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[1967

MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT, 1943-1967

Local Government Department
Perth, 24th November, 1967.

HIS Excellency the Governor in Executive Council, acting pursuant to the powers conferred by the Motor Vehicle (Third Party Insurance) Act, 1943-1967, and the Interpretation Act, 1918-1962, has been pleased to make the rules set out in the schedule hereunder.

R. C. PAUST,
Secretary for Local Government.

Schedule.

RULES.

1. These rules may be cited as the Rules of the Third Party Claims Tribunal, 1967. Citation.
2. The Rules of the Supreme Court for the time being in force shall so far as they may be applied, apply to a case for which no provision is made by these rules; and, where none of those or these rules is applicable to the circumstances of a particular case, the Chairman may make a practice rule to meet that case. Application of Supreme Court Rules.
3. In these rules, unless a contrary intention appears,— Interpretation.
 - “Act” means the Motor Vehicle (Third Party Insurance) Act, 1943;
 - “action” means proceedings under the Act commenced by a Third Party Claim, as prescribed by these rules;
 - “Appendix” means an Appendix to these rules;
 - “Chairman” means the Chairman of the Tribunal;
 - “claim” means a claim under the Act and filed pursuant to these rules and includes a counterclaim;
 - “filed” means filed in the Registry and inflexions of the verb “to file” have a corresponding meaning;
 - “Form” means a form in Appendix “A”;
 - “leave” means leave of the Tribunal or, in the case of an interlocutory proceeding, leave of the Chairman;
 - “Magistrate” means a magistrate of a Local Court appointed under the Local Courts Act, 1904;

"party" means a party to a proceeding;

"person under a disability" means a person under the full age of 21 years or a person of unsound mind;

"proceeding" means a proceeding before the Tribunal, the Chairman or the Registrar;

"Registrar" means the Registrar of the Tribunal appointed pursuant to the Act;

"Registry" means the Registry of the Tribunal established by these rules;

"rule" means one of these rules;

"Third Party Claim" means the process by which a claim under the Act is instituted pursuant to these rules.

ADMINISTRATION.

Registry established.
Registrar to administer.

10. A Registry of the Tribunal is established.

11. Subject to the direction of the Chairman, these rules shall be administered by the Registrar and the Registrar has the control of the Registry and the officers and clerks of the Registry.

Hours of business.

12. The days and hours for the transaction of business at the Registry are from 10 a.m. to 4 p.m. on weekdays, other than such as are public holidays.

Registrar to sign orders, etc.

13. The Registrar shall sign every judgment or order given or made by the Tribunal, the Chairman, a Magistrate or the Registrar and extracted from the Registry.

Register to be kept.

14. The Registrar shall keep a register in accordance with Form 1, in which he shall enter, or cause to be entered, particulars of all claims and a concise note of every step taken in, and of every order made in proceedings under, the claim.

Delivery of documents filed.

15. A person filing a document shall, within 24 hours thereafter, deliver to each party to the action who has an address for service a copy of the document, at that address.

PARTIES.

Infants may be parties.

20. Subject to these rules, a person may be a party to an action, whether he is of full age or not.

Party not to be plaintiff and defendant.

21. A person may not whether in a representative or personal capacity be both plaintiff and defendant to a claim.

PERSONS UNDER A DISABILITY.

Persons under disability to sue or defend by guardian *ad litem*.

30. (1) Subject to rule 33, a person under a disability shall sue or defend by a guardian *ad litem* who is of full age, consents to act and is approved by the Chairman.

(2) An infant over the age of 14 years may, by appointment in accordance with Form 2 or 3, as the case may require, himself appoint a guardian *ad litem*.

Proceedings stayed until appointment of guardian *ad litem*
Chairman may dispense with appointment of guardian *ad litem* in certain cases.

31. A party who has served a claim on a person under a disability shall not, without leave, take any further step in the proceeding, until a guardian *ad litem* has been appointed for that person.

32. Where the Chairman is satisfied that an infant—

- (a) is not living under the protection of a parent, guardian or some other person in *loco parentis*;
- (b) being a defendant, is under no personal liability for a claim made against him; or
- (c) need not, in the peculiar circumstances of the case, sue or defend by guardian *ad litem*,

the Chairman may, by order, dispense with the requirement for the appointment of a guardian *ad litem*.

33. A person of full age may be appointed a guardian *ad litem*, if he has no interest adverse to the person under a disability for whom he is to act. Qualifications of guardian *ad litem*.
34. A person shall not be appointed guardian *ad litem* until— Pre-requisites to appointment of guardian *ad litem*.
- (a) he has subscribed a consent in accordance with Form 4 and the consent has been attested by a person before whom an affidavit may be sworn under the Act; and
- (b) the Chairman has been satisfied by the evidence on affidavit, in accordance with Form 5, of the solicitor for the party concerned or of some other responsible person able to depose to those facts, that the person to be appointed is a fit person and has no interest adverse to the person under a disability for whom he is to act.
35. A formal order is not necessary for the appointment of a guardian *ad litem*, but an appointment is of no effect unless the approval of the Chairman is evidenced by minute endorsed on the consent of the person to be appointed. Formal order of appointment not necessary.
36. The Chairman may, on cause being shown, remove a guardian *ad litem* and may, on the application of the guardian *ad litem*, permit him to retire. Removal of guardian *ad litem*.
37. Where a guardian *ad litem* is removed or has retired or died, the Chairman may, as he thinks fit, approve the appointment of another guardian *ad litem* or dispense with a further appointment. Replacement of guardian *ad litem*.
38. The Tribunal may make an order for the payment of costs— Costs against guardian *ad litem* or estate of person of unsound mind.
- (a) by a guardian *ad litem*, unless he is appointed by reason only of his holding public office; or
- (b) out of the estate of a person of unsound mind.

FORM OF PROCEEDINGS.

40. A proceeding is instituted, in the case of— Institution of proceedings.
- (a) an action, by the issue of a specially endorsed Third Party Claim;
- (b) An application, wherever returnable (including an application that may be made *ex parte*), by filing a notice of application, in accordance with Form 7, signed by the applicant or his solicitor; and
- (c) an appeal to the Tribunal from a Magistrate, by filing a notice of appeal.
41. Every document filed shall bear, on its face, the appropriate title of the claim or proceeding in which it is filed, in accordance with Form 8, 9, 10 or 11, as the case may require, and shall bear an appropriate endorsement, showing clearly the nature of the document; and an affidavit shall bear a further endorsement on the cover showing the date it was sworn and, at its end, the party on whose behalf it is filed. Documents to be entitled and endorsed.
42. A notice of application shall be endorsed, at the foot, with a memorandum indicating the person or persons upon whom it is intended it be served or, where it is not intended to effect service of the notice on a person or party, with a memorandum to that effect. Notices of application to be endorsed according to service.
43. A notice of application that is served on a person or party, under these rules or pursuant to an order shall be endorsed with a warning in accordance with Form 7. Endorsement of warning.
44. Where a notice of application is required to be served on a party or person, it shall, unless the Chairman otherwise orders, be so served at least 48 hours before the time fixed for the hearing of the application. Time for service of notices of application.

Require-
ments of
documents
filed.

45. Subject to these rules, every document filed shall, if its nature permits—

- (a) be clearly typewritten or printed, without blotting, erasure or any alteration causing material disfigurement;
- (b) have a space of not less than $\frac{1}{4}$ in. between each line;
- (c) be upon white folio, foolscap paper of good, durable quality and capable of receiving ink writing;
- (d) be upon one side only of the paper, with a margin of not less than $1\frac{3}{4}$ in. from the left hand side of each sheet;
- (e) have each page numbered; and
- (f) have a backsheet bearing the number and title of the proceedings, a concise description of the document and the name, address and telephone number of the solicitor (if any) filing the document.

First
copy of
documents
to be filed.

46. A typewritten copy of a document filed shall be the first, black ink copy.

CLAIM AND STATEMENT OF CLAIM.

Commence-
ment of
action.

50. (1) An action is commenced by the filing and issue of a Third Party Claim, in accordance with Form 6, specially endorsed with a statement of claim setting out full particulars of the claim, including, without limiting the generality of the foregoing,—

- (a) the date and place of birth of each plaintiff;
- (b) a statement, in summary form, of the material facts relied on as giving rise to the cause of action;
- (c) particulars of injuries sustained by each plaintiff;
- (d) a statement in summary form of the medical treatment received by each plaintiff;
- (e) a statement as to whether or not with respect to each injured plaintiff that plaintiff has sustained any permanent disability and if so, particulars of that disability.
- (f) particulars required by any Statute under which a claim is brought.

(g) details of each item of Special Damages claimed, Set out, as far as may be practicable, in that order.

(2) A statement of claim shall conclude with a summary of the relief claimed, without quantifying either General Damages or costs.

Copies of
claim to
be left at
Registry
with
supporting
documents.
Registrar
to issue
the claim.

51. Prior to the commencement of an action, the original and two copies of the claim shall be left at the Registry, accompanied, where practicable, by documentary evidence of the date of birth of each plaintiff and of each item of special damages claimed.

52. If the Registrar is satisfied with the documentary evidence left with a claim pursuant to rule 51, he shall issue the claim by causing the seal of the Tribunal to be affixed to one copy and by filing another in the Registry; and where he is not so satisfied, he shall, nevertheless, issue the claim on the request in writing of the plaintiff or plaintiffs or of his or their solicitor.

Copy of
claim to
be sent
to Trust.

53. Upon the issue of a claim, the Registrar shall forward a copy of it to the Trust.

Endorse-
ments on
claims.

54. A claim shall be endorsed with the following memoranda, namely—

- (a) a statement as to whether the claim is filed by the plaintiff, in person, or by a solicitor on his behalf; and
- (b) an address (in these rules called "address for service"), being not more than three-fourths of a mile from the intersection of Saint George's Terrace and Barrack Street,

Perth, at which processes and other documents not required to be served personally on the plaintiff may be left for him.

55. A statement of claim shall be subscribed by the person by whom it was settled, unless the solicitor filing it holds a copy settled and subscribed by counsel, in which event the name of the counsel may be typed or written at the end of the copies of the statement of claim filed.

Statements of claim to be subscribed.

DEFENCES AND COUNTERCLAIMS.

60. A defendant may, within the time stated in the claim, file in the Registry a statement of defence to the plaintiff's claim and shall deliver a copy of the statement of defence to the plaintiff or his solicitor at the plaintiff's address for service within 24 hours after it has been filed.

Filing statements of defence.

61. The time for filing a statement of defence shall be shown on the claim and shall be limited, according to the place where service of the claim is effected, in the manner following, namely—

Time for filing statement of defence.

Place where service is effected.	Time after service limited for filing statement of defence.
Within the State—	
(a) not more than 400 miles from G.P.O., Perth	15 days.
(b) more than 400 miles from G.P.O., Perth	21 days.
Outside the State but within the Commonwealth	30 days.
Outside the Commonwealth	Such time as may be fixed by the Registrar.

62. Where a defendant requires further time within which to file a statement of defence he may apply to the Chairman for an extension of time; and the Chairman may allow such further time as he thinks reasonable; and, where the action has already been set down for hearing or a date for hearing has been fixed, the Chairman may stay further proceedings or adjourn the hearing until such time and on such terms as to payment of costs and otherwise as appears to him just.

Extension of time for filing statement of defence.

63. A defendant shall state in his statement of defence which of the allegations made in the statement of claim that he admits and which of them he denies; and, where a defendant does not unequivocally deny an allegation, he is deemed to have admitted it and shall not, without the leave of the Tribunal, adduce any evidence in denial of the allegation.

Statement of claim to be traverse.

64. (1) The defendant may, with his defence, counter-claim against the plaintiff on any cause of action within the jurisdiction of the Tribunal in respect of which the defendant might have issued a claim against the plaintiff.

Counter-claims.

(2) Rule 50 applies, with such adaptations as may be necessary, to a counter-claim.

65. Rules 54 and 55 apply, with such adaptations as may be necessary, to a statement of defence and to a statement of defence and counter-claim.

Endorsements on, and subscription of, statements of defence, etc.

Documents need not be served in certain cases.

66. A defendant or person who, having been served with a claim, has not filed a statement of defence or a notice of address for service need not, unless the Act or these rules otherwise provide or the Tribunal or the Chairman otherwise orders, be served with any document or be given any notice, except notice of date of hearing as hereinafter in these rules provided.

NOTICE OF ADDRESS FOR SERVICE.

Effect of filing notice of address for service.

70. (1) A party who does not intend to contest the question of negligence may, within the time limited for filing a statement of defence, file a notice of address for service, in accordance with Form 12, and that party is, thereupon, deemed to admit the facts pleaded in the statement of claim with respect to the question of negligence and to put in issue all facts pleaded with respect to the claim or claims for damages.

(2) A party is, from the date of filing a notice of address for service, entitled to be served with copies of all documents thereafter filed by other parties to the action.

Change of address for service.

71. A party may change his address for service by filing a notice of change of address for service, in accordance with Form 13, and delivering a copy to all parties having an address for service.

Statement of defence after notice of address for service.

72. A party who has filed an address for service may, within the time limited by these rules, file and deliver a statement of defence.

REPLY AND FURTHER PLEADINGS.

Filing reply, etc.

80. The plaintiff may, within 8 days after the delivery of the statement of defence or the statement of defence and counter-claim, file a reply or a reply and defence to counter-claim, raising any other matters of substance that have arisen out of the statement of defence or the statement of defence and counter-claim.

No joinder.

81. (1) It is not necessary to join issue in a reply and a reply shall not be filed and delivered for that purpose, only; and where a reply is not filed and delivered, the plaintiff shall be taken to have joined issue on all matters left in issue by the pleadings.

(2) Rules 54 and 55 apply, with such adaptations as may be necessary, to a reply and to a reply and defence to counter-claim.

Delivery of reply, etc.

82. The plaintiff shall, after filing a reply or a reply and defence to counter-claim, comply with the provisions of rule 15.

No further pleadings after reply.

83. After the filing of a reply or a reply and defence to counter-claim further pleadings shall not be filed without leave.

AMENDMENT.

Amendment without leave.

90. (1) Unless another party has pleaded to it, a party may amend his pleadings, without leave, at any time prior to the filing of a request to set the action down for hearing.

(2) An amended pleading shall be filed in the Registry and a copy of the amended pleading shall be delivered in accordance with rule 15, as regards parties with an address for service, and be served on all other parties.

(3) The amended pleading shall—

(a) be so drawn as to show the wording of the original document and the effect of the amendments, by striking out, in red, the parts to be deleted and by underlining, in red, the parts that are added; and

(b) bear an endorsement, subscribed by the party or solicitor making the amendment, showing that it was amended pursuant to this rule and the date of the amendment.

Parties may plead to an amended pleading.

91. Where an amended pleading is filed and is delivered to, or served on, a party, the party may plead to it, within 8 days of delivery or service or within any further time that may be allowed by the Chairman.

92. Unless the Tribunal otherwise orders, the party amending a pleading shall pay the costs thrown away by reason of the amendment.

Costs thrown away by amendment.

93. (1) Where a claim is amended without leave, as regards an item of Special Damages, the party amending it shall leave at the Registry documentary evidence of the item as amended.

Documentary evidence of amended items of Special Damages.

(2) If the Registrar is satisfied with the documentary evidence left pursuant to sub-rule (1) of this rule, he shall accept the amended pleading for filing; and where he is not so satisfied, he shall, nevertheless, accept the amended pleading on the request in writing of the plaintiff or plaintiffs or of his or their solicitor.

94. Except as provided by rule 90, a pleading shall not be amended without leave.

Amendments by leave.

PLEADINGS GENERALLY.

100. A pleading may be filed by a party out of time, if no other party has taken a further step in the action or all the other parties on the record consent, but a pleading may not be filed or delivered out of time, after the filing of a request to set the action down for hearing.

Filing out of time, generally.

101. A party may, at any time, apply to the Chairman for leave to file a pleading out of time and the costs of obtaining leave shall, unless the Chairman otherwise directs, fall on that party.

Filing out of time with leave.

102. A party may, by a request in writing, require any other party to give particulars of matters pleaded in any pleading delivered by that other party and, if the particulars are not furnished in accordance with the request, may apply to the Chairman for an order that the required particulars be given.

Particulars.

103. A party giving particulars, whether pursuant to the requirement of another party or an order of the Chairman, shall file the particulars and shall deliver them to the party requiring them within 24 hours after the filing.

Particulars to be filed.

THIRD PARTY PROCEDURE.

110. Where in an action a defendant claims, against another defendant or against a person not already a party (in these rules, in both cases, called a "third party"), that—

Third Party Notices.

- (a) the first mentioned defendant is entitled to contribution or indemnity;
- (b) the first mentioned defendant is entitled to relief or remedy relating to, or connected with, the subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) any question or issue relating to or connected with the subject matter is substantially the same as some question or issue arising between the plaintiff and the first mentioned defendant and should properly be determined as between any of the parties,

the first mentioned defendant may, subject to these rules, file and issue a Third Party Notice, in accordance with Form 14, stating the grounds of the claim, the question or issue sought to be determined and the extent of any relief or remedy claimed.

111. (1) A Third Party Notice shall be sealed and issued in the same manner as a claim and the time for filing a statement of defence to it shall be shown on the Notice and shall be as limited for a statement of defence by rule 61.

Issue and service of Third Party Notices.

(2) A Third Party Notice shall be served on a third party in the same manner as a claim is served on a defendant, within the time limited for filing a statement of defence or, where the Notice is issued by a defendant to a counter-claim, within the time limited for filing a reply; and a copy of every pleading and affidavit filed before the issue of the Notice shall be served with it.

(3) A copy of a Third Party Notice shall be delivered to every party with an address for service.

Third parties may issue Third Party Notices.

112. A third party on whom a Third Party Notice has been served may issue a Third Party Notice against another person, as if the third party originally served were a defendant and the successive third party were the original third party and so on, in succession and these rules shall apply with such adaptations as may be necessary.

Chairman may set aside Third Party proceedings. Defence to Third Party Notices.

113. The Chairman may, at any time, set aside a Third Party Notice.

114. Unless a Third Party Notice has been set aside, a third party shall file and deliver a statement of defence within the time specified in the Notice or within such further time as may be allowed by the Chairman.

Applications for directions in Third Party proceedings.

115. (1) Where a third party files a statement of defence, any party may apply to the Chairman for directions as to the hearing of the questions or issues raised in the third party proceedings and shall serve notice of the application on all other parties.

(2) The Chairman may give directions as to the hearing of the questions or issues raised in the third party proceedings and may from time to time give such further directions as may be necessary.

(3) The Registrar shall not enter an action involving a third party proceeding for hearing, until an order for directions has been made.

Directions by Chairman on Third Party proceedings.

116. On the hearing of an application for directions pursuant to rule 115, the Chairman may give—

(a) a third party liberty to defend a claim or any other issue arising therein, either alone or jointly with the original defendant; and

(b) such procedural directions as may be necessary for properly bringing the matters in issue before the Tribunal.

Judgment on claims involving Third Parties.

117. Where any question or issue on a Third Party Notice is tried, the Tribunal may enter such judgment in respect of the claim made in the Third Party Notice as the nature of the case may require and may grant to the defendant or a third party any relief or remedy that might properly have been granted, if the third party had been made a defendant in a claim against him by the defendant or another third party.

Limitation on execution by third parties.

118. Except as regards costs, execution shall not, without leave, issue at the instance of a party who has issued a Third Party Notice and has obtained judgment thereon, unless his liability for the claim against him and on which the claim made in his Third Party Notice was based has been satisfied, at least to the extent of the third party liability which he claims to enforce under the judgment.

Default of defence to third party notice.

119. Where a third party does not file and deliver a statement of defence or his defence to the Third Party Notice is struck out, he is bound by any judgment given at the hearing of the action and by any decision of the Tribunal on questions specified in the notice; and judgment may be entered against him, accordingly.

OFFERS TO CONSENT TO JUDGMENT.

Certain defendants may not consent to judgment.

120. A defendant who, in his statement of defence, denies negligence absolutely shall not file a notice of offer to consent to judgment.

Procedure on offers to consent to judgment.

121. Where negligence is admitted, either in full or in part, by a defendant, but the extent of negligence or the amount of damages or both is in dispute, then,—

(a) the defendant may, at any time before the hearing, file and serve on all other parties to the action a notice, in accordance with Form 15, admitting negligence to the extent to which

the defendant considers he was negligent and, in addition, may offer to consent to judgment against him, in favour of the plaintiff, for such sum of money as the defendant claims will satisfy the plaintiff's cause of action or, where several causes of action are joined, will satisfy one or more of them;

- (b) where a defendant offers to consent to judgment in an action where several causes of action are joined, the notice shall specify the cause or causes of action in respect of which the offer is made;
- (c) the plaintiff may, within 14 days after the receipt of the notice or such longer period as the Chairman may allow, but, in any case, before the hearing of the action begins, file and serve on all the parties to the action a notice of acceptance of the offer, in accordance with Form 16, or where the offer is made in respect of more than one cause of action, of such part of the offer as relates to some one or more causes of action; and thereupon, unless otherwise ordered by the Chairman, the plaintiff—
 - (i) is entitled to sign judgment for the amount offered and to tax his costs of the action up to the service of the notice on him, including the costs of filing and serving his notice of acceptance and of signing judgment;
 - (ii) may proceed to enforce the judgment; and
 - (iii) may proceed in respect of any other cause of action; and
- (d) the plaintiff may, within 14 days after receipt of a notice given under paragraph (a) of this rule or such longer period as the Chairman may allow, but in any case, before the hearing of the action begins, file and serve on all parties to the action a notice of acceptance of offer as to the extent of negligence, in accordance with Form 17, and, thereupon, unless otherwise ordered by the Chairman, the question of the extent of negligence is deemed to be determined on the basis of the offer and acceptance and the action shall proceed as an assessment of damages.

122. Where any difficulty arises by reason of the terms of an offer to consent to judgment in an action where there is more than one cause of action, any party may apply to the Chairman on notice for directions either before or after filing the notice of acceptance of offer.

Directions on offer to consent to judgment.

123. A defendant may, without leave, withdraw an offer to consent to judgment, at any time before the filing by the plaintiff of a notice of acceptance of the offer.

Withdrawal of offer to consent to judgment.

124. These rules relating to a notice of offer to consent to judgment apply to a counter-claim with such adaptations as may be necessary.

Offers to consent to judgment to apply to counter-claims.

125. A party to an action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, might be held liable in the action to another party to contribute towards any damages which may be recovered by the plaintiff in the claim and who, at any time before the hearing of the action, makes a written offer to that other party (whether absolute or conditional and whether limited or not as to time for acceptance thereof) to contribute, to a specified extent, to the damages, may, in making that offer, while stipulating that it is to be without prejudice to his defence (whether as against the plaintiff or as against the party to whom the offer is made, or against any other party in the action), nevertheless, reserve the right to bring the offer to the attention of the Tribunal at the hearing, as if it were a notice of offer to consent to judgment (that is to say, after all questions of negligence and amount of damages have been decided but prior to a decision as to costs).

Offers without prejudice may go to the question of costs.

Payment without admission of liability in certain cases.

126. (1) Where in respect of any claim a notice is served on or given to a defendant pursuant to section 12 or 13 of the Act or to section 17 of the Commonwealth Employees Compensation Act, 1930 (as amended), or section 115 of the Social Services Act, 1947 (as amended), both of the Commonwealth, or pursuant to any statutory provision of a like nature, that defendant may, in addition to, or without, filing any notice of offer to consent to judgment, pay to the person giving or serving the notice the amount claimed by that person; and such a payment is not deemed to be an admission of liability as between the parties to the action, but, to the extent to which the person giving or serving the notice is entitled to claim the moneys therein referred to, is deemed to be in reduction of the defendant's liability (if any) to the plaintiff.

(2) A defendant making a payment pursuant to this rule shall give notice of that fact to every other party to the claim, at least 7 days prior to the day fixed for the hearing.

Tribunal not to be informed of offers, prior to making its findings.

127. (1) Subject to any specific provision in these rules to the contrary, a person shall not, in any pleading filed or by any other means, inform the Tribunal, at or before the hearing of the action, that an offer to consent to judgment or an offer of contribution with the right reserved to mention it pursuant to rule 125 has been made, until the Tribunal has decided all questions of negligence and damages.

(2) In exercising its discretion as to costs the Tribunal may take in to account the fact that an offer to consent to judgment or an offer of contribution with a right to reserve to mention it pursuant to rule 125 was made.

Tribunal may apportion costs.

128. The Tribunal may award the costs of the whole action to any party or may award the costs on the issue of negligence to one party and the costs on the issue of damages to the other; and, in so doing, the Tribunal may give all necessary directions for the apportionment of, and taxation of, costs.

SERVICE.

Service of claims.

130. (1) Except as otherwise provided by these rules, service of a claim shall be effected by personal service or by service on a solicitor representing the person to be served who is willing to accept service.

(2) Where service is effected on a solicitor, he shall subscribe an endorsement on the claim to the following effect, namely—

“I accept service of this claim on behalf of the defendant.

Dated the day of 19 .

Solicitor for the defendant.”

Personal service of other documents.

131. The Chairman may, in a particular case, order that service of any document be effected by personal service.

Parties not to effect service.

132. Except by leave, service of a document shall not be effected by a party to the action or proceeding.

Mode of personal service.

133. Where personal service is required by these rules or by order of the Chairman, it shall be effected by delivering the document, together with all annexes and endorsements as prescribed by these rules, to the party to be served and, at the time of service, the process server shall, where the circumstances require, produce the original document sealed with the seal of the Tribunal, for inspection by the person who is served.

Service by other means.

134. (1) Where the Chairman is satisfied that personal service is impracticable, he may order service by other means or dispense with service.

(2) Where the Chairman orders service by other means under this rule, he shall specify the time limited in that particular case for the filing of the statement of defence and specify the day or act from which the time for filing commences to run.

(3) Where the Chairman orders substituted service, by advertisement—

- (a) the Registrar shall settle the form of the advertisement; and
- (b) the party advertising shall file the sheet or sheets of the newspapers containing the advertisement attached to a backing sheet bearing the title of the action and need not verify the advertisements by affidavit.

135. Where a statement of defence or a notice of address for service is not filed within the time limited by these rules or any extension thereof, the plaintiff shall, before taking any step in default of defence, file an affidavit of service of the claim, in accordance with Form 18, sworn by the process server, setting out the deponent's means of identifying the person served.

Affidavits of service of claim.

136. (1) Where service is to be effected on an infant, service on his father or guardian *ad litem* or, if none, upon the person with whom the infant resides or in whose care he is or on a solicitor willing to accept service on his behalf is, unless the Chairman otherwise orders, sufficient service on the infant.

Service on infants.

(2) The Chairman may order that service effected, or to be effected, on an infant in person is sufficient service.

137. Where service is to be effected on a person of unsound mind, service on the committee or manager of his estate, or on the person with whom he resides or under whose care he is, or on a solicitor willing to accept service on his behalf is, unless the Chairman otherwise orders, sufficient service on that person.

Service on persons of unsound mind.

138. Any process or document in an action or proceeding may be served out of the jurisdiction in the manner provided by these rules, but, if the person to be served is outside the Commonwealth, service shall be either personal or as ordered or dispensed with, by the Chairman.

Mode of service.

APPLICATIONS IN CHAMBERS AND IN PUBLIC CHAMBERS.

140. The Chairman may hear interlocutory applications in public or private chambers, as he thinks fit.

Chairman may sit in public or private chambers.

141. (1) Interlocutory applications shall be made by way of notice of application, in accordance with Form 7.

Applications, how made.

(2) An application shall, when necessary, be supported by affidavit setting out the facts on which the applicant relies and sworn by a person able to depose to the facts of his own knowledge or, failing that, deposing to the grounds for his belief of them.

142. Notwithstanding that an application may, under these rules, be made *ex parte*, the Chairman may, if he thinks fit, order notice of the application to be given to any other party or to a person not a party on the record.

Notice of *ex parte* applications to be given in certain cases.

143. Notwithstanding that a particular application would, under these rules, not be heard without due service on another party or person, where it is shown to the Chairman by an applicant that the application would be seriously prejudiced if service were effected before obtaining an order, the Chairman may make an *ex parte* order, subject to such terms as to damages and costs and service on the other party, within a limited time, as the Chairman may think fit and subject, in every case, to leave being reserved to the other party affected to move, within such time and upon such notice as may be fixed by the Chairman or where no time is fixed, within a reasonable time, to set aside the order or vary it; but subject to those terms the order is binding and effective.

Orders without service of notice in emergencies.

**SETTLEMENTS AND COMPROMISES BY PERSONS UNDER
A DISABILITY.**

Tribunal to approve certain settlements and compromises. 150. Where, in any action a person under a disability is a party or is entitled to the whole or part of the proceeds of any judgment that may be given and it is proposed to settle or compromise the claim, the settlement or compromise is of no effect, unless approved by the Tribunal.

Mode of applying for approval to settle or compromise. 151. An application to the Tribunal for approval of a settlement or compromise shall be made by notice of application, supported by affidavit and, unless dispensed with by the Tribunal, the opinion of independent counsel on the proposed settlement or compromise.

AFFIDAVITS.

Leave to adduce evidence by affidavit at hearing. 160. A party may, by leave of the Tribunal at the hearing, or of the Chairman prior to the hearing, tender an affidavit on the hearing of the action for the purpose of adducing evidence of the facts therein deposed to; but the Tribunal or the Chairman may, on the application of any party, order the attendance, for cross-examination, of the person making the affidavit.

Limitation on hearsay in affidavits. 161. (1) Except in interlocutory applications, where sub-rule (2) of rule 141 applies, affidavits shall be confined to facts that the deponent is able to swear to of his own knowledge.

(2) A party shall not be allowed the costs of an affidavit that unnecessarily sets out matters of hearsay, argumentative matter or copies of or extracts of documents.

Affidavits, how drawn up. 162. An affidavit shall—
(a) be drawn up in the first person and divided into consecutively numbered paragraphs, of which each shall, as nearly as may be practicable, be confined to an integral portion of the subject that the affidavit is intended to prove;
(b) set out the true place of abode and description of deponent; and
(c) be signed on each page by the deponent and the person before whom the affidavit is sworn.

Affidavits to be filed and endorsed. 163. Every affidavit intended to be used in a proceeding shall be filed and shall be endorsed with a memorandum showing on whose behalf it is filed.

Alterations, etc., to be authenticated. 164. Every interlineation, alteration or erasure to an affidavit shall be authenticated by the initials of the deponent and of the person before whom the affidavit is sworn.

Defective affidavits may be received. 165. The Tribunal or the Chairman may receive an affidavit sworn for the purpose of being used in an action or proceeding, notwithstanding any defect in form or other irregularity, and may direct a memorandum to be made on the document that it has been so received.

Affidavits not to be sworn before solicitor for party. 166. An affidavit shall not be sworn before the solicitor or, before any partner, clerk, agent or correspondent of the solicitor, acting for the party on whose behalf the affidavit is to be filed.

Leave required for use of affidavits filed out of time. 167. Where a time is limited for the filing of an affidavit, an affidavit filed after that time shall not be used, except with leave.

MEDICAL PRACTITIONERS.

Medical reports to be filed. 170. (1) Where a party intends to adduce the evidence of a medical practitioner at the hearing of an action, he shall, at least 14 days prior to the date fixed for the hearing, file, in book form, three copies of every medical report that he has received from that medical practitioner and the substance of which he intends to adduce in evidence; and shall, if he has not already done so, within 24 hours after filing any such report, deliver a copy of it to every other party to the action.

(2) A report that has not been filed and delivered pursuant to this rule shall not be used in a proceeding, without leave.

171. A party to an action may, not less than 10 days prior to the date fixed for the hearing, file an affidavit of evidence of a medical practitioner whose evidence he intends to adduce at the hearing and shall, within 24 hours after filing the affidavit, deliver a copy of it to every other party to the action.

Filing affidavits of evidence of medical practitioners.

172. If a party to whom a copy of an affidavit of evidence of a medical practitioner has been delivered pursuant to rule 171 requires the attendance of the medical practitioner at the hearing for cross-examination and files notice, in accordance with Form 19, and, not less than 4 days prior to the hearing of the action, delivers a copy of the notice to all parties on the record, the medical practitioner shall be required to attend the hearing and give his evidence orally.

Parties may require medical practitioners to attend and give oral evidence

173. A party who, having filed an affidavit of a medical practitioner, has been served with a notice that the practitioner is required to attend the hearing for cross-examination shall arrange for the practitioner to attend and give evidence orally; and he may, without limiting his examination of the practitioner to the matters deposed in the affidavit, tender it in evidence.

Party to arrange attendance of medical practitioner as required.

174. Where a party has filed an affidavit of evidence of a medical practitioner and has not received due notice that the practitioner is required to attend the hearing for cross-examination, he may, subject to any orders, directions or requirements of the Tribunal, tender the affidavit in evidence at the hearing in proof of the facts deposed in the affidavit.

Tendering of affidavits in absence of witness.

DISCOVERY AND INTERROGATORIES.

180. A party may deliver to another party a notice in accordance with Form 20, requiring the other party to give discovery, or a notice in accordance with Form 21, requiring the other party to answer interrogatories with respect to any fact in issue between the parties, within 10 days after the delivery of the notice or within such further time as may be agreed between the parties; but a party is not obliged, unless ordered by the Chairman, to give discovery or answer interrogatories after the action has been set down for hearing.

Notice to give discovery or answer interrogatories.

181. If a party makes default in complying with the requisitions of a notice given pursuant to rule 180, within the time prescribed or agreed, the party delivering the notice may apply to the Chairman for an order compelling compliance; and the Chairman may, as he thinks fit, extend the time limited for compliance or order compliance forthwith and, in any event, may make such order for the costs of the application as he thinks fit.

Chairman may compel compliance with notice.

182. Subject to agreement between the parties, discovery shall be given by affidavit in accordance with Form 22 and interrogatories shall be answered on affidavit in accordance with Form 23.

Discovery and answers to be on affidavit, generally.

CHANGE OF PARTIES BY DEATH OR OTHERWISE.

190. A claim does not abate by reason only of the death or bankruptcy of a party, if the cause of action survives.

Claim not to abate by reason only of death, etc.

191. Whether or not the cause of action survives, a claim does not abate by reason of the death of a party between the hearing of the action and the entry of judgment.

Claim not to abate between hearing and entry of judgment.

192. (1) Where a party to an action dies or is bankrupted, a person or party may apply to the Tribunal or to the Chairman, as the case may require, for an order amending the record and adding or substituting a new party or new parties; and the Tribunal or Chairman may make such order as may be necessary for joining

Ex parte applications to add or substitute parties.

the personal representative, trustee or other successor in interest of or to the deceased or bankrupt and for effectually dealing with the subject matter of the action.

(2) A copy of an order made under this rule shall be delivered to every party continuing in the action and shall be served on such of the new or substituted parties in such manner as may be directed; and, where it is necessary for a new or substituted party to deliver a pleading or take any other formal step, the necessary directions shall be made in the order.

Person
joined may
move to
discharge
order
joining him.

193. A person served with an order pursuant to rule 192 may, within 28 days from the date of service, move to discharge the order, on the ground that he has no interest in the subject matter of the action or does not wish to contest it.

CONSOLIDATION OF PENDING CLAIMS.

Chairman
may order
consolida-
tion of
claims.

200. Where any issue between the same parties can conveniently be heard together or where it appears desirable, notwithstanding that the parties are not or that the evidence necessary to prove the issues is not, identical, the Chairman, may by order consolidate any number of actions in order to quiet all claims relative to the one subject matter, transactions or event or relative to substantially similar subject matters, transactions or events.

Chairman
to give
directions.

201. Where the Chairman orders the consolidation of actions pursuant to rule 200, he shall give all necessary directions for any necessary pre-hearing procedure and for the hearing or determination of the consolidated actions.

SETTING CLAIMS DOWN FOR HEARING.

Time of
setting
actions
down for
hearing.

210. (1) A plaintiff may require an action to be set down for hearing,—

- (a) where the defendant has filed a statement of defence and counter-claim, after the reply has been filed and delivered;
- (b) where the defendant has filed a statement of defence, after it has been filed and delivered;
- (c) where a defendant has filed a notice of address for service, after it has been filed and delivered;
- (d) where a statement of defence or a notice of address for service has not been filed and delivered within the time limited, on proof of service of the claim with endorsements thereon;
- (e) at any time after an order dispensing with service on the defendant; or
- (f) where substituted service has been ordered, at any time after compliance with the order and expiration of the period fixed by the Chairman for the filing of a statement of defence.

(2) A defendant who has filed a statement of defence or a statement of defence and counterclaim may require an action to be set down for hearing, at any time after the time limited for delivering a reply has elapsed.

(3) A party may not require an action to be set down for hearing unless he has complied with all requisitions and orders affecting him and does not intend to make any further interlocutory application.

(4) A party requiring an action to be set down for hearing shall—

- (a) file a request for setting down, in accordance with Form 24, in duplicate;
- (b) lodge in the Registry three copies of the pleadings, in the form provided by rule 230, for the use of the Tribunal at the hearing; and
- (c) within 24 hours after filing the request, deliver to each party to the action with an address for service a copy of the request, accompanied by a copy of the pleadings.

211. (1) Where a party has filed a request that an action be set down for hearing, the Registrar shall, if he is satisfied that the action is ready for hearing, endorse the request with his certificate to that effect, set the action down in the list of actions for hearing and forward a copy of the request to the Trust.

Action of Registrar on request for setting down.

(2) If the Registrar is not satisfied that an action is ready for hearing, he shall so advise the party concerned, giving his reasons therefor; and, where the party is dissatisfied with the determination of the Registrar, he may apply to the Chairman for directions.

212. An action shall not, except by leave, be called on for hearing until after the expiration of 21 days from the date on which the Registrar certified that it was ready for hearing.

Claim not to be called on before 21 days after setting down.

213. (1) Where, after a request to set down an action for hearing has been filed, amendments are made to a pleading or further pleadings are filed, in accordance with these rules, the party who required the action to be set down may, if he is satisfied that it is proper for the hearing to proceed, by request in writing require the Registrar to certify accordingly; and, if the Registrar is satisfied that it is proper for the hearing to proceed and that all necessary papers that ought to be in the possession of the Tribunal at the hearing have been filed or lodged, he may so certify.

Record to be re-examined where varied after claim is set down.

(2) If the Registrar is not satisfied that it is proper for the hearing to proceed, he shall so advise the party concerned, giving his reasons therefor; and, where the party is dissatisfied with the determination of the Registrar, he may apply to the Chairman for directions.

214. A party to an action may apply to the Chairman to have a claim dismissed or to have an issue raised by an opposing party struck out, on the ground that the party entitled to the carriage of the action or the party raising the issue in the claim is in default, in not prosecuting it with proper diligence, by reason that the defaulting party—

Party may apply to have claim or pleading dismissed or struck out, in certain cases.

- (a) has not requested that the action or issue be set down for hearing and 28 days have elapsed from the time when he became entitled to do so;
- (b) has failed to supply further particulars of a pleading when required by an order to do so;
- (c) has failed to comply with an order for discovery; or
- (d) has failed to comply with an order requiring him to answer interrogatories;

and the Chairman may make an order accordingly, or postpone the making of the order, subject to such terms and conditions as he thinks fit.

215. Where, in an action set down for hearing, the defendant has filed and delivered a statement of defence, the Tribunal shall hear and determine the claim as between the plaintiff and that defendant on the issues raised by the pleadings.

Determination of claims on issues raised by pleadings.

216. Where a defendant has not filed and delivered a statement of defence within the time limited by these rules or where a defendant has filed and delivered a notice of address for service and the action is set down for hearing, all allegations in the statement of claim relating to the question of negligence are deemed to be admitted by that defendant and the action shall go on for hearing, against him, as an assessment of the damages claimed in the statement of claim, only.

Determination of claims as an assessment of damages in certain cases.

217. A plaintiff may, at any time, file a notice of discontinuance of his claim and the defendant is, thereupon, entitled to tax his costs of the action up to the date of the filing of the notice of discontinuance and to enter judgment against the plaintiff for the costs as so taxed.

Notice of discontinuance.

Issues may
be heard
separately.

218. A party to an action may apply to the Chairman for an order that an issue raised in the pleadings be heard before another issue or other issues and for consequential orders as to the hearing of that issue.

FIXING DATE OF HEARING.

Registrar
to fix
and give
notice of
days of
hearing.

220. The Registrar shall fix the day for hearing of all actions set down for hearing, in accordance with the directions of the Chairman, and shall, where practicable, give notice thereof, in accordance with Form 25, by prepaid post, to all parties to an action, whether they have filed a pleading or not.

Applications
for special
hearing
days.

221. A party may, at any time, by notice of application, apply to the Chairman to fix a special day for the hearing.

Applications
to adjourn
or put
forward
hearing.

222. At any time after a day for hearing an action has been fixed, a party may, by notice of application, supported by affidavit setting out the reasons for the application, apply to the Chairman for an adjournment of the hearing or to fix an earlier day for the hearing.

List of
days fixed
for hearing
to be
displayed.

223. The Registrar shall keep exhibited, in a conspicuous place in the Registry, a list showing the names of the parties in actions for which hearing days have been fixed, the days so fixed and the estimated length of hearing, so that parties desiring to have any particular days for hearing fixed may see what days are available, at any particular time.

PLEADINGS FOR USE OF THE TRIBUNAL.

Nature of
documents
for use of
Tribunal.

230. The pleadings for the use of the Tribunal at the hearing shall comprise copies, in book form, of the whole of the pleadings and of, orders and requests for particulars and of particulars supplied pursuant to orders or requests.

Further
documents
where
pleadings
amended.

231. Where pleadings are amended after the setting down for hearing but before the hearing of an action, then, subject to any order of the Chairman, the parties responsible for initiating the amendment shall forthwith after the filing of the amended pleadings or any further pleadings filed in consequence of the first amendment, deliver to the Registry three further copies of the whole of the pleadings as amended.

Amend-
ments at
hearing.

232. Where pleadings are amended at the hearing, a party shall, if so ordered, file three further copies of the whole of the pleadings as amended.

Amended
pleadings
to be
marked.

233. Where a party is ordered to file further copies of pleadings, he shall show all amendments in the manner provided by rule 90, with notations clearly indicating the date and origin of each amendment.

Copies of
pleadings
to be
delivered.

234. A party filing copies of pleadings (including copies of pleadings as amended) shall, within 24 hours after filing them, deliver a copy to each of the other parties on the record.

VENUE.

Fixing
venues.

240. Unless the Chairman otherwise orders, actions shall be heard in Perth; but the Chairman may, of his own motion, direct that an action be heard at some other place by the Tribunal or by a Magistrate.

Applications
for change
of venue.

241. A party may, by notice of application, supported by affidavit setting out the reasons for the application, apply to the Chairman for an order that an action be heard by the Tribunal at a place to be specified in the order.

242. A party may, by notice of application, supported by affidavit—

- (a) verifying that the amount of damages in issue does not exceed \$1,000; and
- (b) setting out the reasons for the application as to venue, apply to the Chairman for an order that the action be heard by a Magistrate at a place to be specified in the order.

Applications for hearing before a Magistrate.

HEARING.

250. The Tribunal shall, ordinarily, hear an action in public, on the oral evidence of the parties and their witnesses; but, the Tribunal may order that—

Conduct of hearing.

- (a) any specific facts be proved by affidavit;
- (b) the affidavit of a witness be read and tendered in evidence at the hearing, on such conditions as the Tribunal thinks reasonable; and
- (c) evidence of any specific facts be given at the hearing by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries or otherwise, as the Tribunal may direct; and
- (d) such part of the proceedings, as it thinks fit, be conducted in camera.

251. The Registrar shall keep a record of proceedings on the hearing of an action, in accordance with Form 28, showing, as nearly as may be practicable, a summary of the proceedings; and, at the conclusion of the hearing, the Registrar shall enter the judgment of the Tribunal in, and sign, the record.

Record of hearing to be kept.

252. Where a tape recording is made of a proceeding of the Tribunal, a party interested may, on payment of the prescribed fee, obtain from the Registrar a transcript of that recording certified by him as true and correct; and that transcript may be used as a record of that proceeding before the Tribunal in any other proceeding.

Transcripts of tape-recordings.

253. The hearing of an action before a Magistrate shall conform, as far as may be practicable, to a hearing before the Tribunal.

Hearings before Magistrates to conform to hearings before Tribunal.

254. The decision of a Magistrate hearing an action pursuant to these rules shall be filed in the Registry and may, on the extraction of the formal judgment, be enforced as a judgment of the Tribunal.

Finding of Magistrate to be entered as judgment of Tribunal.

255. Where an action has been heard by a Magistrate, the Clerk of the Local Court where it was heard shall return the Tribunal's documents and forward the record of the hearing to the Registry, within 14 days after the Magistrate's decision is given.

Record to be returned to Tribunal.

SUMMONS TO A WITNESS.

260. (1) A party or practitioner acting on his behalf, may, without leave, procure the issue from the Registry of a summons to a witness, in accordance with Form 27.

Parties may procure summons to witness.

(2) A summons to a witness shall contain one name, only, and may, where required, direct the witness to bring with him the papers or documents specified in the summons.

261. A person who, being served with a witness summons, and being paid or tendered reasonable conduct money fails to obey a direction addressed to him and contained in the summons commits an offence. Penalty: Forty dollars.

Disobedience of witness summons.

POWERS AND DUTIES OF THE REGISTRAR.

- Registrar to settle judgments and tax costs.
Appeals from Registrar.
270. The Registrar shall settle all judgments and orders and shall tax all bills of costs filed in the Registry.
271. (1) A party aggrieved by a determination of the Registrar may appeal therefrom to the Chairman by notice, in accordance with Form 30, within 10 days after the making of the order or decision complained of, or within such further time as may be allowed by the Chairman.
- (2) An appeal from a determination of the Registrar, unless otherwise ordered by the Chairman, acts as a stay.
- Correction of slips, etc.
272. The Chairman may, on notice of application and without the necessity of an appeal, correct accidental slips occurring in, or an omission in respect of, a judgment or order.

DRAWING UP JUDGMENTS AND ORDERS.

- Entry of judgments and extraction of orders.
Drafts to be settled.
280. Any party on the record may enter or extract a judgment of the Tribunal or an order of the Tribunal, the Chairman or a Magistrate.
281. Unless the Registrar dispenses with the requirement, a party desiring to enter a judgment or extract an order shall lodge a draft thereof in the Registry, for settling by the Registrar.
- Particulars to be included in judgments or orders as entered or extracted.
282. A judgment or order as entered or extracted shall—
- (a) bear the date on which it was made;
 - (b) show by whom it was made; and
 - (c) be authenticated by the seal of the Tribunal and the signature of the Registrar.
- Settled drafts to be re-encrossed.
283. (1) Where a draft judgment or order is settled and passed by the Registrar, the party wishing to enter or extract it shall re-encross and lodge it with the Registrar.
- (2) A specimen form of judgment is set out in Form 29.
- Copy to be sealed.
284. The original of a judgment or order shall be kept in the Registry as a record and a duplicate of it shall be sealed and signed by the Registrar and delivered to the party entering or extracting it.
- Application of rules of the Supreme Court to settling.
Orders need not be judgments extracted in certain cases.
285. The Rules of the Supreme Court, relating to the settling of judgments and orders, apply, with such adaptations as may be necessary, to the settling by the Registrar of judgments and orders of the Tribunal, Chairman and Magistrate.
286. An order that is not required to be formally drawn up before being acted on need not be extracted, unless it becomes necessary to serve the order.

ENFORCEMENT OF JUDGMENTS AND ORDERS.

- Judgments and orders enforceable in a Local Court.
290. A person in whose favour a judgment has been given by the Tribunal or an order has been made by the Tribunal or the Chairman may file the sealed copy of the order or a copy thereof certified as a true copy by the Registrar, in a Local Court established under the provisions of the Local Courts Act, 1904, having jurisdiction within the district where the person against whom it is sought to enforce the judgment or order resides; and the judgment or order shall, subject to the provisions of the Act, thereupon be enforceable as a judgment of the Local Court in which it is filed.
- Interest on judgments.
291. A judgment of the Tribunal shall carry interest at the rate of 5 per centum per annum, from the date of the judgment until it is satisfied; and the person in whose favour the judgment was given may recover the interest on execution.

EXAMINATION OF WITNESSES *DE BENE ESSE*.

300. The Tribunal may, on the application of a party, at any time, order the examination on oath of a witness *de bene esse*, either before the Tribunal, a member of the Tribunal, the Registrar, or a Magistrate or before a legal practitioner, whether within the State or elsewhere.

Orders for examination *de bene esse*.

301. A party may, by notice of application supported by affidavit showing the grounds on which the affidavit is made, apply for the examination of a witness *de bene esse*.

Parties may apply for orders for examination *de bene esse*.

302. All evidence taken *de bene esse* is admissible at the hearing of an action, subject to all just exceptions, unless it is shown that the witness whose evidence was so taken is, at the time of the hearing, present within convenient distance of the place of the hearing and is able to attend and give evidence, in person.

Admissibility of evidence *de bene esse*.

303. Where the Tribunal orders the examination of a witness *de bene esse*, the party calling the witness shall give sufficient notice of the time and place appointed for the taking of the examination to all parties on the record; and those parties may attend and cross-examine the witness in the usual manner.

Notice to be given of examinations *de bene esse*.

304. (1) The costs of taking evidence *de bene esse* shall be at the discretion of the Tribunal.

Costs of examination *de bene esse*.

(2) A person required to attend before the Tribunal or an examiner, for the purpose of being examined *de bene esse*, is entitled to the same conduct money and to payment in respect of such expenses and loss of time, as is payable to a witness upon attendance at any hearing of the Tribunal.

305. A person appointed to conduct an examination *de bene esse* may administer oaths or take affirmations for that purpose.

Examiner may administer oaths.

306. (1) On the examination of a witness *de bene esse*, the examiner shall reduce the evidence, or cause it to be reduced, to writing, in his presence, either by way of question and answer or so as to represent, as nearly as may be possible, the statements of the witnesses.

Conduct of examination.

(2) The examiner may put any question to the witness as to the meaning of an answer or as to any matter arising in the course of the examination and shall note, and give his opinion to counsel, solicitors or parties on, and make reference in the deposition to, any question that may be objected to; but an examiner is not empowered to decide upon the materiality or the relevance of any question.

(3) Where a witness, counsel or a solicitor objects to a question, particulars of the question and objection shall be transmitted, with the transcript, to the Registrar; and the Chairman shall rule on the validity of the objection.

(4) Upon the completion of the examination, the deposition shall be read to the witness, in the presence of the parties, and the witness shall then be required to sign the deposition and, where a witness refuses to sign the deposition, the examiner shall note that fact on the deposition.

(5) The examiner shall authenticate the original of the completed deposition, by adding his signature and shall transmit it to the Registrar for filing.

307. Where a person duly summoned to attend for examination *de bene esse* or to produce any document refuses to attend or, having attended, refuses to be sworn or make an affirmation or to answer any proper question or to produce any document, the examiner shall give his certificate to that effect and transmit it to the Registrar to be filed; and, upon the filing of the certificate, the party requiring the examination of the witness may apply to

Recalcitrant witnesses.

the Chairman for an order directing the witness to attend, to be sworn or make an affirmation, to answer any question or to produce the documents, as the case may require.

Examiner to report certain matters.

308. The person taking the examination of a witness *de bene esse* under these rules may, and where necessary shall, make a special report to the Tribunal touching the examination and the conduct or absence of any witness or other person thereat; and the Tribunal or the Chairman may direct such proceedings and make such order on the matters arising from the report as the circumstances may require.

TIME.

Abridgement or enlargement of time.

310. The Tribunal or the Chairman may, at any time, enlarge or abridge the time prescribed by these rules or fixed by an order, with or without terms.

Reckoning of number of days.

311. Where clear days are prescribed by these rules or fixed by an order, the time shall be reckoned exclusively of the first and last days and, 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 inclusive of the last day.

Certain days not to be taken into account.

312. Where less than 7 days is prescribed by these rules or limited by an order for doing any act, a day on which the Registry is closed for business shall not be taken into account.

Time extended when Registry closed.

313. Where the time prescribed by these rules or limited by an order for doing any act expires on a day on which the Registry is closed for business, the time is extended to the day on which the Registry is next open for business.

Certain holiday periods not to be taken into account.

314. In the computation of time for filing, delivering or amending a pleading, subsequent to the service of a claim, the period or any part of the period that falls between the 24th December and 5th January next following, in any year, shall not, unless the Chairman or the Tribunal otherwise orders, be taken into account.

Notice of intention to proceed after prolonged inaction.

315. Where proceedings have not been taken in an action or matter for a period exceeding one year, a party proposing to proceed shall give one month's notice in writing of his intention to every other party; but a notice of application on which no order has been made is not a proceeding for the purposes of this rule.

APPEALS FROM TRIBUNAL TO THE FULL COURT.

Notice of appeal to be filed.

320. A copy of a notice of appeal to the Full Court of the Supreme Court from a judgment or order of the Tribunal or the Chairman, filed in the Central Office, pursuant to the Rules of Court, shall, on the same day that it is so filed, be filed in the Registry.

Order of Full Court to be filed.

321. When an order of the Full Court of the Supreme Court, on an appeal from the Tribunal or the Chairman, has been extracted, the order or an office copy of the order shall be filed in the Registry, by the party extracting it, and the order may, thereupon, be enforced as a judgment or order of the Tribunal.

APPEALS FROM A MAGISTRATE TO THE TRIBUNAL.

Appeals from Magistrates to be by notice of appeal.

330. An appeal to the Tribunal from a decision of a Magistrate shall be by way of rehearing and shall be instituted by notice of appeal filed and delivered, as hereinafter provided by these rules.

Notice of appeal to specify grounds of appeal.

331. An appellant may appeal from the whole or any part of a decision of a Magistrate and shall, in the notice of appeal, show whether the whole or part only of the decision is complained of and, where a part only, shall specify that part and shall also state briefly, but specifically, the grounds relied upon in support of the appeal and what order or judgment he seeks, instead of the decision from which he appeals.

332. (1) An appellant shall file the notice of appeal from a Magistrate and file a copy of it in the Local Court in which the decision appealed from was given and shall, within 24 hours after filing it, serve a copy on all parties on the record of the Tribunal, at their respective addresses for service.

Filing and delivery of notice of appeal.

(2) A notice of appeal must be filed in accordance with sub-rule (1) of this rule, within 21 days after the date of the decision appealed from or within such extended time as the Chairman may allow.

(3) Upon the filing and delivery of a notice of appeal from a Magistrate, in accordance with this rule, the appeal is duly instituted.

333. (1) The Tribunal may direct that the notice of appeal from a Magistrate be served on a person who was not a party to the action, in the first instance, and may permit the admendment of the notice and postpone or adjourn the hearing of the appeal, for such period and upon such terms as appear just.

Service of notice of appeal on persons who are not parties.

(2) Upon the hearing of the appeal, the Tribunal may give such judgment and make such order as might have been given or made, if the person served with the notice of appeal had originally been a party to the action.

334. The Clerk of the Local Court in which the decision appealed from was given or made shall, forthwith after the filing of the notice of appeal, transmit to the Registrar the original exhibits tendered before the Magistrate, together with certified copies of the notes of evidence and the reasons for the decision of the Magistrate.

Clerk to transmit documents.

335. As soon as may be practicable after an appeal has been instituted, the appellant or his solicitor shall extract the formal judgment and prepare a list and index of the documents to constitute the record for the Tribunal and shall file the list and index and, at the same time, take out an appointment to settle them before the Registrar; and the appellant shall, forthwith after the appointment has been obtained, serve a copy of it and of the list and index on the other parties to the appeal.

List and index of documents.

336. The Registrar may, on settling the list, vary it and the index as he thinks proper and may, if he thinks necessary, obtain the directions of the Chairman.

Setting of list and index of documents.

337. As soon as may be practicable after the Registrar has settled the list and index of documents, the appellant or his solicitor shall prepare and produce an appeal book in print, in accordance with the list and index and in a manner satisfactory to the Registrar, so that—

Preparation of appeal books.

- (a) the title page gives, the full and correct title of the action and the names of the solicitors for each party and their addresses for service;
- (b) the title page is followed by an index comprising a complete list of the documents contained in the record before the Tribunal, as settled by the Registrar, and indicating on what page of the appeal book each document appears;
- (c) the index gives the date of each order and of the decision and, in the case of exhibits, the exhibit mark in each case;
- (d) the documents are arranged in the index and in the appeal book in the following order, that is to say—
 - (i) process and pleading;
 - (ii) evidence—oral or on affidavit;
 - (iii) testimony before an examiner tendered and used as evidence;
 - (iv) exhibits in the order they have been marked;
 - (v) reasons for the decision of the Magistrate;

- (vi) the formal judgment;
 - (vii) the notice of appeal; and
 - (viii) a certificate that the transcript has been examined and is correct;
- (e) the date and a short description of each document precedes it, but so that formal headings and formal identification of exhibits and the like are omitted;
- (f) interrogatories, answers thereto and affidavits of documents are not copied, except so far as they were put in evidence; and
- (g) the thickness of any one volume of the appeal book does not exceed 1½ inches.
- Cost of appeal books.** 338. Unless the Tribunal otherwise orders, the costs of preparation of the appeal book are costs in the cause.
- Lodging and delivery of appeal books.** 339. As soon as may be practicable after the preparation of the appeal book, the appellant shall lodge four copies of it in the Registry and, within 24 hours thereafter, deliver two copies of it to each of the other parties on the record.
- Listing of appeals.** 340. When an appeal book is lodged in the Registry, the Registrar shall enter the appeal for hearing in the list of appeals to be heard at the next sitting of the Tribunal in its appellate jurisdiction, unless that sitting falls within the next 7 days, in which event, he shall list the appeal for hearing at the next following sitting of the Tribunal in its appellate jurisdiction.
- Effect of failure to lodge and deliver appeal books.** 341. Where an appellant does not lodge and deliver copies of the appeal book as prescribed by these rules, within 60 days of the date of filing the notice of appeal, any other party on the record may apply to the Tribunal, by notice of application, for an order dismissing the appeal for want of prosecution.
- Powers of Tribunal on appeal.** 342. (1) On the hearing of an appeal from a Magistrate the Tribunal—
- (a) may exercise all the powers and perform all the duties as to amendment and otherwise that might have been exercised or performed by the Magistrate;
 - (b) has an absolute discretion to give leave, on special grounds, for the admission of further evidence upon any question of fact, by oral evidence before it, by affidavit or by deposition taken before an examiner appointed by the Tribunal;
 - (c) is empowered to draw inferences of fact and to give such judgment and make such order as it thinks fit;
 - (d) is empowered to make such order as to the whole or any part of the costs of the appeal as it thinks fit; and
 - (e) may order that the decision and judgment be set aside and a new hearing be held.
- (2) The Tribunal may exercise any of the powers mentioned in sub-rule (1) of this rule, notwithstanding that the notice of appeal seeks that part only of the decision be reversed or varied; and may exercise them in favour of all or any of the respondents or parties, although they have not appealed from, or complained of, the decision of the Magistrate.
- Notice of cross-appeal.** 343. A respondent may file a notice of cross-appeal, but not, without leave, within 8 days of the date fixed for the hearing of the appeal.
- Appeal not to act as a stay.** 344. An appeal from a Magistrate does not operate as a stay of execution or of proceedings under the decision appealed from and does not invalidate an intermediate act or proceeding, except so far as the Chairman may order or direct.

COSTS.

350. Subject to the express provisions of any statute and of these rules, the Tribunal has a general discretion to order the costs of and incidental to any proceedings, but, without limiting that general discretion, the Tribunal will, generally, order that the successful party to an action or proceeding recover his costs, however—

General
discretion
as to costs.

- (a) if the Tribunal is of the opinion that the conduct of a party, either before or after the commencement of the action or proceeding, 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 it may further order him to pay the costs of an unsuccessful party, either wholly or in part; and
- (b) if a party, though generally successful in the action or proceeding, has, by the introduction of some issue on which he has failed, increased the costs, the Tribunal may order that party to pay the costs of that issue.

351. In the absence of a special order for the costs of and incidental to an action or proceeding—

Costs in
special
cases.

- (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 claims had been brought;
- (b) where the plaintiff succeeds in his claim and the defendant succeeds on a counter-claim, costs shall be awarded as if each party respectively had succeeded on an independent claim; but where the Tribunal considers that the counter-claim was more in the nature of a defence, it may give directions ensuring that there be an equitable adjustment, as between the parties, of the costs of the action, and, in the absence of any such directions, the Registrar may on taxation apportion any of the items so as equitably to adjust the rights of the parties;
- (c) where several defendants defend a claim, separately, and it appears that the defendants or any of them might have joined in their defence, the Tribunal may allow only one set of costs to those defendants by whom it appears a joint defence might have been conducted and separate costs to any other or others who, in the opinion of the Tribunal, were properly separately represented;
- (d) where there are several defendants and the plaintiff has a finding against them, each of them shall be liable to the plaintiff for the entire costs, although they defend separately, but the Tribunal may, as the occasion requires, make an order or orders, as between several defendants, apportioning the liability among them and making provision for the recovery of contribution; and
- (e) a plaintiff suing in a representative capacity shall, personally, be liable to pay costs to the defendant, in the case of discontinuance, dismissal or judgment for the defendant.

352. Where a solicitor acts as guardian *ad litem* for a person under a disability, he is not entitled to an order for reimbursement of costs incurred out of any property of the person under a disability, unless the Tribunal has sanctioned his acting in that capacity, at the time of his assuming guardianship, and is satisfied that the costs were properly incurred.

Costs of
solicitor
acting as
guardian
ad litem.

353. Costs shall be taxed and allowed, as between party and party, in accordance with the scales of costs and allowances to witnesses set out in these rules.

Scales of
costs.

- Costs in cases of unusual complexity, etc.
354. Where the Tribunal is of the opinion that a special order as to costs should be made, by reason of the unusual complexity or importance of the case or for any other sufficient reason, the Tribunal may order that any particular allowance in the scale of costs be increased or may direct the Registrar to tax the costs on a higher scale and, in making the order or giving the direction, the Tribunal may fix a limit within which the Registrar may allow those costs.
- Amount allowable on an item may be decreased in certain cases.
355. Where, in regard to any particular item of costs, the work performed does not justify the allowance of a fee according to the scale prescribed or a fee equal to the minimum fee prescribed, the Tribunal or Registrar may fix such fee as, in the opinion of the Tribunal or Registrar, is just and reasonable.
- Award of costs by lump sum or proportion of scale.
356. The Tribunal may award a lump sum by way of costs or may direct that a party entitled to costs shall recover only a proportion of the costs under the scale.
- Apportionment of costs of appeals.
357. Where, on an appeal or on an appeal and cross-appeal, it is desirable that the costs be apportioned as between any of the parties, the Tribunal may, itself, make the apportionment or may refer the matter to the Registrar for his determination, with such directions as it considers necessary.
- Allowances where scale does not apply.
358. In any matter or case to which the scale of costs does not apply, the Tribunal may—
- (a) award a lump sum by way of costs;
 - (b) direct the Registrar to tax or allow costs analogous to those allowable under the scale; or
 - (c) direct the Registrar to tax and allow reasonable costs.
- Allowance of disbursements.
359. In addition to the items of costs allowable under the scale of costs, all disbursements properly incurred, witnesses expenses actually paid, according to the scale of allowances to witnesses set out in these rules, and other necessary payments incurred in the conduct of the action or proceedings are allowable, on taxation of costs.
- Fixing value of subject matter.
360. Unless the Tribunal otherwise orders, the amount of the judgment shall be the value of the subject matter, for the purpose of determining the scale on which the party and party costs are to be taxed; but the Tribunal need not fix the same amount as the value, for each party.
- Taxing of costs.
361. Unless the Tribunal in a particular case otherwise directs, bills of costs that have been directed by a judgment or order to be taxed shall be taxed, allowed and certified by the Registrar who shall, on the application of a party claiming taxation, appoint a time for taxation.
- Notice of taxation need not be delivered to a party not defending.
362. Notice of the taxation of costs need not be delivered to a defendant who has not filed a defence or notice of address for service in the action to which the costs relate.
- Bills of costs to have notice of appointment, etc.
363. Every bill of costs left for taxation shall be endorsed with a notice of appointment and the name and address of the solicitor by whom it was left and the name and address of the solicitor (if any) for whom he is the agent.
- Notice of taxation.
364. Where notice of the taxation of costs is required, the party whose costs are to be taxed shall deliver the notice of appointment and a copy of the bill to the other party at least 2 clear days before that appointed for the taxation, unless, in the case of urgency, the Registrar fixes a shorter period.

365. An appointment made by the Registrar for the taxation of costs is peremptory and, on proof that due notice has been given to the opposite party, the Registrar shall proceed with the taxation, unless there appears to be sufficient cause for a postponement.

Taxation may proceed *ex parte* on proof of notice.

366. In every bill of costs, the professional charges shall be entered in one column and the disbursements in another and both columns shall be totalled, before the bill is left for taxation.

Drawing up bills of costs.

367. Where no order as to costs is contained in an interlocutory order, the order shall, subject to these rules, be so read and interpreted.

Costs where no order.

368. Where, in any action or proceeding, taxation of costs is not ordered or any costs are, by these rules or by an order, reserved for the consideration of the Tribunal at the trial, the Tribunal may fix the amount of costs payable; and, where, in a judgment or order of the Tribunal, the question of costs is not specifically dealt with, liberty to apply, with 21 days, is deemed to be reserved to every interested party.

Where costs not ordered or are reserved.

369. Where a party is, under these rules or pursuant to any order, required to obtain a special certificate for costs, liberty to apply, within 21 days, is deemed to be reserved to that party.

Leave reserved to obtain special certificates for costs.

370. Where a party contends that the Registrar 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, the party may, at any time within 7 days of the signing by the Registrar of the certificate or allocatur, apply to the Chairman to review the taxation in respect of those items or parts; and where the Chairman considers that the Registrar has made an error in principle, the Chairman may make such order to rectify the error as he thinks fit.

Party may apply to review taxation.

371. The costs allowed by the Registrar on any certificate or allocatur are deemed to be a judgment of the Tribunal and are recoverable accordingly; and interest on those costs runs from the date of the certificate or allocatur.

Costs as allowed constitute a judgment.

372. The Chairman has, in interlocutory proceedings dealt with by him, the same powers and duties as the Tribunal, with respect to the question of costs in those proceedings.

Powers of Chairman as to costs in interlocutory proceedings.

373. Where a party entitled to tax costs fails to lodge his bill of costs for taxation in the Registry, within three months after the date of the judgment, any other party on the record may apply, by notice, to the Chairman, for an order that those costs be summarily taxed; and, on the hearing of the application, the Chairman may fix the amount of the costs of the party in default or may give directions to the Registrar for the summary taxation of those costs.

Summary taxation where party entitled fails to bring in bill.

SCALE OF COSTS.

Item.	Scale 1 up to \$1,000.	Scale 2 over \$1,000 to \$5,000.	Scale 3 over \$5,000.
1. (a) Third Party Claim (including instructions and statement of claim)	\$ 25	\$ 40	\$ 40
(b) For each additional defendant	5	6	6
2. Guardian <i>ad litem</i>	10	12	12
3. Notice of Address for Service	5	7	7

Scale of Costs—*continued.*

Item.	Scale 1 up to \$1,000.	Scale 2 over \$1,000 to \$5,000.	Scale 3 over \$5,000.
4. (a) Defence (including instructions)	\$ 20	\$ 40	\$ 40
(b) If with Counterclaim involving substantial new matter—extra	5	10	10
5. Notice of Offer to Consent to Judgment	5	7	7
6. (a) Reply (if necessary)—not exceeding	10	24	24
(b) Reply and Defence to Counterclaim—not exceeding	20	40	40
7. Examination of Witnesses before hearing pursuant to Order—per hour	10	10-16	10-16
8. Application for Leave to Compromise	20	30	40
9. Discontinuance—Other party's entitlement where no fee specially fixed by Tribunal	10	15	15
10. Getting up case for hearing—			
(a) Liability and damages both in issue	30-50	60-200	100-300
(b) Damages only in issue	20-45	40-150	70-200
(c) Liability only in issue	20-45	40-150	70-200
NOTE: If the claim is settled or discontinued before hearing the Registrar may make such allowance under this item as he thinks proper but no allowance is to be made if a Notice of Offer to Consent to Judgment is filed within the time fixed by the Rules for filing a defence and is then accepted in accordance with the Rules.			
11. Counsel fee on hearing—			
(a) Liability and damages both in issue	30-50	60-200	100-300
(b) Damages only in issue	20-45	40-150	70-200
(c) Liability only in issue	20-45	40-150	70-200
12. Counsel fee for 2nd and each succeeding day of hearing— not exceeding	40	75	100
13. Junior Counsel fee on hearing (if certified for)—			
(a) Liability and damages both in issue	—	30-100	50-150
(b) Damages only in issue	—	20-75	35-100
(c) Liability only in issue	—	20-75	35-100
14. Junior Counsel fee 2nd and each succeeding day of hearing (if certified for)—not exceeding	—	50	80

Scale of Costs—*continued.*

Item.	Scale 1 up to \$1,000.	Scale 2 over \$1,000 to \$5,000.	Scale 3 over \$5,000.
	\$	\$	\$
15. Solicitor on the record or his clerk attending hearing (if certified for)—not exceeding per hour	—	10	10
16. Counsel fee on reserved decision	10	15	21
17. Conference fee where oral evidence given at hearing (if certified for)	10	15	15
18. Settling and extracting judgment—			
(a) If without appointment	5	15	15
(b) If with appointment	10	21	21
19. Rehearing—			
(a) Getting up case for rehearing		One half of the amount allowed for getting up case for hearing. Two thirds of the amounts allowed for counsel fees and solicitors fees at hearing.	
(b) Counsel fees on rehearing			
20. Adjournments		Such amount as shall be agreed or certified for by the Tribunal.	
21. (a) Delivery of Interrogatories	10	10-30	15-40
(b) Answers to Interrogatories	10	10-30	15-40
22. (a) Obtaining discovery of documents (without order) including inspection	10	10-25	10-30
(b) Giving discovery of documents	10	10-30	10-40
23. Applications in Chambers	5-15	6-50	6-50
24. Preparation and service of Bill of Costs	5	8	8
25. Attending on taxation of costs—per hour	2-5	2-10	2-10
26. Appeals—			
(a) From the Registrar	5-10	5-20	5-20
(b) From a Magistrate—			
(i) Preparation of Appeal Book	30-60		
(ii) Counsel fee	40-125		
(iii) Counsel fee 2nd and each succeeding day (if certified for)	40-75		
(iv) Junior Counsel fee (if certified for)	30-60		
(v) Junior Counsel fee 2nd and each succeeding day (if certified for)	20-50		
27. (a) Execution	10	10	15
(b) If land is involved—extra	10	10	10

Scale of Costs—*continued.*

Item.	Scale 1 up to \$1,000.	Scale 2 over \$1,000 to \$5,000.	Scale 3 over \$5,000.
	\$	\$	\$
28. Service of process—			
(1) (a) Where personal service is required and effected	2	3	3
(b) In any other case	1	1.50	1.50
(2) If at a place more than 2 miles from the place of business of the solicitor effecting service for each additional mile to the place where service effected	00.15	00.15	00.15
(3) If it is proper to effect ser- vice through an agent—plus the agent's reasonable charges	3	3	3
(4) If outside Australia	Such allowance as the Registrar thinks fit.		

SCALE OF ALLOWANCES TO WITNESSES.

	\$
1. Persons carrying on a professional business, as principals, not exceeding, per day	17
2. Other adult persons, not exceeding, per day	10
3. Persons under 21 years of age in receipt of salary or wages, not exceeding, per day	7
4. Persons under 21 years of age not in receipt of salary or wages—the amount of any loss in respect of which the Registrar thinks the person should be indemnified, but not exceeding, per day	7
5. Where any person is required by reason of the distance he or she has to travel to remain away from home overnight, not exceeding an additional amount, per day	8

NOTES:

- (a) In fixing the allowances to be made under items 2 and 3 the Registrar shall have regard to the amount of salary or wages actually lost by the witness.
- (b) In addition to the above allowances, witnesses residing at a distance from the place of hearing, may be allowed reasonable travelling expenses actually paid, but excluding any charges for maintenance or sustenance.
- (c) The Register may also allow such amount as he thinks has been reasonably and properly incurred and paid to a witness to qualify him to give skilled evidence.
- (d) Except by special order of the Tribunal, no allowance shall be made to any expert witness for attendance at the hearing of an action, for the purpose of assisting or advising Counsel or solicitors for a party, during the hearing.
- (e) In the case of persons giving evidence as experts, the allowances in the above scale may be increased in the discretion of the Registrar.
- (f) Persons appointed by the Tribunal or to whom any matter is submitted by the Tribunal for report under the provisions of section 16D of the Act shall be paid a fee to be determined by the Chairman.

FORMS.

The use of forms.

380. Where applicable, the forms in Appendix "A" and where not applicable, forms to the same effect, with such variations as the circumstances may require, may be used in proceedings under the Act.

Form No. 1.

REGISTER OF PROCEEDINGS.

No.
19.....

Parties.	Solicitors.

DOCUMENTS OTHER THAN IN CHAMBER APPLICATIONS.

Date of Filing.	Nature of Document.	Orders Made.

CHAMBER APPLICATIONS.

Date of Filing.	Nature of Document.	Orders Made.

Form No. 2.

(Title.)

APPOINTMENT OF GUARDIAN *AD LITEM* BY A PROPOSED
INFANT PLAINTIFF.

I, _____ of _____ in the State
of Western Australia _____ an infant who was born
at _____ on the _____ day of _____ 19
HEREBY APPOINT _____ of _____ in the said
State (my lawful father or as the case may be) to take and
prosecute a Claim against _____ of _____ for
(damages for negligence arising out of the use of a motor vehicle on
the _____ day of _____ 19 _____ or as the case may be) and for such
other relief as my said guardian *ad litem* may consider necessary on my behalf.

DATED the _____ day _____ 19 _____ .

SIGNED by the said }
in the presence of— }

(Commissioner for Affidavits or
Justice of the Peace.)

Form No. 3.

(Title.)

APPOINTMENT OF GUARDIAN *AD LITEM* BY DEFENDANT INFANT.

I, _____ of _____ in the State
 of Western Australia _____ an infant who was born
 at _____ on the _____ day of _____ 19____
 HEREBY APPOINT _____ of _____ in the said
 State _____ (my lawful father or as the case may be) to defend the
 above Claim on my behalf and to counterclaim for (damages for negligence
 arising out of the use of a motor vehicle on the _____ day of
 19____ or as the case may be) and to make such other claim
 for relief as my said guardian *ad litem* may consider necessary on my behalf.

DATED the _____ day of _____ 19____ .

SIGNED by the said }
 in the presence of— }

(Commissioner for Affidavits or
 Justice of the Peace.)

Form No. 4

(Title)

CONSENT TO ACT AS GUARDIAN *AD LITEM* ON
 BEHALF OF A PLAINTIFF OR DEFENDANT
 PERSON UNDER A DISABILITY

I, _____ of _____ in the State of
 Western Australia _____ HEREBY CERTIFY my consent
 to make a Claim (or defend this Claim) on behalf of
 of _____ in the said State
 an infant (or person of unsound mind) AND I DECLARE that I have no
 interest in the Claim adverse to that of the said infant (or person of un-
 sound mind).

Dated the _____ day of _____ 19____ .

SIGNED by the said }
 in the presence of— }

(Commissioner for Affidavits or
 Justice of the Peace.)

Form No. 5

(Title)

AFFIDAVIT OF FITNESS AND VERIFICATION OF CONSENT

I, _____ of _____ in the State
 of Western Australia Solicitor MAKE OATH AND SAY as follows:—

1. I am the solicitor for the abovenamed
 Plaintiff (Defendant).
2. _____ is a fit and proper
 person to act as guardian *ad litem* to sue (or defend) in this action
 on behalf of the abovenamed Plaintiff (Defendant).
3. The consent of the said _____ to act in that
 capacity is hereto annexed and marked "A".
4. To the best of my knowledge information and belief the said
 _____ has no interest in the
 matters in question in this action adverse to that of the Plaintiff
 (Defendant).

SWORN by the Deponent on the }
 _____ day of _____ 19____ }
 at _____ in the State of }
 Western Australia. }

Before me,

.....
 (A Commissioner for Affidavits or
 Justice of the Peace.)

Form No. 6.

(Title)

IN THE THIRD PARTY CLAIMS TRIBUNAL OF WESTERN AUSTRALIA

No. /19.

BETWEEN:

Plaintiff

and

Defendant

THIRD PARTY CLAIM

To: of

YOU ARE required within days after the service of this Third Party Claim on you, exclusive of the day of such service, to cause a Statement of Defence to the Claim or a Notice of Address for Service to be filed for you in the Registry of the Third Party Claims Tribunal at Perth otherwise the Plaintiff may proceed and obtain judgment without further notice to you.

This Third Party Claim was issued out of the Registry of the Third Party Claims Tribunal the day of 19 .

IF YOU INTEND TO DEFEND THIS CLAIM A STATEMENT OF DEFENCE SHOULD BE PREPARED AND FILED ON YOUR BEHALF AS SOON AS POSSIBLE. DELAY MAY PREJUDICE YOUR DEFENCE OR INVOLVE YOU IN ADDITIONAL COSTS.

Each defendant may file a Statement of Defence or Notice of Address for Service in the Registry of the Third Party Claims Tribunal at Perth either personally or by a solicitor and a copy of such Defence or Notice of Address for Service must be served on the plaintiff or his solicitor within 24 hours after the filing thereof.

Any document filed in the Registry must be in the form, and contain the endorsements prescribed by the Rules.

IMPORTANT NOTE: The fact of service of this Third Party Claim should in your own interests be forthwith communicated to the Motor Vehicle Insurance Trust by you or a solicitor on your behalf.

Place of hearing Perth.

This Third Party Claim was filed by

The Plaintiff resides at

The Address for Service of the Plaintiff is

CERTIFICATE OF SERVICE

This Third Party Claim was served by me on the defendant on the day of 19 .

Endorsed the day of 19 .

(Signed).....

(Address).....

[Back of Form]

STATEMENT OF CLAIM

COUNSEL

Form No. 7.
(Title.)

NOTICE OF APPLICATION IN CHAMBERS.

TAKE NOTICE that the Plaintiff (Defendant—or as the case may be) intends to make application to the Chairman in Chambers on the _____ day of _____ 19 _____ at the hour of _____ in the forenoon for an order that

DATED the _____ day of _____ 19 _____
(Solicitor for the _____)

Where the Notice is to be served on any other party or person, add the following:—

“FURTHER TAKE NOTICE that if you desire to be heard you should attend accordingly to the requisition of this Notice otherwise the matter may be dealt with in your absence.

To: _____ ”

Where the Notice is not to be served on any other party or person, add the following:—

“It is not intended to serve this Notice on any party or person.”
THIS NOTICE was issued at the instance of _____
of _____ in the State of Western Australia (capacity in which Notice issued).

Form No. 8.
(Title.)

GENERAL FORM OF TITLE OF ACTION.

IN THE THIRD PARTY CLAIMS TRIBUNAL
OF WESTERN AUSTRALIA

	No.	/19
BETWEEN:	AB	(Plaintiff)
	and	
	CD	(Defendant)

Form No. 9.
(Title.)

FORM OF TITLE OF ACTION — PLAINTIFF UNDER A DISABILITY.
IN THE THIRD PARTY CLAIMS TRIBUNAL
OF WESTERN AUSTRALIA

	No.	/19
BETWEEN:	AB an infant (or person of unsound mind) by his guardian <i>ad litem</i>	
	XY	(Plaintiff)
	and	
	CD	(Defendant)

Form No. 10
(Title)

FORM OF TITLE OF ACTION—DEFENDANT UNDER A DISABILITY
IN THE THIRD PARTY CLAIMS TRIBUNAL
OF WESTERN AUSTRALIA

	No.	/19
BETWEEN :	AB	(Plaintiff)
		and
	CD	an infant (or person of un- sound mind) by his guardian <i>ad litem</i> XY
		(Defendant)

Form No. 11
(Title)

FORM OF TITLE OF ACTION WHERE THIRD PARTY JOINED
IN THE THIRD PARTY CLAIMS TRIBUNAL
OF WESTERN AUSTRALIA

	No.	/19
BETWEEN :	AB	(Plaintiff)
		and
	CD	(Defendant)
		and
	EF	(Third Party)

Form No. 12
(Title)

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of the
is

DATED this day of 19 .

.....
(Solicitor for the .)

TO:

Form No 13
(Title)

NOTICE OF CHANGE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of the abovenamed
has now been changed to

DATED this day of 19 .

.....
(Solicitor for the .)

TO:

Form No. 14
(Title)

THIRD PARTY NOTICE

IN THE THIRD PARTY CLAIMS TRIBUNAL
OF WESTERN AUSTRALIA

	No.	/19
BETWEEN :	AB (Plaintiff)	
	and	
	CD (Defendant)	
	and	
	XY (Third Party)	

TO: XY
of

TAKE NOTICE that this action has been brought by the Plaintiff against the Defendant for damages for negligence arising out of a motor vehicle accident which occurred on the day of 19 Street at the intersection of Street and Street

The Defendant claims to be entitled to contribution from you to the extent of (or to be determined by the Tribunal) on the ground that negligence on your part contributed to the happening of the accident. Particulars of that negligence are as follows:—

AND TAKE NOTICE that if you wish to dispute the Plaintiff's claim as against the Defendant CD or your liability to the Defendant CD, you must cause a Statement of Defence to be filed within days after service of this Notice. In default of your so filing and delivering a Statement of Defence, you will be deemed to admit the validity of any judgment obtained against the Defendant CD and your own liability to contribute to the extent found by the Tribunal.

DATED the day of 19 .

.....
Solicitor for the Defendant.

Form No. 15.
(Title.)

NOTICE OF OFFER TO CONSENT TO JUDGMENT.

TAKE NOTICE that the Defendant admits a degree of negligence attributable to him to the extent of per cent. of the total damages which the Plaintiff has sustained and offers to consent to judgment in favour of the Plaintiff and against him for the sum of \$.

DATED the day of 19 .

.....
Solicitor for the Defendant.

Form No. 16.
(Title.)

NOTICE OF ACCEPTANCE OF OFFER TO CONSENT TO JUDGMENT.

TAKE NOTICE that the Plaintiff accepts the offer of the Defendant to consent to judgment for \$ in satisfaction of the Plaintiff's cause of action for damages for negligence (or as the case may be).

DATED the day of 19 .

.....
Solicitor for the Plaintiff.

TO:

Form No. 17.
(Title.)

NOTICE OF ACCEPTANCE OF OFFER AS TO NEGLIGENCE.

TAKE NOTICE that the Plaintiff accepts the offer of the Defendant as to negligence with respect to the Plaintiff's cause of action for damages for negligence (or as the case may be).

DATED the _____ day of _____ 19 _____ .

.....
(Solicitor for the Plaintiff.)

TO:

Form No. 18.
(Title.)

AFFIDAVIT OF SERVICE OF PROCESS.

I, _____ of _____ in the State of Western Australia MAKE OATH AND SAY as follows:—

1. On the _____ day of _____ 19 _____ at _____ I personally served the abovenamed _____ with a true copy of the Third Party Claim and endorsements thereon (or specify nature of the process) bearing date the _____ day of _____ 19 _____ and issued out of the Registry of the Third Party Claims Tribunal.
2. I did at the time and place of such service produce and show to the said _____ the original Third Party Claim (or specify process or document) issued under the seal of the Tribunal.
3. I am able to identify the person so served by me as being the Defendant (or Plaintiff or Third Party) by reason of the following:

SWORN by the Deponent on the _____ day of _____ 19 _____ at _____ in the State of Western Aus- tralia.	}
--------------------------------------------------------------------------------------------------------------------	---

Before me,

.....
(A Commissioner for Affidavits or a Justice of the Peace.)

Form No. 19.
(Title.)

NOTICE REQUIRING ATTENDANCE OF MEDICAL PRACTITIONER.

TAKE NOTICE that the _____ requests that a medical practitioner attend at the hearing to this action to give his evidence orally and to be cross-examined thereon notwithstanding the fact of the filing of his Affidavit of Evidence sworn on the _____ day of _____ 19 _____ .

DATED the _____ day of _____ 19 _____ .

.....
(Solicitor for the _____ .)

TO:

Form No. 20.
(Title.)

REQUEST FOR DISCOVERY.

TAKE NOTICE that the Plaintiff/Defendant requires the Defendant/Plaintiff to give discovery on Affidavit of all documents in the custody possession or power of the Defendant/Plaintiff relating to the matters in issue in this action within 10 days from the service of this notice.

DATED the _____ day of _____ 19 _____
(Solicitor for the _____.)

TO:

Form No. 21.
(Title.)

REQUEST FOR ANSWERS TO INTERROGATORIES.

TAKE NOTICE that the Plaintiff/Defendant requires the Defendant/Plaintiff to answer on oath the interrogatories set out hereunder within 10 days from the service of this notice.

List of Interrogatories.

- 1.
- 2.
- 3.
- 4.

DATED the _____ day of _____ 19 _____
(Solicitor for the _____.)

TO:

Form No. 22.
(Title.)

AFFIDAVIT OF DISCOVERY.

I (full name, address and occupation of deponent) MAKE OATH AND SAY as follows:—

- (1) I am the abovenamed
- (2) I have in my possession custody or power the documents relating to the matters in question in this action set forth in the First and Second Schedules hereto.
- (3) I object to producing the said documents set forth in the Second Schedule hereto on the ground that they are privileged.
- (4) I have had but do not now have in my possession custody or power the documents relating to the matters in question in this action set forth in the Third Schedule hereto. To the best of my knowledge and belief those documents are respectively in the possession of the persons specified in that Schedule in relation to the respective document (or as the case may be).
- (5) To the best of my knowledge information and belief I have not now and never had in my possession custody or power or in the possession custody or power of my solicitors or agents or in the possession custody or power of any other person or person on my behalf any deed account book or account voucher receipt letter memorandum paper or writing or any copy of or any extract from any such document or any other document whatsoever relating to the matters in question in this action or any of them or wherein any entry has been made relative to such matters or any of them other than and except the documents set forth in the said First Second and Third Schedules hereto.

FIRST SCHEDULE.

Date of Document (if any)	Description of Document	To Whom Addressed (if applicable)

SECOND SCHEDULE.

THIRD SCHEDULE.

Date of Document (if any)	Description of Document	To Whom Addressed (if applicable)

SWORN by the Deponent on the day }
of 19 at in the }
State of Western Australia

Before me,

(A Commissioner for Affidavits or Justice of the Peace.)

Form No. 23.
(Title.)

AFFIDAVIT IN ANSWER TO INTERROGATORIES.

I (full name, address and occupation of deponent) MAKE OATH AND SAY as follows:—

- (1) I am the abovenamed .
- (2) My answers to the best of my knowledge to the list of interrogatories dated the day of 19 delivered by the are as follows:—
 - (i) Q.
 - A.
 - (ii) Q.
 - A.
 - (iii) Q.
 - A.
 - etc.

SWORN by the Deponent on the day }
of 19 at in the }
State of Western Australia

Before me,

(A Commissioner for Affidavits or Justice of the Peace.)

Form No. 24

(Title)

REQUEST TO SET ACTION DOWN FOR HEARING

I the solicitor for the Plaintiff (or as the case may be) request that this action be set down for hearing at

- 1. At the hearing of the action it is proposed to call as witnesses (number of witnesses) persons who reside respectively at (names of towns).
- 2. I certify:—
 - (a) That this action is ready for trial.
 - (b) That I have complied with all requisitions and orders affecting the Plaintiff.
 - (c) That the Plaintiff does not propose to initiate any further interlocutory proceedings.
- 3. The probable length of the hearing is

DATED this day of 19 (Solicitor for the)

REGISTRAR'S CERTIFICATE

I certify that this action is ready for hearing in accordance with the Rules. DATED the day of 19 Registrar.

Form No. 25

(Title)

NOTICE OF HEARING

NOTICE is hereby given that this action has been set down for hearing at on the day of 19 at the hour of

DATED this day of 19 Registrar.

TO:

Form No. 26

(Title)

NOTICE TO PRODUCE AT HEARING

TAKE NOTICE that you are required to produce at the hearing of this action all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power that relate to or contain an entry, memorandum or minute relating to any matters in question in this action and in particular the following documents:—

DATED this day of 19 (Solicitor for the)

TO:

Form No. 27.

(Title.)

SUMMONS TO WITNESS.

YOU are hereby Summoned to appear before the Third Party Claims Tribunal at on the day of 19 at and thereafter from day to day until discharged from attendance to give evidence in this action on behalf of the

* You are also required then and there to have and produce all books, papers, writings in your possession, custody or control in any way relating to this action and in particular the following:—

Penalty for default in compliance \$40. DATED this day of 19 Registrar.

TO:

* If not required.

Form No. 28

RECORD OF PROCEEDINGS

In the Third Party Claims Tribunal of Western Australia } Between—

* Strike out whichever in-applicable.

Number..... *Plaintiff and Defendant and Third Party

BEFORE

†State whether trial of action, assessment of damages, motion for judgment, approval of compromise, appeal, or as the case may be.

†Nature or Proceeding..... Starting and finishing times each day :—

Table with columns for Date, Morning (From/To), and Afternoon (From/To) for recording trial times.

APPEARANCES : (a) Counsel : Mr..... for..... (Instructed by..... Attended by†.....) Mr..... for..... (Instructed by..... Attended by†.....) Mr..... for..... (Instructed by..... Attended by†.....) (b) In person.....

†Attendance of Instructing Solicitor or of Clerk should be noted.

Exhibits put in.....

WITNESSES.

† If known.

If insufficient space use separate printed form for details.

Table for recording witness details: Name (State party by whom called), Date, Time in Attendance (From/To), and Time giving evidence (From/To).

Special Remarks (if any).....

ORDER OR RESULT.....

Date...../...../19.....

Registrar.

Form 29.
(Title.)

FORM OF JUDGMENT.
BEFORE THE THIRD PARTY CLAIMS TRIBUNAL.

MR. CHAIRMAN
MR.
MR.

THE DAY OF 19 .

This action (or "The issue of liability/damages in this action"—as the case may be) was heard on the day of 19 .

Mr. being counsel for the Plaintiff and Mr. being counsel for the Defendant and the Tribunal having ordered that judgment be entered in the following terms IT IS ADJUDGED THAT:

1. The plaintiff recover against the defendant \$ and costs to be taxed.
- 2.
- 3.
- 4.

BY THE TRIBUNAL,

.....
Registrar.

The above costs have been taxed and allowed at \$ as appears by the Registrar's Certificate dated the day of 19 .

This Judgment was entered by of solicitors for the Plaintiff.

Form No. 30
(Title)

NOTICE OF APPEAL FROM REGISTRAR'S DECISION

TAKE NOTICE that the Plaintiff (Defendant—or as the case may be) intends to appeal to the Chairman in Chambers on the day of 19 at the hour of against the decision of the Registrar dated the day of 19 whereby the Registrar ordered (here set out the terms of the Registrar's order).

The Plaintiff (Defendant—or as the case may be) seeks an order that the decision of the Registrar be varied (here set out the terms of the order sought from the Chairman).

The grounds of the appeal are as follows:—

- 1.
- 2.
- 3.
- etc.

DATED the day of 19 .

.....
(Solicitor for the)

FURTHER TAKE NOTICE that if you desire to be heard you should attend according to the requisition of this Notice of Appeal otherwise the appeal may be dealt with in your absence.

TO: