  - [(ii) *deleted*]
  - (iii) that the person named in the affidavit as next friend or guardian, as the case may be, has no interest in the cause or matter in question adverse to that of the person under disability; and
  - (iv) that in the case of an infant (who is not a represented person) who has attained the age of 14 years, the infant consents to the person named in the affidavit acting as such next friend or guardian, as the case may be.

*[Rule 3 amended in Gazette 22 Jul 1994 p. 3746-8; 28 Jun 2011 p. 2552-3.]*

**4. Probate actions, special provisions for**

- (1) This rule applies in relation to a probate action.
- (2) Save as provided in subrule (3) a person shall not act in a probate action as next friend or guardian *ad litem* of a person under disability unless he has been appointed to so act by the Court.
- (3) A person may act as next friend or guardian *ad litem* in a probate action without an order of the Court where —



- (a) in the case of a represented person, he is the guardian or administrator appointed under Part 5 or Part 6 of the Act to conduct legal proceedings in the name of the represented person;
  - (b) in the case of an infant (who is not also a represented person) he is the statutory or testamentary guardian of the infant;
  - (c) in the case of an infant who has attained the age of 16 years (who is not a represented person) nobody is qualified to be such next friend or guardian by virtue of paragraph (b) and the person is one of the next of kin of the infant and has been appointed by him or her to act as his or her next friend or guardian *ad litem*.
- (4) Where a person is entitled to act as next friend or guardian *ad litem* of a person under disability without an order of the Court the writ beginning the action (where such person is the plaintiff) must not be issued, and an appearance must not be entered for him in the action (where he is a defendant, intervener or person cited) without the consent of a master.
- (5) On the application for a consent under subrule (4) there must be produced to the master, in the case of a represented person a copy of the order under Part 5 or Part 6 of the Act authorising the next friend or guardian *ad litem* to conduct legal proceedings in the name of the represented person, and in the case of an infant —
- (a) where the next friend or guardian *ad litem* is the statutory or testamentary guardian of the infant, an affidavit deposing to the guardianship, and the age of the infant, and showing that the guardian has no interest in the action adverse to that of the infant;
  - (b) where paragraph (a) does not apply —
    - (i) the appointment by the infant;

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- (ii) the written consent to act as next friend or guardian *ad litem*, as the case may be, of the person so appointed;
- (iii) an affidavit deposing to the age of the infant and proving the fitness and willingness of the proposed next friend or guardian *ad litem* to act as such and that he has no interest in the action adverse to that of the infant, and is a next-of-kin of the infant.

*[Rule 4 amended in Gazette 30 Nov 1984 p. 3952; 22 Jul 1994 p. 3748; 30 Jun 2003 p. 2631; 28 Jun 2011 p. 2552 and 2555.]*

**5. No appearance by person under disability, procedure on**

- (1) Where —
  - (a) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered for that person; or
  - (b) the defendant in an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no appearance is entered for that person,

the plaintiff or defendant, as the case may be, before proceeding further with the action or counterclaim must, after the time limited (as respects the person under disability) for appearing, make an application to the Court for an order appointing a guardian *ad litem* of that person, and giving consequential directions.

- (2) Where a party to an action has served on a person under disability who is not already a party to the action, a third party notice within the meaning of Order 19 and no appearance is entered by that person to the notice, the party serving the notice before proceeding further with the third party proceedings must make an application to the Court after the time limited (as

respects that person) for appearing for an order appointing a guardian *ad litem* of that person and giving consequential directions.

- (3) Where in any proceedings against a person under disability begun by motion or by originating summons to which no appearance need be entered, that person does not appear by a guardian *ad litem* at the hearing of the motion or summons, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings, or direct that an application be made for the appointment of such a guardian.
- (4) At any stage in proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.
- (5) An application under subrules (1) or (2) must be supported by evidence proving —
  - (a) that the person to whom the application relates is a person under disability; and
  - (b) that the person proposed as guardian *ad litem* consents and is a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability; and
  - (c) that the writ, originating summons, defence and counterclaim, or third party notice, as the case may be, was duly served on the person under disability; and
  - (d) subject to subrule (6) that notice of the application was, after the expiration of the time limited for appearance, and at least 7 days before the day named in the notice for hearing the application, duly served on him.
- (6) The Court may order that notice of an application under subrules (1) or (2) need not be served on a person under disability.

- (7) An application for the appointment of a guardian *ad litem* pursuant to a direction of the Court under subrule (3) or (4) must be supported by evidence proving the matters referred to in subrule (5)(b).

*[Rule 5 amended in Gazette 28 Jun 2011 p. 2552-3.]*

**6. Time for application by person under disability to discharge or vary order under O. 18 r. 7**

An application to the Court on behalf of a person under disability on whom an order made *ex parte* under Order 18 rule 7 has been served, for the discharge or variation of the order must be made —

- (a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within 14 days after the appointment of such friend or guardian to act for him.

**7. Removal of next friend or guardian**

- (1) The Court may of its own motion or on the application of a party to any proceedings or of any other person remove a next friend or guardian *ad litem*, and may stay proceedings until a next friend or guardian *ad litem* in place of the one removed has been appointed.
- (2) An application under this rule shall be by summons which, unless the Court otherwise orders, must be served on the next friend or guardian *ad litem* whose removal is sought and on the person under disability.

**8. No implied admission from pleading**

Notwithstanding anything in Order 20 rule 14(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

**9. Discovery and interrogatories**

Orders 26 and 27 shall apply to a person under disability and to his next friend or guardian *ad litem*.

**10. Settlement etc. of action by person under disability**

- (1) No settlement or compromise, and no acceptance of money paid into court, whenever entered into or made, in any cause or matter (other than an appeal to the Court of Appeal) in which there is a claim by or on behalf of or against a person under disability, shall be valid unless it is approved by the Court.
- (2) An application for approval under subrule (1) —
  - (a) if made before the hearing of a cause or matter, shall be by summons in chambers;
  - (b) if made during the trial of an action or issue, shall be to the trial judge on motion,

and shall be supported by affidavit and by the opinion of an independent counsel; but the Court or judge may dispense with the necessity of obtaining counsel's opinion.

- (3) In this rule *settlement* includes an acceptance of an offer to consent to judgment.

*[Rule 10 inserted in Gazette 7 Oct 1977 p. 3602; amended in Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552.]*

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**10A. Settlement etc. of appeal by person under disability**

If a person under disability is a party to an appeal to the Court of Appeal, any settlement or compromise of the appeal is subject to the *Supreme Court (Court of Appeal) Rules 2005*.

*[Rule 10A inserted in Gazette 29 Apr 2005 p. 1793.]*

**11. Settlement etc. before action commenced**

- (1) Where a claim which is enforceable by proceedings in the Court is made by or on behalf of or against a person under disability, and before proceedings to enforce the claim are commenced an agreement is reached for settlement or compromise of the claim, and it is desired to obtain the Court's approval to the agreement for settlement or compromise the next friend of the person under disability or the person making the claim against the person under disability may issue an originating summons for —
  - (a) approval of the settlement or compromise, and for such orders and directions as may appear necessary for the protection and investment of any property or funds relating to the settlement or compromise and the application of the income and/or capital for the benefit of the person under disability; or
  - (b) alternatively, directions as to the further prosecution of the claim.
- (2) Where in proceedings under this rule an application is made in respect of a claim under the *Fatal Accidents Act 1959*, the originating summons must include the particulars mentioned in section 8 of that Act.

**12. Control of money recovered for person under disability**

- (1) Where —
  - (a) in any proceedings money is recovered by or on behalf of or is adjudged or ordered or agreed to be paid to or for the benefit of a person under disability; or

- (b) in any proceedings money paid into court is accepted by or on behalf of a plaintiff who is a person under disability; or
- (c) in an application under rule 11(1) the Court has ordered the payment into court or investment of any moneys relating to a settlement or compromise,

the money shall, unless otherwise ordered by the Court, be paid to the Public Trustee for investment on behalf of the person under disability, and if the Court so orders may be invested by the Public Trustee in investments outside the Common Account established under the *Public Trustee Act 1941*.

- (2) The Court may at any time, and from time to time, give directions for the application of the income or of the capital and income of the investment for the maintenance, welfare, advancement, or otherwise for the benefit of the person under disability.

*[Rule 12 amended in Gazette 12 Jun 2012 p. 2452.]*

### **13. Personal service on person under disability**

- (1) Where in any proceedings, a document is required to be served personally on any person and that person is a person under disability then, subject to Order 26 rule 15(3) and Order 27 rule 8(3), personal service must be effected in accordance with this rule.
- (2) Where the person under disability has a next friend or guardian *ad litem* in the proceedings the document may be served on such next friend or guardian.
- (3) Where the person to be served is an infant (who is not also a patient) and has no next friend or guardian *ad litem* in the proceedings, the document may be served —
  - (a) if he is aged 16 years or upwards, on him;
  - (b) on one of his parents or his guardian;

- (c) if he has no parent or guardian, on the person with whom he resides or in whose care he is.
- (4) Where the person to be served is a represented person and has no next friend or guardian *ad litem* in the proceedings, the document may be served —
  - (a) on the person (if any) who is authorised under Part 5 or Part 6 of the Act to conduct the proceedings in the name of the represented person or on his behalf; or
  - (b) on the Public Trustee if the person is a represented person within the meaning of the *Public Trustee Act 1941*; or
  - (c) if paragraph (a) or (b) does not apply, on the person with whom the represented person resides or in whose care he is.
- (5) Notwithstanding anything in subrules (2), (3) and (4) the Court may order that a document which has been, or is to be, served on the person under disability, or on a person other than a person mentioned in that subrule shall be deemed to be duly served on the person under disability.
- (6) A document served pursuant to any of subrules (2) to (5) must be served in the manner required by these rules with respect to the document.
- (7) A judgment or order requiring a person under disability to do, or refrain from doing any act, a notice of motion or summons for the committal of any person under disability, and a subpoena against any such person, must notwithstanding anything contained in subrules (2) to (5), be served personally on him, unless the Court otherwise orders.
- (8) Subrule (7) does not apply to an order for interrogatories or for discovery or inspection of documents.

*[Rule 13 amended in Gazette 15 Jun 1973 p. 2250; 22 Jul 1994 p. 3748; 21 Feb 2007 p. 576; 28 Jun 2011 p. 2552-3 and 2555.]*



## **Order 71 — Partners, business names**

### **1. Partners may sue or be sued in name of firm**

Subject to the provisions of any enactment, partners may sue or be sued in the name of the firm (if any) of which they were partners when the cause of action accrued, and an action by or against a firm in the firm name shall be sufficient to include all partners constituting the firm.

### **2. Disclosure of partners' names**

- (1) A defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners of the firm at the time when the cause of action accrued.
- (2) If such notice is not complied with, the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that all proceedings in the action be stayed on such terms as the Court may direct.
- (3) When the names of the partners have been declared, the proceedings shall continue in the name of the firm, but with the same consequences as would have ensued if the persons whose names had been so declared had been named as plaintiffs in the writ.
- (4) Where an action is brought against partners in the name of the firm subrules (1) and (2) shall have effect in relation to that action as they have effect to an action brought by partners in the name of a firm, but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively and with the deletion of the power of the Court to stay proceedings, and the substitution therefor of a

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power to the Court to strike out any defence by the firm in its firm name.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552-3.]*

**3. Service on firm**

- (1) Where parties are sued in the name of a firm under rule 1, the writ may, except in the case mentioned in subrule (2), be served —
- (a) on any one or more of the partners; or
  - (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there,

and subject to these rules such service shall be deemed good service upon the firm so sued whether or not any member of the firm is out of the jurisdiction, and no leave to issue a writ against that member shall be necessary.

- (2) Where a partnership has to the knowledge of the plaintiff been dissolved before an action against the firm is begun, the writ must be served on every person within the jurisdiction sought to be made liable in the action.

*[Rule 3 amended in Gazette 28 Jun 2011 p. 2552.]*

**4. Person served under r. 3 to be notified of character in which he is served**

Where a writ is issued against a firm, and is served as directed by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

**5. Appearance of partners**

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

**6. No appearance except by partners**

When a writ is served under rule 3 upon a person apparently having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

**7. Appearance under protest of person served as partner**

- (1) When a person served as a partner under rule 3 denies that he was a partner or liable as such at any material time, he may enter an appearance which states that he does so as a person served as a partner in the defendant firm, but who denies that he was a partner at any material time.
- (2) Where an appearance is so entered it shall not preclude the plaintiff from otherwise serving the firm, and obtaining judgment against the firm in default of appearance, if no party has entered an appearance in the ordinary form.
- (3) Where an appearance to which this rule applies is entered —
  - (a) the plaintiff may either apply to set it aside on the ground that the person entering it was a partner or liable as a partner, or may leave that question to be determined at a later stage of the proceedings; or
  - (b) the person entering the appearance may apply to set aside the service on him on the ground that he was not a partner or liable as such at a material time, or he may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

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- (4) Where a defendant has entered an appearance in accordance with subrule (1), the Court may order on the application of the plaintiff or of that defendant, and at any stage of the proceedings, that any question as to the liability of that defendant or as to the liability of the defendant firm, be tried in such manner and at such time as the Court thinks fit.

*[Rule 7 amended in Gazette 28 Jun 2011 p. 2552.]*

*[8. Deleted in Gazette 22 Feb 2008 p. 641.]*

**9. Rules 1 to 7 apply also to some actions between firm and its members etc.**

Rules 1 to 7 apply also to actions between a firm and one or more of its members and to actions between firms having one or more members in common, if the firm or firms carry on business within the jurisdiction.

*[Rule 9 inserted in Gazette 22 Feb 2008 p. 642.]*

*[10. Deleted in Gazette 22 Feb 2008 p. 642.]*

**11. Rules 2 to 9 apply to proceedings begun by originating summons**

Rules 2 to 9 apply with the necessary modifications to causes by or against partners in the name of their firm which are begun by originating summons as they apply in relation to actions begun by writ.

*[Rule 11 amended in Gazette 22 Feb 2008 p. 642.]*

**12. Application to person using business name**

An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 11, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

**13. Application to charge partner's interest in partnership etc.**

- (1) Every application to the Court by a judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 28 of the *Partnership Act 1895*<sup>3</sup>, and for such other orders as are thereby authorised to be made, and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.
- (2) A summons issued by a judgment creditor under this rule and an order made on such summons must be served on the judgment debtor and on such of his partners as are within the jurisdiction.
- (3) A summons issued by a partner of a judgment debtor under this rule and an order made on such summons must be served —
  - (a) on the judgment creditor; and
  - (b) on the judgment debtor; and
  - (c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.
- (4) A summons or order served in accordance with this rule on some only of the partners of the judgment debtor shall be deemed to have been served on all the partners of the partnership.

## **Order 71A — Contact details of parties and others**

*[Heading inserted in Gazette 21 Feb 2007 p. 576.]*

### **1. Addresses of places, requirements for**

- (1) The address of a place stated under this Order must contain enough information to enable an individual to go to the place.
- (2) For the purposes of, but without limiting, subrule (1) —
  - (a) the information must include any floor or level number, and any room, flat, suite or apartment number, necessary to enable an individual to go to the place;
  - (b) a post box number or road mail box or bag number is not enough information.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 576.]*

### **2. Geographical addresses**

For the purposes of these rules the geographical address of a person is —

- (a) if the person is an individual —
  - (i) the address of the place where he or she usually lives; or
  - (ii) if the person has no such address, the address of the place where he or she usually works;
- (b) if the person is a partnership, the address of the place that is the partnership's main place of business;
- (c) if the person is a body corporate —
  - (i) if the body is required by the *Corporations Act 2001* of the Commonwealth to have a registered office — the address of the place where the registered office is situated;
  - (ii) if the body is incorporated under the *Associations Incorporation Act 1987* — the address of the

place where a member of the body's committee usually lives;

- (iii) in any other case — the address of the place that is the body's main place of business;
- (d) if the person is the State, a Territory or the Commonwealth — the address of the place in Australia where the practitioner representing the person conducts business as a practitioner.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 577; amended in Gazette 22 Feb 2008 p. 653.]*

### **3. Service details, meaning of**

- (1) If these rules require a document to state a person's service details and the person is self-represented, the document —
  - (a) must state a postal address in Australia that can be used to serve documents on the person; and
  - (b) may state one fax number that can be used to serve documents on the person; and
  - (c) may state one email address that can be used to serve documents on the person.
- (2) If these rules require a document to state a person's service details and the person is represented by a practitioner, the document —
  - (a) must state the name of the practitioner; and
  - (b) must state the address of the place in Australia where the practitioner conducts business as a practitioner; and
  - (c) must state the practitioner's postal address in Australia; and
  - (d) with the practitioner's consent, may state any or all of the following —
    - (i) one fax number;
    - (ii) one email address;

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- (iii) the details of a document exchange approved by the Chief Justice,  
in Australia that can be used to serve documents on the practitioner; and
- (e) if the practitioner is the agent of another practitioner —
  - (i) must state the name of the principal practitioner; and
  - (ii) must state the address of the place in Australia where the principal practitioner conducts business as a practitioner; and
  - (iii) must state the principal practitioner's postal address; and
  - (iv) with the principal practitioner's consent, may state any of the information in paragraph (d) in respect of the principal practitioner.
- (3) If under this rule a document states a fax number or an email address of a person, the person is to be taken to have consented to being served with documents by fax at that fax number or by means of email at that email address.
- (4) If a practitioner practises in a business with one or more other practitioners or people —
  - (a) a fax number stated under subrule (2) must be the fax number of the business and not that of the practitioner personally; and
  - (b) an email address stated under subrule (2) must be the email address of the business and not that of the practitioner personally.
- (5) If a party who is self-represented is registered by the Court's website as a person authorised to file documents electronically, any email address stated under subrule (1) must be the email address of the party recorded on the website.



- (6) If a practitioner is registered by the Court's website as a person authorised to file documents electronically, any email address stated under subrule (2) must be the email address of the practitioner recorded on the website.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 577-8; amended in Gazette 22 Feb 2008 p. 654.]*

#### **4. Documents without contact details to be rejected**

The Central Office must reject a document submitted for filing or issuing if these rules require the document to state —

- (a) a person's geographical address; or
- (b) a person's service details,

and it does not do so in accordance with this Order.

*[Rule 4 inserted in Gazette 21 Feb 2007 p. 578.]*

#### **5. Changes of information to be notified**

- (1) If a document states information required or permitted by rule 2 or 3, the person who filed the document —

- (a) must promptly give notice of any change to the information; and
- (b) may, in respect of any of the information that does not have to be stated under those rules, give notice that the information can no longer be used to serve documents; and
- (c) may, in respect of any of the information that does not have to be, and has not been, stated under those rules, give notice of the information.

- (2) Notice under subrule (1) —

- (a) must be given by filing a notice in the Central Office and serving it on any person who has been given the information; and

(b) may be given as part of a notice given under Order 8.

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 579.]*

**6. Fictitious details in documents, court powers as to**

If on the application of a party the Court is satisfied that any information stated in a document in purported compliance with this Order is fictitious, it may set aside the filing of the document or order the document to be rectified and may make any necessary consequential order.

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 579.]*

## **Order 72 — Service of documents**

### **1. When personal service required**

- (1) Any document which by virtue of these rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these rules or by order of the Court is required to be so served.
- (2) Subrule (1) shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

*[Rule 1 amended in Gazette 28 Jun 2011 p. 2552.]*

### **2. Personal service on individual**

Personal service of a document is effected by leaving a copy of the document with the person to be served, and if so requested by him at the time when it is left, showing him —

- (a) in the case where the document is a writ or other originating process, the original; and
- (b) in any other case the original or an office copy.

### **3. Personal service on body corporate**

Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any Act, be effected by serving it in accordance with rule 2 on the mayor, president or other head officer of the body, or on the chief executive officer, clerk, treasurer, manager, secretary or other similar officer thereof.

*[Rule 3 amended in Gazette 22 Feb 2008 p. 654.]*

### **3A. Personal service on State**

Personal service of a document on the State may be effected by serving it in accordance with rule 2 on the person in charge of administrative matters at the office of —

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- (a) the Attorney General; or
- (b) if there is no Attorney General appointed, the Minister for Justice; or
- (c) if there is neither an Attorney General nor a Minister for Justice appointed, the Minister of the State designated under the *Supreme Court Act 1935* section 154(3) or (4).

*[Rule 3A inserted in Gazette 21 Feb 2007 p. 579; amended in Gazette 22 Feb 2008 p. 654.]*

**4. Substituted service**

- (1) Where by these rules personal service of a document is required and it appears to the Court that personal service of such document on a person required to be served is impracticable, the Court may order that the document be served on that person by substituted service.
- (2) An application for an order for substituted service shall be supported by an affidavit stating the facts on which the application is founded.
- (3) Substituted service pursuant to an order under this rule is effected by taking such steps as the Court directs to bring the document to the notice of the person to be served, and has the same operation as personal service.

*[Rule 4 amended in Gazette 14 May 1976 p. 1431; 12 Nov 1976 p. 4277.]*

**5. Ordinary service, how effected**

- (1) This rule does not apply to a document that, under these rules, has to be served personally.
- (2) This rule —
  - (a) does not prohibit personal service of a document to which it applies; and

- (b) does not affect any written law that provides for how a document may be served on a body corporate.
- (3) If under these rules a person has filed a document that, in accordance with Order 71A, states the person's service details, a document may be served on the person by addressing it in accordance with subrule (4) and —
  - (a) delivering it, or posting it by pre-paid post, to the postal address stated in the service details; or
  - (b) if some other method of serving the person is stated in the service details, using that method to serve it on the person.
- (4) A document to be served on a person under subrule (3) must —
  - (a) if the person is self-represented, be addressed to the person;
  - (b) if the person is represented by a practitioner, be addressed to the practitioner;
  - (c) if the document is being served by fax, be sent with a cover page that states —
    - (i) the person to whom the fax is addressed; and
    - (ii) the sender's name and postal address; and
    - (iii) those of the sender's document exchange number, telephone number and fax number that can be used to contact the sender; and
    - (iv) the number of pages (including the cover page) being sent.
- (5) If under these rules a person has not filed a document that, in accordance with Order 71A, states the person's service details, a document may be served on the person —
  - (a) by delivering it, or posting it by pre-paid post, to the person's geographical address or last known geographical address; or

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- (b) if the person is represented by a practitioner in connection with the proceedings to which the document relates — by delivering it to the place, or posting it by pre-paid post to the address of the place, where the practitioner conducts business as a practitioner; or
- (c) by the means that the Court directs in a particular case.

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 580-1.]*

**5A. Ordinary service, when effected**

*[(1) deleted]*

- (2) A document that is sent to a person by a method in the Table to this rule is to be taken to be served on the person at the time stated opposite the method in the Table, unless the contrary is proved.

**Table**

<b>No.</b>	<b>Method of serving a document</b>	<b>When the document is to be taken to be served</b>
1.	Delivering it to a place.	If it is delivered before 4.00 p.m. on a working day, on that day.  Otherwise on the first working day after it is delivered.
2.	Posting it by pre-paid post to an address.	When it would be delivered to the address in the ordinary course of post.
3.	Sending it by fax.	If it is sent by fax before 4.00 p.m. on a working day, on that day.  Otherwise, on the first working day after the fax is sent.

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<b>No.</b>	<b>Method of serving a document</b>	<b>When the document is to be taken to be served</b>
4.	Sending it by email.	If it is sent by email before 4.00 p.m. on a working day, on that day.  Otherwise, on the first working day after the email is sent.
5.	Delivering it to a document exchange.	On the first working day after it is delivered.

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- (3) If a document is served on a person in accordance with the Court's directions given in a particular case, the document is to be taken to be served on the person at the time directed by the Court.

*[Rule 5A inserted in Gazette 21 Feb 2007 p. 581; amended in Gazette 22 Feb 2008 p. 654; 28 Jul 2010 p. 3468.]*

## **6. Service of documents by Court**

- (1) If service of a document on a person by the Court is required, the proper officer must —
- (a) serve it on the person under rule 5; or
  - (b) if the person is registered by the Court's website as a person authorised to file documents electronically —
    - (i) put it in an electronic mailbox maintained by the Court; and
    - (ii) send to the person's email address recorded on the website an email that says the document is in the mailbox,or serve it on the person under rule 5; or
  - (c) if the Court has directed how the document is to be served — obey the directions.
- (2) Rule 5A applies to a document served under subrule (1).

*[Rule 6 inserted in Gazette 22 Feb 2008 p. 655.]*

**6A.      Serving documents by email**

Order 67 rule 20(3) and (4), with any necessary changes, apply to a document being served by email in the same way as they apply to a document being filed electronically.

*[Rule 6A inserted in Gazette 22 Feb 2008 p. 655.]*

**7.      Affidavits of service, content of**

An affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

**8.      No service required in certain cases**

Where by virtue of these rules any document is required to be served on any person but is not required to be served personally, and at the time at which service is to be effected that person is in default as to entry of appearance or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.



## Order 73 — Probate proceedings

### 1. Application of this Order and terms used

- (1) This Order applies to probate causes and matters, and the rules of court generally apply to those causes and matters subject to the provisions of this Order.
- (2) In these rules *probate action* means an action for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.
- (3) In this Order —  
*Registry* means the Probate Office of the Supreme Court;  
*testamentary script* means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;  
*will* has the same meaning as in the *Administration Act 1903*.

### 2. Commencing probate action

- (1) A probate action must be begun by writ issued out of the Central Office.
- (2) A writ beginning an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under rule 8 has been issued or the probate or letters of administration, as the case may be, has or have been lodged in the Court.

[3. Deleted in Gazette 12 Jun 2012 p. 2452.]

**4. Intervention by person who is not defendant**

- (1) A person who is not named as a defendant in the writ in a probate action may apply to the Court for leave to intervene in the action.
- (2) An application under this rule must be made by summons supported by an affidavit showing the interest of the applicant in the estate of the deceased.
- (3) An applicant who obtains leave to intervene in a probate action is not entitled to be heard in the action unless he enters an appearance therein.
- (4) Where the Court grants leave to intervene, it may give such directions as to the filing and service of pleadings, the filing of an affidavit of testamentary scripts, or other matters as it thinks necessary.

**5. Citation against non-party with adverse interest**

On the application of the plaintiff, or of any other party who has pleaded in a probate action, a citation may be issued against any person not a party to the action who has an interest adverse to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him.

**6. Person cited failing to appear**

Where a person on whom a citation under rule 5 is served fails to enter an appearance in the action, the party on whose application the citation was issued shall not be entitled to be heard at the trial of the action without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

**7. Entry of appearance**

An appearance in a probate action must be entered in the Central Office and Order 12 rules 1 to 7 apply to an entry of appearance by a person authorised to intervene in such an action, and by a person cited under rule 5, as if —

- (a) that person were a defendant; and
- (b) the parties to an action (in the case of an intervener) or the party at whose instance the citation was issued (in the case of a person cited) were the plaintiff.

**8. Citation to executor etc. to bring in probate etc.**

In an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person, a citation may, on the application of the plaintiff, be issued against the person to whom the grant of probate or letters of administration was made requiring him to bring into and leave at the Central Office the probate or letters of administration, as the case may be.

**9. Citations, issue of**

- (1) A citation must be issued out of the Central Office but shall not be issued unless —
  - (a) the citation is settled by a registrar; and
  - (b) the applicant, or in special circumstances by leave of a registrar the applicant's solicitor, has sworn an affidavit verifying the statements of fact to be made in the citation.
- (2) A citation is issued upon its being sealed by the proper officer.  
*[Rule 9 amended in Gazette 14 Dec 1979 p. 3872.]*

**10. Citations, service of**

- (1) Without prejudice to Order 72 rule 4, a citation must be served personally on the person cited.

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- (2) A citation may be served out of the jurisdiction but, if it is issued pursuant to rule 8, only with the leave of the Court.
- (3) Order 10 rule 4 applies to an application for leave under subrule (2) as it applies to an application for leave under rules 1 or 2 of that Order.
- (4) The order granting leave must fix the time within which the person to be served must comply with the citation.
- (5) Order 10 rules 9, 10 and 11 apply to a citation issued pursuant to rule 8 as they apply to a writ.

*[Rule 10 amended in Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2452.]*

**11. Affidavit of scripts**

- (1) Subject to any direction by the Court the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit —
  - (a) describing any testamentary script of the deceased person whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he does not know of any such script; and
  - (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person,and shall, in accordance with Order 37 rule 2, attach to the affidavit any such script which is in his possession or control.
- (2) An affidavit required by this rule and any testamentary script attached to it must be filed within 14 days after the entry of appearance by a defendant, or if no defendant enters an appearance and the Court does not otherwise direct, before the action is set down for trial.

*[Rule 11 amended in Gazette 21 Feb 2007 p. 582.]*

**12. Scripts in pencil, affidavits as to; inspecting affidavits of scripts**

- (1) Where a testamentary script required by rule 11 to be filed or any part of it is written in pencil, the person filing it shall also, except where the Court otherwise directs, attach to the affidavit a typed facsimile copy of the script or the page or pages of it containing the part written in pencil showing in bold type the words which appear in pencil in the original.

*[Heading deleted in Gazette 22 Feb 2008 p. 642.]*

- (2) A party to a probate action shall not, except by leave of the Court, be allowed to inspect an affidavit filed pursuant to rule 11 by any other party to the action or any testamentary script exhibited thereto, unless and until he has complied with the requirements of rule 11 so far as they apply to him.

*[Rule 12 amended in Gazette 21 Feb 2007 p. 582.]*

**13. Default of appearance**

- (1) Order 13 does not apply to a probate action.
- (2) Where any of several defendants to a probate action fails to enter an appearance, and the plaintiff has filed an affidavit proving due service of the writ on that defendant, the plaintiff may, after the time limited for appearing by the defendant, proceed with the action as if that defendant had entered an appearance.
- (3) Where the defendant or none of the defendants in a probate action and none of the persons (if any) cited under rule 5, enters an appearance, and the Court has not, on the application of the plaintiff, ordered discontinuance of the action, the plaintiff may, after the time limited for appearance, apply to the Court for leave to set down the action for trial.

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- (4) Before applying for leave under subrule (3), the plaintiff must file an affidavit proving due service of the writ and of the citation (if any).
- (5) The Court granting leave under subrule (3) may order the plaintiff to file an affidavit of testamentary scripts.

*[Rule 13 amended in Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2452.]*

**14. Counterclaim**

Where a defendant alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate of the deceased person which is the subject of the action he must, notwithstanding anything in Order 18 rule 2(1), add to his defence a counterclaim in respect of that matter.

**15. Defendant may require only proof in solemn form**

In a probate action a party opposing a will may, with his defence, give notice to the party propounding the will that he merely insists on the will being proved in solemn form, and only intends to cross-examine the witnesses produced to support the will and he may thereupon do so and, if he does not participate further in the action, he shall not be liable to pay the costs of that other party unless the Court considers that there was no reasonable ground for opposing the will.

**16. Pleadings**

- (1) Where a plaintiff disputes the interest of a defendant he shall so allege in his claim.
- (2) Where by virtue of an interest a party claims to be entitled to a grant of letters of administration another party shall not dispute that interest unless he shows in his pleading that if the allegations in it are proved he would be entitled to an interest in the estate.

- (3) Without prejudice to Order 20 rule 8 a party shall not plead that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents unless he specifies the nature of the case on which he intends to rely and shall not make any allegation in support of such a plea which would be relevant to any other plea that —
- (a) the will was not duly executed; or
  - (b) at the time of the execution of the will the testator was not of sound mind, memory and understanding; or
  - (c) the execution of the will was obtained by undue influence or fraud,
- unless he also makes that other plea.

**17. Default of pleadings**

- (1) Order 22 does not apply to a probate action.
- (2) Where a party to a probate action fails to serve on another party a pleading which he is required by these rules to so serve, and the Court has not ordered discontinuance of the action, the other party may, after the expiration of the time fixed by or pursuant to these rules for service of that pleading, apply to the Court for leave to set down the action for trial.

**18. Discontinuance**

- (1) Order 23 does not apply to a probate action.
- (2) Where at any stage of the proceedings in a probate action the plaintiff or any party who has entered an appearance therein applies by summons for an order for discontinuance of the action, the Court may so order on such terms as to costs and otherwise as it thinks just and may further order that a grant of probate of the will or letters of administration of the estate of the deceased person, which is the subject of the action be made to the person entitled thereto.

**19.      Compromise**

Where at any stage of the proceedings in a probate action the parties agree to a compromise, the action may, with the leave of the Court, be set down for trial.

**20.      Orders etc. to bring in will etc.**

- (1) An application for an order requiring a person to bring into the Registry, or otherwise as the Court may direct, a will or other testamentary paper or to attend in court for examination may be made to a judge by summons which must be served on the person against whom the order is sought.
- (2) An application for the issue by a master of a subpoena requiring a person to bring into the Registry, or otherwise as in the said subpoena may be directed, a will or other testamentary paper must be supported by an affidavit showing that such will or testamentary paper is in the possession, within the power, or under the control of such person.
- (3) Where the person against whom a subpoena referred to in subrule (2) is issued denies that the will or other testamentary paper referred to in the subpoena is in his possession, within his power, or under his control, he may file in the Registry an affidavit to that effect.

*[Rule 20 amended in Gazette 30 Nov 1984 p. 3952; 28 Jun 2011 p. 2552.]*

**21.      Applications, making**

- (1) Except where these rules otherwise provide and subject to subrule (2) applications to the Court in a probate cause or matter may be made by summons.
- (2) The Court may direct that an application in a probate cause or matter be made to the Court by motion.
- (3) Where an application is to be made to the Court by motion, the applicant must not less than 7 clear days before the day fixed for



the hearing of the motion file a case for motion together with an affidavit verifying the statement of facts made in the case, and serve a copy of the case and of every affidavit in support of the motion on any person entitled to be heard in opposition to the motion.

- (4) A case for motion must set out any prior proceedings in the cause or matter with the dates thereof and the relevant facts in summary form, and must state the relief or remedy sought.

*[Rule 21 amended in Gazette 28 Jun 2011 p. 2552.]*

**22. Administrator or receiver appointed pending litigation**

- (1) An application under section 35 of the *Administration Act 1903* for the appointment of an administrator and receiver may be made to a master by summons.
- (2) Subject to any order of the Court, an administrator and receiver appointed under section 35 of the said Act must file and pass accounts at such intervals or at such times as the Court may direct, and the provisions of Order 51 rule 5 apply with such modifications as may be necessary, to such administrator and receiver and to his accounts.
- (3) Except where the remuneration of the administrator or receiver has been fixed by a judge, the master may, on the passing of the accounts of the administrator and receiver, assess and provide for his remuneration in accordance with section 35 of the said Act.

*[Rule 22 amended in Gazette 30 Nov 1984 p. 3952.]*

*[Order 74 deleted in Gazette 30 Oct 1992 p. 5310.]*

**Order 75 — *Inheritance (Family and Dependants Provision) Act 1972 rules***

*[Heading inserted in Gazette 22 Feb 2008 p. 642.]*

**1. Terms used**

In this Order unless the contrary intention appears —

**Act** means the *Inheritance (Family and Dependants Provision) Act 1972*; and

**grant** means a grant of probate or administration, or an order to administer made under section 10 or section 12 of the *Public Trustee Act 1941*; and

**Registry** means the Probate Office of the Supreme Court; and

words defined in section 4 of the Act and used in this Order have the same respective meanings as in the Act.

*[Rule 1 inserted in Gazette 15 Jun 1973 p. 2250.]*

**2. Applications under Act, making of**

- (1) An application for an order under the Act (other than an application in pending proceedings) shall be commenced by originating summons.
- (2) The applicant shall be the plaintiff and, subject to any order made under section 12(1) of the Act, the Administrator shall be the defendant.
- (3) All proceedings to which this Order relates shall be intitled in the matter of the *Inheritance (Family and Dependants Provision) Act 1972*, and in the matter of the will or estate of the deceased person to which the proceedings relate.

*[Rule 2 inserted in Gazette 15 Jun 1973 p. 2250.]*

**3. Copy of summons to be placed on probate file**

- (1) Upon the issue of an originating summons under this Order, the person presenting the summons for sealing must, when filing a copy of the summons as required by Order 58 rule 14(4), lodge with the registrar —
- (a) an additional copy of the summons; and
  - (b) a copy of the will of the testator as admitted to probate or annexed to letters of administration of his estate.
- (2) The registrar shall cause the additional copy of the summons to be placed on the probate file in the Registry.

*[Rule 3 inserted in Gazette 15 Jun 1973 p. 2250.]*

*[4. Deleted in Gazette 21 Feb 2007 p. 582.]*

**5. Court may make inquiries etc.**

At the status conference held under Order 4A rule 18 or upon later application the Court may —

- (a) inquire as to —
  - (i) the nature of the relief that the plaintiff seeks; and
  - (ii) the persons or classes of persons who will be affected by that relief if granted;
- (b) for the purpose of the inquiry, direct the plaintiff and defendant to supply such information as the Court may require;
- (c) give directions as to the persons to be added as defendants as being interested in the relief claimed, or to represent classes of persons so interested;
- (d) make an order under rule 7;
- (e) direct that notice of the application be served on any person;

- (f) give such other directions as the Court thinks fit as to the evidence to be filed, the persons to be served and the hearing of the application.

*[Rule 5 inserted in Gazette 15 Jun 1973 p. 2250-1; amended in Gazette 21 Feb 2007 p. 582; 28 Jul 2010 p. 3468.]*

**6. Parties may be added**

At any stage of the proceedings the Court may direct that any person be made a party or that notice of the application be served on any person.

*[Rule 6 inserted in Gazette 15 Jun 1973 p. 2251.]*

**7. Representative defendant**

Where a person has been added as a defendant and other persons have the same or a similar interest as that defendant, the Court may order that that defendant be authorised to defend the proceedings on behalf of or for the benefit of all persons so interested, and that all persons so interested shall be bound by any order made in the proceedings.

*[Rule 7 inserted in Gazette 15 Jun 1973 p. 2251.]*

**8. Probate etc. to be lodged at Registry if judgment for plaintiff**

- (1) Where an order under the Act is made in favour of a plaintiff, the Administrator shall forthwith after the order has been entered lodge at the Registry the grant with a copy of the order indorsed thereon, and 2 photographic copies of the order.
- (2) When the indorsement on the grant has been certified in accordance with section 14(4) of the Act, the grant shall be returned to the Administrator.
- (3) This rule does not apply to an order made upon the hearing of an originating summons of the kind referred to in rule 9.

*[Rule 8 inserted in Gazette 15 Jun 1973 p. 2251.]*

**9. Appearance to originating summons for extension of time not required**

An appearance is not required to an originating summons in which the only relief sought is an extension of time for making an application for an order under the Act.

*[Rule 9 inserted in Gazette 15 Jun 1973 p. 2251.]*

## **Order 75A — Legal Profession Act 2008 rules**

*[Heading inserted in Gazette 6 Feb 2009 p. 244.]*

### **1. Terms used**

In this Order —

*interstate lawyer* has the meaning given in the *Legal Profession Act 2008* section 4;

*local roll* has the meaning given in the *Legal Profession Act 2008* section 28;

*Supreme Court (full bench)* has the meaning given in the *Legal Profession Act 2008* section 3.

*[Rule 1 inserted in Gazette 6 Feb 2009 p. 244.]*

### **2. Application to be admitted (Act s. 25)**

- (1) An application under the *Legal Profession Act 2008* section 25 to be admitted to the legal profession must be made to the Supreme Court (full bench) by motion.
- (2) The application must be filed in the Central Office at least 2 months before the proposed date of admission.
- (3) When the application is filed a notice of motion must be served on the Legal Practice Board.

*[Rule 2 inserted in Gazette 6 Feb 2009 p. 244.]*

### **3. Attendance at hearing of application to be admitted**

- (1) Subject to subrule (2) an applicant for admission must attend in person before the Supreme Court (full bench) when the application is heard.
- (2) If the applicant is an interstate lawyer he or she may be represented at the hearing of the application by counsel and, if represented, is not required to attend in person.

- (3) A person who is admitted without appearing in person must, within 21 days of being admitted, attend at the office of a superior court of a State or Territory or of the High Court and —
- (a) take an oath or affirmation in the form set out in rule 4; and
  - (b) sign the supplementary roll,
- before the Principal Registrar, a registrar, a deputy registrar or the prothonotary of that court.
- (4) When a person signs the supplementary roll as provided in subrule (3), the person's name is to be entered in the local roll in the usual manner with the endorsement "See supplementary roll".

*[Rule 3 inserted in Gazette 6 Feb 2009 p. 244-5.]*

#### **4. Oath or affirmation**

The form of the oath or affirmation required under the *Legal Profession Act 2008* section 26(1)(b) is —

I, *[name]* of *[address]*, *[insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005]* that I will truly and honestly conduct myself in my practice as a lawyer and as an officer of this honourable court according to the best of my knowledge and ability.

*[Rule 4 inserted in Gazette 6 Feb 2009 p. 245.]*

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## **Order 76 — *Public Notaries Act 1979* rules**

*[Heading inserted in Gazette 21 Feb 2007 p. 582.]*

### **1. Terms used**

In this Order, unless the contrary intention appears —

*Act* means the *Public Notaries Act 1979*; and words defined in section 3 of the Act and used in this Order have the same respective meanings as in the Act.

*[Rule 1 inserted in Gazette 18 Jul 1980 p. 2384.]*

### **1A. Districts prescribed for Act**

For the purpose of the Act each district named in column 1 of the Table to this rule, comprising the local government districts (with boundaries as declared from time to time) listed opposite the name in column 2, is prescribed.

**Table**

<b>Name of district</b>	<b>Local government districts that comprise the district</b>	
Gascoyne District	Carnarvon Exmouth	Shark Bay Upper Gascoyne
Goldfields-Esperance District	Coolgardie Dundas Esperance Kalgoorlie-Boulder Laverton	Leonora Menzies Ngaanyatjarraku Ravensthorpe
Great Southern District	Albany (Town) Albany (Shire) Broomehill Cranbrook Denmark Gnowangerup Jerramungup	Katanning Kent Kojonup Plantagenet Tambellup Woodanilling



<b>Name of district</b>	<b>Local government districts that comprise the district</b>	
Kimberley District	Broome Derby-West Kimberley Halls Creek Wyndham-East Kimberley	
Mid West District	Carnamah Chapman Valley Coorow Cue Geraldton Greenough Irwin Meekatharra Mingenew Morawa	Mt. Magnet Mullewa Murchison Northampton Perenjori Sandstone Three Springs Wiluna Yalgoo
Peel District	Boddington Mandurah Murray	Serpentine-Jarrahdale Waroona
Pilbara District	Ashburton East Pilbara	Port Hedland Roebourne
South West District	Augusta-Margaret River Bridgetown-Greenbushes Donnybrook-Balingup Boyup Brook Bunbury Busselton Capel Collie	
		Dardanup Harvey Manjimup Nannup

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<b>Name of district</b>	<b>Local government districts that comprise the district</b>	
Wheatbelt District	Beverley	Narembeen
	Brookton	Narrogin (Town)
	Bruce Rock	Narrogin (Shire)
	Chittering	Northam (Town)
	Corrigin	Northam (Shire)
	Cuballing	Nungarin
	Cunderdin	Pingelly
	Dandaragan	Quairading
	Dalwallinu	Tammin
	Dowerin	Toodyay
	Dumbleyung	Trayning
	Gingin	Victoria Plains
	Goomalling	Wagin
	Kellerberrin	Wandering
	Kondinin	West Arthur
	Koorda	Westonia
	Kulin	Wickepin
	Lake Grace	Williams
	Merredin	Wongan-Ballidu
	Moora	Wyalkatchem
	Mt. Marshall	Yilgarn
	Mukinbudin	York

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*[Rule 1A inserted in Gazette 21 Feb 2007 p. 583-4.]*

**2. Application for certificate of fitness (Act s. 8)**

- (1) An application to the Chief Justice for a certificate under section 8 of the Act shall be made on affidavit —
  - (a) exhibiting a certificate from the registrar that the applicant is on the local roll maintained under the *Legal Profession Act 2008* section 28 and is not a disqualified person as defined in section 3 of that Act; and

- (b) exhibiting a certificate from the Chairman of the Legal Practice Board that the applicant is not, pursuant to an order of the Board, under suspension from practice; and
  - (c) exhibiting certificates from 2 practitioners of the Court of at least 10 years' standing and practice that the applicant is of good character and reputation and is competent to act as a Public Notary; and
  - (d) setting out details of any professional experience as a practitioner that is relevant to the application; and
  - (e) containing the other information required by section 7 of the Act.
- (2) A certificate granted under section 8 of the Act shall be in accordance with Form No. 93A.

*[Rule 2 inserted in Gazette 18 Jul 1980 p. 2384; amended in Gazette 19 Apr 2005 p. 1300; 29 Apr 2005 p. 1794; 3 Jul 2009 p. 2699.]*

**3. Notice of intention to apply to be appointed Public Notary (Act s. 9)**

- (1) An applicant shall on 2 occasions advertise in a morning daily newspaper published in Perth notice of his intention to apply to the Supreme Court (full bench) for appointment as a Public Notary.
- (1A) The first advertisement shall be published not less than 4 weeks before the return day of the application; and the second advertisement shall be published not less than one week nor more than 2 weeks after the first advertisement.
- (2) Where the applicant is applying to be appointed as a District Public Notary and there is a newspaper published in the district to which the application relates, the applicant shall also advertise the notice in such a newspaper not less than 2 weeks before the return day of his application to the Supreme Court (full bench).

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- (3) The notice referred to in subrules (1) and (2) shall be in accordance with Form No. 93B.

*[Rule 3 inserted in Gazette 18 Jul 1980 p. 2384-5; amended in Gazette 30 Nov 1984 p. 3954; 29 Apr 2005 p. 1794; 28 Jun 2011 p. 2552-3.]*

**4. Application to be appointed Public Notary**

- (1) An application to the Supreme Court (full bench) for appointment as a Public Notary shall be by motion supported by an affidavit of the applicant exhibiting the certificate of the Chief Justice under section 8 of the Act.
- (2) The applicant shall serve the application and affidavit on the Attorney General not less than 10 days before the application is heard.
- (3) Not less than 2 days before the application is heard, the applicant shall file an affidavit —
- (a) stating whether any notice of objection has been given under section 11 of the Act, and if so, exhibiting a copy thereof; and
  - (b) exhibiting extracts from the newspapers containing the advertisements required by rule 3; and
  - (c) proving compliance with subrule (2).
- (4) The applicant shall be present in Court when the application is heard.

*[Rule 4 inserted in Gazette 18 Jul 1980 p. 2385; amended in Gazette 29 Apr 2005 p. 1794; 28 Jun 2011 p. 2552.]*

**5. Certificates of appointment, form of**

- (1) A person who is appointed a Public Notary shall, upon his name being entered on the Roll of Notaries and payment of the prescribed fee, be entitled to receive from the registrar a

certificate in accordance with Form No. 93C with such variations as the circumstances may require.

- (2) The certificate referred to in section 14(3) of the Act shall be in accordance with Form No. 93D with such variations as the circumstances may require.

*[Rule 5 inserted in Gazette 18 Jul 1980 p. 2385.]*

**6. Applications to suspend or strike off Public Notaries**

- (1) An application to the Supreme Court (full bench) under section 16 of the Act to suspend a Public Notary from practice or to strike a Public Notary off the Roll shall be by motion supported by an affidavit setting out the facts relied on.
- (2) Notice of the motion and copy of the affidavit shall be served on the Public Notary not less than 7 days before the application is heard.

*[Rule 6 inserted in Gazette 18 Jul 1980 p. 2385; amended in Gazette 29 Apr 2005 p. 1794.]*

**7. Fees payable on application for appointment**

The following fees are payable on appointment as a Public Notary —

On appointment as a General Public Notary	\$150.00
On appointment as a District Public Notary	\$75.00

*[Rule 7 inserted in Gazette 18 Apr 1980 p. 2385; amended in Gazette 30 Nov 1984 p. 3954.]*

*[8. Deleted in Gazette 16 Jul 1999 p. 3201.]*

*[Order 77 deleted in Gazette 29 Apr 2005 p. 1794.]*

*[Order 78 deleted in Gazette 21 Feb 2007 p. 584.]*

*[Order 79 deleted in Gazette 29 Apr 2005 p. 1801.]*

## **Order 80 — *Escheat (Procedure) Act 1940* rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 643.]*

### **1. Term used: said Act**

In this Order the *Escheat (Procedure) Act 1940*, is referred to as the *said Act*.

### **2. Applications for Order of Escheat, making**

- (1) Subject to subrule (2), an application for an Order of Escheat shall be commenced by originating motion.
- (2) Where a person has claimed title to property the subject of the application, application for an Order of Escheat shall be commenced by originating summons which shall be served upon every such person.
- (3) An application for an Order of Escheat, however commenced, shall be intitled “In the matter of..... deceased, *Ex parte* the State of Western Australia” and shall be supported by an affidavit of the facts relied on.

*[Rule 2 inserted in Gazette 15 Jun 1973 p. 2252; amended in Gazette 19 Apr 2005 p. 1300; 28 Jun 2011 p. 2552.]*

### **3. Notice of applications, form of**

The notice referred to in section 5 of the said Act shall be in Form No. 99.

### **4. Evidence; judge may direct inquiry**

- (1) Upon the hearing of an application for an Order of Escheat, such evidence shall be adduced as the judge may require.
- (2) The judge may direct an inquiry to be held into all such matters as he may consider necessary, and may prescribe the steps to be taken for that purpose.

**5. Claimants to file affidavit verifying claim and may be heard**

Any person claiming title to or any lawful interest in or right to the property or premises the subject of the application must file an affidavit verifying his claim, and may attend on the return day of the summons and be heard either personally or by his solicitor or counsel.

**6. Judge may order issue to be tried**

If it appears to the judge on reading the affidavit verifying the claim, that prima facie the claimant has an interest in the property concerned, he may order that an issue be tried in court, but otherwise the judge may make an Order of Escheat, or such other order as the justice of the case may require.

**7. Order of Escheat, form of**

An Order of Escheat shall be in Form No. 100, and shall be sealed and marked with the name of the judge by whom it is made.

**8. Costs**

On the hearing of an application the judge may make an order for payment of costs out of the property concerned, but no costs shall be allowed to any person making an unsuccessful claim to the property unless the judge certifies that there were substantial grounds for making the claim.

**Order 80A — *Royal Commission (Custody of Records)*  
Act 1992 rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 643.]*

**1. Terms used**

In this Order unless the contrary intention appears —

*Act* means the *Royal Commission (Custody of Records)*  
*Act 1992*,

and words defined in section 4 of the Act and used in this Order  
have the same respective meanings as in the Act.

*[Rule 1 inserted in Gazette 26 Jan 1993 p. 828.]*

**2. Applications for leave to have access (Act s. 14)**

- (1) An application for leave under section 14 of the Act to have access to a record or records shall be made to the Principal Registrar or a registrar.
- (2) The Principal Registrar or a registrar may exercise the powers of the Court when dealing with applications under section 14 of the Act.
- (3) The provisions of rules 20 and 21 of Order 67 apply to all applications for leave.
- (4) An application for leave under section 14 of the Act shall be made to the Court by filing a notice of motion setting out clearly and concisely the grounds upon which the application is made and specifying precisely the record to which access is required, including the type of access required.
- (5) An application must be supported by an affidavit setting forth the facts and circumstances upon which the application is based.
- (6) An application under subrule (4) may be made *ex parte* and may be dealt with in chambers without the necessity of attendance by the applicant unless the Court otherwise directs.



- (7) If the Court otherwise directs, the application shall be heard in chambers either *ex parte* or interparties after service of the motion and the affidavit in support on any person or persons who the Court considers have an interest in the record and the preservation of its confidentiality.
- (8) Leave shall not be granted unless the Court is satisfied that all the requirements under section 14(5) of the Act have been met.

*[Rule 2 inserted in Gazette 26 Jan 1993 p. 829; amended in Gazette 28 Jun 2011 p. 2552.]*

**3. Order granting leave, form of**

- (1) The Court may grant leave on such conditions as it thinks fit.
- (2) Orders made under this Order may be made in respect of the whole or a part of the record.

*[Rule 3 inserted in Gazette 26 Jan 1993 p. 829.]*

*[Order 81 deleted in Gazette 29 Apr 2005 p. 1801.]*

*[Order 81A deleted in Gazette 21 Feb 2007 p. 584.]*

**Order 81B — *Service and Execution of Process Act 1992 (Commonwealth) rules***

*[Heading inserted in Gazette 22 Feb 2008 p. 644.]*

**1. Terms used; how applications to be made**

- (1) In this Order —

*Act* means the *Service and Execution of Process Act 1992* of the Commonwealth;

*court of rendition, enforcement* and *place of rendition* have the same respective meanings as in section 104 of the Act.

- (2) All applications under the Act must be made pursuant to these rules.

*[Rule 1 inserted in Gazette 1 Mar 1994 p. 788.]*

**2. Enforcing judgments under Act s. 105, procedure for**

- (1) A party seeking to enforce a judgment under section 105 of the Act must file a sealed copy of the judgment, or a fax of such a sealed copy, supported by an affidavit.

- (2) The affidavit must state that, at the time when the proceeding to enforce is or is to be taken, the judgment is capable of being enforced in or by —

- (a) the court of rendition; or  
(b) a court in the place of rendition,

and the extent to which it is capable of being enforced in that jurisdiction.

*[Rule 2 inserted in Gazette 1 Mar 1994 p. 788.]*

**3. Claiming interest under Act s. 108, procedure for**

A party seeking to claim interest under section 108 of the Act must file an affidavit verifying to the satisfaction of the Court —

- (a) the rate or rates payable in respect of the same period or periods as are applicable in the court of rendition; and
- (b) the total amount of interest to be recovered based on those rates and periods.

*[Rule 3 inserted in Gazette 1 Mar 1994 p. 789.]*

**4. Appeals under the Act**

The *Criminal Procedure Rules 2005* apply to and in respect of reviews and appeals under Part 5 of the Act.

*[Rule 4 inserted in Gazette 21 Feb 2007 p. 585.]*

## **Order 81C — Road Traffic Act 1974 rules**

*[Heading inserted in Gazette 21 Feb 2007 p. 585.]*

### **1. Terms used**

In this Order —

**Director General** has the meaning given to that term by the RTA section 5;

**RTA** means the *Road Traffic Act 1974*.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 585; amended in Gazette 28 Jul 2010 p. 3484.]*

### **2. Applications under RTA s. 76 and 78, how to be made**

- (1) An application under the RTA section 76(1) must be made by filing a Form No. 101 and any affidavit that the applicant proposes to tender at the hearing of the application.
- (2) An application under the RTA section 76(7)(a) must be made by filing a Form No. 102 and any affidavit that the applicant proposes to tender at the hearing of the application.
- (3) An application under the RTA section 76(7)(b) must be made by filing —
  - (a) a Form No. 103 and any affidavit that the applicant proposes to tender at the hearing of the application; and
  - (b) a copy of the record of the convictions of the holder of the extraordinary licence to which the application relates.
- (4) An application under the RTA section 78 must be made by filing a Form No. 104 and any affidavit that the applicant proposes to tender at the hearing of the application.
- (5) When a form and any affidavit is filed under this rule, 3 copies must also be filed.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 585-6.]*

**3. Registrar's functions when application is made**

- (1) A registrar may reject an application made under rule 2 if the registrar has reason to believe that the application cannot be made to or heard by the Court under the RTA section 76 or 78.
- (2) On accepting a Form No. 101, 103 or 104, a registrar must —
  - (a) list the application for hearing on the earliest convenient date that is at least 14 clear days after the date on which the form is filed; and
  - (b) insert the hearing details on the form and its 3 copies; and
  - (c) return 3 copies of the form and any accompanying affidavit to the applicant.
- (3) On accepting a Form No. 102, a registrar must —
  - (a) list the application for hearing on the earliest convenient date; and
  - (b) insert the hearing details on the form and its 3 copies; and
  - (c) return 3 copies of the form and any accompanying affidavit to the applicant.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 586.]*

**4. Applicant to serve application etc.**

- (1) On receiving the copies of a Form No. 101, 102 or 104 and any accompanying affidavit from a registrar, the applicant must serve one copy of the form and any accompanying affidavit on the Director General.
- (2) On receiving the copies of a Form No. 103 and any accompanying affidavit from a registrar, the Director General must serve one copy on the holder of the extraordinary licence to which the application relates.

*[Rule 4 inserted in Gazette 28 Jul 2010 p. 3484-5.]*

**5. Hearing of application, appearance at**

- (1) The Director General is entitled to be heard on an application made under the RTA section 76(1) or (7)(a) or 78.
- (2) If the Court is satisfied that the Director General has been served with an application made under the RTA section 76(1) or (7)(a) or 78, the Court may deal with it in the absence of the Director General.

*[(3), (4) deleted]*

- (5) If the Court is satisfied that the holder of the extraordinary licence to which an application made under the RTA section 76(7)(b) relates has been served with it, the Court may deal with it in the absence of the holder.

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 587; amended in Gazette 28 Jul 2010 p. 3485.]*

**6. Hearing of application, procedure on**

- (1) At the hearing of an application made under the RTA section 76(1) or (7)(a) or (b) —
  - (a) the applicant bears the onus of proof; and
  - (b) the standard of proof is on the balance of probabilities.
- (2) At the hearing of an application made under the RTA section 76 or 78, affidavit evidence may be adduced by a party if the maker of the affidavit is present.

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 587.]*

**7. Result of hearing, Director General to be notified**

As soon as practicable after the Court decides an application made under the RTA section 76 or 78, a registrar must give the Director General notice of the decision including the details of any order made.

*[Rule 7 inserted in Gazette 21 Feb 2007 p. 587.]*

## **Order 81D — Commercial Arbitration Act 1985 rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 644.]*

### **1. Terms used**

In this Order unless the contrary intention appears —  
*Act* means the *Commercial Arbitration Act 1985*; and  
*section* means a section of the Act; and

words defined in section 4 and used in this Order have the same respective meanings as in the Act.

*[Rule 1 inserted in Gazette 20 Jun 1986 p. 2041.]*

### **1A. Application of this Order**

- (1) This Order applies with the necessary modifications to an appeal from a determination of an arbitrator under Schedule 1 Part 4 clause 31 of the *Energy Arbitration and Review Act 1998*<sup>4</sup>, including an appeal continued or commenced after the repeal of that clause as a result of the operation of the national gas transitional provisions.

- (2) In subrule (1) —

*national gas transitional provisions* means the provisions of —

- (a) the *National Gas Access (WA) Act 2009* and the regulations made under that Act; and
- (b) the National Gas Access (Western Australia) Law and the National Gas Rules, as defined in that Law,

that deal with matters of a transitional, application or savings nature relating to the transition from the application of provisions of the Gas Pipelines Access Law, as defined in the *National Gas Access (WA) Act 2009* section 11, to the application of provisions of the National Gas Access (Western Australia) Law<sup>5</sup>.

*[Rule 1A inserted in Gazette 15 Aug 2003 p. 3691; amended in Gazette 22 Dec 2009 p. 5273-4.]*

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**2. Title of proceedings**

- (1) A motion, affidavit or other document in proceedings in the Court under the Act shall be entitled in accordance with Form No. 105.
- (2) A summons under the Act —
  - (a) where there has been no prior application to the Court in relation to the arbitration, shall be in accordance with Form No. 75;
  - (b) where there has been such an application, shall be in accordance with Form No. 77,

and shall also be entitled in accordance with Form No. 105.

*[Rule 2 inserted in Gazette 20 Jun 1986 p. 2041.]*

**2A. Appeals etc. under Act s. 38, procedure on**

- (1) In this rule —

*appeal* means —

  - (a) an appeal under section 38(2) on any question of law arising out of an award; or
  - (b) an application under section 38(4)(b) for leave to bring such an appeal.
- (2) Subject to this rule, Order 65, except rules 9, 11 and 19, applies with any necessary changes to and in respect of an appeal.
- (3) For the purposes of subrule (2), Order 65 is to be read as if any reference in it to the primary court were a reference to the arbitrator or umpire who made the award.
- (4) An appeal must be commenced within 21 days after the material date, as that term is defined in rule 5(1), or such longer period as the Court may allow.



- (5) When commencing an appeal, the documents referred to in Order 65 rule 10(1)(e), (f) and (g) must not be filed with the appeal notice.
- (6) Within 21 days after the appeal notice is filed, the appellant must take out a summons for directions about the following —
  - (a) whether the application for leave to appeal, if any, will be heard with the appeal or separately;
  - (b) the documents and other things that will be required for the hearing of appeal;
  - (c) any proposed amendments to the grounds of appeal;
  - (d) the filing of a statement of agreed facts;
  - (e) the filing and serving of written submissions;
  - (f) the documents to be included in papers for the judge;
  - (g) any other matter relevant to hearing and determining the appeal.
- (7) The appellant must serve the summons for directions, with a minute of the proposed directions —
  - (a) on the other parties to the arbitration agreement; and
  - (b) on the arbitrator or umpire who made the award.
- (8) If a summons for directions is not taken out under subrule (6), the appeal is to be taken to have been discontinued, unless the Court orders otherwise.
- (9) After the summons for directions is dealt with, a registrar must request the arbitrator or umpire to forward to the registrar such documents or things that are required for the hearing of appeal.

*[Rule 2A inserted in Gazette 21 Feb 2007 p. 590-1; amended in Gazette 28 Jul 2010 p. 3485.]*

### **3. Certain applications to be made to judge in court**

- (1) An application to the Court —

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- (a) under section 39 to determine a question of law arising in the course of an arbitration; or
- (b) under section 42 to set aside an award; or
- (c) under section 43 to remit a matter referred to arbitration; or
- (d) under section 44 to remove an arbitrator or umpire,

must be made by originating motion to a judge in court.

*[(2) deleted]*

- (3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to an award on the ground that it was made without jurisdiction may be made by originating motion to a judge in court; but this subrule does not affect the judge's power to decline to make such a declaration in proceedings begun by motion.
- (4) An application of the kind mentioned in subrule (1) must be served on the arbitrator or umpire as well as on the other parties to the arbitration; and a date of hearing shall be fixed by the proper officer in accordance with the practice of the Court or by an order made on a summons issued under rule 10(4).

*[Rule 3 inserted in Gazette 20 Jun 1986 p. 2041; amended in Gazette 21 Feb 2007 p. 591; 28 Jun 2011 p. 2552.]*

**4. Time for applications to determine preliminary points of law (Act s. 39(1))**

An application to the Court for a determination under section 39(1) must be commenced within 21 days after the day on which the consent or all the consents in writing was or were given to the party who wishes to apply to the Court under that subsection, or within such extended time as the Court may allow.

*[Rule 4 inserted in Gazette 20 Jun 1986 p. 2041.]*

**5. Time for other applications and for appeals**

- (1) In this rule *material date* means —
- (a) in relation to an award which, by agreement by the parties to the arbitration agreement, may be made with reasons later — the day on which notice of the reasons is given by the arbitrator to the person who wishes to apply or appeal to the Court;
  - (b) in relation to any other award — the day on which notice of the award is given by the arbitrator to the person who wishes to apply or appeal to the Court.
- (2) An application to the Court —
- [(a) deleted]*
  - (b) under section 42 to set aside an award; or
  - (c) under section 43 to remit a matter referred to arbitration,

must be made within 21 days after the material date, or within such extended time as the Court may allow.

*[Rule 5 inserted in Gazette 20 Jun 1986 p. 2041-2; amended in Gazette 21 Feb 2007 p. 591-2.]*

**6. Interlocutory orders (Act s. 47), applications for**

- (1) A party who seeks an interlocutory order under section 47 in relation to arbitration proceedings must issue a summons for directions which must be served on the arbitrator or umpire and on the other parties to those proceedings.
- (2) The summons must be supported by an affidavit setting out the relevant facts; and a minute of the orders and directions sought must be filed and a copy of it served with the summons.

*[Rule 6 inserted in Gazette 20 Jun 1986 p. 2042.]*

**7. Subpoenas (Act s. 17(1)), issue of**

Order 36B applies in relation to the issue of a subpoena under section 17(1) of the Act as they apply to the issue of a subpoena in proceedings in the Court.

*[Rule 7 inserted in Gazette 20 Jun 1986 p. 2042; amended in Gazette 21 Feb 2007 p. 592.]*

**8. Orders for examination of witnesses**

Order 38 applies to an arbitration as it applies to proceedings in the Court.

*[Rule 8 inserted in Gazette 20 Jun 1986 p. 2042.]*

**9. Exhibits etc., arbitrator to retain etc.**

- (1) Subject to this rule, to any order of the Court, and to any agreement between the parties to the arbitration, an arbitrator or umpire must, for a period of not less than 42 days after the award is made, retain all notes of evidence, transcripts, tapes, exhibits and other documents and things in his possession relating to the arbitration.
- (2) When requested by the Court or a registrar so to do, the arbitrator or umpire shall forthwith forward to the registrar the documents and other things mentioned in subrule (1), or such of them as are specified in the request.
- (3) An arbitrator or umpire may in his discretion, and after having given notice in writing to the other parties to the arbitration, permit a party, on such conditions as the arbitrator or umpire thinks fit, to uplift any of the documents or things mentioned in subrule (1).
- (4) The arbitrator or umpire or any party to the arbitration may apply to the Court for directions regarding any matter to which this rule applies.

*[Rule 9 inserted in Gazette 20 Jun 1986 p. 2042; amended in Gazette 28 Jun 2011 p. 2552.]*

*[10. Deleted in Gazette 21 Feb 2007 p. 592.]*

**11. Enforcing arbitration awards (Act s. 33 or 58)**

- (1) An application under sections 33 or 58 to enforce an award made under an arbitration agreement in the same manner as a judgment or order must be made by summons.
- (2) The summons must be supported by an affidavit —
  - (a) where the application is under section 33 —
    - (i) exhibiting the original agreement or a copy thereof, or stating the effect of its material terms; and
    - (ii) exhibiting the original award or a copy thereof;
  - or
  - (b) where the application is under section 58, exhibiting the documents required to be produced by section 59;and, in either case —
  - (c) stating the name and the usual or last known place of abode or business of the applicant and of the person against whom it is sought to enforce the award; and
  - (d) stating, as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

*[Rule 11 inserted in Gazette 20 Jun 1986 p. 2043.]*

**12. Payment into and out of court**

- (1) A party to an arbitration agreement may at any time pay into court a sum of money in satisfaction of a claim to which the agreement applies.

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- (2) A person who has paid money into court under subrule (1) may, without leave, make one further payment increasing the sum paid in by him.
- (3) A person who makes any payment into court under this rule must give notice of the payment to the other parties to the arbitration agreement in Form No. 106 and shall state in the notice whether liability is admitted or denied; and each party receiving the notice must, within 3 days, send to the party who gave the notice a written acknowledgment of its receipt.

*[Rule 12 inserted in Gazette 20 Jun 1986 p. 2043-4; amended in Gazette 28 Jun 2011 p. 2552.]*

**13. Acceptance of money paid into court**

- (1) Where money is paid into court under rule 12(1), the party for the satisfaction of whose claim the money has been paid in (in this rule referred to as the *claimant*) may, within 14 days after receipt of the notice of payment or, where more than one payment has been made, within 14 days after receipt of the notice of the last payment, accept the whole sum in satisfaction of the claim by giving to the party who paid the money into court and to the registrar notice in Form No. 107 signed by the claimant; and thereupon, subject to compliance with subrule (2), the claimant shall be entitled to receive payment of the accepted sum in satisfaction of his claim.
- (2) Where the parties consent, or the registrar is satisfied by affidavit that money paid into court has been duly accepted under subrule (1), payment of that money shall be made to the claimant or, on his written authority, to his solicitor.
- (3) If the claimant accepts a payment into court in satisfaction of his claim he may, after 4 days from payment out and unless the arbitrator or umpire otherwise directs, tax in the Court his costs incurred to the time of payment into court and no earlier than 48 hours after taxation may, by leave of the Court, sign judgment for his taxed costs.

*[Rule 13 inserted in Gazette 20 Jun 1986 p. 2044; amended in Gazette 28 Jun 2011 p. 2552.]*

**14. Money remaining in court**

If any money paid into court is not accepted in accordance with rule 13, the money remaining in court shall not be paid out except in pursuance of a certificate of the arbitrator or umpire or an order of the Court.

*[Rule 14 inserted in Gazette 20 Jun 1986 p. 2044.]*

**15. Payment into court not to be disclosed in pleadings etc.**

No statement of the fact that money has been paid into court under rule 12 shall be inserted in any pleadings in the arbitration, and no communication of that fact shall, on the hearing of the arbitration, be made to the arbitrator or umpire until all questions of liability and amount of debt or damages have been decided.

*[Rule 15 inserted in Gazette 20 Jun 1986 p. 2044.]*

**16. Taxation of costs**

- (1) The provisions of Order 66 shall, with such modifications as are necessary, apply in relation to proceedings in the Court for taxation of the costs of an arbitration including the fees and expenses of an arbitrator or umpire.
- (2) A party entitled to require the costs of an arbitration to be taxed must, when obtaining an appointment to tax, leave with the taxing officer the original or a copy of the award unless he has previously filed the original in the Central Office, together with such further documents as may be necessary to enable the bill of costs to be taxed.

*[Rule 16 inserted in Gazette 20 Jun 1986 p. 2044.]*

## **Order 81E — Cross-vesting**

*[Heading inserted in Gazette 1 Jul 1988 p. 2140.]*

### **1. Terms used**

In this Order, unless the contrary intention appears —

*Act* means the *Jurisdiction of Courts (Cross-vesting) Act 1987* of Western Australia;

*cross-vesting laws* means the Act, the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth, and any other law of the Commonwealth or a State or Territory relating to cross-vesting of jurisdiction;

*proceeding* includes an action, cause or matter;

*special federal matter* has the same meaning as in the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth.

*[Rule 1 inserted in Gazette 1 Jul 1988 p. 2140.]*

### **2. Application of this Order**

This Order applies to proceedings to which cross-vesting laws apply.

*[Rule 2 inserted in Gazette 1 Jul 1988 p. 2140.]*

### **3. Commencing proceedings that rely on cross-vesting laws**

- (1) Subject to subrule (2) a proceeding in which a party relies on cross-vesting laws shall be commenced in accordance with the rules of court.
- (2) In a case of doubt or difficulty as to the manner of commencement of a proceeding the Court may give directions.
- (3) An application under subrule (2) shall be by summons and may be *ex parte*.



- (4) A party who relies on cross-vesting laws shall indorse the process by which those laws are invoked with a statement identifying each claim or ground of defence, as the case may be, in respect of which cross-vesting laws are invoked.
- (5) A failure to comply with subrule (4) does not invalidate the process.
- (6) Where a party has not complied with subrule (4) and wishes to invoke cross-vesting laws, that party shall apply to the Court for directions and the Court may give any direction that it could give under rule 6.

*[Rule 3 inserted in Gazette 1 Jul 1988 p. 2141; amended in Gazette 28 Jun 2011 p. 2552.]*

#### **4. Special federal matters**

- (1) Where a matter for determination is a special federal matter the plaintiff or the defendant, as the case may be, shall give particulars of that special matter in the indorsement required under rule 3(4).
- (2) The Court shall not determine a proceeding which raises for determination a special federal matter unless it is satisfied that the notice required by section 6(3)(a) of the Act sufficiently specifies the nature of that special federal matter.

*[Rule 4 inserted in Gazette 1 Jul 1988 p. 2141.]*

*[5. Deleted in Gazette 26 Aug 1994 p. 4413.]*

#### **6. Directions for conduct of proceedings**

- (1) The first party to invoke cross-vesting laws shall take out a summons for directions and serve it on all other parties.
- (2) Where the plaintiff is required to take out the summons for directions the summons shall be taken out and served within 7 days of the plaintiff being served with the first notice of appearance.

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- (3) Where a defendant is required to take out the summons for directions the summons shall be taken out and served within 7 days of the delivery or service, as the case may be, of the process that invokes cross-vesting laws.
- (4) When a proceeding is transferred to the Court from another court the party who originated the proceeding shall within 14 days of the date of the order transferring the proceeding file and serve a summons for directions and in default any other party may do so or the Court may call the parties before it of its own motion.
- (5) On the hearing of the summons for directions the Court shall give any direction or make any decision as to the conduct of the proceeding that the Court thinks proper.
- (6) The Court may at the trial or hearing of the proceeding vary an order or decision made on the summons for directions.

*[Rule 6 inserted in Gazette 1 Jul 1988 p. 2141.]*

**7. Transfer of proceedings**

- (1) Unless the Court orders otherwise when the Court makes an order transferring a proceeding to another court a registrar shall send to the court to which the proceeding is transferred all documents filed and orders made in the proceeding.
- (2) When a proceeding is transferred to the Court from another court a registrar shall give it a number or title.

*[Rule 7 inserted in Gazette 1 Jul 1988 p. 2141.]*

**8. Applications to be dealt with by judge**

An application for the transfer or removal of a proceeding under cross-vesting laws must be determined by a judge.

*[Rule 8 inserted in Gazette 1 Jul 1988 p. 2142.]*

**9. Transfer on Attorney General's application (Act s. 5 or 6)**

An application by an Attorney General under section 5 or 6 of the Act for the transfer of a proceeding may be made by summons without the Attorney General becoming a party to the proceeding.

*[Rule 9 inserted in Gazette 1 Jul 1988 p. 2142.]*

**10. Transfer under Act s. 8, Court's powers on**

- (1) Where a proceeding is removed to the Court pursuant to section 8 of the Act the Court may immediately on that removal give any direction, make any decision or direct the parties to take any step that the Court sees fit.
- (2) The powers exercisable under subrule (1) —
  - (a) are in addition to the powers exercisable under rule 6; and
  - (b) include the power to give any direction that could have been given by the court or tribunal from which the proceeding was removed.

*[Rule 10 inserted in Gazette 1 Jul 1988 p. 2142; amended in Gazette 28 Jun 2011 p. 2552.]*

**11. Procedure if laws etc. of other place to apply under Act s. 11(1)**

- (1) If the law of another State or Territory must be applied under section 11(1)(b) of the Act in determining a right of action arising under a written law of that State or Territory, the pleadings must identify the right of action and the written law under which it arises.
- (2) If a party seeks to have rules of evidence and procedure, being rules that are applied in another court, applied under section 11(1)(c) of the Act in dealing with a matter for determination in the proceeding, the pleadings must include a statement to that effect.

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- (3) If a party proposes to claim that the law of another State or Territory should be applied under section 11(1)(b) of the Act or that rules of evidence and procedure, being rules that are applied in another court, should be applied under section 11(1)(c) of the Act —
- (a) the party shall apply to the Court for directions on that matter before the proceeding is set down for trial;
  - (b) the Court may give directions in relation to that matter —
    - (i) on application being made under paragraph (a);  
or
    - (ii) at any time of its own motion,and may revoke or vary any direction given by it in relation to that matter.

*[Rule 11 inserted in Gazette 1 Jul 1988 p. 2142; amended in Gazette 28 Jun 2011 p. 2555.]*

**Order 81F — *Proceeds of Crime Act 2002*  
(Commonwealth) rules**

*[Heading inserted in Gazette 21 Feb 2007 p. 592.]*

**1. Terms used**

- (1) In this Order, unless the contrary intention appears —  
*Act* means the *Proceeds of Crime Act 2002* of the Commonwealth;  
*section* means a section of the Act.
- (2) If a term used in this Order is defined in the Act, it has the same meaning in this Order as it has in the Act, unless the contrary intention appears.

*[Rule 1 inserted in Gazette 21 Feb 2007 p. 592.]*

**2. Applications under Act, how to be made**

- (1) Any application that may be made under the Act must be made in accordance with this rule.
- (2) This rule is subject to and does not affect the operation of section 17, 18, 19, 20, 26, 61, 136 or 163.
- (3) An application that initiates proceedings in the Court in relation to a suspect or particular property —
  - (a) must be made —
    - (i) by notice of motion (Form No. 65) if no notice of the application is required to be given; or
    - (ii) otherwise by originating summons (Form No. 74);and
  - (b) must be titled: In the matter of the *Proceeds of Crime Act 2002* (Cwlth) and [*name of the suspect concerned, or name of the owner of or a description of the property concerned*]; and

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- (c) must call the person making the application the ‘applicant’; and
  - (d) must call the person against whom the proceedings are initiated the ‘respondent’.
- (4) An application in proceedings under the Act that have been initiated under subrule (3) —
  - (a) must be made by summons (Form No. 77); and
  - (b) must call the person making the application the ‘applicant’; and
  - (c) must call the person entitled to respond to the application the ‘respondent’.
- (5) Unless the Court orders otherwise —
  - (a) an application for an order under the Act must be accompanied by an affidavit that states the facts and circumstances on which the application is based; and
  - (b) the application and the affidavit must be filed and served on the person against whom the order is sought.
- (6) Subrule (5) does not apply to —
  - (a) an application under section 17, 18, 19 or 20 for a restraining order; or
  - (b) an application under section 48 for a forfeiture order; or
  - (c) an application under section 116 for a pecuniary penalty order; or
  - (d) an application under section 152 for a literary proceeds order,against a person if the application is made at the time the person is convicted.
- (7) Subrule (5) does not apply to an application for an order under the Act that is filed together with the written consent to the making of the order of every person whose consent the Court needs in order to make the order by consent.

- (8) If under the Act a person applying for an order or exclusion is required to give written notice to the DPP of the grounds on which the order or exclusion is sought, the person must file a copy of the grounds with the application for the order or exclusion.

*[Rule 2 inserted in Gazette 21 Feb 2007 p. 592-3.]*

**3. Service on DPP (Cwlth) in Perth**

Service of an application under the Act and any document required to accompany the application on the DPP is effected if the application and document are served on the DPP's office in Perth.

*[Rule 3 inserted in Gazette 21 Feb 2007 p. 593.]*

**4. DPP to file grounds for contesting application**

If under the Act the DPP is required to give a person applying for an order or exclusion notice of any grounds on which the DPP intends to contest the application, the DPP must file a copy of the grounds at least 5 clear days before the date set for the hearing of the application.

*[Rule 4 inserted in Gazette 21 Feb 2007 p. 594.]*

**5. Summons for directions**

- (1) If an application under the Act is made by originating summons, the applicant must apply by summons to the Court for directions within 7 days after the time limited for appearance.
- (2) If the applicant does not comply with subrule (1), a respondent may apply to the Court for directions.

*[Rule 5 inserted in Gazette 21 Feb 2007 p. 594.]*

**6. Court may give directions at any time**

On the hearing of a summons for directions, or on any other application, or on its own initiative at any time, the Court may —

- (a) inquire as to the persons who may be affected by the relief claimed and for the purpose of that inquiry direct any party to supply any information which the Court may require;
- (b) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons so interested;
- (c) direct that notice of the application be served on any person;
- (d) give any other directions or make any other orders as may be necessary for the just and expeditious disposal of the proceedings.

*[Rule 6 inserted in Gazette 21 Feb 2007 p. 594.]*

**7. Representative respondent**

If a person is added as a respondent and other persons have the same or a similar interest as that respondent, the Court may order that —

- (a) that respondent be authorised to defend the proceedings on behalf of or for the benefit of all persons so interested; and
- (b) all persons so interested shall be bound by any order made in the proceedings.

*[Rule 7 inserted as rule 6 in Gazette 21 Feb 2007 p. 594; renumbered as rule 7 in Gazette 22 Feb 2008 p. 644.]*



**8. Evidence on applications**

Evidence in support of or opposing an application for an order under the Act is to be by affidavit unless the Court orders otherwise.

[Rule 8 inserted as rule 7 in Gazette 21 Feb 2007 p. 594; renumbered as rule 8 in Gazette 22 Feb 2008 p. 644.]

**9. Court may order separate hearing**

If after proceedings are initiated under the Act an application is made in the proceedings, the Court may on application, or on its own initiative at any time, order that the application be heard and determined separately.

[Rule 9 inserted as rule 8 in Gazette 21 Feb 2007 p. 595; renumbered as rule 9 in Gazette 22 Feb 2008 p. 644.]

## **Order 81FA — *Criminal Property Confiscation Act 2000* rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 644.]*

### **Part 1 — Preliminary**

*[Heading inserted in Gazette 27 Sep 2002 p. 4830.]*

#### **1. Terms used**

In this Part, unless the contrary intention appears —

***confiscable property declaration*** means a declaration under section 28 of the Confiscation Act 2000;

***Confiscation Act 2000*** means the *Criminal Property Confiscation Act 2000*;

***crime-used property substitution declaration*** means a declaration under section 22 of the Confiscation Act 2000;

***criminal benefits declaration*** means a declaration under section 16 or 17 of the Confiscation Act 2000;

***examination order*** means an order under section 58(1) of the Confiscation Act 2000;

***freezing notice*** means a freezing notice issued under section 34 of the Confiscation Act 2000;

***freezing order*** means an order under section 43 of the Confiscation Act 2000;

***interstate confiscation declaration*** has the same meaning as in the Confiscation Act 2000;

***interstate freezing order*** has the same meaning as in the Confiscation Act 2000;

***monitoring order*** means an order under section 68(1) of the Confiscation Act 2000;

***objection*** means an objection under section 79 of the Confiscation Act 2000 to the confiscation of property;

***production order*** means an order under section 63 of the Confiscation Act 2000;

***sham transaction order*** means an order under section 135(2) of the Confiscation Act 2000;

***suspension order*** means an order under section 68(2) of the Confiscation Act 2000;

***unexplained wealth declaration*** means a declaration under section 12 of the Confiscation Act 2000.

*[Rule 1 inserted in Gazette 27 Sep 2002 p. 4830-1.]*

## **Part 2 — Proceedings under the Confiscation Act 2000**

*[Heading inserted in Gazette 27 Sep 2002 p. 4831.]*

### **2. Declarations under Act s. 30, applications for**

- (1) An application by the DPP under section 30(1) of the Confiscation Act 2000 for a declaration that property has been confiscated may be made *ex parte*.
- (2) If, immediately before the property was confiscated or is alleged to have been confiscated under section 6, 7 or 8 of the Confiscation Act 2000, proceedings in relation to the property were on foot under that Act or the *Misuse of Drugs Act 1981*, an application is made by summons or motion in the proceedings.
- (3) If no proceedings were on foot as mentioned in subrule (2), an application is made by originating motion of Form 64.
- (4) On hearing an application, the court may give any directions it thinks fit, whether or not it finds that the property has been confiscated.

*[Rule 2 inserted in Gazette 27 Sep 2002 p. 4831.]*

**3. Other declarations or orders, applications for**

- (1) Subject to subrules (2) and (3), an application under the Confiscation Act 2000 for any of the following declarations or orders is made by filing an originating summons in Form 75 —
  - (a) an unexplained wealth declaration;
  - (b) a criminal benefits declaration;
  - (c) a crime-used property substitution declaration;
  - (d) a confiscable property declaration;
  - (e) a freezing order, except an *ex parte* application;
  - (f) a sham transaction order;
  - (g) an examination order;
  - (h) a production order;
  - (i) a monitoring order;
  - (j) a suspension order;
  - (k) an order under section 85, 91, 93 or 94 of the Confiscation Act 2000.
  
- (2) If an application for any of the following declarations or orders is made in the course of other proceedings under the Confiscation Act 2000 the application is made by motion in the proceedings —
  - (a) an unexplained wealth declaration;
  - (b) a criminal benefits declaration;
  - (c) a crime-used property substitution declaration;
  - (d) a confiscable property declaration;
  - (e) an examination order;
  - (f) a production order;
  - (g) an order under section 85, 91, 93 or 94 of the Confiscation Act 2000.

- (3) An *ex parte* application for any of the following orders is made by originating motion in Form 64 —
- (a) a freezing order;
  - (b) an examination order;
  - (c) a production order;
  - (d) a monitoring order;
  - (e) a suspension order.

*[Rule 3 inserted in Gazette 27 Sep 2002 p. 4831-2; amended in Gazette 10 Aug 2004 p. 3185.]*

**4. Affidavit in support required for some applications**

When an application is made in accordance with rule 3(1) or (3), the applicant must file with the application an affidavit setting out the facts and circumstances on which the application is based.

*[Rule 4 inserted in Gazette 27 Sep 2002 p. 4832.]*

**5. Objections to confiscation of property, making of**

- (1) An objection to the confiscation of property frozen under a freezing notice is made by filing an originating summons in Form 75.
- (2) An objection to the confiscation of property frozen under a freezing order is made by summons in the proceedings on the application for the freezing order.

*[Rule 5 inserted in Gazette 27 Sep 2002 p. 4832.]*

**6. DPP to be served**

When a party (other than the DPP) files an objection or makes an application under this Order, the party is to serve a copy of the objection or application on the DPP.

*[Rule 6 inserted in Gazette 27 Sep 2002 p. 4832.]*

**7. Directions**

- (1) A summons for directions must be filed with an application made by way of originating summons filed in accordance with rule 3(1) or rule 5(1) or (2), and is to be given the same return date as the originating summons.
- (2) On the hearing of the application and summons for directions, or on any other application, or of its own motion at any time, the Court may do any or all of the following —
  - (a) inquire as to the persons who may be affected by the relief the plaintiff seeks;
  - (b) for the purpose of an inquiry under paragraph (a) direct the plaintiff and the defendant to give the Court any information it requires;
  - (c) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons interested in the relief claimed.

*[Rule 7 inserted in Gazette 27 Sep 2002 p. 4832-3.]*

**8. Conference not required**

Order 59 rule 9 does not apply to a summons in proceedings under the Confiscation Act 2000.

*[Rule 8 inserted in Gazette 27 Sep 2002 p. 4833.]*

**9. Representative defendant**

If a person has been added as a defendant in proceedings under the Confiscation Act 2000, and other persons (including unborn persons) have the same interest as the defendant or a similar interest, the Court may —

- (a) authorise the defendant to defend the proceedings on behalf of or for the benefit of all the interested persons; and

- (b) order that all the interested persons are bound by any order made in the proceedings.

*[Rule 9 inserted in Gazette 27 Sep 2002 p. 4833.]*

### **Part 3 — Registration of freezing notices and interstate orders**

*[Heading inserted in Gazette 27 Sep 2002 p. 4833.]*

#### **10. Freezing notices, registration of etc.**

- (1) A register called the Register of Freezing Notices is to be kept at the Central Office.
- (2) When a freezing notice is filed in the court under section 36(6) of the Confiscation Act 2000, the proper officer must —
  - (a) assign a number to it; and
  - (b) enter particulars of the notice in the register; and
  - (c) indorse the notice to the effect that it was registered on the day on which the particulars were entered.
- (3) When a notice of cancellation of a freezing notice is filed in the court under section 40(2)(b) of the Confiscation Act 2000, or a freezing notice is set aside under Part 6 of the Act, the proper officer must enter the cancellation or setting aside in the register.

*[Rule 10 inserted in Gazette 27 Sep 2002 p. 4833-4.]*

#### **11. Interstate orders, registration of etc.**

- (1) A person desiring to register an interstate freezing order or an interstate confiscation order may file a copy of the order sealed with the seal of the court that made the order.
- (2) When a sealed copy of an interstate freezing order is filed, the proper officer must —
  - (a) assign a number to it; and
  - (b) enter the particulars of it in a register kept for the purpose; and

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- (c) indorse the order to the effect that it was registered on the day on which the particulars were entered.
- (3) When the registration of an interstate freezing order or an interstate confiscation order is cancelled under section 122 of the Confiscation Act 2000, the proper officer must enter the cancellation in the register.

*[Rule 11 inserted in Gazette 27 Sep 2002 p. 4834; amended in Gazette 22 Feb 2008 p. 645.]*



**Order 81G — *Criminal and Found Property Disposal Act 2006 rules***

*[Heading inserted in Gazette 22 Feb 2008 p. 645.]*

**1. Terms used**

- (1) In this Order, unless the contrary intention appears —  
*Act* means the *Criminal and Found Property Disposal Act 2006*;  
*claim* means an application made under the Act to the Court for an order under the Act.
- (2) If a term is given a meaning in the Act, it has the same meaning in this Order, unless the contrary intention appears.

*[Rule 1 inserted in Gazette 22 Feb 2008 p. 645.]*

**2. General matters**

- (1) Proceedings on a claim are proceedings in the Court's civil jurisdiction and the civil standard of proof applies.
- (2) Without otherwise affecting Order 37, an affidavit filed under this Order —
  - (a) may include material other than evidence that the deponent could give orally in court, such as hearsay or a belief or opinion; but
  - (b) must include the source of any hearsay or the grounds for any belief or opinion.
- (3) In proceedings on a claim, the Court, on an application by a party to the claim or on its own initiative —
  - (a) may shorten any period in this Order;
  - (b) may extend any period in this Order, even if the period has elapsed;
  - (c) may modify or dispense with any requirement of this Order;

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(d) may, by order, give directions as to the conduct of the proceedings;

(e) may adjourn the proceedings,

and may do so on terms.

[Rule 2 inserted in Gazette 22 Feb 2008 p. 645-6.]

**3. Claims, how to be made**

(1) To make a claim, a person must file a Form No. 108.

(2) A claim must name as a defendant any person who would be affected by any order stated in the claim.

(3) The hearing date stated in a claim must be at least 21 days after the date on which it is filed.

(4) A claim must be filed with one or more affidavits that state the facts and circumstances on which it is based.

(5) A claim, and any affidavit filed with it, must be served by the claimant —

(a) on each defendant to the claim; and

(b) in accordance with the *Interpretation Act 1984* section 76; and

(c) within 7 days after the date on which the claim is filed.

[Rule 3 inserted in Gazette 22 Feb 2008 p. 646.]

**4. Defendant may file memorandum of appearance**

A defendant who is served with a claim and who wants to respond to it or be heard at its hearing must enter an appearance under Order 12.

[Rule 4 inserted in Gazette 22 Feb 2008 p. 647.]

**5. Defendant may file affidavit in response**

- (1) A defendant who is served with a claim may file an affidavit that states the facts and circumstances on which the defendant relies.
- (2) Any such affidavit must —
  - (a) be filed within 10 days after the date on which the defendant is served with the claim; and
  - (b) be served on each other party to the claim in accordance with Order 72; and
  - (c) be served within 3 working days after the date on which it is filed.

[Rule 5 inserted in Gazette 22 Feb 2008 p. 647.]

**6. Applications in course of proceedings on claim**

- (1) A party to a claim may at any time apply to the Court for an order that may be made under rule 2(3).
- (2) To make the application, the party must file a Form No. 86 with any necessary changes and any affidavit on which the party intends to rely.
- (3) The applicant must serve a copy of the filed documents on each other party to the claim at least 3 working days before the hearing date for the application.

[Rule 6 inserted in Gazette 22 Feb 2008 p. 647.]

**7. Hearing claims**

At least 3 working days before the hearing date of a claim, the claimant must file and serve on each other party to the claim a draft of the final orders that the claimant wants the Court to make.

[Rule 7 inserted in Gazette 22 Feb 2008 p. 647.]

**8. Costs**

- (1) The Court may order a party to a claim to pay the whole or a part of another party's costs of proceedings on the claim.
- (2) The Court may fix the amount of costs to be paid or may order the costs to be taxed.
- (3) The amount of any costs ordered to be paid must be in accordance with any relevant scale within the meaning given by Order 66 rule 11(1).

[Rule 8 inserted in Gazette 22 Feb 2008 p. 648.]

## **Order 81H — *Surveillance Devices Act 1998* rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 649.]*

**1. Term used: Act**

In this Order —

*Act* means the *Surveillance Devices Act 1998*.

*[Rule 1 inserted in Gazette 26 Nov 1999 p. 5903.]*

**2. Warrants, applications for**

- (1) An application under the Act for a warrant, other than an application under section 16 of the Act, is to be made by originating motion and accompanied by an affidavit in support.
- (2) In the case of a warrant under section 16 of the Act, the applicant is to file an originating motion in respect of the warrant when he or she forwards to the Court the documents referred to in section 17 of the Act.

*[Rule 2 inserted in Gazette 26 Nov 1999 p. 5904.]*

**3. Report to judge (Act s. 21 or 30)**

A report to a judge under section 21 or 30 of the Act is to be —

- (a) sworn as an affidavit in accordance with these rules; and
- (b) filed with an originating motion.

*[Rule 3 inserted in Gazette 26 Nov 1999 p. 5904.]*

**4. Order allowing publication etc. (Act s. 31), application for**

An application for an order under section 31 of the Act is to be made by originating motion and accompanied by an affidavit in support.

*[Rule 4 inserted in Gazette 26 Nov 1999 p. 5904.]*

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**5. Identification of persons in documents**

In a document filed in a proceeding under the Act a person may be referred to by —

- (a) the person's initials; or
- (b) a numerical reference identifying the law enforcement agency of which the applicant in the proceeding is a member or officer and the year in which the proceeding was commenced.

*[Rule 5 inserted in Gazette 26 Nov 1999 p. 5904.]*

**6. Practice Directions**

- (1) The Chief Justice may from time to time issue Practice Directions —
  - (a) to facilitate compliance with the confidentiality requirements of the Act; and
  - (b) as to the practice and procedure applicable in proceedings under the Act.
- (2) All parties to proceedings under the Act must comply with any such Practice Directions.

*[Rule 6 inserted in Gazette 26 Nov 1999 p. 5904.]*

## Order 82 — Sheriff's rules

[1-6. Deleted in Gazette 21 Feb 2007 p. 595.]

### 7. Service of process by sheriff

- (1) The sheriff shall, if requested so to do by any party or his solicitor, serve or cause to be served in Western Australia any writ, notice, order, summons or other document issued, made or prepared in or in relation to any cause or matter in respect of which personal service is required by statute or by any rule or practice of the Court.
- (2) Such request shall be in writing, and shall contain the instructions for service.
- (3) The service of any such document may be proved by the affidavit of the bailiff or officer effecting service, and no subpoena to compel the attendance of the sheriff or any bailiff or officer in respect of any matter arising out of such service shall be issued except by leave of a judge or a master, which may be obtained *ex parte*.

[Rule 7 amended in Gazette 30 Nov 1984 p. 3952.]

[8. Deleted in Gazette 21 Feb 2007 p. 595.]

### 9. Fees etc. payable to sheriff, disputes as to

In case the sheriff and the person liable or claimed to be liable to pay the amount of any fees and charges payable to the sheriff differ as to the liability to pay the same or as to the amount thereof, the question of liability shall be decided by the Principal Registrar or the Principal Registrar shall tax such fees or charges as the case may be.

[Rule 9 amended in Gazette 30 Jul 1982 p. 2947.]

[10. Deleted in Gazette 21 Feb 2007 p. 595.]

**11. Deposit on account of sheriff's fees**

- (1) Upon request being made for the service of any process or document, or for any work for which fees are properly chargeable in the sheriff's office, the sheriff may require a deposit of money to meet such fees. He may also require an undertaking in writing from the solicitor or if no solicitor is acting, from the party making the request, to pay any further fees or charges which may become payable beyond the amount so deposited.
- (2) Where any person has deposited an amount in excess of the fees which are found to be payable, the sheriff shall, upon the amount actually payable being ascertained, return the amount so deposited in excess.

*[Rule 11 amended in Gazette 21 Feb 2007 p. 595.]*

*[12, 13. Deleted in Gazette 21 Feb 2007 p. 595.]*

**14. Travel distance by sheriff for service**

No sheriff's officer shall be compellable to go more than 65 km by the shortest route usually used in travelling from his office or residence for the service of any writ of summons, notice, order, summons or other document, nor shall an allowance for more than 150 km be made under Schedule 2 to the *Supreme Court (Fees) Regulations 2002* in any case without the order of a judge or a master.

*[Rule 14 amended in Gazette 7 Dec 1973 p. 4489; 30 Nov 1984 p. 3952; 26 Aug 1994 p. 4415; 27 Jul 2001 p. 3895; 21 Feb 2007 p. 595.]*

*[15. Deleted in Gazette 21 Feb 2007 p. 595.]*

**16. Non-payment of sheriff's fees, consequences of**

If any solicitor, who has made a request for the service of any process or document, or for any work for which fees are



properly chargeable in the sheriff's office, makes default in payment of any of the fees or charges properly chargeable, for a period of 7 days after demand in writing by the sheriff, the sheriff may report to the Court the name of the solicitor so making default, and the Court may thereupon make all necessary orders to enforce payment by the solicitor of such fees or charges.

*[Rule 16 amended in Gazette 21 Feb 2007 p. 595.]*

## **Order 83 — Consolidation of pending causes and matters**

### **1. Causes may be consolidated**

Whenever any issues between the same parties can be conveniently tried together, or whenever it appears desirable notwithstanding that the parties are not identical and that the evidence necessary to prove the issues is not identical, the Court may consolidate any number of causes or matters in order to quiet all claims relating to one subject matter, transaction or event, or to substantially similar subject matters, transactions or events.

### **2. Consolidation with action removed from another court**

In the exercise of jurisdiction under this Order the Court may order the consolidation with any action pending in the Supreme Court of any action remitted or removed to the Supreme Court from any other court.

### **3. Directions**

The Court shall make all necessary directions for the pre-trial procedure, and for the trial or determination of such consolidated causes or matters.

*[Order 83A deleted in Gazette 27 Jul 2001 p. 3895.]*

## Order 84 — General rules

### 1. Repealed Orders not revived

No Order or rule annulled by any former Order shall be revived by any of these rules, unless expressly so declared.

### 2. Cases not provided for

- (1) Where no provision is made by law or by these rules, the previous practice of this Court shall be followed or if there be no such practice, or if there is doubt as to what is the correct procedure, the Court may direct (and *ex parte* if it thinks fit) what shall be done in each particular instance, or that the procedure that has been adopted shall be sufficient.
- (2) A step taken in accordance with a direction given under subrule (1) shall be deemed to be regular and sufficient.
- (3) A direction given under subrule (1) is subject to review at any time by the Court, and such further or other directions may be given as the Court thinks necessary or proper in the interests of justice.

*[Rule 2 amended in Gazette 28 Jun 2011 p. 2552.]*

### 3. Publication of written reasons for judgment

Where a judgment is pronounced in a cause or matter, either by the Court of Appeal or a single judge, and the reasons and opinion of a judge are reduced to writing, it is sufficient to state orally the opinion of the judge without stating the reasons for the opinion, but his written reasons and opinion shall be then published by delivering them to the proper officer.

*[Rule 3 amended in Gazette 29 Apr 2005 p. 1795.]*

**4. Bankruptcy jurisdiction, duty of Registrar in Bankruptcy as to seals, records etc.**

- (1) The Registrar in Bankruptcy for the District of the State of Western Australia appointed pursuant to the provisions of the *Bankruptcy Act 1966* of the Commonwealth, shall keep a seal, called the Bankruptcy Seal, bearing a representation of the armorial bearings of the State, and the words “The Supreme Court of Western Australia exercising Federal Jurisdiction in Bankruptcy” which shall be affixed to all documents which are authorised or required to be sealed by the provisions of the said Bankruptcy Act or by the Bankruptcy Rules. Whenever for any reason any such seal is replaced or superseded by another seal, the seal replaced or superseded shall be delivered forthwith by the said Registrar in Bankruptcy to the registrar of the Supreme Court, to be held or disposed of by him in accordance with the directions of the Chief Justice.
- (2) The said Registrar in Bankruptcy shall have the custody of all the records of the Court in the exercise of its Federal Jurisdiction in Bankruptcy, and of all documents filed in the Federal Bankruptcy Registry or ordered to be deposited therein in pursuance of the provisions of any enactment of the Commonwealth relating to Bankruptcy or any rules made thereunder.

*[Rule 4 amended in Gazette 26 Aug 1994 p. 4415; 19 Apr 2005 p. 1300.]*

**5. Public Trustee Act 1941 s. 27, proceedings under**

Claims and complaints under section 27 of the *Public Trustee Act 1941* shall be brought by summons before a judge in chambers and must be supported by affidavit. All parties interested must be served with a copy of such summons and affidavit, and such parties may appear in opposition, either personally or by counsel, or solicitor.

*[Rule 5 amended in Gazette 12 Nov 1976 p. 4277.]*

**6. Sale proceeds paid into court, claimants to must file affidavit**

In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and accept the same.

*[Rule 6 amended in Gazette 26 Aug 1994 p. 4415.]*

**7. Account by solicitor to client, applying for and order as to**

Where the relationship of solicitor and client exists, or has existed, an originating summons may be issued by the client or his representatives for the delivery of a cash account, or the payment of moneys, or the delivery of securities, and the Court may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into court the whole, or any part of the same, within such time as the Court may order. In the event of the respondent alleging that he has a claim for costs, the Court may make such provision for the payment or security thereof or the protection of the respondent's lien (if any) as the Court may think fit.

**8. Interest and apportionment, certification of**

The Court may order the calculation of interest, or the apportionment of a fund, to be certified by a registrar and to be acted upon by the Accountant or any other person without further order.

*[Rule 8 inserted in Gazette 21 Feb 2007 p. 595.]*

**9.      *Admiralty Act 1988 (Cwlth) rules, registrar etc. may exercise powers etc. under***

- (1) In this rule, ***Admiralty Rules*** means the Admiralty Rules made under the *Admiralty Act 1988* of the Commonwealth.
- (2) A registrar may exercise the powers or functions or perform the duties of the registrar under the Admiralty Rules.
- (3) The sheriff or a deputy of the sheriff appointed pursuant to section 158 of the Supreme Court Act may exercise the powers or functions or perform the duties of the Marshal under the Admiralty Rules.

*[Rule 9 inserted in Gazette 30 Mar 1990 p. 1574; amended in Gazette 30 Oct 1992 p. 5310; 21 Feb 2007 p. 595.]*

**Order 85 — *Federal Courts (State Jurisdiction)*  
Act 1999 rules**

*[Heading inserted in Gazette 22 Feb 2008 p. 649.]*

**1. Terms used**

- (1) In this Order, unless the contrary intention appears —  
*Act* means the *Federal Courts (State Jurisdiction) Act 1999*;  
*section* means a section of the Act.
- (2) Unless the contrary intention appears, words defined in the Act and used in this Order have the same respective meanings as in the Act.

*[Rule 1 inserted in Gazette 5 Nov 1999 p. 5629.]*

**2. Title of proceedings**

An application under this Order shall be entitled “In the matter of the *Federal Courts (State Jurisdiction) Act 1999*, [section number, if applicable] and in the matter of proceedings in the [name of Commonwealth court] in [number of the Commonwealth court proceedings] between [names of parties to the Commonwealth court proceedings]”.

*[Rule 2 inserted in Gazette 5 Nov 1999 p. 5629.]*

**3. No proceedings on ineffective judgment before application to have it registered**

- (1) If a person wants to take any proceedings in the Supreme Court in respect of an ineffective judgment, the person must first apply to have the judgment registered in the Supreme Court.
- (2) Subrule (1) does not apply to an ineffective judgment that is —
  - (a) an interlocutory judgment or order; or
  - (b) a relevant order in a proceeding that is the subject of an application under section 11(2).

**r. 4**

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- (3) An application to have an ineffective judgment registered may be made at the same time as an application referred to in rule 6(1)(a).

*[Rule 3 inserted in Gazette 5 Nov 1999 p. 5629-30; amended in Gazette 28 Jun 2011 p. 2552.]*

**4. Ineffective judgment, application for registration of**

- (1) An application for the registration of an ineffective judgment must be made by originating summons to —
- (a) a master in chambers; or
  - (b) if made at the same time as an application referred to in rule 6(1)(a), to a judge in chambers.
- (2) Notice of the application must be given to all parties affected by the ineffective judgment unless the Court orders otherwise.
- (3) If an ineffective judgment relates to 2 or more matters some of which are not State matters, the summons must identify the matters in respect of which registration is sought.
- (4) The application must be supported by an affidavit that —
- (a) exhibits a copy of the ineffective judgment or of the Commonwealth court's record of the judgment; and
  - (b) states why it is sought to register the judgment.
- (5) If the reason for seeking registration of the ineffective judgment is to enforce payment of an amount of money due under the judgment, the affidavit must —
- (a) state the amount as at the date of the affidavit; and
  - (b) state the rate of interest (if any) that applies to the amount; and
  - (c) state the full name, title, trade or business, and the usual or last known place of abode or business of the judgment creditor and of the judgment debtor, so far as they are known to the deponent; and



- (d) state to the best of the deponent's knowledge and belief that the applicant is entitled to enforce the judgment.

*[Rule 4 inserted in Gazette 5 Nov 1999 p. 5630.]*

**5. Ineffective judgments, registration of**

The Court is to register an ineffective judgment if satisfied that —

- (a) the judgment concerned is an ineffective judgment; and
- (b) the application to register it complies with these rules; and
- (c) the judgment is not wholly satisfied; and
- (d) it is appropriate to do so.

*[Rule 5 inserted in Gazette 5 Nov 1999 p. 5630-1.]*

**6. Act s. 10, application for order under**

- (1) An application for an order under section 10(1) or (3) in respect of an ineffective judgment must be made —
  - (a) if the order sought is one that, had the judgment been one of a judge or master of the Supreme Court, could be made by such a judge or master — by summons (with a supporting affidavit) to a judge in chambers; or
  - (b) if the order sought is one that, had the judgment been one of a judge or master of the Supreme Court, could be made only by the Court of Appeal on an application for leave to appeal or on an appeal — by way of appellate proceedings to the Court of Appeal under the *Supreme Court (Court of Appeal) Rules 2005*.
- (2) If an application under subrule (1)(a) also includes an application under rule 3(1) —
  - (a) the application under subrule (1)(a) must be made by originating summons; and

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- (b) the supporting affidavit must, in addition to complying with rule 4, exhibit a copy of each document on the Commonwealth court's file, unless that file has been transferred to the Supreme Court or the Supreme Court orders otherwise.

*[Rule 6 inserted in Gazette 5 Nov 1999 p. 5631; amended in Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552.]*

**7. Act s. 11, application for order under**

- (1) An application under section 11(2) in relation to a proceeding in a Commonwealth court must be made by originating summons to a judge in chambers.
- (2) The application must be supported by an affidavit that —
  - (a) summarizes the cause of action in the proceeding to which the relevant order relates; and
  - (b) exhibits a copy of the relevant order, or of the Commonwealth court's record of the relevant order; and
  - (c) exhibits a copy of each document on the Commonwealth court's file, unless that file has been transferred to the Supreme Court or the Supreme Court orders otherwise; and
  - (d) states, in respect of the proceeding in the Commonwealth court, what procedural steps have been completed and what procedural step has been reached; and
  - (e) states what procedural steps are likely to be taken in the Supreme Court before the proceeding can be listed for a hearing of the action.

*[Rule 7 inserted in Gazette 5 Nov 1999 p. 5631-2.]*

**8. Act s. 11, effect of order under**

When an order is made under section 11(2) in relation to a proceeding in a Commonwealth court —

- (a) the Principal Registrar is to assign the proceeding the appropriate Supreme Court code or action number; and
- (b) the proceeding shall be conducted and dealt with in the Supreme Court in accordance with these rules; and
- (c) documents filed in the Commonwealth court —
  - (i) shall have the same effect and may be used for the same purposes as if they had been documents of the same or a similar nature filed in the Supreme Court; and
  - (ii) shall not be taken to be irregular only because they do not comply, in form or otherwise, with these rules.

*[Rule 8 inserted in Gazette 5 Nov 1999 p. 5632.]*

*[First Schedule deleted in Gazette 21 Feb 2007 p. 595.]*



defendant may notwithstanding the payment of such costs have the same taxed by the taxing officer of the Court and if more than one sixth be disallowed the plaintiff shall pay the costs of taxation.

*(If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity this must be shown in the indorsement of claim.)*

This writ was issued by or on behalf of the plaintiff.

The plaintiff's geographical address is:

The plaintiff's service details are:

*Indorsement as to service*

This writ was served by me at  
on [the defendant or one of the  
defendants] on the day of 20 .

Indorsed the day of 20 .

(Signed)

(Address)

*[Form 1 amended in Gazette 9 Nov 1973 p. 4165; 29 Mar 1974 p. 1042; 27 Aug 1976 p. 3226; 19 Apr 2005 p. 1300; 21 Feb 2007 p. 596; 28 Jul 2010 p. 3485; 28 Jun 2011 p. 2556.]*

**2. Writ of summons indorsed with statement of claim (O. 5 r. 1)**

*[As in No. 1 except that the following note shall be inserted after the directions for entering an appearance and that a statement of claim shall be substituted for the indorsement of claim.]*

**NOTE:** If the defendant enters an appearance, then unless a summons for judgment is served on him in the meantime, he must also file a defence at the Central Office of the Supreme Court at Perth, and serve such defence on the solicitor for the plaintiff, within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

Statement of claim.

Place of trial.

*[If the plaintiff's claim is for a debt or liquidated demand only, the indorsement in Form No. 1 beginning "If within the time allowed for entering an appearance" must be added.]*

*[Form 2 amended in Gazette 9 Nov 1973 p. 4165; 28 Jun 2011 p. 2556.]*

**Form 3**

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**3.      Writ of summons to be served outside WA**

*(Headings as in No. 1.)*

To C.D. of

\*Insert  
number of  
days limited  
for  
appearance.  
If notice of  
the writ is to  
be served  
insert here  
"of notice".

You are commanded that, within \*      days after service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Supreme Court in an action at the suit of the abovenamed plaintiff; and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness *(as in No. 1.)*

*[Memoranda and Indorsements as in No. 1. If the writ is indorsed with a statement of claim the form should be modified to comply with the directions given in No. 2.]*

*Further indorsement to be made on the writ before the issue thereof:*

*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.*

*[Form 3 amended in Gazette 9 Nov 1973 p. 4165; 28 Jul 2010 p. 3485-6; 28 Jun 2011 p. 2556; 12 Jun 2012 p. 2452.]*

*[Form 4 deleted in Gazette 12 Jun 2012 p. 2452.]*

**5. Indorsements of representative capacity of parties (O. 6 r. 5)**

The plaintiff's claim is as executor (*or* administrator) of C.D., deceased, for, etc.

The plaintiff's claim is against the defendant A.B. as executor (*or* etc.) of C.D., deceased, for etc.

The plaintiff's claim is against the defendant A.B. as executor of X.Y., deceased, for, etc. and against the defendant C.D., in his personal capacity, for, etc.

The plaintiff's claim is as trustee under the bankruptcy of A.B. for

The plaintiff's claim is as [*or*, the plaintiff's claim is against the defendant as] trustee under the will of A.B. [*or*, under the settlement upon the marriage of A.B. and X.Y.].

The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for

*[Form 5 amended in Gazette 30 Jun 2003 p. 2631; 28 Jun 2011 p. 2556.]*

**Form 5A**

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**5A.      Request for service abroad of judicial documents and certificate  
          (O. 11A r. 4, 6 & 16)**

**Part 1 — Request for service abroad of judicial documents**

**Convention on the Service Abroad of Judicial and Extrajudicial Documents in  
Civil or Commercial Matters, done at The Hague, the 15<sup>th</sup> of November 1965**

Identity and address of the forwarding authority requesting service
---

Identity and address of receiving authority [ <i>Central Authority/additional authority</i> ]
---

The undersigned forwarding authority (on the application of [*name and address of applicant on whose behalf forwarding authority requests service*]) has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.:

(identity and address) .....

- (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention\*.
- (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of Article 5\*): .....
- (c) by delivery to the addressee, if the addressee accepts it voluntarily (second paragraph of Article 5)\*.

The receiving authority [*Central Authority/additional authority*] is requested to return or to have returned to the forwarding authority a copy of the documents – and of the annexes\* – with a certificate as provided in Part 2 of this Form on the reverse side.

*List of documents*  
.....  
.....

Done at ....., the .....  
Signature or stamp (or both) of forwarding authority.

\*Delete if inappropriate.



**Part 2 — Certificate**

**Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, the 15<sup>th</sup> of November 1965**

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention:

1. that the documents listed in Part 1 have been served\*
  - the (date).....
  - at (place, street, number) .....
  - .....
  - in one of the following methods authorised by Article 5:
    - a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention\*, .....
    - .....
    - b) in accordance with the following particular method\*: .....
    - .....
    - c) by delivery to the addressee, who accepted it voluntarily\*.

The document referred to in the request, has been delivered to:

- (identity and description of person).....
- .....
- relationship to the addressee (family, business or other.) .....
- .....
2. that the document has not been served, by reason of the following facts\*: .....
- .....
- .....

In conformity with the second paragraph of Article 12 of the Convention, the forwarding authority is requested to pay or reimburse the expenses detailed in the attached statement\*.

**Form 5A**

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*Annexes*

Documents returned: .....

In appropriate cases, documents, establishing the service: .....

Done at ....., the .....

Signature or stamp (or both).

\*Delete if inappropriate.

*[Form 5A inserted in Gazette 3 Jul 2009 p. 2696-8; (Printers  
correction in Gazette 7 Jul 2009 p. 2719).]*

**5B. Summary of the document to be served (O. 11A r. 4)**

**Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, the 15<sup>th</sup> of November 1965 (Article 5, fourth paragraph)**

**Identity and address of the addressee [Central Authority/additional authority]:**

**IMPORTANT**

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE SUMMARY OF THE DOCUMENT TO BE SERVED WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO: ....

**SUMMARY OF THE DOCUMENT TO BE SERVED**

Name and address of the forwarding authority.....

Particulars of the parties .....

**\*\*JUDICIAL DOCUMENT**

Nature and purpose of the document .....

Nature and purpose of the proceedings and, when appropriate, the amount in dispute.....

Date and place for entering appearance.....

Court in which proceedings pending/judgment given .....

\*\*Date of judgment (if applicable) .....

Time limits stated in the document .....

*[Form 5B inserted in Gazette 3 Jul 2009 p. 2698-9.]*

*[Forms 5C-5F deleted in Gazette 3 Jul 2009 p. 2696.]*

**Form 6**

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**6. Memorandum of appearance (O. 12 r. 2(2))**

Supreme Court of Western Australia General Division		No:
		<b>Memorandum of appearance</b>
Parties	Plaintiff Defendant	
Appearance [*delete one]	Enter an appearance for the defendant [ <i>name of party</i> ]. The defendant *is/is not represented by a solicitor.	
<b>Defendant's details</b>		
Defendant's geographical address <sup>1</sup>		
Defendant's service details <sup>1</sup>		
<b>Signature and date</b>		
Signature of defendant or solicitor	Defendant/Defendant's solicitor	Date:

Notes to Form No. 6 —

1. Must be in accordance with Order 71A.

*[Form 6 inserted in Gazette 21 Feb 2007 p. 535.]*

**7. Notice limiting defence (O. 12 r. 10)**

*(Heading as in action)*

Take notice that the [abovenamed] defendant A.B. limits his defence to the part only of the property mentioned in the statement of claim, namely, [to the close called "The Big Field"].

Dated the                      day of                      20                      .

(Signed)

of                      Agent for

of

Solicitor for the said  
defendant C.D.

*(or) C.D., defendant in person.*

*[Form 7 amended in Gazette 28 Jun 2011 p. 2556.]*

*[Forms 8 and 9 deleted in Gazette 21 Feb 2007 p. 536.]*

**Form 10**

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**10.      Forms for Order 18**

**(1) Notice to be indorsed on copy of counterclaim (O. 18 r. 3(5))**

To X.Y.

\* Insert  
number  
of days  
limited for  
appearance

Take notice that, if you intend to defend this Counterclaim, an appearance must be entered to the Counterclaim on your behalf within \*days after the service of this defence and counterclaim on you, exclusive of the day of service, otherwise judgment may be given against you without further notice.

The person served with this Counterclaim may enter an appearance either personally or by a solicitor at the Central Office of the Supreme Court at Perth.

**(2) Memorandum of appearance to counterclaim (O. 18 r. 3)**

[As in No. 6 but substituting for the title of the action the following: — ]

Between

Plaintiff(s)

and

Defendant(s)

(by original action)

And between

the said

Plaintiff(s)

and

the said

Defendant(s)

(by counterclaim)

[and substituting for the request to enter appearance the following: ]

Enter an appearance for [full name of defendant to counterclaim wishing to appear] to the Counterclaim of the abovenamed defendant in this action.

**(3) Memorandum of appearance of person added as defendant (O. 18 r. 8(3))**

[As in No. 6 but substituting for the title of the action the following:     ]

Between

Plaintiff(s)

and

Defendant(s)

And between

Plaintiff(s)

and

Defendant(s)

(by original writ and by order)

[and substituting for the request to enter appearance the following: —]

Enter an appearance for [full name of added defendant] who has been served with an order dated the     day of     20     , making him a defendant to the action.

[Form 10 amended in Gazette 28 Jun 2011 p. 2556-7.]





**12. Third party notice where question or issue to be determined  
(O. 19 r. 1)**

*[As in Form No. 11 down to “a copy whereof is served herewith” and proceed: — ]*

The defendant requires that the following question or issue, viz, *[here state the question or issue required to be determined]* should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

\*Fix time in  
accordance  
with O. 5  
R. 11.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant’s liability to the plaintiff or your liability to the defendant you must cause an appearance to be entered for you within\* days after the service of this notice on you, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 19 of the rules of the Supreme Court.

Dated, etc, *[as in Form No. 11]*.

*[Form 12 amended in Gazette 9 Nov 1973 p. 4165; 28 Jun 2011 p. 2557.]*

*[Forms 13 and 14 deleted in Gazette 21 Feb 2007 p. 596.]*

*[Form 15 deleted in Gazette 5 Jun 1992 p. 2282.]*

*[Form 16 deleted in Gazette 21 Feb 2007 p. 596.]*

**Form 17**

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**17.      List of documents (O. 26 r. 4(1) & 8)**

Supreme Court of Western Australia		No:
General Division		<b>List of documents</b>
Parties	Plaintiff Defendant	
To	[Party] and its practitioner.	
From	[Party giving discovery]	
General	This list is served in compliance with the <i>Rules of the Supreme Court 1971</i> Order 26 rule 1(3) [or the Court's order dated 20 .]	
Documents in possession (Part 1)	Part 1A of this list lists the documents relating to the matters in question in this action that are in the possession, custody or power of the [party giving discovery]. Part 1B of this list lists each of those documents listed in Part 1A that the [party giving discovery] objects to producing and the grounds for objecting.	
Documents no longer in possession (Part 2)	Part 2A of this list lists the documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [party giving discovery]. Part 2B of this list, for each document listed in Part 2A, states — <ul style="list-style-type: none"> <li>• the date on which it was last in the [party giving discovery's] possession, custody or power; and</li> <li>• what has become of it; and</li> <li>• who currently has possession or custody of or power over it.</li> </ul>	
Declarations	The [party giving discovery] has made all reasonable enquiries, including of its employees and agents, to identify all documents of any description whatever relating to any matter in question in this action that are or were in its possession, custody or power. Neither the [party giving discovery], nor its practitioner, nor any other person on its behalf, has now, or ever had, possession or custody of or power over any document of any description whatever relating to any matter in question in this action, other than the documents listed in Parts 1A and 2A of this list.	

<b>Inspection of documents<sup>1</sup></b>	The documents in this list, other than those listed in Parts 1B and 2A, may be inspected at — [ <i>address</i> ] on [ <i>date and times</i> ].	
Certificate by party giving discovery or its practitioner <sup>2</sup>	I certify that the statements in this document are true.  [ <i>Party</i> ]/[ <i>Party's practitioner</i> ]	Date:
Service details	This list and its attachments were served on [ <i>party</i> ] on [ <i>date</i> ] by [ <i>server</i> ]  Signed: _____ Date: _____	

<b>List of documents — Part 1A<sup>3</sup></b>	
The documents relating to the matters in question in this action that are in the possession, custody or power of the [ <i>party giving discovery</i> ] are as follows —	
No.	Description of document
1.	

<b>List of documents — Part 1B<sup>3</sup></b>	
Of the documents listed in Part 1A the [ <i>party giving discovery</i> ] objects to producing the following on the following grounds.	
No. in Part 1A	Grounds for objecting to producing the document

<b>List of documents — Part 2A<sup>3</sup></b>	
The documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [ <i>party giving discovery</i> ] are as follows —	
No.	Description of document
1.	

**Form 17**

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**List of documents — Part 2B<sup>3</sup>**

For each document listed in Part 2A, the following states —

- the date on which it was last in the possession, custody or power of the [*party giving discovery*]; and
- what has become of it; and
- who currently has possession or custody of or power over it.

No. in Part 2A	Date	What has become of it	Who currently has possession or custody of or power over it
1.			

Notes to Form No. 17 —

1. This notice must comply with O. 26 r. 8.
2. Do not complete this if this list is being verified by an affidavit.  
This certificate may be signed by a person listed in O. 26 r. 4(4) or the practitioner of the party giving discovery.
3. This Part must begin on a new sheet of paper and be attached to the main document.

*[Form 17 inserted in Gazette 28 Jul 2010 p. 3472-5.]*

**18. Affidavit verifying list of documents (O. 26 r. 4(3))**

*(Heading as in cause or matter)*

I the abovenamed plaintiff (or defendant) A.B., make oath and say as follows: —

1. The list of documents produced to me and marked “Attachment A” is the list of the documents relating to the matters in question in this action that are or have been in the possession, custody or power of the [party giving discovery].
2. The documents listed in Part 1A of Attachment A are the documents relating to the matters in question in this action that are in the possession, custody or power of the [party giving discovery].
3. The [party giving discovery] objects to producing those of the documents in Part 1A of Attachment A identified in Part 1B on the grounds stated in Part 1B.
4. The documents listed in Part 2A of Attachment A are the documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [party giving discovery].
5. The statements in Part 2B of Attachment A about the documents listed in Part 2A are true.
6. The [party giving discovery] has made all reasonable enquiries, including of its employees and agents, to identify all documents of any description whatever relating to any matter in question in this action that are or were in its possession, custody or power.
7. To the best of my knowledge, information and belief, neither the [party giving discovery], nor its practitioner, nor any other person on its behalf, has now, or ever had possession, custody or power over any document of any description whatever relating to any matter in question in this action, other than the documents listed in Parts 1A and 2A of Attachment A.

Sworn, etc.

Filed on behalf of the (plaintiff) (or defendant).

*[Form 18 amended in Gazette 28 Jul 2010 p. 3475-6; 28 Jun 2011 p. 2557.]*

*[Form 18A deleted in Gazette 28 Jul 2010 p. 3468.]*



**22. Subpoena (O. 36B r. 3(1))**

Supreme Court of Western Australia General Division/Court of Appeal		No: <b>Subpoena</b>
Parties	Plaintiff  Defendant	
To: [Witness's details]	[Full name and address]	
<b>Order</b>  [Select one only of these 3 options.]	<p><b>You are ordered —</b></p> <p><input type="checkbox"/> to attend to give evidence — see section A of this form; or</p> <p><input type="checkbox"/> to produce this subpoena or a copy of it and the documents or things specified in the Schedule — see section B of this form; or</p> <p><input type="checkbox"/> to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule — see section C of this form.</p>	
<b>Warning</b>	<b>Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.</b>	
Last date for service [See Note 1]	The last date for service of this subpoena is:	
<b>Notes</b>	<b>Please read Notes 1 to 15 at the end of this subpoena.</b>	
Issuing details	Date of issue: Issued at the request of [name of party], whose service details are:	Seal or stamp of the Court
<b>Section A — Details of subpoena to attend to give evidence only.</b>		
<b>Order</b>	<p>Date, time and place at which you must attend to give evidence unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:</p> <p>Date: Time: Place:</p>	
	You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.	

**Form 22**

<b>Section B — Details of subpoena to produce only.</b>	
<b>Order</b>	<p>You must comply with this subpoena —</p> <p>(a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or</p> <p>(b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear days before the date specified for attendance and production. (See Notes 5–11.)</p> <p>Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:</p> <p>Date:  Time:  Place:</p> <p>Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:</p> <p style="text-align: center;">The Registrar,  <i>[Name of court ... etc. as the case may be.]</i></p>
<b>Schedule</b> [If insufficient space attach list]	The documents and things you must produce are as follows:
<b>Section C — Details of subpoena to both attend to give evidence and produce.</b>	
<b>Order</b>	<p>In so far as you are required by this subpoena to attend to give evidence, you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:</p> <p>Date:  Time:  Place:</p>



	<p>You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.</p> <p>In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena —</p> <p>(a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or</p> <p>(b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear days before the date specified for attendance and production. (See Notes 5–11.)</p> <p>Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:</p> <p>Date: Time: Place:</p> <p>Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:</p> <p style="text-align: center;">The Registrar, [Name of court ... etc. as the case may be.]</p>
<p><b>Schedule</b> [If insufficient space attach list]</p>	<p>The documents and things you must produce are as follows:</p>

**Notes**

**Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

**Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

**Addressee a corporation**

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

**Conduct money**

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date on which your attendance is required.

**Production of subpoena or copy of it and documents or things by delivery or post**

5. If this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the registrar at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production or, if you receive notice of a later date or time from the issuing party, before that later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the registrar may permit the parties to the proceeding to inspect the document or thing.

**Production of a number of documents or things**

8. If you produce more than one document or thing, you must, if requested by the registrar, produce a list of the documents or things produced.

**Production of copy instead of original**

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.
- 9A. The copy of a document may be —
- (a) a photocopy; or
  - (b) in PDF format on a CD-ROM.

*[10, 11. deleted]*

**Applications in relation to subpoena**

12. You have the right to apply to the Court —
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

**Loss or expense of compliance**

13. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court — arrest**

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

*[Form 22 inserted as Form 21 in Gazette 21 Feb 2007 p. 547-50; renumbered as Form 22 in Gazette 22 Feb 2008 p. 649; amended in Gazette 28 Jul 2010 p. 3479-80.]*

**Form 22A**

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**22A. Subpoena notice and declaration (O. 36B r. 10(3))**

Supreme Court of Western Australia		No:
General Division/Court of Appeal		<b>Subpoena notice and declaration</b>
Parties	Plaintiff Defendant	
<b>Notice to addressee</b>		
<p>The <i>addressee</i> is the person to whom the subpoena is addressed, and who will be the recipient of the subpoena.</p> <p>You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be —</p> <p>(a) a photocopy; or</p> <p>(b) in PDF format on a CD-ROM.</p> <p><b>You must complete the Declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.</b></p> <p>If you declare that the material you produce is copies of documents, the registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.</p> <p>If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.</p>		

**Declaration by addressee (subpoena recipient)**

[Tick the relevant option below, (provide your address as appropriate), sign and date]

**All** of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

**Some or all** of the material I am providing to the Court in compliance with the attached subpoena is an **original** document. Once the material is no longer required, all of the material should be returned to me at the following address —

.....  
.....

.....  
[Signature of addressee]

.....  
[Name of addressee]

.....  
[Date]

[Form 22A inserted in Gazette 28 Jul 2010 p. 3480-1.]

[Form 22B deleted in Gazette 21 Feb 2007 p. 546.]

**Form 23**

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**23.      Writ of subpoena for service in New Zealand (O. 36B r. 3(1))**

*(Heading as in cause or matter)*

To *[names of witnesses]*:

This writ commands you to attend before  
at            on            the            day of            , at the  
hour of            in the            noon, and from day to day thereafter until the end of  
the trial, to give evidence on behalf of the plaintiff *[or defendant]\**.

Witness *(as in No. 22)*

Issued *(as in No. 22)*

- Note: 1.    Failure to comply with this subpoena may result in your arrest and the imposition of a fine under section 16 of the *Evidence Amendment Act 1994* of New Zealand.
2.    Service of this subpoena is effective only if it is accompanied by a copy of the order giving leave to serve the subpoena in New Zealand and by a Notice to Witness setting out your rights and obligations in relation to this subpoena.

*\*If duces tecum add:* And this writ also commands you to bring with you and produce at the time and place aforesaid *[here describe the documents or things to be produced]*, unless you produce this subpoena and those documents or things either —

- (a)    to the Central Office of the Supreme Court not later than 2 days before the first day on which you are required to attend; or
- (b)    to a registry of the High Court of New Zealand not later than 10 days before the first day on which you are required to attend (in which case you must obtain from the Registrar of the High Court of New Zealand a receipt of the documents or things produced and send a copy of the receipt by fax to the Central Office of the Supreme Court together with a copy of the subpoena).

*[Form 23 inserted in Gazette 16 Jul 1999 p. 3196; amended in Gazette 21 Feb 2007 p. 546; 28 Jul 2010 p. 3486; 28 Jun 2011 p. 2557.]*

**23A. Notice to accompany subpoena for service in New Zealand  
(O. 36B r. 3(1))**

**NOTICE TO WITNESS**

**THIS NOTICE IS VERY IMPORTANT**

**PLEASE READ IT AND THE ATTACHED DOCUMENT OR DOCUMENTS  
VERY CAREFULLY**

**IF YOU HAVE ANY TROUBLE UNDERSTANDING THESE DOCUMENTS  
YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE**

Attached to this notice is a subpoena.

The subpoena has been issued by the Supreme Court of Western Australia.

The subpoena may be served in New Zealand under New Zealand law (section 14 of the *Evidence Amendment Act 1994* of New Zealand).

This notice:

- sets out your rights relating to the subpoena; and
- sets out your obligations relating to the subpoena; and
- includes information about the way in which you may make an application to have the subpoena set aside.

**YOUR RIGHTS**

1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.

2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: “**YOUR OBLIGATIONS**”).

3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the [court that issued the subpoena] that you be paid the additional amount you incurred.

4. You may apply to the Supreme Court to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible.

5. An application can be made and determined by the Supreme Court without you having to go to Australia, or to retain Australian solicitors. All the necessary arrangements can be made in New Zealand.

**Form 23A**

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[NOTE: Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.]

**YOUR OBLIGATIONS**

1. Unless the subpoena is set aside, you must comply with the subpoena if —
  - (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either —
    - (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
    - (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses;
  - and
  - (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and
  - (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and
  - (d) service of the subpoena complied with any other conditions specified in the order; and
  - (e) you are over 18 years of age.
  
2. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court that issued the subpoena. You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena. When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court that issued the subpoena. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

**FAILURE TO COMPLY WITH THE SUBPOENA**

If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ\$10 000 may be imposed.

**GROUND FOR SETTING ASIDE A SUBPOENA**

1. The Supreme Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and —



- (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or
  - (b) if you complied with the subpoena, you would be liable to be detained for the purpose of serving a sentence; or
  - (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or
  - (d) you are liable to the imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Trade Practices Act 1974* of Australia); or
  - (e) you are subject to a restriction on your movements imposed by law or an order of a court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence).
2. The grounds on which the Supreme Court may set aside the subpoena include —
- (a) the evidence you give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;
  - (b) compliance with the subpoena would cause you hardship or serious inconvenience;
  - (c) if the subpoena requires you to produce a document or thing and —
    - (i) that document or thing should not be taken out of New Zealand; and
    - (ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means.

[NOTE: The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.]

#### **PROCEDURE FOR APPLYING TO SET ASIDE A SUBPOENA**

1. Application must be made to the Supreme Court.
2. You may fax your application to that Court on fax number [*fax number of the Supreme Court*].
3. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, faxed or posted to you at that address.
4. The Principal Registrar of the Supreme Court will arrange for service of your application and of any affidavit you lodge with the Court with your application.



**26.      *Evidence Act 1906 s. 110 or 111, order under (O. 38A r. 5)***

[HEADING]

On the application of ....., and after reading the affidavit of  
..... dated ..... and hearing .....

IT IS ORDERED THAT —

1. AB (“the examiner”) is hereby appointed to examine CD (“the witness”) on oath or affirmation.

-or-

1. A commission shall be issued to AB (“the examiner”) for the examination of CD (“the witness”) on oath or affirmation.
2. The examination shall take place on (date) at (time) at (place outside the State) or at such other time and place as the examiner may appoint and where the examiner does appoint another time or place, notice thereof must be given to the witness and to the parties to these proceedings not less than ..... days before the appointed time.
3. The examiner may invite but must not exercise any powers to compel the witness to attend and to produce documents.
4. The examination must be in the following manner —  
(set out the manner of the examination either specifically or by reference to the rules)
5. The examiner shall —
  - (a) put the evidence of the witness into writing; and
  - (b) appropriately mark for identification any document produced by the witness; and
  - (c) certify the written evidence as being the evidence of the witness; and
  - (d) send the written evidence and any document produced by registered or certified post to —

Principal Registrar  
Supreme Court of Western Australia  
PERTH  
Western Australia 6000
6. When the Principal Registrar receives them, any party to these proceedings shall be at liberty to read the written evidence of the witness and any document produced, except where the Court otherwise orders.

**Form 26**

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7. The trial of these proceedings shall be stayed or adjourned until the Principal Registrar receives the written evidence of the witness and any document produced.
8. The costs of and incidental to the application for this order and to the examination shall be costs in the cause.

-or-

1. A letter of request shall be issued to (name of judicial authority in a place outside the State) to take, or to cause to be taken, the evidence of CD (“the witness”).
2. When the Principal Registrar receives them, any party to these proceedings shall be at liberty to read the written evidence of the witness and any document produced, except where the Court otherwise orders.
3. The trial of these proceedings shall be stayed or adjourned until the Principal Registrar receives the written evidence of the witness and any document produced.
4. The costs of and incidental to the application for this order and to the issue of the letter of request shall be costs in the cause.

Dated:

BY THE COURT

[L.S.]

Registrar.

*[Form 26 inserted in Gazette 8 Feb 1991 p. 584-5; amended in  
Gazette 28 Jun 2011 p. 2558.]*

*[Form 27 deleted in Gazette 8 Feb 1991 p. 585.]*

**28. Letter of request (O. 38A r. 3(4))**

TO: (name of judicial authority in place outside the State)

I, ..... Principal Registrar of the Supreme Court of Western Australia, respectfully request your assistance/the assistance of your court with regard to the following matters.

1. There are before the Supreme Court of Western Australia/before (name of inferior court in W.A.) civil/criminal proceedings entitled as follows —  
(set out full title and action no.) between — (name parties, their descriptions — plaintiff etc. — and their addresses).
2. The names and addresses of the representatives or agents of the parties are as follows —  
(set out names and addresses.)
3. The proceedings concern —  
(set out —
  - (a) the nature of the proceedings; and
  - (b) the relief sought (if applicable); and
  - (c) a summary of the facts.)
4. The Supreme Court has decided, in the interests of justice, to request you to take, or to cause to be taken, the evidence of a person resident in your jurisdiction. Accordingly, I request you to take, or to cause to be taken, the evidence of (name and address of the person or persons) who is/are resident in your jurisdiction.
5. I respectfully request that the evidence be taken in the following manner —  
(set out matters relating to the taking of that evidence — see *Evidence Act 1906*, s. 110(4). Include references, if appropriate, to lists of questions, to detail of evidence sought, or to documents required to be produced.)
6. I request you to inform me or the representatives or agents of the parties of the date when and the place where the evidence is to be taken.
7. Finally, I request that —
  - (a) the evidence of the person(s) mentioned in paragraph 4 above me put into writing; and
  - (b) any document produced by the person(s) be appropriately marked for identification; and
  - (c) the written evidence and any document produced be authenticated with the seal of your court or in such other way as is in accordance with your procedure; and

**Form 29**

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- (d) you send the written evidence and any document produced to me by registered or certified post at the following address —

Principal Registrar  
Supreme Court of Western Australia  
PERTH  
Western Australia 6000

Dated:

[L.S.]

Principal Registrar

*[Form 28 inserted in Gazette 8 Feb 1991 p. 585; amended in Gazette 28 Jun 2011 p. 2558.]*

**29.      Undertaking as to costs of letter of request (O. 38A r. 5)**

*(Heading as in cause or matter)*

I [*or we*] hereby undertake to be responsible for all expenses incurred by the Attorney General for the State of Western Australia in respect of the letter of request issued herein on the \_\_\_\_\_, and on receiving due notification of the amount of such expenses undertake to pay the same to the Attorney General. The following have been appointed as agents for the parties in connection with the execution of the above letter of request: —

\_\_\_\_\_, Plaintiff's agent, of

\_\_\_\_\_, Defendant's agent, of

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Solicitor for

*[Form 29 amended in Gazette 19 Apr 2005 p. 1300; 28 Jun 2011 p. 2558.]*

30. *Evidence Act 1906 s. 117, order under (O. 39 r. 3)*

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No ..... of 20 .....

IN THE MATTER of the *Evidence Act 1906*, s. 117, and a (civil/commercial/criminal) proceeding now pending before (requesting court) intituled as follows —

BETWEEN:

AB

Plaintiff,

-and-

CD

Defendant.

ORDER FOR OBTAINING EVIDENCE

[HERE SET OUT FORMALITIES REQUIRED BY PRACTICE DIRECTIONS]

On the application of ..... and after reading the affidavit (if any) of ..... dated ..... and the request of (requesting court), and hearing .....and being satisfied —

- (a) that the application is made in pursuance of a request by (the requesting court) exercising jurisdiction in (place outside W.A.); and
- (b) that the evidence to which the application relates is to be obtained for the purposes of proceedings (which have been instituted before that court) or (whose institution before that court is contemplated),

IT IS ORDERED THAT —

1. (If applicable) (name of examiner or person who is to obtain the evidence) is hereby appointed to — (set out function).
2. (name of examiner or person who is to obtain the evidence) must —
  - (a) (set out the matters required — such as the manner of the examination, the manner of transmitting the evidence when taken or the person to whom the evidence is to be transmitted.)
3. (name of witness to be examined or person from whom evidence is to be obtained) must —
  - (a) (set out the matters required of the witness or person from whom the evidence is to be obtained — see *Evidence Act 1906*, s. 117(3))

Dated:  
[L.S.]

BY THE COURT  
Registrar.

**Form 31**

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*[Form 30 inserted in Gazette 8 Feb 1991 p. 587-8; amended in Gazette 28 Jun 2011 p. 2558.]*

**31. Certificate (O. 39 r. 5(2))**

I, ....., Principal Registrar of the Supreme Court of Western Australia, hereby certify that the attached documents are —

- (a) a request of (requesting court);
- (b) the order of the Supreme Court of Western Australia dated (date) made for the purpose of giving effect to the request;
- (c) the deposition (or as the case may be) taken by the examiner pursuant to the order;
- (d) (if applicable) the examiner's statement setting out the witness's claim to be exempt from giving evidence;
- (e) (if applicable) this Court's request that the witness's claim be determined.

Dated:

[L.S.]

Principal Registrar.

*[Form 31 inserted in Gazette 8 Feb 1991 p. 588; amended in Gazette 28 Jun 2011 p. 2558.]*

**31A. Application for subpoena to be set aside (O. 39A r. 4(1))**

*(Heading as in order for leave to issue subpoena)*

1. The applicant seeks an order that the subpoena [*identify subpoena*] be set aside on the grounds appearing in the accompanying affidavit.
2. The applicant requests the Court's directions as to the manner in which this application is to be determined.
- 3.\* The applicant requests that any hearing of this application be held by video link or telephone.

Dated:

*[Signature of applicant  
or applicant's solicitor]*

*[Applicant's address, telephone  
number and, if applicable,  
fax number for service.]*

*\*[Delete if not required]*



*[Form 31A inserted in Gazette 16 Jul 1999 p. 3198-9; amended in Gazette 28 Jun 2011 p. 2558.]*

**31B. Objection to determination without hearing (O. 39A r. 4(8))**

*(Heading as in order for leave to issue subpoena)*

The *[identify person]* objects to the application to set aside the subpoena *[identify subpoena]* being determined without a hearing.

Dated:

*[Signature of applicant  
or applicant's solicitor]*

*[Form 31B inserted in Gazette 16 Jul 1999 p. 3199; amended in Gazette 28 Jun 2011 p. 2558.]*

**31C. Request for hearing by video link or telephone (O. 39A r. 4(9))**

*(Heading as in order for leave to issue subpoena)*

The applicant requests that the hearing of the application to set aside the subpoena *[identify subpoena]* be held by video link or telephone.

Dated:

*[Signature of applicant  
or applicant's solicitor]*

*[Form 31C inserted in Gazette 16 Jul 1999 p. 3199; amended in Gazette 28 Jun 2011 p. 2558.]*









**Form 38**

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**38.      Judgment under Order 14 (O. 14 r. 3)**

*(Heading as in action)*

The                                  day of                                  20                                  .

The defendant having entered an appearance herein and the Court having under Order 14 rule 3 ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant,

It is this day adjudged that the defendant do pay to the plaintiff \$                                  and \$                                  costs (*or* costs to be taxed),

*or*

pay to the plaintiff damages to be assessed and costs to be taxed,

*or*

deliver to the plaintiff the goods described in the statement of claim as

[*or* pay to the plaintiff the value of the said goods to be assessed] [and also damages for their detention to be assessed] and costs to be taxed,

*or*

give the plaintiff possession of the land described in the statement of claim as and costs to be taxed.

The above costs, etc. (*as in No. 32*).

*[Form 38 amended in Gazette 28 Jun 2011 p. 2559.]*

**39.      Judgment after trial by judge without a jury (O. 42 r. 1)**

*(Heading as in action)*

Dated and entered the                                  day of                                  20                                  .

This action having been tried [*insert dates of trial*] before the Honourable Mr. Justice                                  at the Supreme Court, Perth [*or as the case may be*] in the presence of Mr.                                  of counsel for the plaintiff and Mr.                                  of counsel for the defendant [*or as the case may be*] and the judge having on the                                  day of                                  20                                  ordered that judgment as hereinafter provided be entered for the plaintiff [*or* defendant],

It is adjudged that the defendant do pay to the plaintiff \$                                  and his costs of action to be taxed [*or* that the plaintiff do pay to the defendant his costs of defence to be taxed] [*or as may be the case according to the judge's order*].

The above costs, etc. (*as in No. 32*)



**Form 42**

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**42.      Judgment after decision of preliminary issue**  
**(O. 32 r. 7; O. 42 r. 1)**

*(Heading as in cause or matter)*

Dated and entered the                      day of                      20                      .

The issue [*or question*] arising in this cause [*or matter*] by the order dated the                      day of                      20                      , ordered to be tried before                      having on the                      day of                      20                      been tried before the said                      and the said                      having found                      and having ordered that judgment as hereinafter provided be entered for the                      [*or having dismissed the cause or matter*],

It is adjudged that [the defendant do pay to the plaintiff \$                      and his costs of action to be taxed] [the plaintiff do pay to the defendant his costs of defence to be taxed] *or as the case may be according to the order made.*

*[Form 42 amended in Gazette 28 Jun 2011 p. 2560.]*

**43.      Judgment for defendant's costs on discontinuance (O. 23 r. 2)**

*(Heading as in action)*

The                      day of                      20                      .

The plaintiff having by a notice in writing dated the                      day of                      , 20                      , wholly discontinued this action [*or withdrawn his claim in this action for*                      ] and the defendant's costs of the action [*or of the claim withdrawn*] having been taxed and allowed at \$                      as appears by the Taxing Officer's certificate dated the                      day of                      20                      , and the plaintiff not having paid such costs within 4 days after taxation,

It is this day adjudged that the plaintiff do pay to the defendant \$                      the said taxed costs, and \$                      the costs of entering judgment for such taxed costs.

*[Form 43 amended in Gazette 28 Jun 2011 p. 2560.]*

**44.      Judgment by consent (O. 42 r. 1(2))**

In the Supreme Court of Western Australia	No:
	<b>Judgment by consent</b>
Parties	Plaintiff Defendant



Judgment	In accordance with the consent of the parties, the Court orders — 1. 2.	
Judicial officer's signature	Judicial officer	Date:

*[Form 44 inserted in Gazette 12 Jun 2012 p. 2452.]*

*[Forms 45-59 deleted in Gazette 21 Feb 2007 p. 553.]*



**61. Order directing summons for appointment of receiver and granting injunction meanwhile (O. 51 r. 1)**

*(Heading as in action)*

Before \_\_\_\_\_ in chambers.

Upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day  
of \_\_\_\_\_ 20 \_\_\_\_\_ :

Let the defendant C.D. attend [the master in chambers, Supreme Court, Barrack Street, Perth] on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon on the hearing of an application on the part of the plaintiff for the appointment of E.F. as receiver in this action to receive the rents, profits, and moneys receivable in respect of the said defendant's interest in the following property namely [*describe the property*], for the following purposes, namely [*state the purposes*], and on the following terms, namely [*state the terms*],

And the plaintiff [by his solicitor] hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise, be restrained, and an injunction is hereby granted restraining him, until after the hearing of the above application, from assigning charging or otherwise dealing with the said property.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

*[Form 61 amended in Gazette 21 Feb 2007 p. 553-4; 28 Jun 2011 p. 2560.]*









**Form 67**

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**67.      Certiorari (O. 56 r. 14)**

*(Heading as in cause or matter)*

**Writ of certiorari**

To:      *[Name and address]*

This writ commands you, on or before *[date]*, to send to the Supreme Court, at *[address]*, *[state the record or decision to be quashed]* together with this writ, or a copy of it, for that court to deal with as it sees fit.

Dated:

.....  
Judicial officer

*[Form 67 inserted in Gazette 28 Jul 2010 p. 3487.]*

*[Form 68 deleted in Gazette 29 Apr 2005 p. 1801.]*

**69.      Mandamus (O. 56 r. 16)**

*(Heading as in cause or matter)*

**Writ of mandamus**

To:      *[Name and address]*

This writ commands you to *[set out the act to be done]* or show cause why you have not done it.

The *Rules of the Supreme Court 1971* Order 56 rule 20 requires you to file in the Supreme Court, on or before *[date]*, this writ, or a copy of it, and a certificate stating either that you have done the above act or why you have not done it.

Disobeying this writ is a contempt of court which may be punished by imprisonment or a fine or both.

Dated:

.....  
Judicial officer

*[Form 69 inserted in Gazette 28 Jul 2010 p. 3487-8.]*



**70. Procedendo (O. 56 r. 32)**

*(Heading as in cause or matter)*

**Writ of procedendo**

To: [Name and address]

By a writ of prohibition dated [date] you were prohibited from [set out the prohibited act].

This writ commands you to [set out the act to be done] as if that writ of prohibition had not been issued.

Dated:

.....  
Judicial officer

*[Form 70 inserted in Gazette 28 Jul 2010 p. 3488.]*

**71. Prohibition (O. 56 r. 33)**

*(Heading as in cause or matter)*

**Writ of prohibition**

To: [Name and address]

This writ prohibits you from [set out the prohibited act].

Dated:

.....  
Judicial officer

*[Form 71 inserted in Gazette 28 Jul 2010 p. 3488-9.]*

*[Form 72 deleted in Gazette 28 Jul 2010 p. 3489.]*







**77. Summons (general form) (O. 59 r. 4(1))**

In the Supreme Court No. of 20 .  
of Western Australia.

Between Plaintiff,

and

Defendant.

Let all parties concerned attend the judge [*or* master] in chambers on day the  
day of , 20 , at o'clock in the noon, on the  
hearing of an application on the part of

Dated the day of , 20 .

This summons was taken out by of  
Solicitor for

To

*[Form 77 amended in Gazette 28 Jun 2011 p. 2561.]*

**78. Order (general form) (O. 59 r. 10)**

*(Heading as in cause or matter)*

Judicial officer(s):

Date of order:

The Court orders (or declares) —

1.

2.

.....  
Judicial officer

*[Form 78 inserted in Gazette 28 Jul 2010 p. 3490.]*

*[Form 79 deleted in Gazette 21 Feb 2007 p. 563.]*

**Form 80**

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**80.      Notice of judgment or order (O. 61 r. 3(3))**

*(Heading as in cause or matter)*

Take notice that a judgment [*or order*] of this Court was given [*or made*] on the day of                      20                      , by which it was [*state substance of judgment or order*].

And also take notice that from the time of the service of this notice you [*or the infant or the represented person*                      *as may be*] will be bound by the said judgment [*or order*] to the same extent as you [*or he*] would have been if you [*or he*] had originally been made a party.

And also take notice that without entering any appearance you [*or the said infant or represented person*] may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment [*or order*] and that after entering an appearance at the Central Office, Supreme Court, Perth, you [*or the said infant or represented person*] may attend the proceedings under the said judgment [*or order*].

Dated the                      day of                      20                      .

(Signed)

To

*[Form 80 amended in Gazette 22 Jul 1984 p. 3748; 28 Jun 2011 p. 2561.]*

**81.      Advertisement for creditors (O. 61 r. 15(2))**

A.B. Deceased. By judgment [*or order*] of the Supreme Court of Western Australia, dated                      and made in an action No.                      of 20                      , In the matter of the estate of A.B. deceased, S. against P., the creditors of A.B., late of                      , who died on                      , are to send by post prepaid to                      of                      so as to reach that address on or before                      20                      , their full names, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof they will be excluded from the benefit of the said judgment [*or order*] unless the Court on application otherwise orders.

Every creditor holding any security is to produce the same at the office of the master at the Supreme Court, Perth, on the                      day of                      20                      , at                      o'clock in the                      noon, being the time appointed for adjudicating upon the claims.

Dated this                      day of                      20                      .

*(Signature and address of the solicitor of the party prosecuting the judgment or order).*

*[Form 81 amended in Gazette 28 Jun 2011 p. 2561.]*

**82. Advertisement for claimants other than creditors (O. 61 r. 15(2))**

A.B. Deceased. By judgment [*or order*] of the Supreme Court of Western Australia dated and made in an action No. \_\_\_\_\_ of \_\_\_\_\_ 20 \_\_\_\_\_, In the matter of the estate of A.B. deceased (late of \_\_\_\_\_) who died on the \_\_\_\_\_, S. against P. the following inquiry was [*or inquiries were*] directed, viz.:

*[Set out inquiry or inquiries.]*

Notice is hereby given that all persons claiming to be entitled under the said inquiry [*or inquiries*] are to send by post prepaid to \_\_\_\_\_ of \_\_\_\_\_ so as to reach that address on or before \_\_\_\_\_ 20 \_\_\_\_\_, their full names, addresses and descriptions, and full particulars of their claims or in default thereof they will be excluded from the benefit of the said judgment [*or order*] unless the Court on application otherwise orders. Claimants are to attend personally or by their solicitor before the master in his chambers, Supreme Court, Barrack Street, Perth, on \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, being the time appointed for adjudicating upon the claims.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

Master.

*[Add name and address of the solicitor of the party prosecuting the judgment or order and state on whose behalf he is acting.]*

*[Form 82 amended in Gazette 28 Jun 2011 p. 2561.]*

*[Forms 82A, 82AA and 82B deleted in Gazette 29 Apr 2005 p. 1800.]*

**Form 83**

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**83.      Appeal notice (O. 65 r. 10)**

Supreme Court of Western Australia General Division		No:
		<b>Appeal notice</b>
Parties to the appeal	Appellant Respondent	
<b>Primary court's decision</b>		
Primary court	at	
Case number		
Parties		
Date of decision		
Judicial officer		
Decision details		
<b>Appeal details</b>		
Notice of appeal	The appellant appeals to the Supreme Court (General Division) against the above decision.	
Act that allows the appeal <sup>1</sup>	section:	
Grounds of appeal <sup>2</sup>	1.	
Notice to the respondent	If you want to take part in this appeal you must lodge a Form No. 85 under the <i>Rules of the Supreme Court 1971</i> within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Leave to appeal	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the appellant legally represented in this appeal? Yes/No <sup>3</sup> Is the appellant applying for legal aid? Yes/No	
<b>Appellant's details</b>		
Appellant's geographical address <sup>3</sup>		
Appellant's service details <sup>3</sup>		



<b>Signature and date</b>		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form No. 83 —

1. State the short title of the Act under which the appeal is being made.
2. Set out the grounds in numbered paragraphs.
3. Must be in accordance with Order 71A.

*[Form 83 inserted in Gazette 21 Feb 2007 p. 572-3.]*

**84. Service certificate (O. 65 r. 10(7))**

Supreme Court of Western Australia General Division	No: <b>Service certificate</b>
Parties to the appeal	Appellant Respondent
Certificate	<p>I certify that on <i>[date]</i> at <i>[place]</i> <i>[name of server]</i> served the respondent personally with —</p> <ul style="list-style-type: none"> <li>• a copy of an appeal notice dated <i>[date]</i>; and</li> <li>• a copy of every other document that was lodged with the appeal notice.</li> </ul> <p>I undertake to lodge an affidavit of service if the Court requires me to.</p>
Signature of appellant or lawyer	<div style="display: flex; justify-content: space-between;"> <span style="width: 60%;">Appellant/Appellant's lawyer</span> <span style="width: 35%;">Date:</span> </div>

*[Form 84 inserted in Gazette 21 Feb 2007 p. 573.]*

**Form 85**

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**85.      Notice of respondent's intention (O. 65 r. 12)**

Supreme Court of Western Australia General Division		No:
		<b>Notice of respondent's intention</b>
Parties to the appeal	Appellant Respondent	
Notice [Tick one box]	<input type="checkbox"/> The respondent intends to take part in this appeal. <input type="checkbox"/> The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Cross appeal [Tick one box]	<input type="checkbox"/> The respondent is not appealing against the primary court's decision specified in the appellant's appeal notice. <input type="checkbox"/> The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.	
Last date for appealing <sup>1</sup>	Last date: Is an extension of time needed? Yes/No	
Leave to appeal <sup>1</sup>	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the respondent legally represented in this appeal? Yes/No Is the respondent applying for legal aid? Yes/No	
<b>Respondent's details</b>		
Respondent's geographical address <sup>2</sup>		
Respondent's service details <sup>2</sup>		
<b>Signature and date</b>		
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form No. 85 —

1. Complete this only if the respondent also appeals against the primary court's decision.
2. Must be in accordance with Order 71A.

*[Form 85 inserted in Gazette 21 Feb 2007 p. 574.]*

**86. Application in an appeal (O. 65 r. 13)**

Supreme Court of Western Australia General Division		No:
		<b>Application in an appeal</b>
Parties to the appeal	Appellant Respondent	
Applicant	Appellant/Respondent	
Application <sup>1</sup>	The applicant applies for —	
Conference between parties [Tick one box]	<input type="checkbox"/> The parties to this application have conferred about the issues giving rise to this application and have not resolved them. <input type="checkbox"/> The parties to this application have not conferred about the issues giving rise to this application because <sup>2</sup>	
Signature of applicant or lawyer	Applicant/Appellant's lawyer	Date:

Notes to Form No. 86 —

1. State —
  - the order or orders sought; and
  - the written law and provision under which the application is made.
2. State the reasons why the parties have not conferred.

*[Form 86 inserted in Gazette 21 Feb 2007 p. 574-5.]*

**87. Consent notice (O. 65 r. 15 & 18)**

Supreme Court of Western Australia General Division		No:
		<b>Consent notice</b>
Parties to the appeal	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

*[Form 87 inserted in Gazette 21 Feb 2007 p. 575.]*

**Form 88**

---

**88. Request for hearing (O. 65 r. 7)**

Supreme Court of Western Australia General Division		No:
		<b>Request for hearing</b>
Parties to the appeal	Appellant Respondent	
Request	The appellant/respondent requests a hearing of the matter decided provisionally by [ <i>name of judge</i> ] on [ <i>date</i> ] in this appeal.	
Signature of party requesting or lawyer	Appellant/Respondent/ Appellant's lawyer/Respondent's lawyer	Date:

*[Form 88 inserted in Gazette 21 Feb 2007 p. 575.]*

**89. Discontinuance notice (O. 65 r. 17)**

Supreme Court of Western Australia General Division		No:
		<b>Discontinuance notice</b>
Parties to the appeal	Appellant Respondent	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

*[Form 89 inserted in Gazette 21 Feb 2007 p. 575.]*

*[Forms 90-93 deleted in Gazette 21 Feb 2007 p. 572.]*

**93A. Public Notaries Act 1979 s. 8, certificate (O. 76 r. 2)**

IN THE SUPREME COURT  
OF WESTERN AUSTRALIA

IN THE MATTER of the *Public Notaries  
Act 1979*

and

IN THE MATTER of an application by  
A.B. to be appointed as a General Public  
Notary (or as a District Public Notary as  
*the case may be*).

PURSUANT to section 8 of the *Public Notaries Act 1979*, I HEREBY CERTIFY that  
A.B. of \_\_\_\_\_, a Practitioner of this Court, is  
qualified to be a General Public Notary [*or a District Public Notary for the (name of  
district)*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

Chief Justice of Western Australia.

*[Form 93A inserted in Gazette 18 Jul 1980 p. 2386; amended in  
Gazette 21 Feb 2007 p. 584; 22 Feb 2008 p. 649; 28 Jun 2011  
p. 2561.]*

**93B. Notice of intention to apply for appointment as public notary  
(O. 76 r. 3)**

*(Heading as in Form No. 93A)*

NOTICE is hereby given that (name and address), a Practitioner of the Supreme Court  
of Western Australia, intends to apply to the Supreme Court (full bench) on the  
\_\_\_\_\_, 20 \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon,  
or so soon thereafter as counsel can be heard, for appointment as a General Public  
Notary [*or as a District Public Notary for the (name of district) in the State of Western  
Australia*].

Any person desiring to object to the appointment of the applicant may be heard before  
the Supreme Court (full bench) by himself or counsel; but written notice, stating the  
grounds of objection, must be lodged at the Central office of the Supreme Court at Perth  
not less than 7 days before the day fixed for the hearing of the application.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

*[Form 93B inserted in Gazette 18 Jul 1980 p. 2386; amended in  
Gazette 29 Apr 2005 p. 1794; 21 Feb 2007 p. 584; 28 Jun 2011  
p. 2562.]*

**Form 93C**

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**93C.      Certificate of appointment as public notary Western Australia**  
**(O. 76 r. 5(1))**

IN THE SUPREME COURT

I HEREBY CERTIFY that

of

has this day been appointed as a General Public Notary for the State of Western Australia [*or as a District Public Notary for the (name of district) in the State of Western Australia*] and that his name has been entered on the Roll of Public Notaries.

Given under my hand and the seal of the Court, this                  day of  
20      .

Registrar of the Supreme Court.

*[Form 93C inserted in Gazette 18 Jul 1980 p. 2386; amended in Gazette 21 Feb 2007 p. 584; 28 Jun 2011 p. 2562.]*

**93D.      Certificate that name of public notary remains on roll**  
**(O. 76 r. 5(2))**

Western Australia

IN THE SUPREME COURT

I HEREBY CERTIFY that

of

was duly appointed as a General Public Notary for the State of Western Australia [*or as a District Public Notary for the (name of district) in the State of Western Australia*] and that his name was entered on the Roll of Public Notaries on the                  day of  
20      , and still remains on the Roll.

Given under my hand and the seal of the Court, this                  day of  
20      .

Registrar of the Supreme Court.

*[Form 93D inserted in Gazette 18 Jul 1980 p. 2387; amended in Gazette 21 Feb 2007 p. 584; 28 Jun 2011 p. 2562.]*

*[Form 94 deleted in Gazette 21 Feb 2007 p. 584.]*

*[Forms 95, 96, 97, 98 and 98A deleted in Gazette 29 Apr 2005 p. 1801.]*

**99. Escheat (Procedure) Act 1940, notice of application under  
(O. 80 r. 3)**

IN THE SUPREME COURT  
OF WESTERN AUSTRALIA.

In the matter of

deceased

*Ex parte*

The State of Western Australia.

Notice of Application for Order of Escheat.

TAKE NOTICE that an application will be made on the            day of            ,  
20    , at            o'clock in the            noon, to the judge in chambers at the  
Supreme Court, Barrack Street, Perth, for an Order that the property mentioned  
hereunder, viz:            shall be and become the property of the State by way of  
Escheat.

Any person claiming title to the abovementioned property or premises may appear at the  
time and place abovementioned in support of the claim.

State Solicitor.

*[Form 99 amended in Gazette 19 Apr 2005 p. 1301; 28 Jun 2011  
p. 2562.]*





**101. Application for extraordinary licence (O. 81C r. 2(1))**

<i>Road Traffic Act 1974 s. 76(1)</i> Supreme Court of Western Australia No:		<b>Application for extraordinary licence</b>	
Applicant	Full name		
	Address		
	Date of birth		
	Occupation		
	Employment [Tick one box]	<input type="checkbox"/> Self employed <input type="checkbox"/> Not employed <input type="checkbox"/> Employed by the employer below	
	Employer's name and address		
Details of disqualification from holding or obtaining a driver's licence	Date disqualified		
	Period disqualified		
	Reason <sup>1</sup>		
Application	Under the <i>Road Traffic Act 1974 s. 76(1)</i> I apply for an order directing the Director General to issue an extraordinary licence that allows me to drive — <ul style="list-style-type: none"> <li>• vehicles of class:</li> <li>• in these localities:</li> <li>• on these days at these times:</li> <li>• for these purposes:</li> </ul>		
Grounds for this application <sup>2</sup>	1.		
Certificate by applicant [Tick one box]	A licence suspension order made under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> is not in force against me. <input type="checkbox"/> I have not been refused an extraordinary licence by a court within the 6 months before the date of this application. <input type="checkbox"/> I made a special application for an extraordinary licence that was refused by the [name of] Court on [date], but otherwise I have not been refused an extraordinary licence by a court within the 6 months before the date of this application.		
Signature of applicant		Date	
Hearing details	This application will be heard — on [date] at [time] or as soon after as possible, at [place]		

**Form 102**

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Notes to Form No. 101 —

1. If disqualified by a court after being convicted of an offence, state the court and the offence and, if the offence was against the *Road Traffic Act 1974* s. 63, 64, 67 or 67A, state whether the conviction was the applicant's first, second or subsequent for the offence. If disqualified for some other reason, give details.
2. State the hardship and inconvenience that would result if this application were refused. Note the *Road Traffic Act 1974* s. 76(3). Use numbered paragraphs.

*[Form 101 inserted in Gazette 21 Feb 2007 p. 588.]*

**102. Application by holder to vary extraordinary licence  
(O. 81C r. 2(2))**

<i>Road Traffic Act 1974</i> s. 76(7)(a) Supreme Court of Western Australia No:		<b>Application by holder to vary extraordinary licence</b>	
Applicant	Full name		
	Address		
Extraordinary licence details	Court that ordered it		
	Date of court order		
	Licence's limitations and conditions		
Application [Tick one box]	I hold the above extraordinary licence. Under the <i>Road Traffic Act 1974</i> s. 76(7)(a) I apply for — <input type="checkbox"/> An order that varies the above limitations and conditions by:  <input type="checkbox"/> An order that cancels the above limitations and conditions and substitutes these limitations and conditions:		
Grounds for this application <sup>1</sup>	1.		
Signature of applicant		Date	
Hearing details	This application will be heard — on [date] at [time] or as soon after as possible, at [place]		

Note to Form No. 102 —

1. Note the *Road Traffic Act 1974* s. 76(9)(a). Use numbered paragraphs.

*[Form 102 inserted in Gazette 21 Feb 2007 p. 589.]*

**103.      Application by Director General to vary extraordinary licence  
(O. 81C r. 2(3))**

<i>Road Traffic Act 1974 s. 76(7)(b)</i> Supreme Court of Western Australia No:		<b>Application by Director General to vary extraordinary licence</b>	
Extraordinary licence details	Holder's name		
	Holder's address		
	Court that ordered it		
	Date of court order		
	Licence's limitations and conditions		
Application [Tick one box]	Under the <i>Road Traffic Act 1974 s. 76(7)(b)</i> the Director General applies for — <input type="checkbox"/> An order that varies the above limitations and conditions by: <input type="checkbox"/> An order that cancels the above limitations and conditions and substitutes these limitations and conditions: <input type="checkbox"/> An order that cancels the above extraordinary licence.		
Grounds for this application <sup>1</sup>	1.		
Signature of applicant	_____ for Director General	Date	_____
Hearing details	This application will be heard — on <i>[date]</i> at <i>[time]</i> or as soon after as possible, at <i>[place]</i>		

Note to Form No. 103 —

1. Note the *Road Traffic Act 1974 s. 76(9)*. Use numbered paragraphs.  
*[Form 103 inserted in Gazette 21 Feb 2007 p. 589-90.]*

**Form 104**

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**104.      Application for removal of disqualification (O. 81C r. 2(4))**

<i>Road Traffic Act 1974 s. 78</i> Supreme Court of Western Australia No:		<b>Application for removal of                  disqualification</b>	
Applicant	Full name		
	Address		
	Date of birth		
	Occupation		
Details of order disqualifying applicant from holding or obtaining a driver's licence	Court that made the order		
	Date of order		
	Period disqualified		
	Reason <sup>1</sup>		
Application	Under the <i>Road Traffic Act 1974 s. 78</i> , I apply for an order removing the above disqualification.		
Grounds for this application <sup>2</sup>	1.		
Certificate by applicant	An application made under the <i>Road Traffic Act 1974 s. 78</i> in respect of the above disqualification has not been refused in the year preceding the date of this application.		
Signature of applicant		Date	
Hearing details	This application will be heard — on <i>[date]</i> at <i>[time]</i> or as soon after as possible, at <i>[place]</i>		

Notes to Form No. 104 —

1. State the offence(s) for which the applicant was disqualified and, if the offence was against the *Road Traffic Act 1974 s. 63, 64, 67 or 67A*, state whether the conviction was the applicant's first, second or subsequent for the offence. If disqualified for some other reason, give details.
2. Note the *Road Traffic Act 1974 s. 78(5)*. Use numbered paragraphs.

*[Form 104 inserted in Gazette 21 Feb 2007 p. 590.]*

**105. Commercial Arbitration Act 1985, title of proceedings (O. 81D r. 2)**

In the Supreme Court Arb. No. of 20  
of Western Australia  
In the matter of the *Commercial  
Arbitration Act 1985*  
and  
In the matter of an arbitration  
Between A.B. and C.D.

*[Form 105 inserted in Gazette 20 Jun 1986 p. 2045; amended in  
Gazette 28 Jun 2011 p. 2562.]*

**106. Commercial Arbitration Act 1985, notice of payment into court  
(O. 81D r. 12)**

*(Title as in Form No. 105)*

Take notice that (name of party paying in) has paid into court \$ \*with  
denial of liability and says that that sum is enough to satisfy the claim of (identify party)  
\* for

The name of the \*arbitrator/\*umpire is

To:

Dated, etc.

(Signed)

Solicitor for

whose address for service is

\*Strike out whichever is not applicable

*[Form 106 inserted in Gazette 20 Jun 1986 p. 2045; amended in  
Gazette 28 Jun 2011 p. 2562.]*

**107. Commercial Arbitration Act 1985, notice of acceptance of sum paid  
into court (O. 81D r. 13)**

*(Title as in Form 105)*

Take notice that (name of party accepting) accepts the sum of \$ paid by  
(name of party paying in) into court in satisfaction of the claim in respect of which it is  
paid in.

To (name of party paying in)

And to the registrar

Dated, etc.

(Signed)

Solicitor for the claimant

Whose address for service is

**Form 108**

[Form 107 inserted in Gazette 20 Jun 1986 p. 2045; amended in Gazette 28 Jun 2011 p. 2562.]

**108. Criminal and Found Property Disposal Act 2006, claim under (O. 81G r. 3)**

Supreme Court of Western Australia General Division		No: <b>Criminal and Found Property Disposal Act 2006 claim</b>
Parties	Claimant Defendant	
Claim <sup>1</sup>	This claim is made under the <i>Criminal and Found Property Disposal Act 2006</i> section In relation to the property described below, the claimant applies for — 1.	
Property to which claim relates <sup>2</sup>		
Estimated value <sup>3</sup>	\$	
Hearing details	This claim will be heard on 20 not before a.m./p.m. at the Supreme Court, Stirling Gardens, Barrack Street, Perth.	
<b>Claimant's details</b>		
Claimant's geographical address <sup>4</sup>		
Claimant's service details <sup>4</sup>		
<b>Signature and date</b>		
Signature of claimant or solicitor	Claimant/Claimant's solicitor	Date:

Notes to Form No. 108 —

- State the section(s) of the *Criminal and Found Property Disposal Act 2006* under which the claim is made.  
State the order(s) the claimant wants the Court to make in numbered paragraphs.
- Describe the property to which the claim relates.
- State the estimated value of the property.
- Must be in accordance with Order 71A.

[Form 108 inserted in Gazette 22 Feb 2008 p. 648-9.]

### **Schedule 3 — Payment into and out of court**

[O. 24 r. 12]

*[Heading inserted in Gazette 28 Jun 2011 p. 2563.]*

*[1. Deleted in Gazette 21 Feb 2007 p. 596.]*

2. When any party intends to pay money into court the provisions of regulation 15 shall be complied with. The Accountant, on receiving the money, shall give an official receipt for the money, setting out the particulars. Where the money is paid in upon a notice or pleading, a signed copy of such notice or pleading must first have been filed.

3. Money paid into court shall be paid by the Accountant to the Treasurer, except when the money is to be invested by the Public Trustee, in which case it shall be transferred to the Public Trustee.

4. Where money is paid into court under a judgment or order, an office copy of the judgment or order shall be lodged with the Accountant forthwith by the person or party making the payment in or his solicitor. If the money or any part of the money is transferred to the Public Trustee for investment the office copy of the judgment or order shall be forwarded by the Accountant to the Public Trustee.

*[5. Deleted in Gazette 5 Apr 1991 p. 1401.]*

6. Where money is paid into court as security for costs, if after the cause or matter has been finally disposed of, the party who paid the money in is entitled to have the money paid out to him, the taxing officer shall on the taxation of costs give to such a party a certificate that he is so entitled. Upon production of such certificate to the Accountant, unless an order restraining the payment out has previously been lodged with the Accountant, the money mentioned in the certificate will, on request, be paid out to the party mentioned in the certificate as entitled thereto, or on his written authority to his solicitor. In all other cases money paid into court as security for costs will not be paid out except on production to the Accountant of an order of the Court or a judge.

7. On bespeaking payment out of court of money paid in on a notice or pleading, an office copy of the original receipted notice or pleading must be lodged at the office of the Accountant.

8. Where money is to be paid out under an order or authority, on bespeaking the payment out, the order or authority must be lodged at the Central Office, and after having been examined by the Principal Registrar must be filed. An office copy of the order or authority shall also be lodged with the Accountant by the solicitor or party seeking the payment out.

*[Regulation 8 amended in Gazette 14 Dec 1979 p. 3872.]*

9. Where the money to be paid out has been transferred to the Public Trustee for investment, the documents required under regulations 7 and 8 to be lodged with the Accountant, shall be lodged instead with the Public Trustee, and the Public Trustee shall pay such money to the person entitled thereto.

*[Regulation 9 amended in Gazette 28 Jun 2011 p. 2555.]*

10. Every authority for the payment of money out of court must be attested by a witness, whose residence and description must be added to his attestation.

11. Each sum paid into court shall, as regards its payment out of court, be deemed when the time for payment out arrives, to be money standing to the credit of the Supreme Court.

12. All payments out of court shall be made by the Accountant or Public Trustee as the case may be, in favour of the party claiming to receive the money on the production by him of a form or request signed by the party entitled to receive the money or his solicitor, and duly marked by the Principal Registrar as approved as set out in regulation 15. On the written authority of the party, the payment out may be made to his solicitor.

*[Regulation 12 amended in Gazette 14 Dec 1979 p. 3872; 26 Aug 1984 p. 4415.]*

13. Whenever the order is required to be drawn in favour of any person not a solicitor of the Supreme Court, the Accountant or Public Trustee as the case may be, may require him to be identified by a solicitor. If such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor.

14. Where an order directs that money paid into court is to be invested, the Public Trustee shall make the investment.



- 15.** (1) In all cases in which it is desired to pay money into court or to receive money out of court, a form of request signed by the party so desiring or his solicitor, shall be presented to the Principal Registrar and be by him examined, and if he shall be of opinion that such request may be legally complied with, he shall mark his approval thereof.
- (2) The request so marked shall then be presented by such party or his solicitor to the Accountant by whom the money mentioned in such request shall be received, or (if it is not money which has been invested by the Public Trustee) paid out, as the case may require.
- (3) The Accountant shall then indorse on the request a short note to the effect that the said money has been received or paid by him, as the case may be, and the request so indorsed shall be forthwith returned to the Central Office and filed there.
- (4) If the money which it is desired to receive out of court has been invested by the Public Trustee, the request marked by the Principal Registrar shall be presented to the Public Trustee, who upon payment shall indorse the request accordingly and forthwith forward it to the Central Office to be filed there.

*[Regulation 15 amended in Gazette 14 Dec 1979 p. 3872.]*

- 16.** The Principal Registrar shall furnish to the Accountant or Public Trustee, free of charge an office copy of any document filed with the Principal Registrar, which the Accountant or Public Trustee may reasonably require for the purpose of carrying out his duties under this Schedule.

*[Regulation 16 amended in Gazette 14 Dec 1979 p. 3872.]*

*[Fourth Schedule deleted in Gazette 21 Feb 2007 p. 596.]*

*[Fifth Schedule deleted in Gazette 27 Jul 2001 p. 3895.]*

*[Sixth Schedule deleted in Gazette 16 Jul 1999 p. 3201.]*

*[Seventh Schedule deleted in Gazette 21 May 2004 p. 1712.]*



## Notes

- <sup>1</sup> This is a compilation of the *Rules of the Supreme Court 1971* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Rules of the Supreme Court 1971</i>	18 Nov 1971 p. 4397-758	14 Feb 1972 (see O. 1 r. 2(1))
Untitled rules	17 Dec 1971 p. 5266	14 Feb 1972 (see r. 1)
Untitled rules	7 Jun 1972 p. 1703	7 Jun 1972
Untitled rules	15 Jun 1973 p. 2247-52	15 Jun 1973
Untitled rules	10 Sep 1973 p. 3425-36	1 Oct 1973 (see r. 2)
Untitled rules	9 Nov 1973 p. 4162-6	Rules other than r. 5 and 6: 9 Nov 1973 (see r. 2(1)); r. 5 and 6: 1 Jan 1974 (see r. 2(2)) and <i>Gazette</i> 14 Dec 1973 p. 4528)
Untitled rules	7 Dec 1973 p. 4488-9	1 Jan 1974 (see r. 2)
Untitled rules	29 Mar 1974 p. 1037-40	15 Apr 1974 (see r. 2)
Untitled rules	29 Mar 1974 p. 1041-2 (erratum 5 Apr 1974 p. 1195)	29 Mar 1974
<i>Supreme Court (Costs) Rules 1974</i>	30 Aug 1974 p. 3242-3	30 Aug 1974 (see r. 1)
Untitled rules	10 Jan 1975 p. 50-5	1 Mar 1975 (see r. 2 and <i>Gazette</i> 14 Feb 1975 p. 505)
Untitled rules	23 May 1975 p. 1404	1 Jun 1975 (see r. 2)
Untitled rules	3 Oct 1975 p. 3769-71	1 Nov 1975 (see r. 2)

Citation	Gazettal	Commencement
Untitled rules	19 Dec 1975 p. 4571-7	1 Jan 1976 (see r. 2)
Untitled rules	2 Apr 1976 p. 1039-41	2 Apr 1976 (see r. 2)
Untitled rules	14 May 1976 p. 1431	1 Jun 1976 (see r. 2)
<b>Reprint of the <i>Rules of the Supreme Court 1971</i> dated 25 May 1976</b> (see <i>Gazette</i> 9 Aug 1976 p. 2725-3030) (includes amendments listed above except those in 14 May 1976)		
Untitled rules	27 Aug 1976 p. 3223-6	13 Sep 1976 (see r. 2)
Untitled rules	12 Nov 1976 p. 4275-7	17 Jun 1977 (see r. 2 and <i>Gazette</i> 17 Jun 1977 p. 1811)
Untitled rules	24 Jun 1977 p. 1914-16	1 Sep 1977 (see r. 2)
Untitled rules	7 Oct 1977 p. 3602-3	1 Nov 1977 (see r. 2)
<i>Supreme Court (Costs) Rules 1978</i>	13 Jan 1978 p. 117	13 Jan 1978 (see r. 2)
Untitled rules	23 Jun 1978 p. 2025-30	1 Aug 1978 (see r. 2)
Untitled rules	13 Oct 1978 p. 3698-704	Rules other than r. 3-5, 9-11: 13 Oct 1978 (see r. 2); balance: 1 Jan 1979 (see r. 2)
<i>Supreme Court (Miscellaneous Amendments) Rules 1979</i>	14 Dec 1979 p. 3869-76	11 Feb 1980 (see r. 1 and <i>Gazette</i> 8 Feb 1980 p. 383)
<i>Supreme Court (Costs) Rules 1980</i>	21 Mar 1980 p. 960-2	21 Mar 1980 (see r. 2)
Untitled rules	13 Jun 1980 p. 1719-22	1 Jul 1980 (see r. 2)
Untitled rules	18 Jul 1980 p. 2384-8	1 Aug 1980 (see r. 2 and <i>Gazette</i> 1 Aug 1980 p. 2537)
Untitled rules	1 Aug 1980 p. 2550-6	1 Aug 1980 (see r. 2)
Untitled rules	1 Aug 1980 p. 2558	1 Aug 1980 (see r. 2)
<b>Reprint of the <i>Rules of the Supreme Court 1971</i> dated 11 May 1981</b> (see <i>Gazette</i> 11 Jun 1981 p. 1731-2046) (includes amendments listed above)		

## Rules of the Supreme Court 1971

Citation	Gazettal	Commencement
Untitled rules	20 Nov 1981 p. 4724-9	20 Nov 1981 (see r. 2)
Untitled rules	2 Jul 1982 p. 2315-20	2 Jul 1982 (see r. 2)
<i>Supreme Court (Costs) Rules 1982</i>	2 Jul 1982 p. 2320-1	2 Jul 1982 <sup>6</sup> (see r. 1)
Untitled rules	30 Jul 1982 p. 2946-7	30 Jul 1982
Untitled rules	31 Mar 1983 p. 1090-1	20 Jun 1983 (see r. 2 and <i>Gazette</i> 3 Jun 1983 p. 1675)
Untitled rules	23 Sep 1983 p. 3797-8	23 Sep 1983
Untitled rules	20 Jan 1984 p. 129-34	20 Jan 1984 (see r. 2)
Untitled rules	30 Nov 1984 p. 3951-6	30 Nov 1984
<i>Supreme Court (Costs) Rules 1985</i>	15 Feb 1985 p. 583-7 (erratum 22 Feb 1985 p. 658)	15 Feb 1985 (see r. 1)
<b>Reprint of the Rules of the Supreme Court 1971 as at 12 Dec 1985</b> (see <i>Gazette</i> 18 Mar 1986 p. 779-1179) (includes amendments listed above)		
<i>Supreme Court (Costs) Rules No. 2 1985</i>	13 Dec 1985 p. 4760-4 (erratum 3 Jan 1986 p. 11)	1 Jan 1986 (see r. 1)
Untitled rules	20 Jun 1986 p. 2040-5	20 Jun 1986
<i>Rules of the Supreme Court 1971 Amendment Rules (No. 2) 1986</i>	4 Jul 1986 p. 2280-6	4 Jul 1986 (see r. 3)
<i>Rules of the Supreme Court 1971 Amendment Rules 1987</i>	18 Dec 1987 p. 4456-7	1 Jan 1988 (see r. 3)
<i>Supreme Court Amendment Rules 1988</i>	1 Jul 1988 p. 2140-2	1 Jul 1988 (see r. 2 and <i>Gazette</i> 24 Jun 1988 p. 1995)
<i>Supreme Court Amendment Rules 1989</i>	15 Dec 1989 p. 4520	1 Jan 1990 (see r. 2)

Citation	Gazettal	Commencement
<i>Supreme Court Amendment Rules (No. 2) 1990</i>	23 Feb 1990 p. 1153-6	23 Feb 1990
<i>Supreme Court Amendment Rules 1990</i>	30 Mar 1990 p. 1573-4	30 Mar 1990 (see r. 2)
<i>Supreme Court Amendment Rules (No. 3) 1990</i>	17 Aug 1990 p. 4071-8	1 Sep 1990 (see r. 2)
<i>Supreme Court Amendment Rules (No. 7) 1990</i>	9 Nov 1990 p. 5526	9 Nov 1990 (see r. 2)
<i>Supreme Court Amendment Rules (No. 6) 1990</i>	16 Nov 1990 p. 5698-9	16 Nov 1990 (see r. 2)
<i>Supreme Court Amendment Rules (No. 8) 1990</i>	30 Nov 1990 p. 5900-1	30 Nov 1990
<i>Supreme Court Amendment Rules (No. 4) 1991</i>	8 Feb 1991 p. 582-8	8 Mar 1991 (see r. 2 and <i>Gazette</i> 8 Mar 1991 p. 1029-30)
<i>Supreme Court Amendment Rules 1991</i>	5 Apr 1991 p. 1397-8	5 Apr 1991
<i>Supreme Court Amendment Rules (No. 3) 1991</i>	5 Apr 1991 p. 1398-401	5 Apr 1991
<i>Supreme Court Amendment Rules (No. 2) 1991</i>	19 Apr 1991 p. 1714-19	1 Jun 1991 (see r. 2 and <i>Gazette</i> 17 May 1991 p. 2455)
<i>Supreme Court Amendment Rules (No. 4) 1991</i>	7 Feb 1992 p. 676-93	7 Feb 1992
<i>Supreme Court Amendment Rules (No. 6) 1991</i>	28 Feb 1992 p. 995-8	28 Feb 1992
<i>Supreme Court Amendment Rules 1992</i>	5 Jun 1992 p. 2278-82	5 Jun 1992
<i>Supreme Court Amendment Rules (No. 3) 1992</i>	21 Aug 1992 p. 4121-4	1 Sep 1992 (see r. 2)
<i>Supreme Court Amendment Rules (No. 4) 1992</i>	30 Oct 1992 p. 5309-10	30 Oct 1992
<i>Supreme Court Amendment Rules (No. 5) 1992</i>	30 Oct 1992 p. 5310-11	30 Oct 1992
<i>Supreme Court Amendment Rules (No. 6) 1992</i>	26 Jan 1993 p. 823-30	26 Jan 1993
<i>Supreme Court Amendment Rules 1993</i>	26 Mar 1993 p. 1840-6	26 Mar 1993
<i>Supreme Court Amendment Rules (No. 2) 1993</i>	20 Apr 1993 p. 2103-4	20 Apr 1993

## Rules of the Supreme Court 1971

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Citation	Gazettal	Commencement
<i>Supreme Court Amendment Rules (No. 3) 1993</i>	29 Jun 1993 p. 3166-7	29 Jun 1993
<i>Supreme Court Amendment Rules (No. 4) 1993</i>	17 Sep 1993 p. 5054-61	17 Sep 1993
<i>Supreme Court Amendment Rules (No. 6) 1993</i>	1 Dec 1993 p. 6451-2	1 Dec 1993 (see r. 2 and <i>Gazette</i> 30 Nov 1993 p. 6439)
<i>Supreme Court Amendment Rules 1994</i> <sup>7</sup>	1 Mar 1994 p. 784-93	1 Mar 1994
<i>Supreme Court Amendment Rules (No. 4) 1994</i>	28 Jun 1994 p. 3047-141	1 Aug 1994 (see r. 2)
<i>Supreme Court Amendment Rules (No. 2) 1994</i>	1 Jul 1994 p. 3238-9	1 Jul 1994
<i>Supreme Court Amendment Rules (No. 3) 1994</i>	22 Jul 1994 p. 3746-8	22 Jul 1994
<i>Supreme Court Amendment Rules (No. 5) 1994</i>	26 Aug 1994 p. 4410-13	26 Aug 1994
<i>Supreme Court Amendment Rules (No. 7) 1994</i>	26 Aug 1994 p. 4414-15	26 Aug 1994
<i>Supreme Court Amendment Rules (No. 6) 1994</i>	9 Sep 1994 p. 4630	9 Sep 1994
<i>Supreme Court Amendment Rules (No. 8) 1994</i>	11 Nov 1994 p. 5701-2	11 Nov 1994
<b>Reprint of the Rules of the Supreme Court 1971 as at 21 Nov 1994</b> (includes amendments listed above)		
<i>Supreme Court Amendment Rules 1995</i>	24 Jan 1995 p. 269-72	24 Jan 1995
<i>Supreme Court Amendment Rules (No. 2) 1995</i>	24 Jan 1995 p. 272-3	24 Jan 1995
<i>Supreme Court Amendment Rules (No. 4) 1995</i>	7 Jul 1995 p. 2819	7 Jul 1995
<i>Supreme Court Amendment Rules (No. 5) 1995</i>	24 Oct 1995 p. 4917-21	24 Oct 1995
<i>Supreme Court Amendment Rules (No. 6) 1995</i>	10 Nov 1995 p. 5246-7	10 Nov 1995
<i>Supreme Court Amendment Rules 1996</i>	9 Aug 1996 p. 3949-51	9 Aug 1996
<i>Supreme Court Amendment Rules (No. 3) 1996</i>	13 Sep 1996 p. 4568	7 Apr 1997 (see r. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)

Citation	Gazettal	Commencement
<i>Supreme Court Amendment Rules (No. 4) 1996</i>	28 Oct 1996 p. 5671-712	1 Nov 1996 (see r. 2)
<i>Supreme Court Amendment Rules (No. 2) 1997</i> <sup>8</sup>	1 Jul 1997 p. 3258-60	21 Jul 1997 (see r. 2 and correction in <i>Gazette</i> 4 Jul 1997 p. 3480)
<i>Supreme Court Amendment Rules (No. 1) 1998</i>	6 Mar 1998 p. 1177	6 Mar 1998
<i>Supreme Court Amendment Rules (No. 2) 1998</i>	6 Mar 1998 p. 1178	6 Mar 1998
<i>Supreme Court Amendment Rules 1999</i>	16 Jul 1999 p. 3187-200 (as amended 5 Nov 1999 p. 5632)	16 Jul 1999
<i>Supreme Court Amendment Rules (No. 2) 1999</i>	16 Jul 1999 p. 3201	8 Jan 2000 (see r. 2 and <i>Gazette</i> 7 Jan 2000 p. 19)
<i>Supreme Court Amendment Rules (No. 5) 1999</i>	5 Nov 1999 p. 5625-33	5 Nov 1999
<i>Supreme Court Amendment Rules (No. 4) 1999</i>	26 Nov 1999 p. 5903-5	26 Nov 1999 (see r. 2)
<i>Supreme Court Amendment Rules 2000</i>	10 Mar 2000 p. 1121	10 Mar 2000
<i>Supreme Court Amendment Rules (No. 2) 2000</i>	8 May 2000 p. 2159-232	1 Jun 2000 (see r. 2)
<i>Supreme Court Amendment Rules (No. 3) 2000</i>	30 Jun 2000 p. 3417-19	30 Jun 2000
<b>Reprint of the Rules of the Supreme Court 1971 as at 1 Dec 2000</b> (includes amendments listed above)		
<i>Supreme Court Amendment Rules (No. 5) 2000</i>	29 Dec 2000 p. 7917-19	5 Feb 2001 (see r. 2 and <i>Gazette</i> 2 Jan 2001 p. 7)
<i>Supreme Court Amendment Rules (No. 2) 2001</i>	23 Jan 2001 p. 555-61	23 Jan 2001
<i>Supreme Court Amendment Rules (No. 3) 2001</i>	23 Jan 2001 p. 561-3	23 Jan 2001
<i>Supreme Court Amendment Rules 2001</i>	2 Feb 2001 p. 697-701	2 Feb 2001
<i>Supreme Court Amendment Rules (No. 7) 2001</i>	29 May 2001 p. 2701-3	30 Jun 2001 (see r. 2)

## Rules of the Supreme Court 1971

Citation	Gazettal	Commencement
<i>Supreme Court Amendment Rules (No. 5) 2001</i>	27 Jul 2001 p. 3895-6	27 Jul 2001
<i>Supreme Court Amendment Rules (No. 8) 2001</i>	5 Oct 2001 p. 5474-5	5 Oct 2001
<i>Supreme Court Amendment Rules 2002</i>	12 Apr 2002 p. 1903-4	12 Apr 2002
<i>Supreme Court Amendment Rules (No. 2) 2002</i>	27 Sep 2002 p. 4829-34	27 Sep 2002
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 36</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 16</i>	15 Aug 2003 p. 3685-92	15 Sep 2003 (see r. 2)
<i>Supreme Court Amendment Rules 2004</i>	21 May 2004 p. 1712	1 Jun 2004 (see r. 2)
<i>Supreme Court Amendment Rules (No. 4) 2004</i>	10 Aug 2004 p. 3185	10 Aug 2004
<b>Reprint 6: The Rules of the Supreme Court 1971 as at 15 Oct 2004</b> (includes amendments listed above)		
<i>Courts and Legal Practice (Consequential Amendments) Regulations 2005 r. 12</i>	19 Apr 2005 p. 1294-302	19 Apr 2005
<i>Supreme Court Amendment Rules 2005</i>	29 Apr 2005 p. 1791-6	2 May 2005 (see r. 2)
<i>Supreme Court Amendment Rules (No. 2) 2005</i>	29 Apr 2005 p. 1797-802	2 May 2005 (see r. 2)
<i>Supreme Court Amendment Rules 2007</i>	21 Feb 2007 p. 531-96	1 Mar 2007 (see r. 2)
<i>Supreme Court Amendment Rules 2008</i>	22 Feb 2008 p. 629-56	Pt. 1: 22 Feb 2008 (see r. 2(a)); Pt. 2: 23 Feb 2008 (see r. 2(b)); Pt. 3: 25 Feb 2008 (see r. 2(c))
<b>Reprint 7: The Rules of the Supreme Court 1971 as at 11 Apr 2008</b> (includes amendments listed above)		
<i>Supreme Court Amendment Rules 2009</i>	6 Feb 2009 p. 243-5	r. 1 and 2: 6 Feb 2009 (see r. 2(a)); Rules other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)



Citation	Gazettal	Commencement
<i>Supreme Court Amendment Rules (No. 2) 2009</i>	3 Jul 2009 p. 2682-700 (printer's correction 7 Jul 2009 p. 2719)	Pt. 1: 3 Jul 2009 (see r. 2(a)); Pt. 3: 4 Jul 2009 (see r. 2(c)); Pt. 2: 1 Nov 2010 (see r. 2(b) and the <i>Hague Convention on the Service Abroad of Judicial Extrajudicial Documents in Civil or Commercial Matters 1965</i> )
<i>Supreme Court Amendment Rules (No. 3) 2009</i>	22 Dec 2009 p. 5273-4	1 Jan 2010 (see r. 2 and <i>Gazette</i> 31 Dec 2009 p. 5327)
<i>Supreme Court Amendment Rules 2010</i>	28 Jul 2010 p. 3433-90	Pt. 1: 28 Jul 2010 (see r. 2(a)); Rules other than Pt. 1: 29 Jul 2010 (see r. 2(b))
<i>Supreme Court Amendment Rules 2011</i>	28 Jun 2011 p. 2551-63	r. 1 and 2: 28 Jun 2011 (see r. 2(a)); Rules other than r. 1 and 2: 12 Jul 2011 (see r. 2(b))
<b>Reprint 8: The Rules of the Supreme Court 1971 as at 15 Jul 2011</b> (includes amendments listed above)		
<i>Supreme Court Amendment Rules 2012</i>	12 Jun 2012 p. 2445-53	r. 1 and 2: 12 Jun 2012 (see r. 2(a)); Rules other than r. 1 and 2: 26 Jun 2012 (see r. 2(b))
<i>Supreme Court Amendment Rules (No. 3) 2012 r. 1 and 2</i>	3 Aug 2012 p. 3748-56	3 Aug 2012 (see r. 2(a))

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Supreme Court Amendment Rules (No. 3) 2012 r. 3-8</i> <sup>9</sup>	3 Aug 2012 p. 3748-56	Operative on commencement of the <i>Trans-Tasman Proceedings Act 2010</i> (Cwlth) s. 3 to 110 (see r. 2(b))
<i>Supreme Court Amendment Rules (No. 2) 2013 r. 3-6</i> <sup>10</sup>	15 Mar 2013 p. 1205-7	Operative on commencement of the <i>Commercial Arbitration Act 2012</i> s. 40 (see r. 2(b))

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Citation	Gazettal	Commencement
<a href="#">Supreme Court Amendment Rules 2013 r. 3-7<sup>11</sup></a>	<a href="#">23 Apr 2013 p. 1590-7</a>	<a href="#">7 May 2013 (see r. 2(b))</a>

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- <sup>2</sup> This rule is merely declaratory of an Order in Council gazetted 16 Sep 1983 whereby the vacations of the Supreme Court are regulated.
- <sup>3</sup> Formerly referred to as *The Partnership Act 1895*, the short title of which was changed to the *Partnership Act 1895* by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 144. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- <sup>4</sup> Formerly referred to the *Gas Pipelines Access (Western Australia) Act 1998*, the short title of which was changed to the *Energy Arbitration and Review Act 1998* by the *National Gas Access (WA) Act 2009* s. 26. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- <sup>5</sup> The *Gas Pipelines Access Law* ceased to apply when the *National Gas Access (WA) Act 2009* commenced on 1 Jan 2010.
- <sup>6</sup> The commencement date of 1 Jul 1982 that was specified was before the date of gazettal.
- <sup>7</sup> The *Supreme Court Amendment Rules 1994* r. 14 is a transitional provision that has no further effect.
- <sup>8</sup> Disallowed on 10 Mar 1998, see *Gazette* 13 Mar 1998 p. 1389.
- <sup>9</sup> On the date as at which this compilation was prepared, the *Supreme Court Amendment Rules (No. 3) 2012* r. 3-8 had not come into operation. They read as follows:

**3. Rules amended**

These rules amend the *Rules of the Supreme Court 1971*.

**4. Order 10 amended**

- (1) In Order 10 rule 1A(2) delete “Australia” and insert:

Australia, except a writ served on a person in New Zealand under the *Trans-Tasman Proceedings Act 2010* (Commonwealth),

- (2) After Order 10 rule 1A(2) insert:

(3A) A writ served on a person in New Zealand has no effect unless it is served under the *Trans-Tasman Proceedings Act 2010* (Commonwealth).

**5. Order 36B amended**

Delete Order 36B rule 3(1) and insert:

- (1) A subpoena must be in the form of Form No. 22, unless it is a subpoena for which leave to serve the subpoena in New Zealand is to be sought under Order 39A, in which case the subpoena must be in the form of Form No. 23.

**6. Order 39A heading replaced and Order 39A Division 1 heading inserted**

Delete the heading to Order 39A and insert:

**Order 39A — *Trans-Tasman Proceedings Act 2010*  
(Commonwealth) rules**

**Division 1 — General**

**7. Order 39A amended**

- (1) In Order 39A rule 1(1) delete the definition of *Act* and insert:

*Act* means the *Trans-Tasman Proceedings Act 2010*  
(Commonwealth).

- (2) In Order 39A rule 2(1) and (2) after “proceedings” insert:

and NZ judgments

- (3) After Order 39A rule 2 insert:

**Division 2 — Subpoenas to be served in New Zealand**

- (4) In Order 39A rule 3(1) delete “Leave” and insert:

For the purposes of section 31 of the Act, leave

- (5) In Order 39A rule 3(2)(g) delete “14(2) or (3)” and insert:

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- (6) Delete Order 39A rule 3(3).

Note: The heading to amended Order 39A rule 3 is to read:  
**Leave to serve subpoena (Act s. 31)**

- (7) Delete Order 39A rule 4(1) and insert:

- (1) An application to the Court under section 35(1) of the Act must be made by filing an application in the form of Form No. 31A.

- (8) Delete Order 39A rule 4(4) and insert:

- (4) In addition to the requirements of section 35(3) of the Act, the application must contain the applicant's telephone number.

- (9) Delete Order 39A rule 4(6) and insert:

- (6) For the purposes of section 35(4) of the Act, the Principal Registrar must serve the copy of the application, and any accompanying affidavit, in accordance with Order 72 rule 6.

- (10) Delete Order 39A rule 4(8) and (9) and insert:

- (8) A request made under section 36(5) of the Act must be made by filing a notice in the form of Form No. 31B not later than 7 days after —
- (a) if the request is made by the person named in the subpoena, the date on which the application was filed; or
  - (b) otherwise, the date on which the application is served on the party who obtained leave to serve the subpoena.

- (9) A request made under section 36(6)(b) of the Act that is not made in the application must be made by filing a request in the form of Form No. 31C.

Note: The heading to amended Order 39A rule 4 is to read:  
**Setting aside subpoena (Act s. 35 and 36)**

- (11) Before Order 39A rule 5(1) insert:

(1A) In this rule —  
*certificate* means a certificate referred to in section 38 of the Act.

- (12) In Order 39A rule 5(1) delete “under section 16 of the Act, in accordance with Form No. 31D,”.

- (13) In Order 39A rule 5(2)(a) delete “accordance with” and insert:

the form of

- (14) In Order 39A rule 5(3):

(a) delete paragraph (a) and insert:

(a) an affidavit of service of —

- (i) the subpoena; and
  - (ii) the order giving leave for the subpoena to be served in New Zealand; and
  - (iii) the notice referred to in section 32(2) of the Act;
- and

(b) delete paragraph (b)(i).

- (15) After Order 39A rule 5(3) insert:

- (4) It is not necessary to attach the documents referred to in subrule (3)(a) to the affidavit of service.
- (5) A certificate must be in the form of Form No. 31D.

Note: The heading to amended Order 39A rule 5 is to read:  
**Failure to comply with subpoena (Act s. 38)**

- (16) After Order 39A rule 5 insert:

**Division 3 — Remote appearances from New Zealand**

**6A. Appearances by audio link or audiovisual link (Act s. 48)**

- (1) An application for leave under section 48(1) of the Act may be made orally or by summons.
- (2) The application must be supported by an affidavit stating the following —
  - (a) the reasons why the applicant or the applicant’s lawyer can more conveniently participate in the hearing from New Zealand;
  - (b) which audio link or audiovisual link facilities are available for the hearing or can reasonably be made available;
  - (c) that the requirements of section 51 or 52, as the case requires, of the Act can be met;
  - (d) if leave is sought for the applicant’s lawyer to appear before the Court, and the lawyer is not entitled to appear before the Court —
    - (i) that the lawyer is a qualified NZ lawyer; and
    - (ii) the applicant ordinarily resides or, if the applicant is not an individual, has its principal place of business, in New Zealand.

- (17) In Order 39A rule 6(1) delete “a direction under section 25” and insert:

leave under section 50(1)

- (18) In Order 39A rule 6(2):

- (a) in paragraph (g) before “facilities” insert:

audio link or audiovisual link

- (b) in paragraph (h) delete “26 or 27” and insert:

51 or 52, as the case requires,

- (19) In Order 39A rule 6(3) delete “the application,” and insert:

leave,

- (20) In Order 39A rule 6(4) delete “video link or telephone, the Principal Registrar may be directed” and insert:

audio link or audiovisual link, the Court may direct the Principal Registrar

Note: The heading to amended Order 39A rule 6 is to read:  
**Evidence by audio link or audiovisual link (Act s. 50)**

- (21) Delete Order 39A rule 7.  
(22) At the end of Order 39A insert:

#### **Division 4 — Registration and enforcement of NZ judgments**

##### **7. Setting aside registration of NZ judgment (Act s. 72)**

- (1) An application under section 72(2) of the Act must be made by filing a notice of originating motion in the form of Form No. 64.
- (2) The application must be supported by an affidavit setting out the facts and grounds on which the application is made.
- (3) The notice of originating motion and the accompanying affidavit must be served on the entitled person not less than 7 clear days before the day named in the notice for hearing the motion.

##### **8. Stay of enforcement of registered NZ judgment (Act s. 76)**

- (1) An application under section 76(3) of the Act must be made by filing a notice of originating motion in the form of Form No. 64.
- (2) The application must be supported by an affidavit setting out the facts and grounds on which the application is made.

- (3) The notice of originating motion and the accompanying affidavit must be served on the entitled person not less than 7 clear days before the day named in the notice for hearing the motion.

**8. Schedule 2 amended**

- (1) In Schedule 2 Form 23 delete “section 16 of the *Evidence Amendment Act 1994* of New Zealand.” and insert:

the *Evidence Act 2006* (New Zealand) section 165.

- (2) Delete Schedule 2 Form 23A.

- (3) In Schedule 2 Form 31A:

- (a) delete “The applicant seeks” and insert:

Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 35, the applicant seeks

- (b) delete “video link or telephone.” and insert:

audio link or audiovisual link.

- (c) delete “[*Applicant’s address, telephone number and, if applicable, fax number for service.*]” and insert:

[*Applicant’s address for service and telephone number.*]

- (4) Delete Schedule 2 Form 31B and insert:

**31B. Request for application to be determined with hearing (O. 39A r. 4(8))**

(*Heading as in order for leave to issue subpoena*)

Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 36(5), the [identify person] requests that the application to set aside the subpoena [*identify subpoena*] be determined with a hearing.

Dated:



*[Signature of applicant  
or applicant's solicitor]*

- (5) Delete Schedule 2 Form 31C and insert:

**31C. Request to appear remotely in hearing to set aside subpoena (O. 39A r. 4(9))**

*(Heading as in order for leave to issue subpoena)*

1. Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 36(6)(b), the *[identify person]* requests to appear remotely in the hearing of the application to set aside the subpoena *[identify subpoena]*.
2. The applicant was *[served/purportedly served\*]* with the subpoena in New Zealand under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) Part 5 Division 2.
3. A remote appearance medium is, or can reasonably be made, available for the hearing.
4. The remote appearance can be made from *[place in New Zealand]*.
5. The *[audio link/audiovisual link\*]* facilities are available at *[courtroom or other place in New Zealand where remote appearance is to be made]*.
6. I estimate the remote appearance will take *[amount of time for remote appearance]*.

*\*[Select one]*

Dated:

*[Signature of applicant  
or applicant's solicitor]*

- (6) Delete Schedule 2 Form 31D and insert:

**31D. Certificate of non-compliance with subpoena (O. 39A r. 5)**

To: The High Court of New Zealand  
*[Address]*

Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 38, the [issuing Australian court] certifies as follows —

1. On [date] under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 31, the [issuing Australian court] gave [identify person] leave to serve a subpoena on [identify person] in New Zealand. Copies of the subpoena and the order giving leave are attached.
2. On [date] the subpoena was served on [identify person].
3. \*No application to set aside the subpoena either wholly or in part has been made. An application to set aside the subpoena was dismissed by order made on [insert date]. A copy of this order is attached to this certificate.
4. On [date] [identify person] failed to comply with the subpoena.

\*[Delete the inapplicable]

Dated:

BY THE COURT

[Signature of appropriate officer]

*Note: The seal of the court is to be affixed.*

<sup>10</sup> On the date as at which this compilation was prepared, the *Supreme Court Amendment Rules (No. 2) 2013* r. 3-6 had not come into operation. They read as follows:

**3. Rules amended**

These rules amend the *Rules of the Supreme Court 1971*.

**4. Order 4A amended**

After Order 4A rule 11(b) insert:

- (ca) any case involving proceedings to which Order 81D applies;

**5. Order 81D replaced**

Delete Order 81D and insert:

## Order 81D — Arbitration law rules

### 1. Terms used

In this Order —

*arbitration law* means —

- (a) the *International Arbitration Act 1974* (Commonwealth);
- (b) the *Commercial Arbitration Act 2012*;
- (c) subsidiary legislation in force under any of the above laws;

*arbitrator* means a person who, under whatever title, conducts arbitration proceedings under an arbitration law.

### 2. Application of this Order

This Order applies to proceedings that can be or are commenced in the Court under an arbitration law in relation to arbitration provided for by such a law or provided under such a law.

### 3. Court documents, headings on

The heading of every document filed in proceedings to which this Order applies must include the title of the arbitration law under which the proceedings are being conducted.

### 4. Commencing proceedings

- (1) To commence proceedings to which this Order applies in the Court, a person must file —
  - (a) an originating summons; and
  - (b) either —
    - (i) an affidavit that states the relevant facts and to which is attached any relevant document; or
    - (ii) a notice of motion for an order that such an affidavit is not needed.
- (2) The documents listed in subrule (1) must be filed within the time limit set by the relevant arbitration law.

### 5. Subpoena to appear etc. before arbitrator

If, under an arbitration law, the Court issues a subpoena requiring a person —

- (a) to appear before an arbitrator; or
- (b) to produce any thing to an arbitrator; or
- (c) to do both of those,

Order 36B, with any necessary changes, applies to and in relation to the subpoena.

**6. Taking evidence for arbitrator**

If, under an arbitration law, the Court agrees to a request for assistance in taking evidence, Order 38, with any necessary changes, applies to and in relation to executing the request.

**7. Costs of arbitration, assessing**

Order 66, with any necessary changes, applies if the Court is required to assess the costs of an arbitration (other than the fees or expenses of an arbitrator).

**6. Schedule 2 amended**

In Schedule 2 delete Forms 105, 106 and 107.

<sup>11</sup> On the date as at which this compilation was prepared, the *Supreme Court Amendment Rules 2013* r. 3-7 had not come into operation. They read as follows:

**3. Rules amended**

These rules amend the *Rules of the Supreme Court 1971*.

**4. Order 4A amended**

After Order 4A rule 11(a) insert:

(ba) any case in which there is an application for —

(i) judicial review to which Order 56 applies; or

(ii) a review order under the *Magistrates Court Act 2004* section 36;

(iii) a writ of habeas corpus or an information of *quo warranto*;

**5. Order 56 heading replaced**

Delete the heading to Order 56 and insert:

**Order 56 — Judicial review**

**6. Order 56 amended**

(1) Delete Order 56 rules 1 to 9 and insert:

**1. Terms used**

(1) In this Order, unless the contrary intention appears —

**adequate reasons**, for a decision, means a document that —

(a) states any findings on material questions of fact that led to the decision and refers to the evidence or other material on which those findings were made; and

(b) states the reasons for the decision;

**application** means an application for judicial review of a reviewable decision or of reviewable conduct;

**challenged conduct** means reviewable conduct in respect of which an application is made;

**challenged decision** means a reviewable decision in respect of which an application is made;

**conduct** includes any act and any omission;

**limitation period** —

(a) for an application for judicial review of a reviewable decision, means 6 months after the later of —

(i) the date on which the decision is made; or

(ii) the date on which the applicant became aware of it;

(b) for an application for judicial review of reviewable conduct, other than a failure to make a decision, means 6 months after the later of —

(i) the date on which the conduct occurred; or

(ii) the date on which an applicant became aware of it.

unless a written law sets a different period, in which case it means that period;

**remedy** includes relief;

**reviewable conduct** means any conduct, including conduct for the purpose of making a decision and a failure to make a decision, that the Court, under the common law or in equity, has jurisdiction to review and to grant relief in respect of by way of a writ, a declaration or an injunction;

**reviewable decision** means any decision that the Court, under the common law or in equity, has jurisdiction to review and to grant relief in respect of by way of a writ, a declaration or an injunction;

writ means a writ of certiorari, mandamus, prohibition or procedendo or an information of quo warranto.

- (2) For the purposes of paragraph (a) of the definition of limitation period in subrule (1), it does not matter if on the relevant date —
- (a) the reviewable decision is not or had not been extracted or given in writing; or
  - (b) adequate reasons for the reviewable decision are not or had not been given.

**2. Application, making**

- (1) To make an application, a person must file an application in the form of Form No. 67A.
- (2) In one application a person may apply for any or a combination of these remedies —
- (a) one or more writs;
  - (b) either a declaration or an injunction or both;
  - (c) a remedy having the same effect as a remedy that could be provided by means of a writ.
- (3) An application must state the grounds on which it is made.
- (4) If an application is made outside the limitation period for the application —
- (a) the application must include an application for leave to proceed with the application; and
  - (b) the applicant must file an affidavit explaining why the application was not made within the limitation period.
- (5) If adequate reasons for a challenged decision have not been given when an application is made for judicial review of it, the application may include an application for an order that the person who made it must give adequate reasons.

**3. Application, service of**

After making an application, the applicant must serve it, by personal service, on —

- (a) the person who made the challenged decision or engaged in the challenged conduct; and
- (b) any person who was a party to the proceedings in which the challenged decision was made or the challenged conduct occurred.

**4. Person served with application, options of**

A person served with an application may —

- (a) enter an appearance under Order 12, which applies with any necessary changes; or
- (b) file, and serve on the applicant, a notice stating the person does not intend to take part in the proceedings and will accept any order made by the Court on the application other than as to costs.

**5. Procedure on application**

(1) The applicant and any person served with an application are entitled to be heard on it.

(2) On an application, the Court may do one or more of the following —

- (a) if the application is made outside the limitation period for the application, give or refuse the applicant leave to proceed with the application;
- (b) order the applicant to serve the application on a person whom the Court considers might have an interest in the challenged decision, the challenged conduct or the outcome of the application;
- (c) if adequate reasons for the challenged decision have not been given, order the person who made it to give adequate reasons for it to any or all of the following —
  - (i) the Court;
  - (ii) the applicant;
  - (iii) a person served with the application;
- (d) prohibit or restrict the disclosure of the reasons for the challenged decision or any part of them;
- (e) order the applicant or any other person to file an affidavit as to any facts material to the application, the challenged decision or the challenged conduct;
- (f) give the applicant leave to file and rely on an affidavit (whether or not made by the applicant);
- (g) allow a person not served with the application to be heard on it;
- (h) give the applicant leave to require a person served with the application to give discovery under Order 26;
- (i) give the applicant leave to require a person served with the application to answer interrogatories under Order 27;
- (j) allow the applicant to amend the application;

- (k) adjourn the hearing of the application;
- (l) refuse the whole or a part of the application if it has no reasonable prospect of succeeding;
- (m) grant or refuse the application;
- (n) if it considers the remedy applied for would be inadequate, grant any other remedy.
- (3) Subrule (2) does not limit the operation of Order 4A or the powers of the Court when dealing with an application.
- (4) A single judge dealing with an application may, without deciding it, order it be heard by the Court of Appeal.

**6. Discovery and interrogatories**

Orders 26 and 27 do not apply in proceedings on an application unless and to the extent the Court, under rule 5(2) or Order 4A, gives leave and orders otherwise.

**7. Costs**

- (1) The Court may make an order for the payment of the costs of the proceedings on an application against one or more of these persons —
  - (a) the applicant;
  - (b) the person who made the challenged decision or engaged in the challenged conduct;
  - (c) a person served with the application;
  - (d) a person not served with the application whom the Court allowed to be heard on it.
- (2) Subject to rule 24, the Court may make such an order before, when or after deciding the application.
- (2) In Order 56 rule 10(1):
  - (a) delete “in proceedings to which this Order relates” and insert:

on an application
  - (b) delete paragraph (a) and insert:
    - (a) be prepared by the applicant; and
- (3) Delete Order 56 rules 11, 12 and 13.



(4) In Order 56 rule 15(1) delete “An order nisi for a writ” and insert:

A writ

(5) In Order 56 rule 25 delete “order nisi or”.

(6) In Order 56 rule 26 delete “to whom the notice of motion, order nisi or” and insert:

who made the challenged decision or to whom the

(7) Delete Order 56 rule 27.

(8) Delete the heading to Order 56 Division 4 and insert:

**Division 4 — Prohibition and *procedendo***

(9) At the beginning of Order 56 Division 5 insert:

**34A. Application for information of *quo warranto***

To apply for an information of *quo warranto* without applying for judicial review, a person must apply *ex parte* by originating motion.

(10) Delete Order 56 rule 35(2) and insert:

(2) A copy of the information must be served on the respondent or, if he or she appeared by a lawyer, on the lawyer.

**7. Schedule 2 amended**

In Schedule 2 after Form 66 insert:

**67A. Application for judicial review (O. 56 r. 2)**

<u>In the Supreme Court of Western Australia</u>	<u>No:</u>
	<u>Application for judicial review</u>

<a href="#">Applicant</a>	
<a href="#">Respondent <sup>1</sup></a>	<a href="#">Name:</a> <a href="#">Office:</a>
<a href="#">Other parties</a>	
<a href="#">Decision or conduct to be reviewed</a>	<a href="#">Date:</a> <a href="#">Where made or occurring:</a> <a href="#">Written law governing:</a> <a href="#">Description:</a>
<a href="#">Application</a> [Tick one or more]	<a href="#">The applicant applies for judicial review of the above decision or conduct and —</a> <input type="checkbox"/> <a href="#">a writ of certiorari;</a> <input type="checkbox"/> <a href="#">a writ of mandamus;</a> <input type="checkbox"/> <a href="#">a writ of prohibition;</a> <input type="checkbox"/> <a href="#">a writ of <i>procedendo</i>;</a> <input type="checkbox"/> <a href="#">an information of <i>quo warranto</i>;</a> <input type="checkbox"/> <a href="#">a declaration;</a> <input type="checkbox"/> <a href="#">an injunction;</a> <input type="checkbox"/> <a href="#">this remedy (being a remedy which would have the same effect as a remedy that could be provided by means of one or more of the above writs) —</a>
<a href="#">Grounds of application</a>	<a href="#">The grounds for the above application are these —</a> <a href="#">1.</a>
<a href="#">Late application <sup>2</sup></a>	<input type="checkbox"/> <a href="#">The applicant also applies for leave to proceed with this application which is made outside the limitation period.</a>
<a href="#">Reasons for decision <sup>2</sup></a>	<input type="checkbox"/> <a href="#">The applicant also applies for an order that the maker of the challenged decision give adequate reasons for it.</a>

<u>Signature of applicant or lawyer</u>	<u>Applicant/Applicant's lawyer</u>	<u>Date:</u>
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Notes to Form No. 67A —

1. The respondent is the person whose decision or conduct is to be reviewed.
2. Tick only if necessary.