

**NORTHERN TERRITORY OF AUSTRALIA**

**LOCAL COURT RULES**

As in force at 15 July 2001

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 15 July 2001

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## LOCAL COURT RULES

### Rules under the *Local Court Act*

#### Chapter 1      **General Rules**

#### Part 1          **Preliminary**

#### Division 1      **Citation and commencement**

##### 1.01      **Citation**

These Rules may be cited as the *Local Court Rules*.

##### 1.02      **Commencement**

These Rules come into operation on the commencement of the *Local Court Amendment Act 1997*.

#### Division 2      **Application of Rules**

##### 1.03      **Definitions**

In this Division:

***commencement date*** means the date on which these Rules come into operation.

***former Rules*** means the *Local Court Rules* in force immediately before the commencement date.

***pending proceeding*** means a proceeding in the Court to which, immediately before the commencement date, the former Rules applied and includes a proceeding commenced in another court and remitted or transferred to, or removed into, the Court on or after the commencement date.

#### **1.04      Application**

- (1) These Rules apply to every proceeding commenced in the Court on or after the commencement date.
- (2) Subject to this Division, these Rules apply with the necessary changes to a pending proceeding.
- (3) The Court may order that the former Rules or certain procedures prescribed by the former Rules are to apply to a pending proceeding.
- (4) The repeal of the former Rules does not affect anything done or omitted to be done in a pending proceeding before the commencement date and, except as provided in this Division, anything done or omitted to be done before that date is to be taken to have been done or omitted under these Rules.

#### **1.05      Jurisdiction not affected**

Nothing in these Rules limits the jurisdiction, power or authority that the Court had immediately before the commencement date.

#### **1.06      Time for doing act in pending proceeding**

Where the time for doing an act in a pending proceeding is specified in process issued or an order made by the Court before the commencement date, that time continues to apply to that act despite anything to the contrary in these Rules.

#### **1.07      Order in pending proceeding**

- (1) Except as provided in this rule, these Rules apply to an order made in a pending proceeding as if it had been made in a proceeding commenced after the commencement date.
- (2) An order made in a pending proceeding before the commencement date may be enforced in accordance with these Rules, but otherwise the order has the same force and effect as if these Rules had not been made.
- (3) Without limiting subrule (2):
  - (a) a person may not appeal against, make an application to set aside or vary or take any other action in respect of an order made before the commencement date unless the appeal, application or action could have been made or taken under the former Rules immediately before the commencement date; and

- (b) process commenced under the former Rules to enforce an order made before the commencement date may be continued or carried out in accordance with these Rules.

### **1.08      Costs in pending proceeding**

The costs for work done in a pending proceeding:

- (a) before the commencement date are to be determined in accordance with the former Rules; and
- (b) on or after the commencement date are to be determined in accordance with these Rules.

## **Division 3      Interpretation**

### **1.09      Definitions**

In these Rules, unless the contrary intention appears:

**an Act** includes an Act of the Commonwealth.

**corporation** means a corporation within the meaning of the Corporations Act 2001.

**counterclaim** means a claim in a proceeding by a defendant against a plaintiff and includes a set-off.

**discovery** means discovery and inspection of documents or discovery by written interrogatories.

**document** includes a video tape, audio tape, disc, film, facsimile or other means of recording.

**document exchange** means a document exchange facility approved for the time being by the Chief Justice on the recommendation of the Law Society of the Northern Territory.

**firm** means a firm within the meaning of section 4(1) of the *Business Names Act*.

**judgment** includes a decision, determination and order, whether final or otherwise.

**legal practitioner** means:

- (a) a person whose name is on the Roll of Legal Practitioners within the meaning of the *Legal Practitioners Act*;

- (b) the Secretary within the meaning of section 8 of the *Law Officers Act*;
- (c) the Secretary of the Attorney-General's Department of the Commonwealth; or
- (d) an officer of the Attorney-General's Department of the Commonwealth authorised under section 55E(4) of the *Judiciary Act 1903* of the Commonwealth to act in the name of the Australian Government Solicitor.

**officer**, in relation to a corporation, includes a director, secretary, receiver, receiver and manager, official manager, administrator, liquidator and trustee administering a compromise or arrangement made between the corporation and another person.

**order** includes a decision, determination, direction and judgment, whether final or otherwise.

**originating process** means the process by which a proceeding is commenced, and includes a third party notice and, where a counterclaim is made against a person not previously a party to the proceeding in which the counterclaim is made, the counterclaim.

**party**, in relation to a proceeding, means the plaintiff, defendant, applicant, respondent or another party to the proceeding.

**pleading** includes a statement of claim and particulars of a pleading.

**possession** means possession, custody or power.

**proceeding** includes a matter in the Court commenced by or under an Act or these Rules.

**question** means a question, issue or matter for determination by the Court, of fact or law or of fact and law, raised at any stage of a proceeding by the pleadings or otherwise by:

- (a) the Court;
- (b) a party; or
- (c) a person, not a party, who has a sufficient interest in the proceeding.

**teleconferencing** means the use of telephone or closed circuit television.

**the Act** means the *Local Court Act*.

## **Division 4            Miscellaneous**

### **1.10        Court seal**

- (1) There is to be a seal of the Court approved by the Chief Magistrate.
- (2) Each Registrar is to have in his or her custody a stamp of a design as near as practicable to that of the seal of the Court.
- (3) A document marked with a stamp referred to in subrule (2) is as valid and effectual as if it had been sealed with the seal of the Court.

### **1.11        Exercise of power**

- (1) The Court may exercise a power under these Rules of its own motion or on application.
- (2) In exercising a power under these Rules, the Court:
  - (a) must endeavour to ensure that all questions in a proceeding are effectively, completely, promptly and economically determined; and
  - (b) may impose any conditions it considers appropriate.

### **1.12        Procedure wanting or in doubt**

- (1) Where the manner or form of the procedure:
  - (a) for commencing or taking a step in a proceeding; or
  - (b) by which the jurisdiction, power or authority of the Court is to be exercised,

is not prescribed by these Rules or by or under an Act, the Court may adopt and apply with the necessary changes the relevant procedures, rules and forms observed and used in the Supreme Court.

- (2) An act done in accordance with an order made or direction given in pursuance of subrule (1) is regular and sufficient.
- (3) An application for directions relating to the commencement of a proceeding is not to name a person as defendant.

### **1.13        Act by corporation**

Where the Court makes an order that a corporation is to do an act, it may order that the act be done by the appropriate officer of the corporation.

### **1.14 Power to act by legal practitioner, &c.**

Unless the contrary intention appears, anything in a proceeding that is required or permitted by these Rules, an Act or another law to be done by a party may be done:

- (a) by the party's legal practitioner; or
- (b) with the leave of the Court, by some other person.

### **1.15 Appearance by party**

Subject to rule 32.02, a party may appear in Court:

- (a) in person;
- (b) by a legal practitioner;
- (c) by an articulated clerk unless the Court orders otherwise; or
- (d) with the leave of the Court:
  - (i) in the case of a corporation – by an officer or employee of the corporation;
  - (ii) in the case of a firm – by a partner or employee of the firm;
  - (iii) in enforcement proceedings – by a commercial agent; or
  - (iv) by some other person.

## **Part 2 Non-compliance with Rules**

### **2.01 Effect of non-compliance**

- (1) A failure to comply with these Rules is an irregularity and does not nullify a proceeding or a step taken, document used or order made in a proceeding.
- (2) Subject to rules 2.02 and 2.03, where there is a failure to comply with these Rules, the Court may:
  - (a) set aside the proceeding, either wholly or in part;
  - (b) set aside a step taken, document used or order made in the proceeding; or
  - (c) exercise its powers under these Rules to allow amendments and make orders dealing with the proceeding generally.

## **2.02      Proceeding commenced by wrong process**

The Court must not strike out or wholly set aside a proceeding on the ground that the proceeding was commenced by the wrong process.

## **2.03      Application to set aside**

Where a party applies to the Court to set aside a proceeding or a step taken, document used or order made in a proceeding on the ground of a failure to comply with these Rules, the Court may do so only if the party applies:

- (a) within a reasonable time after the party becomes aware of the failure; and
- (b) before the party takes a further step in the proceeding (other than filing a notice of defence) after becoming aware of the failure.

## **2.04      Dispensing with compliance**

The Court may dispense with compliance with a requirement of these Rules either before or after the time for compliance arises.

# **Part 3            Time and documents**

## **Division 1        Time**

### **3.01      Calculating time**

- (1) Unless the Court orders otherwise, a time fixed by these Rules or by an order or document in a proceeding is to be calculated in accordance with this rule.
- (2) Where a time of one day or longer is to begin on or be calculated from a day or event, the day or the day on which the event occurs is to be excluded.
- (3) Where a time of one day or longer is to end on or be calculated to a day or event, the day or the day on which the event occurs is to be included.
- (4) Where a time of 5 days or less includes a day on which an office of the Court is closed, that day is to be excluded.
- (5) Where the last day for doing an act at an office of the Court is a day on which the office is closed, the act may be done on the next day the office is open.

### **3.02      Time for service**

- (1) In calculating a time for service fixed by these Rules or fixed, extended or reduced by an order, a document that is served after 4.00 p.m. or on a day on which the office of the Court is closed is to be taken as having been served on the next day the office is open.
- (2) Where a document is delivered into the facility of a document exchange in accordance with rule 6.07(1)(d), the day of service is to be taken as the next day on which the document exchange is open for business.

### **3.03      Extending or reducing time**

- (1) The Court may extend or reduce a time fixed by these Rules or fixed, extended or reduced by an order.
- (2) Subject to rule 7.06, the Court may extend a time under subrule (1) before or after the time expires whether or not an application for the extension is made before the time expires.

### **3.04      Fixing time**

Where a time is not fixed by these Rules or by an order, the Court may fix a time.

## **Division 2      Documents**

### **3.05      Content and form**

- (1) A document (including a form) to be used in the Court is to be prepared in accordance with subrules (2), (3) and (4) but strict compliance with those subrules is not required and substantial compliance, or the compliance that the circumstances require, is sufficient.
- (2) A document is to:
  - (a) be of durable paper 297 millimetres by 210 millimetres in the size known as International Paper Size A4 and be capable of receiving writing in ink;
  - (b) have a left-hand margin of at least 25 millimetres;
  - (c) be printed or typed and the text is to be clear, sharp, legible and permanent;

- (d) be headed "In the Local Court at" followed immediately by the venue of the Court in which the proceeding has been or is to be commenced and state the identifying number assigned by the Court to the proceeding;
  - (e) state the title of the proceeding and give a short description of the document; and
  - (f) state the name, address and telephone, facsimile and reference numbers of the legal practitioner who prepared the form or, where the party acts without a legal practitioner, the name, address and telephone and facsimile numbers of the party.
- (3) A document is not to have a backing sheet.
- (4) Dates (other than months), amounts and other numbers are to be expressed in figures and not in words.
- (5) The Court may require a document in a proceeding to be prepared in a manner it considers appropriate.

### **3.06 Registrar may return document**

- (1) A Registrar may return a document if the Registrar considers that:
- (a) the form or contents of the document show that, if the document were to be accepted, the proceeding would be an abuse of the process of the Court; or
  - (b) the document is irregular or is not prepared in accordance with these Rules.
- (2) A document returned under subrule (1) is to be taken as filed but is to be corrected in accordance with the Registrar's directions.
- (3) A magistrate or Judicial Registrar may direct a Registrar to accept a document for filing.

### **3.07 Prescribed forms**

- (1) In these Rules, a reference to a form by number is a reference to the form so numbered in Schedule 1.
- (2) If a document required by or under an Act or by these Rules is not prescribed in these Rules or in a practice direction, a Registrar may accept a document in the form adapted from the most relevant form in Schedule 1 or the practice directions.

- (3) An inaccuracy in the completion of a form or the use of a wrong form does not invalidate a proceeding, but the Court may make amendments to the form or give directions in respect of the form that the Court considers appropriate.

### **3.08      General power of amendment**

- (1) To:
- (a) determine the real question in issue between the parties to a proceeding;
  - (b) correct a defect or error in a proceeding; or
  - (c) avoid a multiplicity of proceedings,
- the Court may at any stage order that:
- (d) a document (including a statement of claim) be amended; or
  - (e) a party have leave to amend a document.
- (2) An amendment under this rule may be made without the leave of the Court if all the parties to a proceeding consent to the amendment.

### **3.09      How document is filed**

A document is filed by lodging it in the Registry at the office of the Court where the proceeding is commenced or to which the proceeding is transferred.

### **3.10      Filing documents by electronic transmission**

- (1) A person may, in writing, request the Chief Magistrate to authorise him or her to file documents by electronic transmission and the Chief Magistrate may authorise the person in accordance with Form 3A.
- (2) The Chief Magistrate may give a general authorisation by practice direction relating to the filing of documents by electronic transmission.
- (3) A document filed by electronic transmission is to comply with these Rules.
- (4) The filing date of a document filed under this rule is the date on which it is received by the Court.

- (5) The Court must store a document filed by electronic transmission in a computer database or other device so that a hard copy of the document can be reproduced.
- (6) A person who files a document by electronic transmission must keep a hard copy of the document and must provide the Court with a hard copy if requested by a Registrar to do so.

## **Part 4            Registrars and bailiffs**

### **Division 1       Registrars**

#### **4.01            Jurisdiction of Judicial Registrar**

A Judicial Registrar may exercise the jurisdiction of the Court in accordance with the Act and these Rules, other than the jurisdiction to preside at:

- (a) the hearing of a proceeding;
- (b) the re-hearing of a proceeding; or
- (c) the hearing of an appeal.

#### **4.02            Jurisdiction of Registrar**

- (1) A Registrar may exercise the jurisdiction of the Court in accordance with the Act and these Rules, other than the jurisdiction to:
  - (a) make an order under:
    - (i) Part 2 (non-compliance with Rules);
    - (ii) Part 26 (injunctions and preservation of property);
    - (iii) Part 27 (summary judgment);
    - (iv) Part 28 (summary stay or dismissal of claim and striking out pleading);
    - (v) Part 29 (summary proceeding for recovery of possession of land);
    - (vi) Part 31 (security for costs);
    - (vii) Part 36 (re-hearing);
    - (viii) Part 37 (appeals);
    - (ix) Part 51 (charging order);

- (x) Part 52 (appointment of receiver); or
    - (xi) Part 53 (sequestration);
  - (b) preside at:
    - (i) the hearing of a proceeding;
    - (ii) the re-hearing of a proceeding; or
    - (iii) the hearing of an appeal; or
  - (c) authorise the issue of a warrant of arrest under Part 47 for a failure to attend in answer to an examination summons.
- (2) The Chief Magistrate may, by practice direction, provide that a Registrar at a specified office of the Court must not exercise all or part of the jurisdiction conferred by subrule (1).

#### **4.03 Referral of application to magistrate**

If, on an application to a Registrar under the Act or these Rules, the Registrar considers that it is proper for the application to be determined by a magistrate, the Registrar must refer the application to a magistrate.

#### **4.04 Appeal from Registrar**

- (1) A person affected by an order made by a Judicial Registrar, acting Judicial Registrar, Registrar, Deputy Registrar or acting Registrar may appeal to the Court.
- (2) An appeal under this rule is to be:
  - (a) by application under Part 25;
  - (b) heard by a magistrate; and
  - (c) by way of a hearing de novo.
- (3) Unless a magistrate orders otherwise, an appeal does not operate as a stay of the order appealed against.
- (4) Except with the leave of a Registrar or magistrate, an appeal under this rule is to be commenced not later than 14 days after the date of the order appealed against.

## **Division 2      Bailiffs**

### **4.05      Definitions**

In this Division:

***bailiff*** means a bailiff of the Court appointed under section 10A of the Act.

***warrant of execution*** means a warrant of seizure and sale, warrant of possession or warrant of delivery.

### **4.06      Service of summons**

- (1) A bailiff must serve a summons or notice as soon as practicable after receiving it from the Court.
- (2) If a bailiff does not serve a summons or notice within 7 days after receiving it from the Court, the bailiff must as soon as practicable report the non-service and the reasons for it to a Registrar.
- (3) Immediately after a bailiff has served a summons or notice, the bailiff must endorse on the duplicate the time and date of service.
- (4) As soon as practicable after a bailiff has served a summons or notice, the bailiff must swear an affidavit of service.
- (5) Where a bailiff receives more than one summons or notice directed to one person, the bailiff must serve them in the order in which they were received.

### **4.07      Execution of warrant**

- (1) A bailiff must execute a warrant of execution or warrant for a person's arrest not later than 14 days after receiving it from the Court, or sooner if so required by the Court.
- (2) If a bailiff does not execute a warrant of execution or warrant for a person's arrest within the time specified in subrule (1), the bailiff must as soon as practicable report the non-execution and the reasons for it to a Registrar.
- (3) As soon as practicable after execution of a warrant of execution or warrant for a person's arrest, the bailiff must endorse on the warrant:
  - (a) the time, date and manner of execution; and
  - (b) in the case of a warrant of execution – each amount of money received and disbursed or retained on account of the warrant.

- (4) Where a bailiff receives more than one warrant of execution issued against one person, the bailiff must execute them in the order in which they were received.

#### **4.08      Payment of money to Registrar**

A bailiff must, as soon as practicable, pay to a Registrar money received by the bailiff by virtue of his or her office.

#### **4.09      Liability**

A bailiff has the same liability as a sheriff under the *Sheriff Act*.

## **Part 5            General procedure in Court**

### **Division 1        Venue of Court**

#### **5.01      Proper venue**

- (1) A proceeding is to be commenced in a proper venue of the Court.
- (2) A proper venue is an office of the Court that is nearest to:
- (a) the defendant's residence immediately before the proceeding is commenced;
  - (b) the defendant's residence at the time the claim arose;
  - (c) the defendant's place of business immediately before the proceeding is commenced;
  - (d) the defendant's place of business at the time the claim arose;
  - (e) the defendant's place of employment immediately before the proceeding is commenced;
  - (f) the defendant's place of employment at the time the claim arose; or
  - (g) the place where the claim arose.
- (3) Despite a proceeding being commenced in a venue of the Court that is not a proper venue, the Court may hear and determine the proceeding at the venue at which the proceeding was commenced or at another venue the Court considers appropriate.
- (4) A proceeding is not void or in any other way affected by reason only that the proceeding was heard and determined at a venue of the Court other than a proper venue.

- (5) In subrule (2), **defendant**, in relation to a proceeding where there are 2 or more defendants, means any one of the defendants.

## **5.02      Objection to venue**

- (1) Subject to subrule (2), where:
- (a) a defendant objects that the venue from which process is issued is not a proper venue of the Court; and
  - (b) the Court is satisfied, having regard to the convenience of the parties, that the proceeding should be transferred,
- the Court may adjourn the proceeding to another venue of the Court.
- (2) Where a defendant objects that the venue from which process is issued is not a proper venue of the Court, the defendant must give notice of the objection to the plaintiff with the notice of defence unless the Court orders otherwise.

## **5.03      Transfer of proceeding**

The Court may order the transfer of a proceeding to another venue of the Court.

## **5.04      Transfer from Supreme Court**

- (1) Where the Supreme Court orders that a proceeding be transferred from the Supreme Court to the Local Court, the court file relating to the proceeding is to be transferred.
- (2) The Local Court must give all parties a notice of transfer in accordance with Form 5A specifying:
- (a) the date on which the Supreme Court made the order for transfer of the proceeding; and
  - (b) that it has received the file.
- (3) If the plaintiff has not filed a statement of claim or particulars of a claim in the Supreme Court, the plaintiff must:
- (a) file in the Local Court a concise statement of the particulars of the plaintiff's claim not later than 14 days after the date of the notice of transfer; and
  - (b) serve a copy of the statement of particulars on each other party not later than 7 days after it is filed.

- (4) If a Registrar considers it is appropriate, the Registrar must fix a date, time and place for a conciliation conference and notify the parties in the notice of transfer.
- (5) Where these Rules prescribe a time for doing an act by reference to the date of filing a notice of defence, the time for doing the act in a proceeding transferred under this rule is to be determined by reference to the date on which the order for transfer was made.

## **Division 2            Commencement of proceeding and making application**

### **5.05            Names of parties**

- (1) A person who commences a proceeding by filing a statement of claim is the party called the plaintiff and the person against whom the proceeding is commenced is the party called the defendant.
- (2) A person who commences a proceeding by filing an originating application or other application is the party called the applicant and the person against whom the application brought is the party called the respondent.

### **5.06            How proceeding commenced**

Except where provided otherwise by or under an Act or these Rules, a proceeding is commenced by filing a statement of claim under Division 1 of Part 7 or an originating application under Division 2 of Part 7.

### **5.07            Interlocutory or other application**

Unless the Court orders otherwise, an interlocutory or other application in a proceeding is to be made under Part 25.

### **5.08            Urgent case**

In an urgent case, the Court may:

- (a) on the application of a person who intends to commence a proceeding; and
- (b) on the person's undertaking to commence the proceeding within the time the Court directs,

make any order the Court might make if the applicant had commenced the proceeding and the application were made in the proceeding.

## **Division 3        Pleadings**

### **5.09        Form and content**

- (1) A pleading is to:
  - (a) be expressed in plain English and in non-technical language unless required by the nature of the claim;
  - (b) be divided into paragraphs numbered consecutively and each allegation, so far as practicable, is to be contained in a separate paragraph;
  - (c) contain, in a summary form, a statement of all the material facts on which the party relies but not the evidence by which those facts are to be proved;
  - (d) where a claim or defence of a party arises by or under an Act – identify the specific provision relied on; and
  - (e) state specifically the amount of compensation sought (if any) or the relief or remedy sought.
- (2) In a pleading, a party may:
  - (a) raise a point of law; and
  - (b) plead a conclusion of law if the material facts supporting the conclusion are pleaded.

### **5.10        Matter to be pleaded**

In a pleading subsequent to a statement of claim, a party must plead specifically a fact or matter that:

- (a) the party alleges makes a claim or defence of the opposite party not maintainable;
- (b) if not pleaded specifically, might take the opposite party by surprise; or
- (c) raises a question of fact that does not arise out of a preceding pleading.

### **5.11        Subsequent pleading**

A party may plead a fact or matter that has arisen at any time, whether before or after the commencement of the proceeding.

### **5.12      Inconsistent pleading**

A party may make inconsistent allegations of fact if the pleading makes it clear that the allegations are pleaded in the alternative.

### **5.13      Particulars of pleading**

- (1) A pleading is to contain the necessary particulars of a fact or matter pleaded.
- (2) Without limiting subrule (1), particulars are to be given if they are necessary to enable the opposite party to plead, define the questions for hearing or avoid surprise at the hearing.

### **5.14      Denial and pleading different facts**

- (1) An allegation of fact in a pleading is to be taken as admitted unless, in the pleading of the opposite party, it is:
  - (a) denied specifically or by necessary implication; or
  - (b) stated to be not admitted.
- (2) A party who specifically denies an allegation of fact must state what facts he or she relies on as the basis of the denial.
- (3) A party who intends to prove facts that are different from those pleaded by the opposite party must:
  - (a) specifically deny the facts pleaded or state that the facts pleaded are not admitted; and
  - (b) plead the facts he or she intends to prove.

### **5.15      Amendments and orders as to form, filing and service**

- (1) Such amendments are to be made to the pleadings as are necessary for determining the real questions at issue between the parties.
- (2) At any stage of a proceeding, the Court may:
  - (a) allow a party to amend his or her pleadings in a manner and on terms the Court considers appropriate;
  - (b) order that the pleadings be in a particular form; or
  - (c) make orders in respect of the filing and service of pleadings.

**5.16      Failure to plead matter or particulars**

A failure to comply with rule 5.10 or 5.13 does not invalidate a statement of claim.

**5.17      Filing pleadings**

A party who serves a pleading on another party must promptly file a copy of the pleading.

**Division 4          Discontinuance or withdrawal**

**5.18      Discontinuance or withdrawal**

- (1) At any time before the date fixed for the hearing of a proceeding, a party may, without the leave of the Court:
  - (a) discontinue a statement of claim, counterclaim or claim by third party notice; or
  - (b) withdraw a notice of defence.
- (2) A notice of discontinuance or withdrawal in accordance with Form 5B is to be filed and served on each other party.
- (3) Discontinuance or withdrawal is not effective until the notice is filed under subrule (2).
- (4) A party who discontinues or withdraws must pay the costs of the other party incurred before the discontinuance or withdrawal unless the Court orders otherwise.
- (5) Where a party is liable to pay the costs of another party because of discontinuance or withdrawal and the party, before paying the costs, commences another proceeding for the same or substantially the same cause of action, the Court may stay the proceeding until the costs are paid.

**Part 6                  Service**

**6.01      Documents to be served**

All documents filed by a party in a proceeding are to be served on the other parties.

## **6.02      When personal service necessary**

A document to be served in a proceeding need not be served personally unless personal service is required by these Rules or by order of the Court.

## **6.03      How personal service effected**

- (1) Personal service of a document is effected:
  - (a) by leaving a copy of the document with the person to be served; or
  - (b) if the person does not accept the copy – by putting the copy down in the person's presence and telling the person the nature of the document.
- (2) To effect personal service, it is not necessary to show the original document.

## **6.04      Personal service on particular party**

Personal service of a document is effected by serving the document in accordance with rule 6.03:

- (a) in the case of a company within the meaning of the Corporations Act 2001 or a registered body within the meaning of that Act – on the mayor, chairperson, president, town clerk, manager, treasurer, secretary or similar officer of the corporation;
- (b) in the case of a statutory corporation – on the Commissioner, chairperson, president, manager, chief executive officer or other officer of the statutory corporation;
- (c) in the case of the Territory or the Crown in right of the Territory – on the Solicitor for the Northern Territory;
- (d) in the case of the Commonwealth or the Crown in right of the Commonwealth – on the Australian Government Solicitor;
- (e) in the case of an infant:
  - (i) on a parent or guardian of the infant; or
  - (ii) if there is no such person – on the person with whom the infant resides or in whose care the infant is; or

- (f) in the case of a person under a disability as defined in rule 15.01(b):
  - (i) on the person who, under Part 15, is the litigation guardian in the proceeding to which the person with a disability is a party; or
  - (ii) if there is no litigation guardian – on the person with whom the person under a disability resides or in whose care the person is.

### **6.05      Personal service on firm or company**

Personal service is effected on:

- (a) individuals suing or being sued in the name of a firm, the business name of which is registered under the *Business Names Act* – by serving a document in accordance with section 31(2) of that Act;
- (b) individuals suing or being sued in the name of a firm, the business name of which is not registered under the *Business Names Act* – by serving a document in accordance with rule 6.03 on a person who appears to be a partner in the firm or to have the control or management of the business;
- (c) a company within the meaning of the Corporations Act 2001 – by serving a document in accordance with section 109X of that Act; or
- (d) a registered body within the meaning of the Corporations Act 2001 – by serving a document in accordance with section 601CX of that Act

### **6.06      Address for service**

- (1) The address for service of a plaintiff is:
  - (a) if the plaintiff sues by a legal practitioner – the business address in Australia of the legal practitioner or the legal practitioner's agent as stated in the originating process; or
  - (b) if the plaintiff sues in person – the address for service in Australia as stated in the originating process.

- (2) The address for service of a defendant is:
  - (a) if the defendant defends by a legal practitioner – the business address in Australia of the legal practitioner or the legal practitioner's agent as stated in the notice of defence or notice of admission; or
  - (b) if the defendant defends in person – the address for service in Australia as stated in the notice of defence or notice of admission.
- (3) A party or a party's legal practitioner may include in the address for service a number for facsimile transmission by which service of documents may be effected.

#### **6.07      How ordinary service effected**

- (1) If personal service of a document is not required, the document may be served:
  - (a) by leaving it at the address for service of the person to be served;
  - (b) by sending it by prepaid post to the person to be served at the person's address for service;
  - (c) where provision is made by or under an Act for service of a document on a corporation – by serving it in accordance with the provision;
  - (d) where the legal practitioner for a party has the facility for the reception of documents in a document exchange – by delivering it into the facility; or
  - (e) where a party or a party's legal practitioner has the facility for the reception of documents by facsimile transmission – by transmitting the document to the facility.
- (2) For the purpose of subrule (1), if at the time service is to be effected the person to be served has not stated an address for service in accordance with rule 6.06, the address for service is:
  - (a) in the case of an individual – the person's usual or last known place of residence or business;
  - (b) in the case of individuals suing or being sued in the name of a firm – the principal or last known place of business of the firm; or

- (c) in the case of a corporation – the registered office or principal place of business of the corporation.

#### **6.08 Identity of person served**

For the purposes of proof of service, evidence of a statement by a person:

- (a) relating to the person's identity; or
  - (b) that the person holds a particular office,
- is evidence of that fact.

#### **6.09 Acceptance of service by legal practitioner**

Where, in a proceeding:

- (a) a document is to be served on a person; and
- (b) a legal practitioner makes a note on a copy of the document that the legal practitioner accepts service of the document on behalf of the person to be served,

unless the legal practitioner is shown not to have had authority to accept service, the document is to be taken as having been served on the person on the day on which the legal practitioner made the note or on such other day as is proved.

#### **6.10 Substituted service**

- (1) Where it is impracticable to serve a document in a manner required by these Rules, the Court may order that, instead of service, steps specified by the Court be taken to bring the document to the notice of the person to be served.
- (2) Where the Court makes an order under subrule (1), it may order that the document is to be taken as served when a specific event happens or a specific time expires.
- (3) The Court may make an order under subrule (1) despite the person to be served being out of the Territory when the proceeding is commenced or the order is made.
- (4) An application for an order under subrule (1) is to be supported by an affidavit stating:
  - (a) that attempts at service have been unsuccessful, or the reason personal service is impracticable;
  - (b) the manner of service proposed; and

- (c) how the proposed manner of service will bring the document to the notice of the person to be served.
- (5) In deciding whether it is impracticable to serve a document, the Court must consider:
- (a) whether the applicant has taken reasonable steps to discover the whereabouts of the person to be served and to serve the person with the document;
  - (b) the means of the applicant, the likely cost to the applicant and the nature of the document to be served;
  - (c) whether by advertising or some other method the existence of the document is likely to come to the knowledge of the person to be served; and
  - (d) any other relevant matters.

#### **6.11 Confirmation of informal service**

Where a document has not been served in a manner required by or under these Rules or a law in force in the Territory but steps have been taken to bring, or which may tend to bring, the document to the notice of the person to be served, the Court may order that the document be taken as served on the person on a date specified in the order.

#### **6.12 Service on agent**

- (1) Where a contract is entered into in the Territory:
- (a) by or through an agent residing or carrying on business in the Territory; and
  - (b) on behalf of a principal residing or carrying on business out of the Territory,
- the Court may give leave, before the determination of the agent's authority or the agent's business relations with the principal, for originating process relating to or arising out of the contract to be served on the agent.
- (2) Where an order giving leave is made under subrule (1):
- (a) the order is to specify the time within which the defendant must file a notice of defence; and

- (b) the plaintiff must, without delay, send a copy of the order and the originating process by prepaid post to the defendant at the defendant's usual or last known place of residence or business out of the Territory.

### **6.13      Service under agreement**

Where, before or after the commencement of a proceeding, the parties agree that documents may be served on a party or on a person on behalf of a party in a manner or at a place specified in the agreement, service in accordance with the agreement is proper service.

### **6.14      Recovery of vacant land**

- (1) In a proceeding for the recovery of land, the Court may:
  - (a) if it is satisfied that no person appears to be in possession of the land and that service of originating process cannot be otherwise effected on a defendant without undue delay or expense – order that service on the defendant may be effected by affixing a copy of the originating process to a conspicuous part of the land; or
  - (b) if it is satisfied that no person appears to be in possession of the land and that service of originating process could not otherwise have been effected on a defendant without undue delay or expense – order that service already effected by affixing a copy of the originating process to a conspicuous part of the land is to be taken as sufficient service on the defendant.
- (2) This rule has effect despite the defendant being out of the Territory when a copy of the originating process is affixed to the land.

### **6.15      No service Christmas Day or Good Friday**

A person is not entitled to serve a document on Christmas Day or Good Friday.

### **6.16      Affidavit or declaration of service**

- (1) In the case of personal service of a document, an affidavit or declaration of its service is to have attached or clearly describe the document served and state:
  - (a) by whom the document was served;
  - (b) the time, day of the week and date when the document was served;

- (c) the place of service; and
  - (d) the manner of identifying the person served.
- (2) In the case of ordinary service of a document, an affidavit or declaration of its service is to state, with relevant dates, the facts constituting service.
- (3) A document purporting to be an affidavit or declaration of service is to be taken as evidence of proper service of the document unless the contrary is proved.

## **Part 7                    Commencement of proceeding**

### **Division 1            Statement of claim**

#### **7.01            Filing statement of claim**

- (1) A plaintiff commences a proceeding by filing a statement of claim in the Registry of the office of the Court at a proper venue as specified in rule 5.01.
- (2) When the office of the Court is closed, a statement of claim is to be taken to have been filed if:
- (a) the plaintiff produces the statement of claim to a magistrate or Registrar;
  - (b) the plaintiff gives to the magistrate or Registrar:
    - (i) an undertaking that the statement of claim will be filed in the office on the day the office is next open; and
    - (ii) any other undertaking the magistrate or Registrar requires; and
  - (c) the magistrate or Registrar initials the statement of claim.

#### **7.02            Form and content**

- (1) A statement of claim is to be:
- (a) subject to paragraph (b), in accordance with Form 7A; or
  - (b) in accordance with Form 7B if the claim arises from a motor vehicle collision.

- (2) A statement of claim is to:
- (a) state the full name of the plaintiff and an address for service of documents on the plaintiff;
  - (b) if the plaintiff sues in a representative capacity – state the capacity in which the plaintiff sues;
  - (c) state the name and address of the defendant;
  - (d) where the plaintiff sues by a legal practitioner:
    - (i) state the name of the legal practitioner and his or her firm, the business address in Australia and the telephone, facsimile and reference numbers of the legal practitioner; and
    - (ii) if the legal practitioner is the agent of another legal practitioner – state the name, firm, business address and telephone, facsimile and reference numbers of the principal;
  - (e) contain:
    - (i) a concise statement of the nature of the plaintiff's claim;
    - (ii) particulars of the claim;
    - (iii) a statement of the relief or remedy sought;
    - (iv) in the case of a claim for a liquidated amount – a precise statement of the amount and the basis on which it is calculated; and
    - (v) in the case of a claim for an unliquidated amount – the basis on which it is estimated; and
  - (f) if the claim arises from a motor vehicle collision – have attached to it at least one itemised quotation of the damages or loss assessor's report.
- (3) In addition to the business address of a legal practitioner or principal referred to in subrule (2)(d), a statement of claim may state the practitioner's or principal's postal address.
- (4) Where a plaintiff claims damages for bodily injury, in addition to the matters specified in subrule (2), the statement of claim is to contain:
- (a) particulars, with dates and amounts, of all earnings lost in consequence of the injury;

- (b) particulars of loss of earning capacity (if any) resulting from the injury;
- (c) the date of the plaintiff's birth; and
- (d) the name and address of each of the plaintiff's employers during the period commencing on the day 12 months before the party sustained the injury, the time of commencement and duration of each employment and the total net amount after deduction of income tax that was earned in each employment.

### **7.03      Costs to be specified**

- (1) If the plaintiff claims a debt or liquidated demand only, the statement of claim is to contain the following statement:

If you pay the amount of \$            and costs of \$            to the plaintiff or the plaintiff's legal practitioner without filing and serving a notice of defence you may avoid further costs.

- (2) The amount of costs specified in the statement is to be the amount of costs applicable under Part 38 to the amount claimed plus the fee for the filing and service of the statement of claim.

### **7.04      Claim not to be divided**

- (1) A plaintiff must not divide a claim or cause of action to make 2 or more statements of claim.
- (2) A plaintiff who has a claim that exceeds the jurisdiction of the Court:
  - (a) may abandon the excess by including a statement to that effect in the particulars of the claim; and
  - (b) on proof of the claim the plaintiff is entitled to judgment for the claim less the amount abandoned.

### **7.05      Service**

A plaintiff must serve a statement of claim with a notice of defence in accordance with Form 8A personally on each defendant unless the Court orders otherwise.

### **7.06      Time for service**

- (1) A statement of claim is valid for service for 12 months after the date on which it is filed.

- (2) If a statement of claim has not been served on a defendant, the Court may order that the validity be extended for a period of not more than 12 months from the day of the order.
- (3) An application for an extension under subrule (2) is to be made on or before the day on which a statement of claim ceases to be valid and no order for an extension is to be made after a statement of claim ceases to be valid.
- (4) Subject to subrules (2) and (3), the Court may make further orders extending the validity of a statement of claim.

## **Division 2      Originating application**

### **7.07      Commencing proceeding by originating application**

- (1) If a person commences a proceeding in respect of which:
  - (a) it is inappropriate to file a statement of claim; and
  - (b) no commencement procedure is otherwise prescribed by these Rules or by or under an Act,the person must commence the proceeding by filing an originating application in accordance with this Division.
- (2) An originating application is to be filed in the Registry of the Office of the Court at a proper venue as specified in rule 5.01.
- (3) When the office of the Court is closed, an originating application is to be taken to have been filed if:
  - (a) the applicant produces the originating application to a magistrate or Registrar;
  - (b) the applicant gives to the magistrate or Registrar:
    - (i) an undertaking that the originating application will be filed in the office on the day the office is next open; and
    - (ii) any other undertaking the magistrate or Registrar requires; and
  - (c) the magistrate or Registrar initials the originating application.

### **7.08      Form of originating application between parties**

- (1) An originating application by which an applicant commences a proceeding against a respondent is to be in accordance with Form 7C and is to:
- (a) state the full name of the applicant and an address for service of documents on the applicant;
  - (b) if the applicant acts in a representative capacity – state the capacity in which the applicant acts;
  - (c) state the name and address of the respondent;
  - (d) if the applicant is represented by a legal practitioner:
    - (i) state the name of the legal practitioner and his or her firm, the business address in Australia and the telephone, facsimile and reference numbers of the legal practitioner; and
    - (ii) if the legal practitioner is the agent of another legal practitioner – state the name, firm, business address and the telephone, facsimile and reference numbers of the principal;
  - (e) contain a brief statement of the order or relief applied for;
  - (f) if the application arises by or under an Act – identify the specific provision relied on;
  - (g) set out sufficient particulars to support the application; and
  - (h) be accompanied by a supporting affidavit if required.
- (2) In addition to the business address of a legal practitioner or principal referred to in subrule (1)(d), an originating application between parties may state the practitioner's or principal's postal address.

### **7.09      Service of originating application between parties**

Unless the Court orders otherwise, the applicant must serve personally on each respondent:

- (a) an originating application between parties;
- (b) the supporting affidavit (if any); and
- (c) a notice of intention to appear, in accordance with Form 7D.

### **7.10      Time for service of originating application between parties**

- (1) An originating application between parties is valid for service for 12 months after the date on which it is filed.
- (2) If an originating application between parties has not been served on the respondent, the Court may order that the validity be extended for a period of not more than 12 months from the day of the order.
- (3) An application for an extension under subrule (2) is to be made on or before the day on which an originating application between parties ceases to be valid and no order for an extension is to be made after it ceases to be valid.
- (4) Subject to subrules (2) and (3), the Court may make further orders extending the validity of an originating application between parties.

### **7.11      Filing and form of notice of intention to appear**

- (1) A respondent served with an originating application between parties must, not later than 28 days after being served, file and serve on the applicant a notice of intention to appear.
- (2) A notice of intention to appear is to be in accordance with Form 7D and is to:
  - (a) state the full name of the respondent and an address for service of documents on the respondent;
  - (b) if the respondent acts in a representative capacity – state the capacity in which the respondent acts;
  - (c) if the respondent is represented by a legal practitioner:
    - (i) state the name of the legal practitioner and his or her firm, the business address in Australia and the telephone, facsimile and reference numbers of the legal practitioner; and
    - (ii) if the legal practitioner is the agent of another legal practitioner – state the name, firm, business address and the telephone, facsimile and reference numbers of the principal; and
  - (d) contain a statement of the respondent's intention to appear before the Court in the proceeding.

- (3) In addition to the business address of a legal practitioner or principal referred to in subrule (2)(c), a notice of intention to appear may state the practitioner's or principal's postal address.
- (4) If a respondent who is served with an originating application between parties does not comply with subrule (1), the applicant may apply for an order for default judgment under Part 11.

### **7.12 Conciliation conference**

- (1) When a notice of intention to appear is filed, a Registrar must fix a date, time and place for a conciliation conference and must give all parties notice of the conference in accordance with Form 32A.
- (2) At a conciliation conference in respect of an originating application between parties:
  - (a) the parties must attend in accordance with rule 32.02;
  - (b) the Court may conduct the conciliation conference as it thinks fit; and
  - (c) the Court may make the orders it considers appropriate.

### **7.13 Originating application if no respondent**

- (1) An originating application by which an applicant commences a proceeding to which there is no other party is to be in accordance with Form 7E and is to:
  - (a) state the full name of the applicant and an address for service of documents on the applicant;
  - (b) if the applicant is represented by a legal practitioner:
    - (i) state the name of the legal practitioner and his or her firm, the business address in Australia and the telephone, facsimile and reference numbers of the legal practitioner; and
    - (ii) if the legal practitioner is the agent of another legal practitioner – state the name, firm, business address and the telephone, facsimile and reference numbers of the principal;
  - (c) contain a brief statement of the order or relief applied for;
  - (d) if the application arises by or under an Act – identify the specific provision relied on;

- (e) set out sufficient particulars to support the application; and
  - (f) be accompanied by a supporting affidavit if required.
- (2) In addition to the business address of a legal practitioner or principal referred to in subrule (1)(b), an originating application may state the practitioner's or principal's postal address.
- (3) An applicant must file 2 copies of an originating application and a Registrar must fix a date, time and place for a hearing and mark them on the application.

#### **7.14      Hearing of originating application in proceeding with no respondent**

- (1) The Court may conduct the hearing in respect of an originating application as the Court thinks fit and may make the orders it considers appropriate.
- (2) At the hearing, the Court may order that a copy of the originating application and any other document relevant to the application be served on a person who appears to the Court to have a sufficient interest in the determination of the application.

### **Part 8                      Notice of defence**

#### **8.01      Filing and service**

A defendant who intends to defend a claim must, not later than 28 days after being served with the statement of claim, file a notice of defence and serve a copy on the plaintiff at the plaintiff's address for service.

#### **8.02      Form and content**

- (1) A notice of defence is to:
- (a) be in accordance with Form 8A;
  - (b) state the full name of the defendant and an address for service of documents on the defendant;
  - (c) if the defendant defends in a representative capacity – state the capacity in which the defendant defends;

- (d) where the defendant acts by a legal practitioner:
    - (i) state the name of the legal practitioner and his or her firm, the business address in Australia and the telephone, facsimile and reference numbers of the legal practitioner; and
    - (ii) if the legal practitioner is the agent of another – state the name, firm business address and telephone, facsimile and reference numbers of the principal;
  - (e) contain a statement of the defendant's intention to defend the claim;
  - (f) state the defence or defences relied on, including statutory defences; and
  - (g) state particulars of each defence, including a summary of the material facts on which the defendant relies.
- (2) In addition to the business address of a legal practitioner or principal referred to in subrule (1)(d), a notice of defence may state the practitioner's or principal's postal address.
- (3) A notice of defence is not to be in the form of general denials and non-admissions.

### **8.03 Specific defences**

- (1) If the defendant intends to rely on:
- (a) the defence of illegality or fraud – the defendant must give particulars of the illegality or fraud;
  - (b) the defence of minority – the defendant must state the date and place of the defendant's birth;
  - (c) the defence of limitation by statute – the defendant must state the date on which the defendant claims the limitation period commenced;
  - (d) the defence of discharge under a law relating to bankruptcy or insolvency – the defendant must state the date of the order sequestrating the defendant's estate and the court by which the order was made and, if necessary, the date of the certificate of an order for the bankrupt's or insolvent's discharge; or

- (e) the defence of tender – the defendant must state the date of the tender and, where the amount tendered is less than the amount claimed, specify the item or items in the plaintiff's particulars of demand in respect of which tender was made.
- (2) The defence of tender is not available unless the defendant pays the amount alleged to have been tendered into the Court not later than 5 days before the date fixed for the hearing of the proceeding.

#### **8.04 Money claim as defence**

Where a defendant has a claim against a plaintiff for the recovery of a debt or damages, the defendant may:

- (a) rely on that claim as a defence to the whole or part of a claim by the plaintiff for the recovery of a debt or damages; and
- (b) include that claim in the defence and set-off against the plaintiff's claim,

whether or not the defendant also counterclaims for the debt or the damages.

#### **8.05 Conditional defence**

- (1) Where a defendant claims that the Court does not have jurisdiction to hear the proceeding, the defendant may apply to have the proceeding stayed or the statement of claim set aside.
- (2) An application under subrule (1) is made by filing a conditional notice of defence in accordance with Form 8B.
- (3) A conditional notice of defence has effect as an unconditional notice of defence unless the Court orders otherwise.

### **Part 9 Counterclaim**

#### **9.01 Defendant may counterclaim**

- (1) A defendant who has a claim against a plaintiff may counterclaim in the proceeding.
- (2) Subject to this Part, these Rules apply to a counterclaim as if the plaintiff were the defendant and the defendant were the plaintiff.

#### **9.02 Form of counterclaim**

- (1) A defendant who counterclaims must do so in the notice of defence unless the Court orders otherwise.

- (2) A counterclaim is to contain:
- (a) a concise statement of the nature of the defendant's claim;
  - (b) particulars of the defendant's claim; and
  - (c) a statement of the amount, relief or remedy sought.

### **9.03      Hearing of counterclaim**

A counterclaim is to be heard at the hearing of the proceeding unless the Court orders otherwise.

### **9.04      Counterclaim after judgment for plaintiff, &c.**

A defendant may continue a counterclaim despite:

- (a) judgment being given for the plaintiff in the proceeding; or
- (b) the stay, discontinuance or dismissal of the plaintiff's claim.

## **Part 10                  Further and better particulars**

### **10.01      Notice requiring particulars**

- (1) A defendant may serve a notice on a plaintiff stating that the defendant requires further and better particulars of the plaintiff's claim.
- (2) A plaintiff may serve a notice on a defendant that the plaintiff requires further and better particulars of the defendant's defence.
- (3) A notice requiring further and better particulars is to specify the facts or matters alleged about which particulars are sought.

### **10.02      Time for serving and filing notice**

A notice requiring further and better particulars is to be served and filed not later than 14 days before the date fixed for the conciliation conference under rule 32.01(1) unless the Court orders otherwise.

### **10.03      Particulars to be served and filed**

A party must serve and file the further and better particulars not later than 7 days after receiving the notice requiring them.

#### **10.04      Failure to give particulars**

- (1) If a party fails to comply with a notice requiring further and better particulars, the party who served the notice may apply for an order:
  - (a) if the party in default is a plaintiff or other party claiming relief – striking out the claim; or
  - (b) if the party in default is a defendant or other party against whom relief is claimed – permitting the party applying for the order to proceed as if a notice of defence had not been filed.
- (2) A party must file and serve an application under subrule (1) not later than 28 days before the date fixed for the hearing of the proceeding.

#### **10.05      Particulars in counterclaim**

This Part applies with the necessary changes to a counterclaim as if the plaintiff in the proceeding were a defendant.

### **Part 11                      Order in default of defence**

#### **11.01      When party may apply for order**

A party may apply for an order for default judgment in accordance with Form 11A:

- (a) where a defendant fails to file a notice of defence within 28 days after being served with the statement of claim;
- (aa) where a respondent fails, within 28 days of being served with an originating application between parties, to file a notice of intention to appear;
- (b) where the Court makes an order under rule 10.04(1)(b), 16.08(1)(c), 17.07(2) or 32.10(e) permitting the plaintiff or other party to proceed as if a notice of defence had not been filed; or
- (c) not later than 28 days after the Court orders a notice of defence be struck out under rule 28.02.

### **11.02 Affidavit or declaration required**

An application under rule 11.01 is to be filed together with:

- (a) in the case where a claim is for a debt or liquidated amount – an affidavit or declaration of service of the statement of claim if not previously filed;
- (aa) in the case of an originating application between parties:
  - (i) an affidavit or declaration of service if not previously filed; and
  - (ii) an affidavit verifying the particulars set out in the originating application; or
- (b) in any other case:
  - (i) an affidavit or declaration of service of the statement of claim if not previously filed;
  - (ii) an affidavit stating the extent to which the claim is unsatisfied, sworn not less than 7 days before the application is filed; and
  - (iii) an affidavit verifying the claim and the nature and extent of the injury, loss or damage suffered by the plaintiff, sworn not less than 21 days before the application is filed.

### **11.03 Registrar may make order or refer to magistrate**

- (1) If a Registrar is satisfied that an order for default judgment should be made, the Registrar may:
  - (a) make the order and, where applicable, an order for the assessment of damages or value of goods; and
  - (b) enter judgment to the extent of the order made.
- (2) If a Registrar is not satisfied that an order for default judgment should be made, the Registrar may:
  - (a) direct that a further affidavit or declaration be filed;
  - (b) give directions relating to the application;
  - (c) refer the matter to a magistrate; or
  - (d) refuse to make the order.

- (3) Where a Registrar refers an application to a magistrate, the magistrate may:
  - (a) make the order sought;
  - (b) order that:
    - (i) judgment as to liability only be entered; and
    - (ii) damages or the value of goods be assessed;
  - (c) direct that a further affidavit or declaration be filed;
  - (d) give directions relating to the application; or
  - (e) refuse to make the order.
- (4) Where a magistrate directs that a further affidavit or declaration be filed, a Registrar may make an order for default judgment on the filing of that document.

#### **11.04 Party may apply for re-hearing**

A party against whom an order for default judgment is made may apply in accordance with Part 36 for the order to be set aside and the proceeding to be re-heard.

## **Part 12 Joinder of claims and parties**

### **12.01 Joinder of claims**

- (1) Subject to rule 12.04, a plaintiff may join any number of claims against a defendant whether:
  - (a) the plaintiff makes the claims in the same or different capacities; or
  - (b) the claims are made against the defendant in the same or different capacities.
- (2) The Court may order that claims joined in one statement of claim are to be heard separately if the Court considers separate hearings to be appropriate and convenient.
- (3) Where claims are joined in one statement of claim, the total amount claimed is not to exceed the jurisdiction of the Court.

## **12.02      Joinder of parties**

- (1) Subject to rule 12.04, a party may join 2 or more persons as plaintiffs or defendants in a proceeding where, if separate proceedings were brought by or against each of them, a common question of law or fact would arise in all the proceedings.
- (2) A party may join persons as plaintiffs or defendants whether or not:
  - (a) all rights to relief are in respect of or arise out of the same transaction or series of transactions; or
  - (b) each person is entitled to damages and the damages will need to be assessed individually.

## **12.03      Plaintiff suing for 2 or more persons**

- (1) Two or more persons may commence a proceeding by a representative where:
  - (a) they have a right to the same or substantially the same relief against the same person; and
  - (b) if separate proceedings were brought by each of them against that person in respect of that right, a common question of law or fact would arise in all the proceedings.
- (2) A representative proceeding may be brought whether or not:
  - (a) all rights to relief are in respect of or arise out of the same transaction or series of transactions; or
  - (b) each person is entitled to damages and the damages will need to be assessed individually.

## **12.04      Orders where joinder prejudicial, &c.**

Despite rules 12.01 and 12.02, where a joinder of claims or parties may:

- (a) embarrass or delay the hearing of a proceeding;
- (b) cause prejudice to a party; or
- (c) be otherwise inconvenient,

the Court may order that:

- (d) there be separate hearings;
- (e) a claim be excluded;

- (f) a party be compensated by an award of costs or otherwise for being required to attend a part of a hearing in which the party has no interest;
- (g) a party be relieved from attending a part of a hearing in which the party has no interest; or
- (h) a person joined as a party cease to be a party, with or without the condition that the person is to be bound by the determination of the questions in the proceeding.

### **12.05 Removal, addition or substitution of party**

At any stage of a proceeding, the Court may order that:

- (a) a person who is not a proper or necessary party (whether or not the person was a party originally) cease to be a party;
- (b) any of the following persons be added as a party:
  - (i) a person who ought to have been joined as a party;
  - (ii) a person whose presence before the Court is necessary to ensure that all questions in the proceeding are properly and completely determined;
  - (iii) a person in respect of whom there may exist a question arising out of, relating to or connected with a claim in the proceeding and it is just and convenient to determine the question between that person and a party as well as between the parties to the proceeding; or
- (c) a person to whom paragraph (b) refers be substituted for a person to whom paragraph (a) refers.

### **12.06 Procedure for addition of party**

- (1) A person must consent in writing, or in the manner the Court orders, to his or her joinder as a plaintiff.
- (2) Unless the Court orders otherwise, a person who applies for an order that he or she be joined as a party must support the application with an affidavit stating:
  - (a) the person's interest in the questions in the proceeding; or
  - (b) the question to be determined between the person and a party to the proceeding.

- (3) Without limiting rule 12.05(b), where a person who is not a party to a proceeding for the recovery of land is in possession personally or by a tenant of the whole or a part of the land, the Court may order that he or she be joined as a defendant.

### **12.07      Consolidation or hearing together**

Where 2 or more proceedings are before the Court and:

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

the Court may order that:

- (d) the proceedings be consolidated;
- (e) the proceedings be heard at the same time or one immediately after the other; or
- (f) any of the proceedings be stayed until after the determination of any other of them.

## **Part 13                      Third party procedure**

### **13.01      When defendant may join third party**

Where a defendant claims against a person not already a party to the proceeding (in this Part called a ***third party***):

- (a) a contribution or indemnity;
- (b) a relief or remedy relating to or connected with the original subject matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) that a question relating to or connected with the original subject matter of the proceeding should be determined not only between the plaintiff and the defendant but also between either or both of them and the third party,

the defendant may join the third party as a party to the proceeding.

### **13.02      Third party notice**

- (1) A defendant joining a third party must make a claim against the third party by filing and serving a third party notice in accordance with Form 13A.
- (2) A third party notice is to:
  - (a) contain a statement of claim;
  - (b) have attached a copy of all pleadings in existence at the time the notice is served; and
  - (c) be served personally on the third party not later than 28 days after the day on which the defendant serves a notice of defence on the plaintiff under Part 8, unless the Court orders otherwise.
- (3) A third party becomes a party to a proceeding when served with a third party notice.

### **13.03      Claim by defendant against another defendant**

- (1) A defendant who has a claim against another defendant of a kind referred to in rule 13.01 may make a claim by filing and serving a notice in accordance with Form 13B.
- (2) A defendant who claims against another defendant contribution under section 12 of the *Law Reform (Miscellaneous Provisions) Act* must file and serve a notice in accordance with Form 13C.
- (3) A notice referred to in subrule (1) or (2) is to:
  - (a) contain a statement of claim; and
  - (b) be served personally on the other defendant not later than 28 days after the day on which the claiming defendant is served under Part 8 with a copy of the other defendant's notice of defence, unless the Court orders otherwise.
- (4) A notice filed under this rule need not have a copy of all pleadings attached.
- (5) This Part applies with the necessary changes to a claim made under this rule as if the defendant had filed and served a third party notice and the defendant joined is a third party under rule 13.01.

### **13.04 Subsequent parties**

With the leave of the Court, a third or subsequent party may make a claim against another person (whether that person is a party to the proceeding or not) by filing and serving the appropriate notice under this Part.

### **13.05 Plaintiff may join third party**

- (1) Where a defendant serves a third party notice on a person, the plaintiff may join the person as a defendant.
- (2) If a plaintiff joins a third party as a defendant, the plaintiff must file and serve on the third party and the defendant a notice that the third party is joined.
- (3) A third party becomes a defendant to the proceeding on being served with the notice under subrule (2).

### **13.06 Defence of third party**

Unless the Court orders otherwise, not later than 28 days after being served with a third party notice, the third party must file and serve on the other parties a notice of defence to the statement of claim in the third party notice.

### **13.07 Separate disposal or stay of third party proceeding**

Where a third party notice is filed and served, the Court may at any time before the plaintiff's claim is determined:

- (a) order that the defendant's claim against the third party or part of that claim, or the facts on which the defendant's claim against the third party or part of that claim is based, be dealt with separately; or
- (b) stay proceedings on the defendant's claim against the third party.

### **13.08 Hearing**

Unless the Court orders otherwise, a third party:

- (a) may attend and take part at the hearing of a proceeding, including cross-examining the plaintiff's witnesses; and
- (b) is bound by the result of the hearing.

### **13.09      Directions**

Where a third party files a notice of defence the Court may, either before or after judgment is entered or given for the plaintiff against the defendant, give the directions necessary to ensure that all questions in the proceeding are effectually and completely determined.

### **13.10      Counterclaim**

This Part applies with the necessary changes in relation to a counterclaim as if the defendant were the plaintiff and the plaintiff were the defendant.

## **Part 14            Interpleader**

### **Division 1        Interpretation and purpose**

#### **14.01      Definitions**

In this Part, unless the contrary intention appears:

***applicant*** includes a bailiff and a stakeholder.

***bailiff*** means the person to whom a warrant of execution is directed.

***claimant*** means a person making a claim in respect of property in dispute.

***execution creditor*** means the person for whom a bailiff is executing a warrant.

***property*** means a debt or other personal property.

***property in dispute*** means property in respect of which there are competing claims.

***stakeholder*** means an applicant referred in rule 14.03(1).

***warrant*** means a warrant of execution under Chapter 2.

#### **14.02      Purpose of Part**

The purpose of this Part is to enable:

- (a) a person who is being sued, or expects to be sued, in respect of property in dispute in which the person has no interest; or

- (b) a bailiff who has taken or intends to take property in dispute in execution of a warrant,

to apply to the Court for a determination of the claimants' rights in relation to that property.

## **Division 2           Stakeholder's interpleader**

### **14.03      Stakeholder's application for interpleader order**

- (1) Where a person (not being a bailiff):
  - (a) is under a liability in respect of property;
  - (b) is being sued, or expects to be sued, in a court in respect of the property by 2 or more persons with competing claims in relation to the property; and
  - (c) claims no interest in the property except for charges or costs,the person may apply for an interpleader order under this Part.
- (2) Where there is a proceeding pending in which the stakeholder is being sued in respect of the property in dispute, the application for an interpleader order is to be made in that proceeding.
- (3) The stakeholder must serve the application for an interpleader order personally on each claimant.

## **Division 3           Bailiff's interpleader**

### **14.04      Notice of claim to bailiff**

- (1) Where a bailiff has taken or intends to take property in execution of a warrant, a person making a claim in respect of the property or the proceeds of sale of the property may give the bailiff written notice of the claim.
- (2) A notice of claim under subrule (1) is to:
  - (a) be given as soon as practicable after the claimant becomes aware that the bailiff has taken or intends to take the property;
  - (b) state the name and address for service of the claimant;
  - (c) identify each item of property that is, or the proceeds of sale that are, claimed; and
  - (d) state the grounds of the claim.

#### **14.05      Bailiff's application to stay or restrain proceeding**

- (1) Where a claimant who is entitled to give notice under rule 14.04 does not do so within the time referred to in rule 14.04(2)(a), the bailiff may apply for an order to:
  - (a) restrain the claimant from commencing a proceeding in a court; or
  - (b) stay or restrain the continuance of a proceeding in a court by the claimant,  
  
against the bailiff in respect of anything done by the bailiff in execution of the warrant after the time when the person might reasonably have given notice.
- (2) An application under this rule is to be:
  - (a) made in the proceeding in which the warrant was issued; and
  - (b) served personally on the claimant.

#### **14.06      Notice to execution creditor**

- (1) Not later than 7 days after receiving a notice of claim under rule 14.04, the bailiff must serve on the execution creditor:
  - (a) a copy of the notice; and
  - (b) a notice in accordance with Form 14A.
- (2) Not later than 7 days after being served with the notices under subrule (1), the execution creditor may serve on the bailiff a written notice stating that the execution creditor:
  - (a) admits the claim;
  - (b) disputes the claim; or
  - (c) admits part and disputes part of the claim as specified in the notice.

#### **14.07      Consequences of admission of claim**

- (1) Where an execution creditor admits a claim to property in dispute:
  - (a) the execution creditor is not liable for any fees in respect of that property claimed by the bailiff under the warrant after the notice admitting the claim is served;

- (b) the bailiff must:
  - (i) withdraw from possession of that property; or
  - (ii) if the property has been sold – pay the proceeds of the sale into the Court and notify the execution creditor and the claimant in writing of the payment into the Court; and
- (c) the bailiff may apply for an order to:
  - (i) restrain the claimant from commencing a proceeding in a court; or
  - (ii) stay or restrain the continuance of a proceeding in a court by the claimant,against the bailiff in respect of anything done by the bailiff in execution of the warrant.
- (2) As soon as practicable after receipt of the proceeds of sale under subrule (1)(b)(ii), a Registrar must pay out the proceeds to the claimant.

#### **14.08 Bailiff's application for interpleader order**

- (1) If an execution creditor:
  - (a) does not serve a notice admitting the whole of a claim within the time specified in rule 14.06(2)(a); or
  - (b) serves a notice under rule 14.06(2)(b) or (c) disputing the claim or part of the claim,the bailiff may, if the claimant does not withdraw the claim, apply to the Court for an interpleader order.
- (2) An application under subrule (1) is to be:
  - (a) made in the proceeding in which the warrant was issued; and
  - (b) served on the execution creditor and each claimant.

## **Division 4      Interpleader orders**

### **14.09      Interpleader orders**

On application for an interpleader order, the Court may:

- (a) where a proceeding in which the applicant is being sued in respect of any of the property in dispute is pending in the Court:
  - (i) order that a claimant be added as a defendant in the proceeding in addition to or in substitution for the applicant; or
  - (ii) order that the proceeding be stayed or dismissed;
- (b) order that a question between the claimants be stated and heard and direct which of the claimants is to be plaintiff and which defendant;
- (c) where a proceeding in which the applicant is sued in respect of any of the property in dispute is pending in another court – restrain the continuance of the proceeding;
- (d) order the applicant to transfer or dispose of any of the property in dispute or pay the proceeds from its sale into the Court or elsewhere;
- (e) where a claimant claims to be entitled by way of security for debt to any of the property in dispute – make orders for the sale of any of the property and for the application of the proceeds of sale;
- (f) summarily determine a question of fact or law arising on the application; or
- (g) make the orders or give the judgment it considers appropriate.

### **14.10      Neutrality of applicant**

- (1) Where a stakeholder applies for an interpleader order, the Court may dismiss the application or give judgment against the stakeholder if it is not satisfied that the stakeholder:
  - (a) claims no interest in the property in dispute except for charges or costs; and
  - (b) is not colluding with a claimant.

- (2) Where a bailiff applies for an interpleader order, the Court may dismiss the application if it is not satisfied that the bailiff:
  - (a) claims no interest in the property in dispute except for charges or costs; and
  - (b) is not colluding with a claimant.
- (3) Nothing in this rule affects the power of the Court generally to dismiss an application or give judgment against the stakeholder.

#### **14.11 Order in several proceedings**

- (1) Where an applicant applies for an interpleader order and several proceedings are pending in the Court in respect of any of the property in dispute, the Court may make the order it considers necessary in relation to each proceeding.
- (2) An order made under subrule (1) is to identify the proceedings to which it relates and is to be placed on the Court file of each proceeding identified in the order.
- (3) A Registrar must forward a copy of the order to all parties to the proceedings to which the order relates.

#### **14.12 Hearing of interpleader question**

On the hearing of an application for an interpleader order, the Court may finally determine all questions arising out of the application.

#### **14.13 Default by claimant**

- (1) Where a claimant:
  - (a) has been given notice of the hearing of an application for an interpleader order and fails to attend the hearing; or
  - (b) fails to comply with an order made at the hearing of the application,

the Court may order that the claimant and all persons claiming under the claimant be barred from prosecuting the claimant's claim against the applicant and all persons claiming under the applicant.

- (2) An order under subrule (1) does not affect the rights of the claimants between themselves.

#### **14.14      Bailiff's costs when decision against claimant**

Where a bailiff applies for an interpleader order and the claim to the property in dispute is decided against the claimant, the costs of the bailiff in respect of the application are to be retained by the bailiff out of the proceeds of sale on execution of the warrant unless:

- (a) the execution creditor requests the Court to order that the costs be paid by the claimant, and the Court so orders; or
- (b) the Court orders otherwise.

### **Part 15                    Person under disability**

#### **15.01      Definition**

In this Part, *person under a disability* means:

- (a) an infant; or
- (b) a person who is incapable because of age, injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to a proceeding.

#### **15.02      Litigation guardian**

- (1) Except where provided otherwise by or under an Act, a person under a disability may only commence or defend a proceeding by his or her litigation guardian.
- (2) A statement of claim or notice of defence filed by a litigation guardian is to state that the proceeding is commenced or defended by the litigation guardian on behalf of the person under a disability.
- (3) Except where these Rules provide otherwise, anything that is required or permitted by these Rules to be done by a party who is a person under a disability is required or permitted to be done by the party's litigation guardian.
- (4) Where a party has a litigation guardian in a proceeding, no other person may act as the litigation guardian of that party unless the Court orders otherwise.

#### **15.03      Person who may be litigation guardian**

- (1) A person may be the litigation guardian of a person under a disability if he or she:
  - (a) is not a person under a disability; and

- (b) has no interest in the proceeding adverse to that of the person under a disability.
- (2) Where a person is authorised by a law in force in the Territory to conduct a legal proceeding in the name of or on behalf of a person under a disability, he or she is entitled to be the litigation guardian of a person under a disability in a proceeding to which his or her authority extends, unless the Court orders otherwise.

#### **15.04      Consent of litigation guardian**

- (1) Except where a litigation guardian is appointed by the Court, the name of a person may not be used in a proceeding as the litigation guardian of a person under a disability unless there is first filed the written consent of the person to be the litigation guardian.
- (2) A consent filed under subrule (1) is to contain:
  - (a) a statement detailing the reason why the proposed party is a person under a disability; and
  - (b) a declaration that the proposed litigation guardian has no interest in the proceeding adverse to that of the person under a disability.

#### **15.05      Appointment, &c., of litigation guardian by Court**

- (1) If a party to a proceeding becomes a person under a disability after the proceeding is commenced, the Court must appoint a litigation guardian of that party.
- (2) Before appointing a litigation guardian under subrule (1), the Court may review the conduct of the proceeding and make the orders it considers necessary to ensure that justice is done between the parties.
- (3) Where a party who is a person under a disability fails to file a notice of defence when required to do so by an order of the Court or these Rules, the Court may order the appointment of a litigation guardian to defend the proceeding.
- (4) Where the interests of a party who is a person under a disability require it, the Court may appoint or remove a litigation guardian or substitute another person as litigation guardian of the party.

**15.06      Pleading admissions by person under disability**

A person under a disability is not be taken as admitting the truth of an allegation of fact made in the pleadings of another party unless the person under a disability states in his or her pleadings that the allegation is admitted.

**15.07      Litigation guardian liable for costs**

A litigation guardian is liable for costs in the same manner and to the same extent as if he or she were the plaintiff or the defendant in the proceeding.

**15.08      Court to approve compromise, &c.**

- (1) Where a claim is made in a proceeding by, on behalf of or against a person under a disability, no compromise, payment of money or acceptance of an offer of compromise under Part 20, whenever entered into or made, is, so far as it relates to the claim, valid without the approval of the Court.
- (2) Subject to subrule (3), an application for approval referred to in subrule (1) is to be filed not later than 28 days after the compromise, payment or acceptance is entered into, made or given.
- (3) If an application for approval is made at the hearing of a proceeding, the Court may dispense with the requirement of subrule (2).
- (4) At the hearing of an application for approval, evidence is to be given of:
  - (a) the date of the compromise, payment or acceptance;
  - (b) the date of birth of the person under a disability; and
  - (c) the signature of the litigation guardian.
- (5) The compromise, payment or acceptance is to be taken to have been entered into, made or given at the time of approval by the Court.

**15.09      Order approving compromise, &c.**

- (1) An order under rule 15.08 approving a compromise by which money is to be paid by or to a person under a disability is to be in accordance with Form 15A or 15B, whichever is appropriate.

- (2) An order approving a compromise or payment of money is to state the dates referred to in rules 15.08(4)(a) and (b).

### **15.10 Money to be paid to Public Trustee**

- (1) Unless the Court orders otherwise, all money or damages received by or awarded to a person under a disability by a judgment of the Court or by compromise or settlement is to be paid to the Public Trustee not later than 14 days after judgment is given or the order giving approval is made.
- (2) The Court may order the Public Trustee to pay money held on behalf of a person under a disability to a person specified in the order.

### **15.11 Counterclaim or claim by third party**

This Part applies with the necessary changes to:

- (a) a counterclaim against a person under a disability who is joined as a defendant to the counterclaim; and
- (b) a claim by a third party notice by or on behalf of or against a person under a disability.

### **15.12 Legal practitioner's lien**

Nothing in this Part affects the lien of a legal practitioner for costs.

## **Part 16 Discovery and inspection of documents**

### **16.01 Party to give discovery**

- (1) Not later than 14 days after a notice of defence is filed, each party must give discovery of documents by:
- (a) making and filing a list of the documents:
- (i) that are or have been in the party's possession; and
- (ii) that relate to a matter in question between the parties in the proceeding; and
- (b) serving a copy of the list on each other party.
- (2) A party to whom discovery of documents is to be given may serve on a party who must give discovery a notice in accordance with Form 16A requiring that party to swear an affidavit verifying his or her list of documents.

- (3) A party on whom a notice is served under subrule (2) must, not later than 14 days after service of the notice:
- (a) make and file an affidavit in compliance with the notice; and
  - (b) serve a copy of the affidavit on the party who served the notice.

**16.02      List of documents**

- (1) A list of documents is to be in accordance with Form 16B and is to:
- (a) identify the documents that are or have been in the possession of the party making the list;
  - (b) enumerate the documents in convenient order and:
    - (i) describe each document sufficiently to enable it to be identified; or
    - (ii) in the case of a group of documents of the same nature – describe the group sufficiently to enable it to be identified;
  - (c) distinguish those documents that are in the possession of the party making the list from those that have been but are no longer in the party's possession and, where a document has been but is no longer in the party's possession, state when the document was last in the party's possession and his or her belief as to what has become of it; and
  - (d) if the party making the list claims that a document in the party's possession is privileged from production – state sufficiently the grounds of the privilege.
- (2) It is not necessary to identify, enumerate or describe correspondence between the legal practitioners for the parties.
- (3) A document is not privileged from production on the sole ground that it:
- (a) relates exclusively to the party making the list of documents and does not tend to impeach that party's case; and
  - (b) does not tend to support the other party's case.

### **16.03      Continuing discovery**

- (1) Subject to an order of the Court, a party must continue to give discovery of documents in accordance with this Part until the commencement of the hearing of the proceeding.
- (2) Discovery is to be given:
  - (a) not later than 14 days after a document comes into a party's possession; or
  - (b) where a document comes into a party's possession less than 28 days before a conciliation conference or prehearing conference – as soon as practicable after the document comes into the party's possession.

### **16.04      Request for inspection**

- (1) A party may, either orally or in accordance with Form 16C, request another party to produce for inspection a document in the other party's possession referred to:
  - (a) in the other party's list of documents; or
  - (b) in a statement of claim, notice of defence, affidavit or other document provided by the other party.
- (2) A party who requests inspection of a document before the conciliation conference referred to in rule 32.01(1) must do so in sufficient time to enable inspection to occur before the conciliation conference.

### **16.05      Production**

- (1) Subject to subrule (2), a party requested to produce a document must, not later than 7 days after the request, produce the document for inspection at a place within 15 kilometres of the Registry in which the statement of claim was filed, unless the parties agree otherwise or the Court orders otherwise.
- (2) A party requested to produce a document is not required to do so if:
  - (a) the party:
    - (i) claims that the document is privileged from production; and
    - (ii) makes and serves on the other party an affidavit in which the party makes that claim and states sufficiently the grounds of the privilege; or

- (b) the document is not in the party's possession and he or she makes and serves on the other party an affidavit in which he or she states that fact and states to the best of his or her knowledge, information and belief:
  - (i) where the document is and in whose possession it is; and
  - (ii) if the document has been but is no longer in the party's possession – when the document was last in the party's possession, and his or her belief as to what has become of it.

#### **16.06 Copies of documents**

- (1) A party to whom documents are produced for inspection may take copies of the documents.
- (2) For the purpose of subrule (1), taking a copy of a document includes photocopying the document.
- (3) If the party to whom a document is produced states that he or she wishes to have it photocopied, the party producing the document must, at his or her option:
  - (a) allow the other party to photocopy the document at a place agreed by the parties; or
  - (b) supply the other party with a photocopy of the document.
- (4) Unless the Court orders otherwise, the cost of a photocopy of a document supplied to a party in accordance with subrule (3) is to:
  - (a) be borne by that party in the first instance and is ultimately to be a cost in the proceeding; and
  - (b) be ascertained in accordance with Part 38 or as agreed by the parties.

#### **16.07 Audio and visual devices, &c.**

- (1) Where a party is entitled to inspect a document that consists of a device such as a video tape, audio tape, disc, film or other means of recording, the Court may give directions for the screening or playing of the device and for the making by or supply to the party of:
  - (a) a transcript of the recording in so far as it can be transcribed; or
  - (b) a copy of the recording.

- (2) Where a party is entitled to inspect a document that consists of information that has been processed by or is stored in a computer, the Court may give directions for making the information available.

#### **16.08      Failure to give discovery or allow inspection**

- (1) Where a party fails to give discovery or to allow inspection of documents in accordance with this Part, the Court may:
- (a) order the party to give discovery or allow inspection;
  - (b) if the party is a plaintiff or other party claiming relief – strike out the claim; or
  - (c) if the party is a defendant or other party against whom relief is claimed – make an order permitting the party claiming the relief to proceed as if a notice of defence had not been filed.
- (2) Where a party applies for an order under subrule (1) and the other party claims that the document is privileged from production or objects to production on another ground, the Court may inspect the document to decide the validity of the claim or objection.
- (3) An application for an order under this rule is to be filed and served not later than 28 days before the date fixed for the hearing of the proceeding.

### **Part 17                      Interrogatories**

#### **17.01      When interrogatories allowed**

- (1) A party may serve on another party interrogatories relating to a matter in question between them in the proceeding:
- (a) with the consent in writing of the party to be interrogated; or
  - (b) with the leave of the Court.
- (2) An application for leave to serve interrogatories is to be made not later than 28 days after the day on which the notice of defence is filed, unless the Court orders otherwise.
- (3) An interrogating party may serve further interrogatories with the leave of the Court.
- (4) A party who serves interrogatories must file a copy of them without delay.

**17.02      Statement where multiple parties interrogated**

If interrogatories are to be answered by 2 or more parties, the interrogating party must state in the document containing the interrogatories which of the interrogatories each party is required to answer.

**17.03      Form, serving and filing of answers**

A party on whom interrogatories are served must, not later than 28 days after service:

- (a) answer the interrogatories in an affidavit that consolidates each question with the relevant answer;
- (b) serve the affidavit on the party who served the interrogatories; and
- (c) file a copy of the affidavit.

**17.04      Answers to interrogatories**

- (1) Subject to rule 17.05, a party who is interrogated must answer each interrogatory in accordance with this rule.
- (2) A party must make all reasonable enquiries to enable him or her to provide a proper answer to each interrogatory.
- (3) A party must answer:
  - (a) specifically, by answering the substance of the interrogatory without evasion; and
  - (b) from his or her own knowledge of the fact or matter that is enquired after or, if the party has no such knowledge, subject to subrule (7), from a belief as to the fact or matter, irrespective of the source of the information from which the belief is formed.
- (4) Where a party has no personal knowledge of the fact or matter enquired after, for the purpose of enabling himself or herself to form a belief as to the fact or matter, the party must make all reasonable enquiries to determine:
  - (a) whether a person has knowledge of the fact or matter that was acquired by the person in the capacity of the party's employee or agent; and
  - (b) if so – what that knowledge is.

- (5) A party must make the enquiries referred to in subrule (4) despite the fact that at the time the party is required to answer the interrogatory a person having the relevant knowledge has ceased to be an employee or agent.
- (6) A party who has no knowledge of the fact or matter enquired after is taken not to have a belief as to the fact or matter if:
  - (a) he or she has no information relating to the fact or matter on which to form a belief; or
  - (b) where the party has such information – he or she has no belief that the information is true.
- (7) A party is not required to answer from his or her belief where the belief is formed on information that the party could not, on the ground of privilege, be compelled to disclose.
- (8) If the party interrogated is a corporation, this rule applies with the necessary changes as if:
  - (a) the person who answers the interrogatories on behalf of the corporation were the party; and
  - (b) the reference in subrule 4(a) to an employee or agent of the party were a reference to an employee or agent of the corporation.

#### **17.05      Objections**

- (1) A party may object to answering an interrogatory on any of the following grounds:
  - (a) the interrogatory does not relate to a question in issue between the parties;
  - (b) the interrogatory is unclear, vague or too wide;
  - (c) the interrogatory is oppressive;
  - (d) the interrogatory requires the party to express an opinion that the party is not qualified to give;
  - (e) privilege, stating sufficiently the grounds of privilege;
  - (f) any other ground on which objection may be taken.

- (2) Without limiting subrule (1)(a), an interrogatory that does not relate to a question in issue between the parties includes an interrogatory the sole purpose of which is to:
  - (a) impeach the credit of the party being interrogated;
  - (b) enable the interrogating party to ascertain whether he or she has a claim or defence other than the claim or defence raised in the proceeding; or
  - (c) enable the interrogating party to ascertain the evidence by which the party being interrogated intends to prove his or her case, including the identity of witnesses.
- (3) A party is not entitled to object to answering an interrogatory on the ground that he or she cannot answer without going to a place that is not the party's usual place of residence or business if the interrogating party undertakes to pay the party's reasonable cost of going there, unless the Court orders otherwise.
- (4) Where a party objects to answering an interrogatory, the party must state the grounds for making the objection and the facts, where applicable, on which the objection is based.

#### **17.06      Who to answer**

- (1) Interrogatories are to be answered:
  - (a) if the person on whom the interrogatories are served is:
    - (i) a natural person – by the person; or
    - (ii) a corporation – by an officer of the corporation or a person authorised by the corporation to answer; or
  - (b) by the person the Court directs to do so.
- (2) The answers of a person directed under subrule (1)(b) to answer interrogatories are as effective and binding as if made by the party on whom the interrogatories were served.

#### **17.07      Failure to answer**

- (1) If a plaintiff or other party claiming relief fails to answer interrogatories, the Court may strike out the claim.
- (2) If a defendant or other party against whom relief is claimed fails to answer interrogatories, the Court may make an order permitting the party claiming relief to proceed as if a notice of defence had not been filed.

- (3) An application for an order under this rule is to be filed and served not later than 28 days before the date fixed for hearing of the proceeding.

### **17.08      Answers as evidence**

- (1) On an application in a proceeding or at the hearing of a proceeding, a party may tender as evidence:
- (a) one or more answers to interrogatories without tendering the other answers; or
  - (b) part of an answer to an interrogatory without tendering the whole of the answer.
- (2) On the tender of an answer to an interrogatory under subrule (1), the Court may look at the whole of the answers and, if another answer or a part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without the other answer or part, the Court may reject the tender unless the other answer or part is also tendered.

## **Part 18              Preliminary discovery and discovery from non-party**

### **18.01      Definitions**

In this Part:

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

***description*** includes the name, place of residence, place of business, occupation and sex of the person against whom the applicant desires to bring a proceeding and whether the person is an individual or a corporation.

### **18.02      Privilege**

An order made under this Part does not operate to require the person against whom the order is made to produce a document that on the ground of privilege the person could not be required to produce:

- (a) in the case of an order under rule 18.03 or 18.05 – if the applicant had commenced a proceeding against the person;
- (b) in the case of an order under rule 18.04 or 18.06 – if the applicant had made the person a party to the proceeding; or

- (c) in the case of an order made under rule 18.07 – if the person had been served with a summons for production of the document at the hearing of the proceeding.

### **18.03 Ascertaining description of prospective defendant**

If:

- (a) an applicant, having made reasonable enquiries, is unable to ascertain the description of a person sufficiently to enable the applicant to commence a proceeding against the person (in this rule called *the person concerned*); and
- (b) it appears that a person:
  - (i) has or is likely to have knowledge of facts; or
  - (ii) has or is likely to have, or has had or is likely to have had, in his or her possession a document or thing,tending to assist in the ascertainment of the description of the person concerned,

the Court may order that the person must:

- (c) produce to the Court a document or thing in the person's possession that relates to the description of the person concerned;
- (d) attend before the Court to be orally examined in relation to the description of the person concerned or a document or thing produced to the Court under paragraph (c); or
- (e) give discovery to the applicant of all documents relating to the description of the person concerned that are, or have been, in the person's possession.

### **18.04 Party may ascertain description of non-party**

Rule 18.03 applies with the necessary changes where:

- (a) the applicant is a party to a proceeding and wishes to make a claim against a person who is not a party to the proceeding; and
- (b) the claim is one that the applicant could properly have made had the person been a party.

### **18.05 Discovery from prospective defendant**

Where:

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

the Court may order that the person must give discovery of the document to the applicant.

### **18.06 Discovery from non-party relating to relief**

Rule 18.05 applies with the necessary changes where:

- (a) the applicant is a party to a proceeding;
- (b) there is reasonable cause to believe that the applicant has or may have the right to obtain relief from a person who is not a party to the proceeding; and
- (c) the applicant could properly have claimed relief from the person had the person been a party.

### **18.07 Discovery from non-party relating to question**

Where:

- (a) the applicant is a party to a proceeding; and
- (b) it appears that a person who is not a party to the proceeding has or is likely to have, or has had or is likely to have had, a document in his or her possession that relates to a question in the proceeding,

the Court may order that the person must give discovery of the document to the applicant.

### **18.08 Procedure**

- (1) An application under rule 18.03, 18.04, 18.05, 18.06 or 18.07 is to be made under Part 25 by an application:
  - (a) served personally on the person against whom the order is sought; and
  - (b) served on each party to the proceeding (where applicable).
- (2) An application under subrule (1) is to be supported by an affidavit:
  - (a) stating the facts on which the application is made; and
  - (b) describing the documents or a class of documents in respect of which the order is sought.
- (3) A copy of the supporting affidavit is to be served on each person on whom the application is served.

### **18.09 Inspection of documents**

Part 16 applies with the necessary changes to the inspection of documents referred to in a list of documents made and served under this Part as if the list were a list of documents referred to in Part 16.

### **18.10 Costs**

- (1) On an application under this Part, the Court may make an order for the costs and expenses of:
  - (a) the applicant;
  - (b) the person against whom the order is sought or made; or
  - (c) a party to the proceeding,including the costs of making and serving a list of documents and producing a document for inspection.
- (2) The Court may include in an order made under this Part a condition that the applicant give security for the costs and expenses of the person against whom the order is made.

## **Part 19                    Admissions**

### **19.01      Definition**

In this Part, ***authenticity of a document*** means that a document:

- (a) is what it purports to be;
- (b) if it is an original or is described as such – is an original document and was printed, written, signed or executed as it purports to have been; or
- (c) if it is a copy or is described as such – is a true copy.

### **19.02      Restrictive effect of admission**

An admission in a proceeding made by a party under this Part is for the purpose of that proceeding only and is not to be used against the party as an admission in another proceeding.

### **19.03      Admission of debt**

- (1) A party may admit a debt by filing and serving on the other party a notice of admission of debt in accordance with Form 19A.
- (2) On the filing of a notice of admission of debt, the Court must enter judgment against the party who made the admission.

### **19.04      Voluntary admission of facts**

- (1) A party may admit facts in favour of another party by filing and serving on the other party a notice of admission of the facts specified in the notice.
- (2) A notice referred to in subrule (1) is to be in accordance with Form 19B.
- (3) With the leave of the Court, a party may withdraw an admission made under this rule.

### **19.05      Notice to dispute facts**

- (1) A party may file and serve on another party a notice stating that unless the other party, within the time expressed in the notice (being not less than 14 days after service), disputes the facts specified in the notice that party will be taken to admit the facts.
- (2) A notice to dispute facts referred to in subrule (1) is to be in accordance with Form 19C.

- (3) A party served with a notice under subrule (1) may dispute facts specified in the notice by filing and serving, within the time expressed in that notice, a notice in accordance with Form 19D.
- (4) If a party served with a notice under subrule (1) does not dispute a fact, the party is taken to admit that fact.
- (5) With the leave of the Court, a party may withdraw an admission that is taken to have been made under subrule (4).

#### **19.06      Notice to dispute authenticity of documents**

- (1) A party may file and serve on another party a notice stating that unless the other party, within the time expressed in the notice (being not less than 14 days after service), disputes the authenticity of the documents specified in the notice that party will be taken to admit their authenticity.
- (2) A notice to dispute the authenticity of documents referred to in subrule (1) is to be in accordance with Form 19E.
- (3) A party served with a notice under subrule (1) may dispute the authenticity of documents specified in the notice by filing and serving, within the time expressed in that notice, a notice in accordance with Form 19F.
- (4) If a party served with a notice under subrule (1) does not dispute the authenticity of a document, the party is taken to admit its authenticity.
- (5) With the leave of the Court, a party may withdraw an admission that is taken to have been made under subrule (4).

#### **19.07      Costs of proof**

Where a party:

- (a) serves a notice under rule 19.05(3) disputing a fact and later the fact is proved in the proceeding; or
- (b) serves a notice under rule 19.06(3) disputing the authenticity of a document and later its authenticity is proved in the proceeding,

the party must pay the costs of proof unless the Court orders otherwise.

## **19.08      Judgment on admission**

- (1) Where a party makes an admission of fact in a proceeding, whether by the party's pleading or otherwise, the Court may, on the application of another party, give the judgment or make the order to which the applicant is entitled on the admission.
- (2) The Court may exercise the powers under subrule (1) whether or not there are other questions to be determined in the proceeding.

## **Part 20            Offers of settlement**

### **Division 1          Definitions**

#### **20.01      Definitions**

In this Part, unless the contrary intention appears:

***claim*** includes a counterclaim and a claim made under Part 13.

***contribution claim*** means a claim by a defendant to recover contribution or indemnity against a person (whether a defendant or not) in respect of a claim for a debt or damages made by a plaintiff.

***defendant*** includes a defendant to a counterclaim and a party against whom a claim is made under Part 13.

***party*** means the plaintiff or defendant.

***plaintiff*** includes a defendant who serves a counterclaim and a party who makes a claim under Part 13.

### **Division 2          Offer of compromise**

#### **20.02      Party may make offer**

- (1) At any time before judgment in a proceeding, a party may serve on the other party an offer of compromise of the plaintiff's claim on the terms specified in the offer.
- (2) For the purposes of this Division, an offer of compromise is to:
  - (a) be in writing and prepared in accordance with rule 3.05; and
  - (b) contain a statement that the offer is made in accordance with this Division.
- (3) A party may make more than one offer of compromise to the other party.

### **20.03      Acceptance of offer**

- (1) An offer of compromise is open for acceptance at any time after service.
- (2) Not later than 3 days after being served with an offer of compromise, the party served must serve on the party making the offer an acknowledgment of service of the offer.
- (3) A party may withdraw an offer of compromise at any time before acceptance by serving a notice in writing on the other party.
- (4) A party may accept an offer of compromise at any time before judgment or withdrawal of the offer by serving a notice of acceptance on the party making the offer.
- (5) Where a plaintiff accepts a defendant's offer of compromise in accordance with subrule (4), unless the Court orders otherwise or the parties agree otherwise:
  - (a) the defendant must pay the plaintiff's costs in respect of the claim to and including the day on which the offer was served; and
  - (b) the plaintiff must pay the defendant's costs from the date 7 days after the day on which the offer was served to the date of acceptance.
- (6) Where a defendant accepts a plaintiff's offer of compromise in accordance with subrule (4), unless the Court orders otherwise or the parties agree otherwise:
  - (a) the defendant must pay the plaintiff's costs in respect of the claim to and including the day on which the offer was served; and
  - (b) the Court may make the orders it considers appropriate in respect of costs incurred after the offer was served.
- (7) If an offer of compromise contains a term that purports to negative or limit the operation of subrule (1), (5) or (6), the offer has no effect under this Division.

### **20.04      Effect of offer**

An offer of compromise made in accordance with this Division is to be taken as an offer of compromise made without prejudice unless the offer states otherwise.

### **20.05      No disclosure of offer to Court**

- (1) A document filed in the Court is not to contain a statement that an offer of compromise has been made.
- (2) If an offer of compromise is not accepted, no communication with respect to the offer may be made to the Court at the hearing of the proceeding until after all questions of liability and the relief to be granted are determined.
- (3) Subrules (1) and (2) do not apply where an offer of compromise states that it is not a without prejudice offer.

### **20.06      Order in terms of accepted offer**

Either party may apply to the Court for an order in the terms of an offer of compromise that has been accepted.

### **20.07      Costs consequences of failure to accept**

- (1) This rule applies to an offer of compromise that has not been accepted at the time of judgment.
- (2) If:
  - (a) a defendant does not accept an offer of compromise made by a plaintiff; and
  - (b) the plaintiff obtains a judgment on the claim to which the offer relates that is equal to or more than the offer made,

the plaintiff is entitled to an order that the defendant must pay the plaintiff's costs in respect of the claim from the date of service of the offer, to be taxed or agreed on an indemnity basis, unless the Court orders otherwise.

- (3) If:
  - (a) a plaintiff does not accept an offer of compromise made by a defendant; and
  - (b) the plaintiff obtains a judgment on the claim to which the offer relates that is equal to or less than the offer made,

unless the Court orders otherwise:

- (c) the plaintiff is entitled to an order that the defendant must pay the plaintiff's costs in respect of the claim to and including the day on which the offer was served, to be taxed or agreed on a standard basis; and

- (d) the defendant is entitled to an order that the plaintiff must pay the defendant's costs in respect of the claim after the offer was served, to be taxed or agreed on an indemnity basis.

## **20.08 Multiple defendants**

- (1) Where 2 or more defendants are joined in a proceeding in respect of a claim for a debt or damages and rights of contribution or indemnity appear to exist between them, one or more of the defendants may make an offer of compromise of:
- (a) the plaintiff's claim; and
  - (b) the claims of all the other defendants for contribution or indemnity.
- (2) An offer of compromise under subrule (1) is to be:
- (a) made on behalf of all the defendants; and
  - (b) served on the plaintiff and all other defendants.
- (3) If the defendant's offer is not accepted and the judgment is equal to or less than the defendant's offer, unless the Court orders otherwise, the defendant is entitled to an order that:
- (a) the plaintiff; or
  - (b) one or more of the other defendants, as the Court determines,
- must pay the defendant's costs in respect of the claim, commencing 7 days after the day on which the offer was served, to be taxed or agreed on a standard basis.
- (4) Where 2 or more defendants are joined in a proceeding in respect of a claim for debt or damages and rights of contribution or indemnity appear to exist between them, the plaintiff may make an offer of compromise of the plaintiff's claim against all of them.
- (5) The plaintiff must serve an offer of compromise under subrule (4) on all the defendants.
- (6) If the plaintiff's offer is not accepted and the judgment is equal to or more than the offer, the Court may make the orders for costs it considers appropriate against some or all of the defendants.

### **20.09      Offer to contribute**

- (1) Where a defendant makes a contribution claim, a party to the contribution claim may serve on any other party to the contribution claim an offer to contribute toward a compromise of the plaintiff's claim on the terms specified in the offer.
- (2) The Court may take an offer to contribute into account in determining whether to make an order that the party on whom the offer to contribute was served should pay the whole or part of:
  - (a) the costs of the party who made the offer; or
  - (b) the costs that the party who made the offer is liable to pay to the plaintiff.
- (3) Rules 20.04 and 20.05 apply with the necessary changes to an offer to contribute as if it were an offer of compromise.

### **20.10      Interest on offer of compromise**

In considering the effect of an offer of compromise, the Court must not take into account interest that accrued on the claim the subject of the offer after the date of service of the offer.

## **Division 3            Payment into Court**

### **20.11      Where tender before action pleaded**

A defendant who pleads or otherwise raises a defence of tender before action must pay into the Court the sum of money alleged to have been tendered, unless the Court orders otherwise.

### **20.12      Paying money into Court**

A defendant may pay money into the Court in answer to a claim or in addition to money previously paid into the Court under this Division.

### **20.13      Notice of deposit**

On paying money into the Court under this Division, a defendant must:

- (a) file a notice of deposit in accordance with Form 20A; and
- (b) immediately serve a copy of the notice of deposit on the plaintiff.

#### **20.14      Withdrawal by defendant**

- (1) Subject to subrule (2), and with the leave of the Court, a defendant may withdraw the whole or a part of the money he or she paid into the Court under this Division.
- (2) A defendant is not entitled to withdraw money after the money is accepted by the plaintiff.
- (3) A withdrawal under subrule (1) is to be made by filing a notice of withdrawal of deposit in accordance with Form 20B.
- (4) On the filing of a notice of withdrawal of deposit, the defendant is entitled to receive payment of the money withdrawn.
- (5) A notice of withdrawal of deposit is to be served on the plaintiff immediately after the notice is filed.

#### **20.15      Acceptance by plaintiff**

- (1) A plaintiff served with a notice of deposit may, in accordance with this rule, accept money paid into the Court in satisfaction of the claim in respect of which the defendant paid the money into the Court.
- (2) Where a defendant files a notice of deposit in answer to a claim before the beginning of the hearing of the proceeding, the plaintiff may accept the money in satisfaction of the claim:
  - (a) not later than 14 days after service of that notice on the plaintiff; and
  - (b) before the beginning of the hearing,  
  
by filing and serving a notice of acceptance in accordance with Form 20C.
- (3) Where a defendant:
  - (a) files a notice of deposit in answer to a claim after the beginning of the hearing of the proceeding; or
  - (b) by a notice in accordance with Form 20D served on the plaintiff after the hearing begins, confirms a notice of deposit,  
  
the plaintiff may, subject to subrule (4), accept the money in satisfaction of the claim not later than 2 days after service on him or her of the relevant notice by:
    - (c) announcement to the Court during the hearing; and

- (d) filing a notice of acceptance in accordance with Form 20C on the day of the announcement.
- (4) A plaintiff is not entitled to accept money under subrule (3) after the magistrate gives his or her decision or begins to give his or her reasons for decision.
- (5) A defendant who serves notice of confirmation under subrule (3)(b) must file the notice on the day of service.
- (6) Where a plaintiff sues in respect of more than one claim and he or she accepts money paid into the Court in answer to one or more of the claims, but not all of them, the plaintiff may, by filing a notice (which may be combined with his or her notice of acceptance), abandon all causes of action other than the cause or causes of action to which the acceptance relates.
- (7) Where a plaintiff sues 2 or more defendants in a claim against them jointly and he or she accepts money paid into the Court by one or more but not all of those defendants in answer to the claim, the plaintiff may, by filing a notice (which may be combined with his or her notice of acceptance), abandon his or her claim against the other defendant or all those other defendants.
- (8) Subject to rule 20.17, a plaintiff who accepts money under this rule is entitled to receive payment of the money without an order of the Court.

#### **20.16      Effect of acceptance**

- (1) Where a plaintiff accepts money paid into the Court in satisfaction of a claim against a defendant paying money into the Court, the proceeding is stayed in relation to:
  - (a) the claim against the defendant;
  - (b) an alternative claim against the defendant or some other defendant; and
  - (c) if the defendant, in paying the money into the Court, had taken into account a counterclaim referred to in rule 20.20(2) – the counterclaim against the plaintiff.
- (2) Where a defendant pays money into the Court in answer to a claim and the plaintiff accepts the money in satisfaction of the claim against the defendant, the liability of another person (whether a party to the proceeding or not) jointly with the defendant in respect of the claim is satisfied to the extent of the amount of the money accepted and is discharged by the acceptance only to that extent.

### **20.17      Order for payment out after acceptance**

- (1) Where a plaintiff accepts money paid into the Court in satisfaction of a claim in the following circumstances, the money is to be paid out only by order of the Court:
  - (a) where the money was paid into the Court in answer to a claim to which the defendant making the payment properly raised a defence of tender before the commencement of the proceeding;
  - (b) where the plaintiff accepts the money after the beginning of the hearing of the proceeding;
  - (c) where the plaintiff is a person under a disability.
- (2) On an application for an order under subrule (1) the Court must, as far as practicable, deal with the costs of the proceeding.

### **20.18      Money not accepted**

Subject to rule 20.14, where money paid into the Court by a defendant is not accepted by the plaintiff in accordance with rule 20.15, the defendant is entitled to receive payment of the money without an order of the Court.

### **20.19      No disclosure of payment into Court**

- (1) Subject to subrules (2) and (3), the fact that money has been paid into the Court is not to be:
  - (a) pleaded or disclosed in an affidavit; or
  - (b) disclosed to the Court at:
    - (i) the hearing of a proceeding; or
    - (ii) the hearing of a question of liability or the amount of debt or damages,until all questions of liability or amount of debt or damages have been decided.
- (2) Subrule (1) does not apply where the money has been paid into the Court in answer to a claim to which the defendant pleads or otherwise properly raises a defence of tender before commencement of the proceeding.

- (3) Subrule (1)(b) does not apply:
- (a) where the plaintiff accepts the money in accordance with rule 20.15; or
  - (b) where the disclosure is necessary for the purpose of an application under this Division.

## **20.20      Costs consequences of payment into Court**

- (1) Where, before the hearing of the proceeding begins, a plaintiff:
- (a) accepts money paid into the Court by a defendant in answer to a claim;
  - (b) if applicable – abandons all the plaintiff's other claims against the defendant; and
  - (c) if applicable – abandons the claim against all other defendants sued on the claim jointly with the defendant paying the money into the Court,

after payment out and unless the Court orders otherwise, the plaintiff is entitled to a taxation of his or her costs in respect of the plaintiff's claim against the defendant who paid the money into the Court incurred before service of the notice of deposit of the money.

- (2) Where:
- (a) a defendant who has counterclaimed pays money into the Court and in the notice of deposit states that the defendant takes into account the counterclaim with a view to its abandonment in the event the money is accepted; and
  - (b) the money is accepted before the hearing of the proceeding begins,

unless the Court orders otherwise, the defendant is entitled to a taxation of his or her costs in respect of the counterclaim incurred before service of the notice of acceptance.

- (3) A party whose costs under this rule are not paid before the end of 21 days after the taxation of costs is completed may enter judgment for the taxed costs.

## **Part 21            Evidence generally**

### **21.01      Manner of giving evidence**

Except where otherwise provided by or under an Act or by these Rules or unless the Court orders otherwise, the evidence of a witness is to be given:

- (a) at the hearing of a proceeding – orally on oath or, subject to rule 21.02, by affidavit; and
- (b) on any other application in a proceeding – by affidavit.

### **21.02      Use of affidavit at hearing**

- (1) Where an affidavit is to be used at the hearing of a proceeding, it is to be filed and a copy served on the other parties not later than 14 days before the date of the hearing, unless the Court orders otherwise.
- (2) Not later than 7 days after a party is served with an affidavit under subrule (1), unless the Court orders otherwise, the party served may serve a notice on the party intending to rely on the affidavit that he or she requires the attendance of the deponent at the hearing for cross-examination.
- (3) The Court may order the deponent of an affidavit filed under subrule (1) to attend to be examined before the Court.
- (4) The Court may make orders relating to a deponent's costs where a deponent is required to attend in accordance with subrule (2).
- (5) If a deponent required to attend under subrule (2) or ordered to attend under subrule (3) fails to attend for examination, the Court may order that the deponent's affidavit is not to be received in evidence.

### **21.03      Attendance and production**

- (1) The Court may make an order in a proceeding for:
  - (a) the attendance of a person for the purpose of being examined;
  - (b) the attendance of a person and production by the person of a document or thing specified in the order.
- (2) An order under subrule (1) does not operate to require the person to produce a document that the person could properly object to producing on the ground of privilege.

**21.04      Inspection of place, &c.**

The Court may inspect a place, process or thing during a proceeding.

**21.05      Admission of copy**

At the hearing of a proceeding, the Court may admit as evidence a copy of a document without enquiring into the non-production of the original document if:

- (a) the Court considers it is proper to do so; and
- (b) there is no real dispute as to the contents or authenticity of the original document.

**21.06      Person about to leave Territory**

- (1) If, on the application of a party, the Court is satisfied by evidence on oath that a person is:

- (a) able to give material evidence or to produce relevant or material documents or things relating to a proceeding; and
- (b) likely to be absent from the Territory at the time the proceeding comes on for hearing,

the Court may order that, before the hearing:

- (c) the person must give evidence; or
  - (d) the person must produce the documents or things.
- (2) An order under subrule (1) is to be served:
    - (a) personally on the person named in the order; and
    - (b) on all other parties to the proceeding.
  - (3) The person named in an order under this rule is to be given conduct money at a reasonable time before he or she is to give evidence or produce documents, and rule 23.08 applies with the necessary changes.

**Part 22            Affidavits**

**22.01      Form of affidavit**

- (1) An affidavit is to be made in the first person.

- (2) The first page of an affidavit is to be headed immediately beneath the title of the proceeding with the name of the deponent and the date of swearing.
- (3) Unless the Court orders otherwise, an affidavit is to state:
  - (a) the deponent's place of residence;
  - (b) the deponent's occupation or, if the deponent has none, the deponent's description; and
  - (c) if applicable – that the deponent is a party to the proceeding or employed by a party.
- (4) Despite subrule (3), where a deponent makes an affidavit in a professional or other occupational capacity, the affidavit may, instead of stating the deponent's place of residence, state:
  - (a) the address of the deponent's place of business;
  - (b) the position of the deponent; and
  - (c) if applicable – the name of the deponent's firm or employer.
- (5) An affidavit is to be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.
- (6) An affidavit is, subject to rule 22.05(1), to be signed by the deponent and the jurat is to be completed and signed by the person before whom it is sworn.
- (7) Each page of an affidavit is to be signed by the person before whom it is sworn.
- (8) An affidavit is to contain a statement of:
  - (a) the name and address of the party on whose behalf it is filed;
  - (b) the name of the deponent;
  - (c) the date of swearing; and
  - (d) the name and a contact address or telephone number of the person before whom it is sworn, printed legibly beneath the person's signature.

## **22.02      Affidavit relating to motor vehicle accident**

An affidavit giving evidence of the assessment or repair of a motor vehicle is to be in accordance with Form 22A.

### **22.03      Affidavit by multiple deponents**

If an affidavit is made by 2 or more deponents, the names of the persons making the affidavit are to be inserted in the jurat unless the affidavit is sworn by both or all of the deponents at one time before the same person, in which case it is sufficient to state that it was sworn by "each of the above-named deponents".

### **22.04      Affidavit by person unable to read**

- (1) If it appears to the person before whom an affidavit is sworn that the deponent is unable to read, the person must certify in or below the jurat that:
  - (a) the affidavit was read to the deponent in the person's presence;
  - (b) it appeared to the person that the deponent understood the affidavit; and
  - (c) the deponent signed his or her name or made a mark in the person's presence.
- (2) If a certificate in accordance with subrule (1) does not appear on an affidavit of a deponent who is unable to read, the affidavit is not to be used in evidence unless the Court is satisfied that it was read to the deponent and that the deponent appeared to understand it.

### **22.05      Affidavit by person unable to write**

- (1) If it appears to the person before whom an affidavit is sworn that the deponent is physically unable to sign his or her name or make a mark, the person must certify in or below the jurat that:
  - (a) the affidavit was read to the deponent in the person's presence;
  - (b) it appeared to the person that the deponent understood the affidavit; and
  - (c) the affidavit was sworn by the deponent without the deponent signing his or her name or making a mark because the deponent was physically unable to do so.
- (2) If a certificate in accordance with subrule (1) does not appear on an affidavit by a deponent who is physically unable to sign his or her name or make a mark, the affidavit is not to be used in evidence unless the Court is satisfied that it was read to the deponent and that the deponent appeared to understand it.

## **22.06      Affidavit by person unable to understand English**

- (1) If it appears to the person before whom an affidavit is sworn that the deponent is unable to understand the English language, the person must certify in or below the jurat that:
  - (a) the affidavit was sworn with the assistance of an interpreter (naming the interpreter) who first swore that he or she:
    - (i) understands the English language and the language of the deponent (naming the language); and
    - (ii) would truly and faithfully interpret to the deponent the contents of the affidavit and the oath to be administered to the deponent;
  - (b) the affidavit was read to the deponent in the person's presence with the assistance of the interpreter;
  - (c) it appeared to the person that the deponent understood the affidavit; and
  - (d) the deponent signed his or her name or made a mark in the person's presence.
- (2) If a certificate in accordance with subrule (1) does not appear on an affidavit by a deponent who is unable to understand the English language, the affidavit is not to be used in evidence unless the Court is satisfied that it was:
  - (a) sworn in accordance with subrule (1)(a); and
  - (b) read to the deponent with the assistance of an interpreter and the deponent appeared to understand it.

## **22.07      Content of affidavit**

- (1) Unless these Rules provide otherwise, an affidavit is to be confined to facts that the deponent is able to state of his or her own knowledge.
- (2) In an application in a proceeding, an affidavit may contain a statement of fact based on information and belief if the grounds are set out in the affidavit.

## **22.08      Annexures and exhibits**

- (1) A document referred to in an affidavit:
  - (a) is to be annexed to the affidavit; or

- (b) if the document is too large to be annexed, may be referred to as an exhibit.
- (2) An exhibit to an affidavit is to be identified by a separate certificate that:
- (a) is annexed to the exhibit;
  - (b) bears the same title as the affidavit; and
  - (c) is signed by the person before whom the affidavit is sworn.

### **22.09 Filing**

- (1) An affidavit is to be filed.
- (2) Unless the Court orders otherwise, an affidavit that has not been:
  - (a) filed; or
  - (b) served and filed in compliance with these Rules or an order of the Court,

may not be used by the party by whom or on whose behalf it was made.

### **22.10 Alterations**

An affidavit that has an interlineation, erasure or other alteration in the body or jurat may, unless the Court orders otherwise, be filed but may not be used without the leave of the Court unless the deponent and the person before whom the affidavit was sworn have initialled the alteration.

### **22.11 Irregularity**

An affidavit that is irregular in form may:

- (a) unless the Court orders otherwise, be filed; and
- (b) with the leave of the Court, be used in evidence.

### **22.12 Affidavit sworn before party, &c.**

- (1) Unless the Court orders otherwise, an affidavit sworn before:
  - (a) the legal practitioner acting for the party on whose behalf it is to be used; or
  - (b) an employee of the legal practitioner,

may be used in evidence.

- (2) Subject to subrule (3), an affidavit sworn before:
  - (a) the party on whose behalf it is to be used; or
  - (b) an employee of that party,is not to be used in evidence without the leave of the Court.
- (3) Where the Territory is the party on whose behalf the affidavit is to be used, the affidavit may be sworn before an employee of the Territory.

### **22.13      Affidavit sworn before commencement of proceeding**

Unless the Court orders otherwise, an affidavit may be used in a proceeding despite having been sworn before the commencement of the proceeding.

## **Part 23              Witness summons**

### **23.01      Definitions**

In this Part:

***summons for production*** means an order in writing requiring a person to attend at the Court as directed by the order for the purpose of producing a document or thing for evidence.

***summons to give evidence*** means an order in writing requiring a person to attend at the Court as directed by the order for the purpose of giving evidence.

### **23.02      Order to attend**

- (1) The Court may, by summons, order a person to attend the hearing of a proceeding or attend at any stage of a proceeding for the purpose of giving evidence or producing a document or thing for evidence, or for both purposes.
- (2) An order by summons for the attendance of a person to give evidence or produce a document or thing is to be taken as made when the summons is issued.

### **23.03      Summons to give evidence**

- (1) A summons to give evidence:
  - (a) is to be in accordance with Form 23A;

- (b) may be addressed to one or more persons; and
  - (c) is to be filed in sufficient numbers for service and proof of service.
- (2) On the filing of a summons to give evidence, a Registrar must:
- (a) sign and seal each copy of the summons; and
  - (b) issue the summons.

#### **23.04 Form and filing of summons for production**

A summons for production is to be:

- (a) if it is addressed to a person other than a corporation – in accordance with Form 23B;
- (b) it is addressed to a corporation – in accordance with Form 23C;
- (c) addressed to one person only and, if it is addressed to a firm, may include the address of each partner of the firm; and
- (d) filed in sufficient numbers for service and proof of service.

#### **23.05 Summons for production after hearing date fixed**

Where the Court has fixed a date for the hearing of a proceeding and a party to the proceeding files a summons for production, a Registrar must:

- (a) sign and seal each copy of the summons; and
- (b) issue the summons.

#### **23.06 Summons for production before hearing date fixed**

- (1) Where the Court has not fixed a date for the hearing of a proceeding, a party to the proceeding must seek the leave of the Court to file and serve a summons for production.
- (2) An application for leave under subrule (1) is to be made:
  - (a) at a prehearing conference; or
  - (b) under Part 25.

- (3) Where the Court gives leave under this rule for a party to file and serve a summons for production, the party must specify in the summons the date for attendance at Court, being a date:
  - (a) when the Court hears interlocutory matters; and
  - (b) that allows the person ordered to attend a reasonable time in which to comply with the summons.
- (4) Where a party files a summons for production under this rule, a Registrar must:
  - (a) sign and seal each copy of the summons; and
  - (b) issue the summons.

### **23.07 Service**

A sealed copy of a summons for production or summons to give evidence is to be served personally in accordance with these Rules.

### **23.08 Conduct money, expense or loss**

- (1) A person is not required to comply with a summons for production or a summons to give evidence unless conduct money is given or offered to the person at the time the summons is served or at a reasonable time before the day for compliance with the summons.
- (2) Where a person:
  - (a) is not a party to the proceeding; and
  - (b) reasonably incurs expense or loss in complying with a summons for production that is more than the conduct money given or offered under subrule (1),

the Court may order that the party who served the summons for production must pay to the person an amount in respect of the expense or loss.

- (3) If a person who attends in answer to a summons to give evidence, before being sworn, requests the Court to fix an amount to be paid to him or her in respect of expense incurred in attending as a witness, the Court must do so.
- (4) A witness referred to in subrule (3) is not to be compelled to give evidence until the Court is satisfied that proper arrangements have been made for the payment of the amount fixed by the Court.

### **23.09 Delivery of documents by hand or post**

- (1) Unless the Court orders otherwise, a summons for production is to permit the person to whom the summons is addressed, instead of attending at the Court to produce the document or thing, to deliver it by hand or send it by post to a Registrar so that the Registrar receives it not later than 2 days before the day on which production is required by the summons.
- (2) Where a document or thing is delivered or sent to a Registrar under subrule (1), the Registrar must:
  - (a) if requested to do so, give a receipt to the person who delivered or posted the document or thing; and
  - (b) produce the document or thing to the Court as the case requires or the Court directs.
- (3) This rule does not apply to any part of a summons that requires a person to attend for the purpose of giving evidence.

### **23.10 Objections and setting aside summons**

- (1) A person served with a summons for production or a summons to give evidence may:
  - (a) notify the Court on attendance that he or she objects to producing a document or thing or giving evidence; or
  - (b) before the date fixed for attendance, apply to the Court to have the summons set aside.
- (2) The Court may set aside a summons for production or a summons to give evidence or, in the case of a summons for production, may set aside a part of the summons.

### **23.11 Orders for inspection**

- (1) Where:
  - (a) a summons for production is issued under rule 23.05;
  - (b) the date specified for attendance and production is a date earlier than the date fixed for the hearing of the proceeding; and
  - (c) the person served with the summons:
    - (i) delivers, sends by post or produces a document or thing; or

- (ii) objects to producing a document or thing,

a Registrar must:

- (d) fix a date, time and place for an interlocutory hearing or directions hearing at which the Court will:

- (i) make orders or give directions relating to the inspection of a document or thing produced or any other matter considered necessary; or

- (ii) determine objections to production; and

- (e) notify all the parties:

- (i) that the document or thing is at the Court or the person served with the summons objects to producing the document or thing;

- (ii) that the Court will make orders or give directions relating to the objections or the inspection of the document or thing; and

- (iii) of the date, time and place of the interlocutory hearing or directions hearing.

- (2) Where a summons for production is issued under rule 23.06, at the interlocutory hearing held on the date specified for attendance and production, the Court must:

- (a) hear and determine objections to production (if any); and

- (b) make orders or give directions relating to the inspection of documents or things produced or any other matter considered necessary.

## **Part 24            Expert evidence**

### **24.01    Statement of expert evidence**

- (1) A party who intends at a hearing to adduce evidence from a person in the person's capacity as an expert must, not later than 28 days before the date fixed for the hearing, serve on each other party a statement from the expert in accordance with subrule (2).

- (2) A statement from an expert is to:

- (a) give the expert's name and address;

- (b) describe his or her qualifications to give evidence as an expert; and
  - (c) state the evidence to be adduced from the expert.
- (3) Unless the Court gives leave or the parties consent, a party is not entitled, except in cross-examination, to adduce evidence from a witness as an expert unless the party has served a statement under subrule (1).

#### **24.02      Putting other party's expert statement in evidence**

A party may put in evidence a statement from an expert served on that party under rule 24.01.

#### **24.03      Request for examination of plaintiff**

- (1) Where a plaintiff claims damages for personal injury a defendant may, in writing, request the plaintiff to submit to an appropriate examination by a medical expert at a specified time and place.
- (2) If:
- (a) a plaintiff refuses or neglects without reasonable cause to comply with a request under subrule (1); and
  - (b) the defendant's request is reasonable,
- the Court may stay the proceeding.

#### **24.04      Costs of examination**

- (1) Unless the Court orders otherwise, the costs of and incidental to an examination referred to in rule 24.03 are costs in the proceeding.
- (2) Without limiting subrule (1), the defendant must, on request by the plaintiff (whether before or after the plaintiff is examined), pay to the plaintiff a reasonable sum to meet the plaintiff's travelling and other expenses of and incidental to the examination.

#### **24.05      Report of examination**

A defendant at whose request a plaintiff is examined under rule 24.03 must:

- (a) obtain a medical report from the medical expert as soon as practicable after the examination; and
- (b) unless the Court orders otherwise, serve a copy on the plaintiff not later than 21 days after receipt of the medical report.

#### **24.06      Expert's report admissible**

Where a copy of a statement or report is served in accordance with rule 24.01 or 24.05, the statement or report is admissible:

- (a) as evidence of the expert's opinion; and
- (b) where the expert's oral evidence of a fact on which the opinion is based would be admissible – as evidence of that fact.

#### **24.07      Attendance of expert**

- (1) A party served with a statement or report from an expert may serve a notice on the party who intends to rely on the statement or report that the party served requires the attendance of the expert for cross-examination at the hearing of the proceeding.
- (2) A notice requiring the attendance of an expert for cross-examination is to be served not later than 14 days before the commencement of the hearing.
- (3) The party who served the statement or report must cause the expert to attend the hearing unless the Court orders otherwise.
- (4) If the expert in respect of whom a notice is served under subrule (2) fails to attend for cross-examination, the Court may order that his or her statement or report is not to be received in evidence.
- (5) Where:
  - (a) an expert's statement or report is received in evidence; and
  - (b) the expert fails to attend for cross-examination,a party may not, without the leave of the Court on just terms, lead evidence to contradict the evidence of the expert.

### **Part 25              Applications**

#### **25.01      Definition**

In this Part, **hearing** means the hearing of an application.

#### **25.02      Form of application**

An application in a proceeding is to be:

- (a) in accordance with Form 25A unless these Rules provide otherwise or the Court orders otherwise; and

- (b) supported by an affidavit where the applicant wishes to lead evidence in support of the application.

### **25.03      Filing**

- (1) An application is to be filed.
- (2) An application is taken to be made at the time it is filed.
- (3) A Registrar must fix a date, time and place for the hearing and mark them on the application.
- (4) An affidavit in support of an application is to be filed before the hearing of the application.

### **25.04      Service**

- (1) Subject to these Rules, an applicant must serve a copy of an application and a supporting affidavit on every person to whom notice of the application is to be given:
  - (a) within a reasonable time before the date fixed for the hearing but not later than 2 p.m. on the day before the date fixed for the hearing; or
  - (b) where the office of the Court is closed on the day before the date fixed for the hearing, not later than 2 p.m. on the day the office is last open before that date.
- (2) At the hearing, the Court may order that a copy of the application and any document in support be served on a person who appears to the Court to have a sufficient interest in the determination of the application.

### **25.05      Person served to file affidavit**

A person served with an application under this Part must, before the hearing of the application, file and serve on the applicant the affidavits on which the person intends to rely at the hearing.

### **25.06      Failure to attend hearing**

- (1) If a person to whom an application is addressed fails to attend the hearing, the Court may hear the application if satisfied that the application and affidavit in support were properly served.
- (2) If the applicant fails to attend the hearing, the Court may dismiss the application or make the orders it considers appropriate.

### **25.07 Attendance by teleconferencing**

- (1) With the leave of the Court, a person may attend the hearing by teleconferencing if physical attendance is impracticable.
- (2) A person wishing to attend a hearing by teleconferencing must seek the leave of the Court not later than 24 hours before the time fixed for the hearing.
- (3) Leave under this rule may be granted informally by telephone and without notice to any other person.
- (4) A person who is granted leave to attend a hearing by teleconferencing must give the notice to other persons that the Court directs.
- (5) The Court may direct that the person granted leave under this rule must reserve the teleconferencing facilities to be used at the hearing and pay the costs in connection with their use.

## **Part 26 Injunctions and preservation of property**

### **26.01 Injunctions**

- (1) The Court may grant an injunction:
  - (a) at any stage of a proceeding; or
  - (b) in an urgent case – before the commencement of a proceeding.
- (2) Unless the Court gives a party leave to apply ex parte, an application for an injunction is to be on notice.
- (3) An applicant for an injunction must give an undertaking to pay, in the manner the Court directs, compensation to a person who suffers loss as a result of the injunction.
- (4) An undertaking given under subrule (3) may be referred to in a proceeding as "the usual undertaking as to damages".

### **26.02 Preservation of property**

- (1) The Court may make an order in a proceeding for the inspection, detention or preservation of property, whether or not it is in the possession of a party.

- (2) An order under subrule (1) may authorise a person to:
  - (a) enter on land or do an act for the purpose of obtaining access to the property;
  - (b) take samples of the property;
  - (c) make observations, including the photographing, of the property;
  - (d) conduct an experiment on or with the property; or
  - (e) observe a process.
- (3) Where the Court makes an order under subrule (1), the Court may make an order relating to the costs and expenses of a person who is not a party to the proceeding.
- (4) When making an order under this rule the Court may impose a condition that the person applying for the order must give security for the costs and expenses of a person (whether or not a party) who will be affected by the order.

## **Part 27            Summary judgment**

### **27.01      Application for judgment by plaintiff**

- (1) Where a defendant has filed a defence to the whole or part of a claim, a plaintiff may at any time apply to the Court for judgment against the defendant on the ground that the defendant has no defence:
  - (a) to the whole or part of the claim; or
  - (b) except as to the amount of the claim.
- (2) A plaintiff may make only one application for judgment under this Part unless the Court orders otherwise.

### **27.02      Plaintiff's affidavit**

- (1) A plaintiff must support an application for judgment by filing an affidavit:
  - (a) verifying the facts on which the claim or the part of the claim is based; and
  - (b) stating that in the belief of the deponent there is no defence to the claim or the part of the claim or no defence except as to the amount of the claim.

- (2) Where:
  - (a) a statement in a document tends to establish a fact referred to in subrule (1)(a); and
  - (b) at the hearing of the proceeding, the document would be admissible by or under the *Evidence Act* or a law in force in the Territory to verify that fact,the affidavit may set out the statement.
- (3) An affidavit under subrule (1) may contain a statement of fact based on information and belief if the grounds are set out and, having regard to all the circumstances, the Court considers that the statement ought to be permitted.

### **27.03      Service on defendant**

A plaintiff must serve an application for judgment and a copy of the supporting affidavit on the defendant not later than 7 days before the date fixed for the hearing of the application.

### **27.04      Defendant may show cause**

- (1) A defendant may, by affidavit or otherwise to the satisfaction of the Court, show cause against an application for judgment.
- (2) An affidavit under subrule (1):
  - (a) is to show a defence to the claim or the part of the claim to which the application relates;
  - (b) is to state the facts on which the defence is based; and
  - (c) may contain a statement of fact based on information and belief if the grounds are set out.
- (3) A defendant must serve a copy of an affidavit on a plaintiff not later than 3 days before the date fixed for the hearing of the application unless the Court orders otherwise.

### **27.05      Hearing of application**

- (1) On the hearing of an application for judgment, the Court may:
  - (a) dismiss the application;
  - (b) give the appropriate judgment for the plaintiff against the defendant on the claim or the part of the claim to which the application relates, having regard to the nature of the relief or remedy claimed; or

- (c) give the defendant leave to defend the claim or the part of the claim to which the application relates, either unconditionally or on terms in relation to giving security, paying money into the Court, time, the manner of hearing or otherwise.
- (2) The Court may stay the execution of a judgment given under subrule (1)(b) until after the hearing of a counterclaim made by the defendant in the proceeding.

### **27.06 Summary judgment for defendant**

On application by a defendant who has filed a defence to a claim or part of a claim, the Court may at any time give judgment for the defendant against the plaintiff if the defendant has a good defence on the merits.

## **Part 28 Summary stay or dismissal of claim and striking out pleading**

### **28.01 Stay or judgment in proceeding**

- (1) Where a proceeding generally or a claim in a proceeding:
- (a) does not disclose a cause of action;
  - (b) is scandalous, frivolous or vexatious; or
  - (c) is an abuse of the process of the Court,
- the Court may stay the proceeding generally or in relation to a claim or give judgment in the proceeding generally or in relation to a claim.
- (2) Where a defence to a claim in a proceeding:
- (a) does not disclose an answer;
  - (b) is scandalous, frivolous or vexatious; or
  - (c) is an abuse of the process of the Court,
- the Court may give judgment in the proceeding generally or in relation to the claim.
- (3) In this rule:
- (a) a claim in a proceeding includes a counterclaim and a claim by third party notice; and

- (b) a defence includes a defence to a counterclaim and a defence to a claim by third party notice.

## **28.02 Striking out pleading**

Where a pleading:

- (a) does not disclose a cause of action or defence;
- (b) is scandalous, frivolous or vexatious;
- (c) may prejudice, embarrass or delay the fair hearing of the proceeding; or
- (d) is otherwise an abuse of the process of the Court,

the Court may order that the whole or part of the pleading be struck out or amended.

## **Part 29 Summary proceeding for recovery of possession of land**

### **29.01 Application of Part**

- (1) Subject to subrule (2), this Part applies where a plaintiff claims the recovery of land that is occupied solely by a person:
  - (a) who entered into occupation; or
  - (b) having been a licensee, remained in occupation,without the consent or licence of the plaintiff or the plaintiff's predecessor in title.
- (2) This Part does not apply where the land is occupied by a mortgagor or successor in title and the claim is made by the mortgagee or successor in title.

### **29.02 Commencement of proceeding**

A plaintiff commences a proceeding under this Part by filing an application in accordance with Form 29A.

### **29.03 Who to be defendant**

- (1) Each person in occupation of the land whose name the plaintiff knows is a defendant.

- (2) If the plaintiff does not know the name of a person in occupation, the proceeding may be commenced without naming the person as defendant.

#### **29.04 Affidavit required**

A plaintiff must file with the application an affidavit stating:

- (a) the interest of the plaintiff in the land;
- (b) the circumstances in which the land is occupied without licence or consent and in which the claim for recovery of the land arises; and
- (c) if applicable – that the plaintiff does not know the name of a person occupying the land who is not named as a defendant.

#### **29.05 Service**

- (1) The plaintiff must serve a copy of the application and affidavit on:
- (a) each defendant; and
  - (b) each person occupying the land who is not named as a defendant.
- (2) Service on a defendant is to be personal.
- (3) Service on a person occupying land who is not named as a defendant is effected:
- (a) by:
    - (i) affixing a copy of the application and affidavit to a conspicuous part of the land; and
    - (ii) if practicable – leaving in a letter-box or other receptacle for mail on the land a copy of the application and affidavit enclosed in a sealed envelope addressed to "The Occupiers"; or
  - (b) in any other manner the Court directs.

#### **29.06 Affidavit to be filed**

A person served with an application under this Part must, not less than 7 days before the hearing of the application, file and serve on the applicant the affidavits on which the person intends to rely at the hearing.

**29.07 Occupier made defendant**

The Court may order that a person occupying land who is not named as a defendant be made a defendant or added as a defendant.

**29.08 Judgment for possession**

A judgment for possession under this Part is to be in accordance with Form 29B.

**29.09 Warrant of possession**

- (1) Where 3 months have elapsed after a judgment for possession under this Part takes effect, the Court may give leave for the issue of a warrant of possession.
- (2) A plaintiff may apply for leave under subrule (1) without notice to any person unless the Court orders otherwise.
- (3) A warrant of possession issued under this Part is to be in accordance with Form 29C.

**Part 30 Applications under Commercial Tenancies or Tenancy Act**

**30.01A Interpretation**

A reference in this Part to the *Tenancy Act* is to be read as a reference to that Act as continued in force by section 160 of the *Residential Tenancies Act* in relation to a lease to which the *Tenancy Act* applied immediately before the commencement of the *Residential Tenancies Act*.

**30.01 Lessor's application for warrant of possession after notice to quit**

An application under section 48 of the *Commercial Tenancies Act* or the *Tenancy Act* for an order for the issue of a warrant of possession is to be in accordance with Form 30A.

**30.02 Lessor's application for termination of lease and possession of dwelling house**

- (1) An application under section 51 of the *Tenancy Act* for an order terminating a lease and an order for immediate possession is to be in accordance with Form 30B.
- (2) An application under subrule (1) is not to be addressed to a person.

### **30.03 Lessee's application for termination of lease**

An application under section 51A(1) of the *Tenancy Act* for an order terminating a lease is to be in accordance with Form 30C.

### **30.04 Lessor's application to enforce termination order**

An application under section 51A(4) of the *Tenancy Act* for a warrant of possession to enforce an order requiring the lessee to deliver up possession is to be in accordance with Form 30D.

### **30.04A Application may be made by agent**

An application in accordance with this Part may be made by an agent of a lessor or lessee within the meaning of the *Tenancy Act* or the *Commercial Tenancies Act*, as the case may be, who is authorised in writing to act as the agent of the lessor or lessee.

### **30.05 Service and hearing of application**

- (1) On the filing of an application under this Part, a Registrar must fix a date, time and place for the hearing and mark them on the application.
- (2) A copy of the application is to be served personally on the person to whom it is addressed as soon as practicable after the application is filed and not less than 2 days before the date fixed for the hearing.
- (2A) If it is impracticable to effect personal service of the application or attempts to effect personal service are unsuccessful:
  - (a) a copy of the application may be served by leaving it in a letter-box or other receptacle for mail at the last-known residential or business address of the person to whom the application is addressed or by affixing it to a conspicuous part of the premises at that address;
  - (b) the applicant must file an affidavit stating the reasons why personal service of the application was not effected and the manner in which the application was served; and
  - (c) at the hearing, before considering the application, the Court must be satisfied that the application was properly served in accordance with paragraph (a) and only after all reasonable steps had been taken to effect personal service.
- (3) If the person to whom an application is addressed fails to attend the hearing, the Court may hear and determine the application if it is satisfied that the application was properly served.

- (4) If the applicant fails to attend the hearing, the Court may dismiss the application or make the orders it considers appropriate.
- (5) If neither party attends the hearing, the Court may make the orders it considers appropriate.

### **30.06      Court to issue warrant**

After an order for the issue of a warrant of possession is made, subject to the terms of the order, the Court must issue the warrant on the written request of the lessor.

## **Part 30A      Applications under Residential Tenancies Act**

### **30A.01      Application for declaration that term is harsh etc.**

An application under section 22 of the *Residential Tenancies Act* is to be in accordance with Form 30A-A.

### **30A.02      Application for termination of tenancy and order for possession**

An application under Division 4 of Part 11 of the *Residential Tenancies Act* for an order terminating a tenancy and an order for possession of the premises to which the tenancy relates is to be in accordance with Form 30A-B.

### **30A.03      Application for order for possession if tenancy terminated**

An application under section 104(1) of the *Residential Tenancies Act* is to be in accordance with Form 30A-B.

### **30A.04      Application for order for possession if head tenancy forfeited**

An application under section 107(3) of the *Residential Tenancies Act* is to be in accordance with Form 30A-C.

### **30A.05      Service and hearing of application**

- (1) On the filing of an application under this Part, a Registrar must fix a date, time and place for the hearing and mark them on the application.
- (2) If the name of a tenant within the meaning of the *Residential Tenancies Act* on whom an application is to be served is not known, the application may be addressed to the occupier of the premises to which the application relates.

- (3) A copy of the application is to be served personally on the person to whom it is addressed as soon as practicable after the application is filed and not less than 2 days before the date fixed for the hearing.
- (4) If it is impracticable to effect personal service of the application or attempts to effect personal service are unsuccessful:
  - (a) a copy of the application may be served by leaving it in a letter-box or other receptacle for mail at the last-known residential or business address of the person to whom the application is addressed or by affixing it to a conspicuous part of the premises at that address;
  - (b) the applicant must file an affidavit stating the reasons why personal service of the application was not effected and the manner in which the application was served; and
  - (c) at the hearing, before considering the application, the Court must be satisfied that the application was properly served in accordance with paragraph (a) and only after all reasonable steps had been taken to effect personal service.
- (5) If the person to whom an application is addressed fails to attend the hearing, the Court may hear and determine the application if it is satisfied that the application was properly served.
- (6) If the applicant fails to attend the hearing, the Court may dismiss the application or make the orders it considers appropriate.
- (7) If neither party attends the hearing, the Court may make the orders it considers appropriate.

### **30A.06 Court to issue warrant**

- (1) If an order for possession is made in relation to premises, subject to the terms of the order, the Court may, on the written request of the landlord within the meaning of the *Residential Tenancies Act* in relation to the premises or his or her agent authorised in writing, issue a warrant of possession.
- (2) If an order for possession is made in relation to premises by the Commissioner of Tenancies, the landlord within the meaning of the *Residential Tenancies Act* in relation to the premises or his or her agent authorised in writing may apply to a Registrar for the issue of a warrant of possession to enforce the order by producing the original order to, and filing a copy of the order with, a Registrar.
- (3) A warrant of possession is to be in accordance with Form 46A.

## **Part 31            Security for costs**

### **31.01      Definitions**

In this Part, unless the contrary intention appears:

**defence** includes defence to a counterclaim and to a third party claim.

**defendant** includes a person against whom a claim is made in a proceeding.

**plaintiff** includes a person who makes a claim in a proceeding.

### **31.02      When security for costs may be ordered**

(1) Where:

- (a) a plaintiff is ordinarily resident out of the Territory;
  - (b) a plaintiff:
    - (i) is a corporation; or
    - (ii) is suing for the benefit of another person and not for the plaintiff's own benefit (other than a plaintiff suing in a representative capacity),
- and there is reason to believe that the plaintiff has insufficient assets in the Territory to pay the costs of the defendant if ordered to do so;
- (c) a proceeding by the plaintiff for the same claim is pending in another court;
  - (d) subject to subrule (2), the address of a plaintiff is not stated or is stated incorrectly in the plaintiff's originating process;
  - (e) a plaintiff has changed his or her address after the commencement of the proceeding in order to avoid the consequences of the proceeding; or
  - (f) the Court may require security for costs under the Corporations Act 2001 or another Act,

on the application of a defendant, the Court may order that the plaintiff give security for the defendant's costs of defending the proceeding and that the proceeding against the defendant be stayed until the security is given.

- (2) The Court must not require a plaintiff to give security for costs by reason only of subrule (1)(d) if in failing to state his or her address or in stating his or her address incorrectly the plaintiff acted innocently and without intention to deceive.

**31.03      Manner of giving security**

Where an order is made requiring the plaintiff to give security for costs, security is to be given in the manner and within the time the Court directs.

**31.04      Failure to give security**

Where a plaintiff fails to give the security required by an order, the Court may dismiss the plaintiff's claim.

**31.05      Setting aside or variation of order**

The Court may set aside or vary an order requiring a plaintiff to give security for costs.

**31.06      Payment by irrevocable guarantee**

Where the Court makes an order requiring a plaintiff to pay money into the Court as security for costs, subject to rule 31.07, it is sufficient compliance if the plaintiff files an irrevocable guarantee given by a bank that it will pay the money into the Court if ordered by the Court to do so.

**31.07      Requirements of guarantee**

An irrevocable guarantee is to be:

- (a) in accordance with Form 31A;
- (b) given by a bank approved by a Registrar; and
- (c) sealed by the bank or signed by an officer of the bank who has written authority from the bank to sign the guarantee on its behalf.

**31.08      Liability of bank**

- (1) An irrevocable guarantee filed under rule 31.06 may be amended or revoked only with the leave of the Court.
- (2) Unless the Court orders otherwise, a bank that has given an irrevocable guarantee may discharge its liability under the guarantee only by:
  - (a) payment into the Court of the total sum guaranteed; and

- (b) filing a notice of discharge and payment into the Court in accordance with Form 31B.

## **Part 32            Case management**

### **32.01      When conferences to be held**

- (1) When a notice of defence is filed, a Registrar must fix a date, time and place for a conciliation conference and must give all parties notice of the conference in accordance with Form 32A.
- (2) The date fixed under subrule (1) is to be 35 days after a notice of defence is filed or as soon as practicable after that date.
- (3) At any stage of a proceeding, the Court may order that a conciliation conference or a prehearing conference be held.

### **32.02      Who to attend conferences**

- (1) Each party must attend a conciliation conference or a prehearing conference:
  - (a) in the case of an individual – in person;
  - (b) in the case of a corporation – by an officer or employee of the corporation authorised by the corporation to attend;
  - (c) in the case of a firm – by all the partners, or by one or more partners with the unfettered written authority of all the other partners to attend; or
  - (d) in the case of the Territory – by an employee (as defined in the *Public Sector Employment and Management Act*) of the Agency on behalf of which the Territory is conducting the proceeding who is authorised in writing by the Chief Executive Officer of that Agency to attend.
- (2) An authorisation to attend a conciliation conference or prehearing conference referred to in subrule (1)(b), (c) or (d) includes an authorisation to settle the proceeding if possible.
- (3) A party may be accompanied by a legal practitioner or, with the leave of the Court, by some other person who is fully instructed as to the conduct of the proceeding including the options for settlement and advice from counsel, if obtained.
- (4) A party for whom physical attendance is impracticable may, with the leave of the Court obtained in accordance with rule 32.03, attend by teleconferencing.

- (5) The Court may dispense with the requirement of attendance in person (whether physically or by teleconferencing) in special circumstances.

### **32.03      Attendance by teleconferencing**

- (1) A party wishing to attend a conciliation conference or prehearing conference by teleconferencing must seek the leave of the Court not later than 24 hours before the time fixed for the conference.
- (2) Leave may be granted informally by telephone and without notice to any other party.
- (3) A party granted leave under this rule must give the notice to the other parties that the Court directs.
- (4) The Court may direct that a party granted leave under this rule must reserve the teleconferencing facilities to be used at the conciliation or prehearing conference and pay the costs in connection with their use.

### **32.04      Procedure at conciliation conference**

- (1) At a conciliation conference, the parties must be in a position to indicate:
- (a) where the party is the plaintiff – particulars of the claim and the relief sought;
  - (b) where the party is the defendant – the issues (if any) and the grounds on which liability is denied;
  - (c) the issues of fact and law;
  - (d) whether any amendment to the pleadings is anticipated or required;
  - (e) the nature of any necessary interlocutory matters, including interrogation;
  - (f) the nature of any steps that need to be taken prior to the hearing of the proceeding;
  - (g) the prospects of settlement and be able to respond to an offer of settlement; and
  - (h) any other matter that might affect readiness for the hearing of the proceeding or scheduling for the hearing.

- (2) At a conciliation conference, the Court may:
- (a) conciliate between the parties and make recommendations for the resolution of the issues to facilitate agreement between the parties;
  - (b) refer the parties to a mediation conference; or
  - (c) give the directions it thinks necessary for the expeditious determination of the proceedings.
- (3) The Court may:
- (a) adjourn the conciliation conference and fix a date, time and place for the adjourned conference;
  - (b) fix a date, time and place for a prehearing conference; or
  - (c) fix a date, time and place for the hearing of the proceeding.
- (4) For the purpose of subrule (2)(c), but without limiting its generality, the Court may give directions relating to:
- (a) the facilitating of agreement between the parties;
  - (b) the service of documents;
  - (c) the settling of issues for the hearing of the proceeding;
  - (d) particulars of the statement of claim or defence to be provided;
  - (e) the attendance of the parties to give evidence (whether or not on oath) at a prehearing conference or the hearing of the proceeding;
  - (f) the giving of evidence and calling of witnesses;
  - (g) discovery and inspection;
  - (h) interrogatories and answers to interrogatories;
  - (j) dispensing with the requirement for and delivery of pleadings, giving discovery, delivery of interrogatories, and other matters of practice and procedure;
  - (k) the making of admissions relating to a matter in question;
  - (m) the admission into evidence of facts or documents;
  - (n) expediting further conferences; or

- (p) time limits for further pleadings.
- (5) Directions given under this rule are to be set out in a scheduling order in accordance with Form 32B.

### **32.05 Case management statement**

Not later than 2 days before the date fixed for a prehearing conference, each party must file and serve on each other party a case management statement in accordance with Form 32C.

### **32.06 Procedure at prehearing conference**

- (1) At a prehearing conference, the parties must be in a position to indicate:
  - (a) the prospects of settlement and be able to respond to an offer of settlement; and
  - (b) any other matter that might affect readiness for the hearing of the proceeding or scheduling for the hearing.
- (2) At a prehearing conference, the Court may:
  - (a) conciliate between the parties and make recommendations for the resolution of the issues to facilitate agreement between the parties;
  - (b) refer the parties to a mediation conference; or
  - (c) give the directions it thinks necessary for the expeditious determination of the proceedings.
- (3) If no agreement is reached, the Court:
  - (a) must settle a joint memorandum of issues to be signed by each party;
  - (b) must be satisfied as to the matters in each case management statement and confirm the following details with the parties:
    - (i) medical or expert reports to be relied on;
    - (ii) the number of witnesses, both expert and non-expert;
    - (iii) the estimated length of the hearing of the proceeding;
    - (iv) teleconferencing arrangements;
    - (v) whether counsel has been briefed and whether advice on evidence has been obtained; and

- (c) may:
  - (i) adjourn the prehearing conference;
  - (ii) list the matter before a magistrate; or
  - (iii) list the matter for hearing.

### **32.07      Mediation conference**

- (1) Where the Court refers the parties to a mediation conference, a Registrar must fix a date, time and place for the conference and give all parties notice of them.
- (2) A mediation conference is to be held before:
  - (a) a Judicial Registrar;
  - (b) a Registrar; or
  - (c) a mediator appointed by the Chief Magistrate or a Judicial Registrar from the list of mediators referred to in rule 32.08(2).
- (3) Each party must attend a mediation conference:
  - (a) in the case of an individual – in person;
  - (b) in the case of a corporation – by an officer or employee of the corporation authorised by the corporation to attend;
  - (c) in the case of a firm – by all the partners, or by one or more partners with the unfettered written authority of all the other partners to attend; or
  - (d) in the case of the Territory – by an employee (as defined in the *Public Sector Employment and Management Act*) of the Agency on behalf of which the Territory is conducting the proceeding who is authorised in writing by the Chief Executive Officer of that Agency to attend.
- (4) An authorisation to attend a mediation conference referred to in subrule (3)(b), (c) or (d) includes an authorisation to settle the matter if possible.
- (5) With the leave of the Court, a party attending a mediation conference may be accompanied by:
  - (a) a legal practitioner who is fully instructed as to the conduct of the proceeding and the options for settlement; or
  - (b) some other person.

- (6) The mediator may adjourn a mediation conference if the parties consider that further negotiations may lead to a settlement.

### **32.08 Mediators**

- (1) In this rule, **mediator** does not include a Judicial Registrar or Registrar.
- (2) The Court may keep a list of persons who are, in the Chief Magistrate's opinion, suitably qualified to act as mediators under this Part and who are willing to do so.
- (3) The costs and expenses of a mediator may be fixed by the Chief Magistrate and, subject to rule 32.09, are to be shared equally by all parties to the mediation.
- (4) The Court may make an order necessary to secure or enforce payment of a mediator's costs and expenses.

### **32.09 Costs on adjournment of mediation**

If a party applies to adjourn a mediation conference without the consent of the other parties, and the conference is adjourned, the party must:

- (a) if the mediator is appointed under rule 32.07(2)(c) – immediately pay the mediator's costs; and
- (b) pay the other parties' costs thrown away as a result of the adjournment.

### **32.10 Consequences of failure to attend, &c.**

If a party fails to:

- (a) attend a conciliation conference, prehearing conference or mediation conference after receiving notice to attend;
- (b) prepare adequately for a conciliation conference, prehearing conference or mediation conference; or
- (c) comply with an order or direction of the Court, including an order or direction contained in a scheduling order under rule 32.04(5),

the Court may:

- (d) in the case of failure by a plaintiff or other party claiming relief – strike out the claim;

- (e) in the case of failure by a defendant or other party against whom relief is claimed – make an order against the party permitting the party claiming the relief to proceed as if a notice of defence had not been filed;
- (f) make orders relating to costs that it considers appropriate, including an order that a legal practitioner pay all or part of the costs payable;
- (g) list the proceeding before a magistrate; or
- (h) make any other order it considers appropriate.

### **32.11 Confidentiality**

- (1) Unless the parties consent, evidence of things said or admissions made in the course of and for the purpose of:
  - (a) conciliation during a conciliation or prehearing conference; or
  - (b) mediation during a mediation conference,is not admissible in the proceeding or in a court except to prove that a settlement was reached and the terms of that settlement.
- (2) Subject to subrule (1) and any other law in force in the Territory, a mediator must not disclose or be required to disclose any information of which the mediator becomes aware in the course of and for the purpose of a mediation.

## **Part 33 Hearing of proceeding**

### **33.01 Directions for conduct of hearing**

The Court may give directions relating to the conduct of the hearing of a proceeding, including the order of evidence.

### **33.02 Absence of party**

If a party is absent when the hearing of a proceeding is called on, the Court:

- (a) may:
  - (i) proceed with the hearing and give judgment;
  - (ii) strike out the claim or dismiss the proceeding; or
  - (iii) adjourn the hearing; and

- (b) may make any other order it considers appropriate, including an order for costs.

**33.03 Party may apply for re-hearing**

A party against whom an order is made under rule 33.02(a)(i) or (ii) may apply in accordance with Part 36 to have the order set aside and the proceeding re-heard.

**33.04 Disqualification of magistrate**

A magistrate may disqualify himself or herself from presiding at the hearing of a proceeding if the magistrate previously presided at a conciliation conference or prehearing conference and is of the view that his or her earlier involvement may prejudice the outcome of the proceeding.

**Part 34 Assessment of damages or value of goods**

**34.01 Interpretation**

In this Part, unless the contrary intention appears, a reference to an assessment of damages is to be read as including a reference to an assessment of the value of goods.

**34.02 When order for assessment may be made**

At any stage of a proceeding, the Court may order damages to be assessed.

**34.03 Manner of assessment**

- (1) Subject to subrule (3), damages are to be assessed by a Judicial Registrar unless the Court orders otherwise.
- (2) The party against whom an order for the assessment of damages is made may take part in the assessment.
- (3) Where:
  - (a) the Court makes an order in a proceeding against some defendants for default judgment with damages to be assessed; and
  - (b) the proceeding is continued against other defendants,

the damages are to be assessed at the hearing of the proceeding unless the Court orders otherwise.

#### **34.04 Notice to parties**

A Registrar must:

- (a) fix a date, time and place for the assessment of damages; and
- (b) give each party notice of the assessment in accordance with Form 34A not later than 14 days before the date fixed for the assessment.

#### **34.05 Evidence by affidavit**

Not later than 7 days before the date fixed for the assessment of damages, the party in whose favour the assessment is to be made must file and serve on the other party an affidavit stating:

- (a) the amount claimed; and
- (b) the facts and calculations on which the amount is based.

#### **34.06 Summons to give evidence or produce documents**

The attendance of witnesses and production of documents for the purposes of an assessment of damages may be ordered by summons in accordance with Part 23.

#### **34.07 Order to state amount**

Where a Judicial Registrar assesses damages he or she must, by order, state the amount at which they are assessed.

### **Part 35 Orders**

#### **35.01 General relief**

The Court may at any stage of a proceeding, on the application of a party, make an order that is required despite the fact that the order was not sought in the statement of claim.

#### **35.02 Date of effect**

An order made by the Court:

- (a) is to bear the date on which it is made; and
- (b) takes effect on that date unless the Court orders otherwise.

### **35.03      Form of order**

- (1) An order of the Court, whether final or otherwise is to be:
  - (a) in accordance with Form 35A;
  - (b) signed by a magistrate or Registrar; and
  - (c) sealed by the Court.
- (2) The Court must forward a sealed order to each party.

### **35.04      Certified copy**

A party may request the Court to provide him or her with a certified copy of an order and, on payment of the relevant fee specified in the Schedule to the *Local Court Regulations*, the Court must provide the certified copy.

### **35.05      Time for compliance**

- (1) Subject to subrule (2), where an order requires a person to do an act, the person must do the act not later than 14 days after being served with a sealed copy of the order.
- (2) Subrule (1) does not apply to:
  - (a) an order that specifies the time in which a person must do an act;
  - (b) an order or part of an order that requires a person to pay money otherwise than into the Court; or
  - (c) an order for the delivery of goods.
- (3) Where an order requires a person to do an act within a fixed time, the Court may by order fix another time.
- (4) Where an order requires a person to do an act but does not fix a time in which the act is to be done, the Court may by order fix a time.

### **35.06      Order by consent**

- (1) Where all parties to a proceeding consent to the making of an order, the Court may make an order in the terms consented to.
- (2) A party may consent to an application for an order made by another party by:
  - (a) filing a notice of consent in accordance with Form 35B; or

- (b) endorsing his or her consent on the application that is filed.
- (3) If all parties to a proceeding consent to the making of an order, a Registrar may:
  - (a) without delay make an order in the terms consented to; or
  - (b) if not satisfied that the order should be made:
    - (i) refuse to make the order; or
    - (ii) refer the matter to a magistrate.
- (4) An order under subrule (3) takes effect from the date specified in the order or, if no date is specified, on the service of the order by the party filing the application on the other party or on all of the other parties.
- (5) Where some, but not all, parties to a proceeding consent to the making of an order, a Registrar may:
  - (a) without delay make an order in favour of the party seeking it, as against the parties who consented to the order, in the terms consented to; or
  - (b) if not satisfied that the order should be made:
    - (i) refuse to make the order; or
    - (ii) refer the matter to a magistrate.
- (6) An order under subrule (5):
  - (a) takes effect on the date specified in the order or, if no date is specified, on the service of the order by the party filing the application on the other party or on all of the other parties consenting to the order; and
  - (b) is also to be served on all the parties who did not consent to the order.

### **35.07 Party may apply for re-hearing**

A party who applies under section 20(1)(c) of the Act to have a consent order set aside and a re-hearing of the proceeding must do so in accordance with Part 36.

## **Part 36            Re-hearing**

### **36.01      Application for re-hearing**

- (1) A party may apply for an order under section 20 of the Act that an order be set aside and the proceeding be re-heard by filing an application in accordance with Form 36A.
- (2) An application for a re-hearing is to be filed with an affidavit stating why the applicant:
  - (a) did not file a notice of defence and stating the applicant's intention to defend the claim, the defences to be relied on and the particulars of each defence, including a summary of the material facts on which the applicant relies;
  - (b) did not appear in the proceeding when required to do so; or
  - (c) consented to the making of an order.
- (3) A copy of the application and affidavit is to be served personally on each other party unless the Court orders otherwise.

### **36.02      Further application**

If an application under this Part is struck out because the applicant fails to appear at the time fixed for the hearing of the application, a further application for re-hearing is to be taken to be an application for leave to re-apply under section 20(5) of the Act.

### **36.03      Re-hearing date**

Where the Court sets aside an order, the proceeding is to be re-heard on a date fixed by the Court.

## **Part 37            Appeals**

### **Division 1        Appeals generally**

#### **37.01      Application of Division**

This Division applies where a person appeals to the Court under an Act other than the *Tenancy Act*.

### **37.02      Definitions**

In this Division:

***appellant*** means a person who appeals to the Court under an Act other than the *Tenancy Act* and includes a person joined as an appellant under rule 37.03.

***respondent*** means the decision maker in relation to whose decision the appellant appeals and includes a person joined as a respondent under rule 37.03.

### **37.03      Persons who may be joined**

- (1) A person who is:
  - (a) affected by the relief sought by a notice of appeal; or
  - (b) is interested in maintaining the decision appealed against, may be joined as an appellant or respondent.
- (2) The Court may order the addition or removal of a person as an appellant or respondent.
- (3) A person is not to be made an appellant without his or her consent.

### **37.04      Notice of appeal**

- (1) Unless an Act provides otherwise, an appellant commences an appeal by filing, not later than 28 days after a decision is made, a notice of appeal in the Registry of the office of the Court at a proper venue as specified in rule 5.01.
- (2) A notice of appeal is to:
  - (a) be in accordance with Form 37A; and
  - (b) state:
    - (i) the name and address of the appellant;
    - (ii) the name and address of the respondent;
    - (iii) the decision in respect of which the appeal is brought;
    - (iv) the date on which the decision was made; and
    - (v) specifically and concisely, the grounds of appeal.

- (3) As soon as practicable after filing a notice of appeal, the appellant must serve a copy on the respondent.

### **37.05      Notice of appearance**

Not later than 7 days after being served with a notice of appeal, a respondent must file and serve on the appellant a notice of appearance in accordance with Form 37B.

### **37.06      Prehearing conference**

- (1) When a notice of appeal is filed, a Registrar must fix a date, time and place for a prehearing conference and mark them on the notice of appeal.
- (2) The prehearing conference is to be held not later than 6 weeks after the notice of appeal is filed.
- (3) A party for whom physical attendance is impracticable may, with the leave of the Court obtained in accordance with rule 32.03, attend by teleconferencing.
- (4) At a prehearing conference the Court may give the directions it considers appropriate, including a direction setting the matter down for the hearing of the appeal.

### **37.07      Amendment of grounds**

The Court may give leave to amend the grounds of appeal.

### **37.08      Representation**

A party to an appeal may appear:

- (a) in person;
- (b) by an agent authorised in writing by the party; or
- (c) in accordance with rule 1.15(b), (c) or (d)(i), (ii) or (iv).

### **37.09      Hearing of appeal**

- (1) The Court may give the directions it considers appropriate in respect of the hearing of an appeal.
- (2) If a respondent fails to attend the hearing, the Court may hear the appeal if it is satisfied that the notice of appeal was properly served on the respondent.
- (3) If an appellant fails to attend the hearing, the Court may dismiss the appeal or make the orders it considers appropriate.

- (4) If neither party attends at the hearing, the Court may make the orders it considers appropriate.

## **Division 2           Appeals under Residential Tenancies Act or Tenancy Act**

### **37.10      Application of Division**

This Division applies to an appeal under section 150 of the *Residential Tenancies Act* or section 19 of the *Tenancy Act*.

### **37.11      Interpretation**

- (1) In this Division:

***appellant*** means a person who appeals to the Court under section 150 of the *Residential Tenancies Act* or section 19 of the *Tenancy Act*.

***Commissioner of Tenancies*** means the Commissioner of Tenancies within the meaning of the *Residential Tenancies Act*.

- (2) A reference in this Division to the *Tenancy Act* is to be read as a reference to that Act as continued in force by section 160 of the *Residential Tenancies Act* in relation to a lease to which the *Tenancy Act* applied immediately before the commencement of the *Residential Tenancies Act*.

### **37.12      Notice of appeal**

- (1) An appellant commences an appeal by filing a notice of appeal in accordance with Form 37C in the Registry of the office of the Court at a proper venue as specified in rule 5.01.
- (2) As soon as practicable after filing a notice of appeal, the appellant must serve a copy on:
- (a) the Commissioner of Tenancies; and
  - (b) all other persons directly affected by the order, determination, variation or decision made by the Commissioner of Tenancies.

### **37.13      Commissioner of Tenancies to provide information**

Within 7 days after being served with a notice of appeal, the Commissioner of Tenancies must file all information in his or her possession relating to the matter to which the appeal relates, other than evidence obtained in the course of a conference in accordance with the *Residential Tenancies Act*.

### **37.14      Notice of appearance**

Within 7 days after a person other than the Commissioner of Tenancies is served with a notice of appeal under rule 37.12, the person must serve on the appellant a notice of appearance in accordance with Form 37D.

### **37.15      Persons who may be joined**

- (1) A person who is:
  - (a) affected by the relief sought by a notice of appeal under this Division; or
  - (b) interested in maintaining the decision appealed against in accordance with this Division,may apply to be joined by the Court as an appellant or respondent in relation to the appeal.
- (2) The Court may order the addition or removal of a person as an appellant or respondent to an appeal under the *Residential Tenancies Act* or the *Tenancy Act*.
- (3) A person is not to be made an appellant under the *Residential Tenancies Act* or the *Tenancy Act* without his or her consent.

### **37.16      Joinder of Commissioner of Tenancies**

- (1) The Commissioner of Tenancies may apply to be joined by the Court as a respondent to an appeal under the *Tenancy Act* by lodging an application under Part 25.
- (2) The Court may, of its own motion or on the application of the Commissioner of Tenancies, order that the Commissioner of Tenancies be joined as a respondent to an appeal under the *Residential Tenancies Act* or the *Tenancy Act*.
- (3) The Commissioner of Tenancies must, within 7 days after being joined as a respondent to an appeal, file and serve a notice of appearance in accordance with Form 37D on the appellant and all other persons directly affected by the order, determination, variation or decision made by the Commissioner of Tenancies to which the appeal relates.

### **37.17      Intervention of Commissioner of Tenancies**

- (1) The Commissioner of Tenancies may intervene in an appeal under the *Residential Tenancies Act* by filing a notice of intervention within 7 days after being served with a notice of appeal under rule 37.12(2)(a).
- (2) As soon as practicable after filing a notice of intervention, the Commissioner of Tenancies must serve a copy on the appellant and all other persons directly affected by the order, determination, variation or decision made by the Commissioner of Tenancies to which the appeal relates.

### **37.18      Prehearing conference**

- (1) When a notice of appeal is filed, a Registrar must fix a date, time and place for a prehearing conference and mark them on the notice of appeal.
- (2) The prehearing conference is to be held not later than 6 weeks after the notice of appeal is filed.
- (3) A party for whom physical attendance is impracticable may, with the leave of the Court obtained in accordance with rule 32.03, attend by teleconferencing.
- (4) At a prehearing conference, the Court may give the directions it considers appropriate, including a direction setting the matter down for the hearing of the appeal.

### **37.19      Representation**

A party to an appeal may appear:

- (a) in person;
- (b) by an agent authorised in writing by the party; or
- (c) in accordance with rule 1.15(b), (c) or (d)(i), (ii) or (iv).

### **37.20      Hearing of appeal**

- (1) At the hearing of an appeal the Court may hear, in the order it considers appropriate, submissions from:
  - (a) the appellant;
  - (b) the Commissioner of Tenancies; and
  - (c) all other persons directly affected by the order, determination, variation or decision to which the appeal relates.

- (2) If a person to whom the notice of appeal is addressed fails to attend the hearing, the Court may hear the appeal if it is satisfied that the notice of appeal was properly served on the person.
- (3) If the appellant fails to attend the hearing, the Court may dismiss the appeal or make other orders it considers appropriate.
- (4) If no party attends the hearing, the Court may make the orders it considers appropriate.

## **Part 38            Costs**

### **Division 1        Preliminary**

#### **38.01        Definitions**

In this Part, unless the contrary intention appears:

**Appendix** means the Appendix to Order 63 of the *Supreme Court Rules* and includes practice directions relating to the Appendix issued by the Chief Justice.

**attendance at the hearing**, for the purposes of rule 38.12(3)(b), includes all work reasonably done in and in relation to attending the hearing of a proceeding and to hear a deferred judgment.

**bill** means a bill of costs.

**preparation**, for the purposes of rule 38.12(3)(a), includes the doing of all reasonable work up to attendance at the hearing of a proceeding that was reasonably done, arising out of or incidental to the proceeding.

**taxation**, for the purposes of rule 38.12(3)(c), includes all work done in preparing a bill (where allowable) and includes preparing for and attending the taxation of costs.

**taxing officer** means:

- (a) a Judicial Registrar;
- (b) a Registrar; or
- (c) an officer of the Court directed under rule 38.11(2) to conduct a taxation.

## **38.02      Application of *Supreme Court Rules***

Subject to the Act, these Rules and practice directions issued by the Chief Magistrate, Order 63 of the *Supreme Court Rules* applies with the necessary changes to this Part.

## **Division 2            Costs**

### **38.03      Power and discretion of Court**

- (1) Subject to the Act, these Rules and any other law in force in the Territory, the costs of and incidental to a proceeding are in the Court's discretion and the Court has the power to determine by whom, to whom, to what extent and on what basis the costs are to be paid.
- (2) The Court may exercise its power and discretion in relation to costs at any stage of a proceeding or after the conclusion of a proceeding.

### **38.04      Court to fix percentage of Supreme Court costs**

- (1) Subject to these Rules, costs for work done are allowable at an appropriate percentage of the relevant costs set out in the Appendix up to and including 100%.
- (2) Subject to rules 38.07 and 38.08, when making a costs order the Court must fix the appropriate percentage referred to in subrule (1).
- (3) In fixing the appropriate percentage, the Court is to:
  - (a) have regard to:
    - (i) the complexity of the proceeding in fact and law;
    - (ii) the amount awarded to the plaintiff or defendant;
    - (iii) the efficiency with which the parties conducted the proceeding;
    - (iv) the preparedness of the parties at a conciliation conference, prehearing conference or hearing of an interlocutory application; and
    - (v) any other matter the Court considers appropriate; and
  - (b) be guided by the following percentages in relation to the amount of the claim in the proceeding:
    - (i) claim of \$5,001 to \$10,000 – 50%;

- (ii) claim of \$10,001 to \$50,000 – 80%;
- (iii) claim of \$50,001 to \$100,000 – 100%.

**38.05      Costs of conciliation conference**

Subject to rule 38.04 and unless the Court orders otherwise, costs for the preparation for and attendance at a conciliation conference are allowable in the same amount as set out in the Appendix for a contested interlocutory application.

**38.06      Costs of interlocutory application**

Where the Court orders that a party be paid the costs of an interlocutory application, the party is not entitled to have those costs taxed until after the final disposition of the proceeding unless the Court orders otherwise.

**38.07      Costs under *Crimes (Victims Assistance) Act***

Costs under the *Crimes (Victims Assistance) Act* are allowable at 80% of the relevant scale of costs set out in the Appendix unless the Court orders otherwise.

**38.08      Costs under *Commercial Tenancies Act, Tenancy Act and Residential Tenancies Act***

The appropriate percentage referred to in rule 38.04(1) in relation to an application under Part 30 or Part 30A is in the discretion of the Court and is to be fixed by the Court when making a final determination or a costs order in the proceedings.

**38.09      Costs in appeals**

In an appeal under Part 37, each party is to pay his or her own costs subject to:

- (a) the Act under which the appeal is made;
- (b) disciplinary and case management costs orders;
- (c) a public interest costs order under rule 38.10; and
- (d) any other costs orders the Court considers appropriate.

**38.10      Public interest costs order**

- (1) A party may apply to the Court at any stage of a proceeding, including at the commencement, for a public interest costs order under this rule.

- (2) The applicant must satisfy the Court that the proceeding:
  - (a) will determine, enforce or clarify an important right or obligation affecting the community or a significant sector of the community;
  - (b) will affect the development of law generally and may reduce the need for further litigation; or
  - (c) otherwise has the character of a public interest or test case proceeding.
- (3) If the Court is satisfied that there are grounds for it to make a public interest costs order, it may make the order it considers appropriate, having regard to:
  - (a) the resources of the parties;
  - (b) the likely cost of the proceeding to each party;
  - (c) the ability of each party to present his or her case properly or to negotiate a fair settlement; and
  - (d) the extent of a private or commercial interest each party may have in the litigation.
- (4) When considering the resources of the parties, the Court must have regard to the financial circumstances of each party and whether the financial capacity of a party to pay costs is affected either wholly or in part by legal aid, contingency fees, insurance, fighting funds, tax deductibility or any other factor.
- (5) The Court may make an order under this rule despite a party to the proceeding having a personal interest in the matter.
- (6) The orders the Court may make under this rule include an order that:
  - (a) costs follow the event;
  - (b) each party is to bear his or her own costs; and
  - (c) the party making the application, regardless of the outcome of the proceeding:
    - (i) is not to be liable for the other party's costs;
    - (ii) is to be liable to pay up to a specified amount or proportion only of the other party's costs; or

- (iii) may recover all or part of his or her costs from the other party.

### **Division 3      Taxation**

#### **38.11      Taxing officer**

- (1) Unless the Court orders otherwise, costs taxed in accordance with this Division are to be taxed by a taxing officer.
- (2) The Chief Magistrate or a Judicial Registrar may direct an officer of the Court to conduct a taxation.
- (3) An officer directed under subrule (2) to conduct a taxation is not to do so if a party to the taxation or a party's legal practitioner objects to the officer conducting the taxation.

#### **38.12      Bill of costs**

- (1) A party entitled to costs may apply to the taxing officer for a taxation by filing, not later than 2 months after the final costs order is made:
  - (a) a summons for a taxation of costs in accordance with Form 38A; and
  - (b) a bill in taxable form.
- (2) A bill is to commence with a short narrative that succinctly identifies the issues involved in the proceeding.
- (3) A bill is to consist of 3 parts dealing with the costs of:
  - (a) preparation;
  - (b) attendance at the hearing; and
  - (c) taxation.
- (4) The items claimed in each part are to be listed in chronological order.
- (5) On the filing of a summons for taxation, a Registrar must mark on it the date, time and place fixed for the taxation.
- (6) Not later than 21 days before the date fixed for the taxation, the party entitled to costs must serve on the party who is to pay costs a copy of the summons for taxation and the bill.

### **38.13      Notice of objection**

- (1) If the party who is to pay costs objects to any items in a bill, the party must file and serve a notice of objection to those items in accordance with Form 38B and provide in the notice the reason for each objection.
- (2) A party must file and serve a notice of objection not later than 7 days before the date fixed for the taxation.
- (3) If a party who is to pay costs fails to file and serve a notice of objection, there is a presumption that the party has no objection to the bill.
- (4) Nothing in subrule (3) is to be taken to affect the discretion of the taxing officer to tax off items.
- (5) A party who is to pay costs and who does not file a notice of objection is not entitled to be heard at the taxation without the leave of the Court.

### **38.14      Particular allowances**

- (1) The taxing officer may allow a charge for general care and conduct (as defined in the *Supreme Court Rules*) in respect of preparation and attendance at the hearing of a proceeding.
- (2) No allowance is to be made for specific care and conduct (as defined in the *Supreme Court Rules*).
- (3) A clerk's time spent in engrossing a document is allowable only where it is:
  - (a) included in an item charged under the composite scale set out in the Appendix; or
  - (b) 5 or more units.

### **38.15      Fee for taxation**

The fee for a taxation of costs by a taxing officer:

- (a) is the amount specified in item 2 of Schedule 2; and
- (b) is to be claimed in the bill.

**38.16      Review of taxing officer's order**

- (1) Where a party objects to an order made by the taxing officer following the taxing officer's reconsideration of a decision made at the taxation, the party may apply to the Court for a review of the order.
- (2) An application under subrule (1) is to be heard before a magistrate.

**Part 39                      Interest on judgment and costs**

**39.01      Interest on judgment and costs**

- (1) Subject to subrule (2) and unless the Court orders otherwise, every judgment debt carries interest from the date of judgment at the rate fixed in accordance with rule 59.02 of the *Supreme Court Rules*.
- (2) A judgment debt for costs awarded or fixed by the Court carries interest, at the rate referred to in subrule (1), from the date the costs are fixed or allowed at taxation unless the Court orders otherwise.

**39.02      Interest on costs in interlocutory application**

When a costs order is made in an interlocutory application, interest does not run on those costs until after the final disposition of the proceeding unless the costs order specifies that the costs be taxed and payable immediately or within a specified time.

**39.03      Interest up to judgment**

- (1) In a proceeding, the Court may order that interest is to be included in the sum for which judgment is given at the rate it considers appropriate on the whole or a part of the sum for the whole or a part of the period between the date when the cause of action arose and the date of the judgment.
- (2) Subrule (1) does not:
  - (a) authorise the giving of interest on interest;
  - (b) apply in respect of a debt on which interest is payable as of right, whether by virtue of an agreement or otherwise; or
  - (c) affect damages recoverable for the dishonour of a bill of exchange.

(3) Where:

- (a) a claim is made for a debt or liquidated demand (whether or not another claim is also made in the proceeding); and
- (b) the plaintiff is entitled under Part 11 to an order for default judgment on that claim,

unless the Court orders otherwise, the plaintiff may enter final judgment against the defendant for an amount not exceeding the amount claimed in the statement of claim together with interest from the commencement of the proceeding up to and including the date of judgment:

- (c) on a debt that carries interest – at the rate it carries; or
- (d) on any other amount – at the rate payable on a judgment debt during that time.

**39.04      No interest while instalment order in force**

Unless the Court orders otherwise, no interest is payable on a judgment while an instalment order under Chapter 2 is being complied with.

**Part 40              Legal practitioners**

**40.01      Change in legal practitioner**

- (1) Where a legal practitioner acts for a party in a proceeding and the party changes his or her legal practitioner, the party must without delay file a notice of the change and serve a copy on the other parties and, where practicable, on his or her former legal practitioner.
- (2) The address for service of a party who files and serves a notice under subrule (1) is the business address of the new legal practitioner.

**40.02      Appointment of legal practitioner**

- (1) Where a party in a proceeding who had not previously appointed a legal practitioner appoints a legal practitioner to act for him or her, the party must without delay file a notice of the appointment and serve a copy on the other parties.
- (2) The address for service of a party who files and serves a notice under subrule (1) is the business address of the legal practitioner.

### **40.03      Ceasing to act**

- (1) Where a legal practitioner ceases to act for a party in a proceeding, unless a notice of change is filed and served under rule 40.01, the legal practitioner must without delay file a notice that he or she has ceased to act and serve a copy on all parties.
- (2) A notice under subrule (1) is to state the address of the party last known to the legal practitioner.
- (3) Except with the leave of the Court, a legal practitioner must not file a notice under subrule (1) later than 56 days before the hearing of a proceeding.
- (4) The address for service of a party where notice is filed and served under subrule (1) is the address of the party stated in the notice.
- (5) Where, under subrule (3), the Court gives a legal practitioner leave to file a notice that the legal practitioner has ceased to act, the Court may direct what address is to be the address for service of the party for whom the legal practitioner has ceased to act.

### **40.04      Service where practitioner ceases to practise**

- (1) Where a legal practitioner who has acted for a party has ceased to practise and the party has not given notice under rule 40.01 or the legal practitioner has not given notice under rule 40.03(1), on an interlocutory application made by any other party to the proceeding, the Court may give directions for service of documents on the party.
- (2) Where an order is made under subrule (1), the party who made the application must without delay serve a copy of the order on each other party to the proceeding and file an affidavit of service.

## Chapter 2 Rules for enforcement of orders

### Part 42 Preliminary

#### Division 1 Definitions

##### 42.01 Definitions

In this Chapter, unless the contrary intention appears:

***bailiff*** means the person to whom a warrant of execution is directed.

***judgment creditor*** means the person entitled to enforce an order for the payment of money.

***judgment debt*** means the amount of money payable under an order for the payment of money and includes the costs of recovering the amount.

***judgment debtor*** means the person liable under an order for the payment of money.

***order for the payment of money*** means an order made by the Court for the payment of:

- (a) money, with or without costs; or
- (b) costs alone.

***warrant of execution*** means a warrant of seizure and sale, warrant of delivery or warrant of possession.

#### Division 2 Enforcement generally

##### 42.02 Enforcement of order for payment of money

- (1) An order for the payment of money to a person may be enforced by:
  - (a) a warrant of seizure and sale issued under Part 44;
  - (b) an attachment of earnings order made under Part 48;
  - (c) an attachment of debts order made under Part 49;
  - (d) an instalment order made under Part 50;

- (e) a charging order made under Part 51; or
  - (f) the appointment of a receiver under Part 52.
- (2) An order for the payment of money into the Court may be enforced by a sequestration order under Part 53.

#### **42.03      Order against multiple defendants**

- (1) Where an order is made against 2 or more defendants jointly, the order may be enforced by a warrant of execution or other enforcement process against any of the defendants as if the order had been made against the defendant separately.
- (2) If an order against 2 or more defendants jointly is satisfied by one of the defendants, no further steps may be taken to enforce it against another defendant.

#### **42.04      Order against partners**

An order made against a firm may be enforced against any or all of the persons who were partners in the firm at the time the cause of action arose.

#### **42.05      Court may stay enforcement**

The Court may stay enforcement of an order for the payment of money.

### **Part 43                      Warrants of execution generally**

#### **43.01      Application for issue of warrant of execution**

- (1) A warrant of execution is to be issued only if the applicant produces a form of the warrant to a Registrar.
- (2) Where a warrant of execution is to enforce an order:
- (a) for the payment of money; or
  - (b) that includes the payment of money,
- the applicant must file an application in accordance with Form 43A.
- (3) An application under subrule (2) is to state:
- (a) the date of the order;
  - (b) the amount for which the order was made;

- (c) the amount owing in respect of the order on the date of the application, including costs to that date;
  - (d) the interest accrued on the amount referred to in paragraph (c) and particulars of how it is calculated;
  - (e) the practitioner's costs and the filing fee in respect of the application;
  - (f) the bailiff's fee for execution of the warrant applied for;
  - (g) the daily amount of interest that, subject to future payments, will accrue after the date of the application; and
  - (h) particulars of amounts paid on account or recovered under a previous warrant in respect of the order.
- (4) The bailiff's fee referred to in subrule (3)(f) is not to exceed the fee specified under the *Local Court Regulations* as the relevant fee payable in respect of the warrant of execution applied for.

#### **43.02 Costs of prior execution**

The amount for which a warrant of execution may be issued includes the costs and fees in respect of a previous warrant of execution issued to enforce the same order, whether or not that warrant was productive.

#### **43.03 When warrant of execution issued**

- (1) A warrant of execution is issued when the warrant is sealed by the Court.
- (2) A warrant of execution is to bear the date of its issue.

#### **43.04 Duration and priority**

- (1) Subject to subrule (2), a warrant of execution is valid for execution for 12 months after the date on which it is issued.
- (2) The Court may order that the validity of a warrant of execution be extended for not more than 12 months from the day on which it would otherwise expire.
- (3) In determining whether to extend the validity of a warrant of execution, the Court must have regard to the attempts made to execute the warrant.
- (4) An order extending validity is not to be made after the day of expiry of a warrant of execution.

- (5) Subject to subrules (2), (3) and (4), the Court may make further orders extending the validity of a warrant of execution.
- (6) The priority of a warrant of execution the validity of which has been extended is to be determined by reference to the date and time the warrant was originally delivered to the bailiff to whom it was directed for execution.

#### **43.05 Payment into Court**

- (1) Subject to subrule (2), a bailiff must pay into the Court the money raised by the sale of property under a warrant of execution.
- (2) A bailiff to whom section 33(1) of the *Commercial and Private Agents Licensing Act* applies may retain from the money raised under a warrant of execution the amount specified in the warrant as the bailiff's fee for executing the warrant.
- (3) After money is paid into the Court under subrule (1), a Registrar must:
  - (a) pay to the judgment creditor the amount then owing to him or her on the judgment debt or the amount paid into the Court, whichever is the lesser;
  - (b) if the warrant was executed by a private bailiff to whom section 33(1A) of the *Commercial and Private Agents Licensing Act* applies – pay to the bailiff, in accordance with that section, the fees to which the bailiff is entitled; and
  - (c) return the remaining money (if any) to the judgment debtor.

### **Part 44 Warrant of seizure and sale**

#### **44.01 Definition**

In this Part, unless the contrary intention appears, **sale** includes sale by auction.

#### **44.02 Application for warrant**

- (1) A judgment creditor may apply to a Registrar in accordance with rule 43.01 for the issue of a warrant of seizure and sale to enforce an order for the payment of money.
- (2) A warrant of seizure and sale is to be in accordance with Form 44A.

#### **44.03      Property that may be seized and sold**

- (1) A warrant of seizure and sale authorises the bailiff to seize and sell:
  - (a) land described in the warrant; and
  - (b) personal property belonging to the judgment debtor except personal property necessary for adequate living and continuation of work.
- (2) Money or bank notes belonging to a judgment debtor may be seized under a warrant of seizure and sale but need not be sold.
- (3) Under a warrant of seizure and sale, the bailiff may:
  - (a) seize cheques, bills of exchange, bonds, promissory notes, specialties or securities that provide for the payment of money to the judgment debtor and hold them as security for a judgment debt or the unsatisfied part of a judgment debt; and
  - (b) when the time for payment to the judgment debtor arrives:
    - (i) demand and receive payment of the money; or
    - (ii) sue in a court of competent jurisdiction in the name of the judgment debtor, or in the name of a person in whose name the judgment debtor might have sued, for the recovery of the money.

#### **44.04      Possession of property not removed**

- (1) On the execution of a warrant of seizure and sale, the bailiff need not remove property found on land.
- (2) Where the bailiff leaves seized property on the land where it was seized, the bailiff is to be taken to remain in possession of the property if he or she leaves in a prominent position on the land a notice of the seizure listing the property seized.
- (3) The bailiff must mark property seized and not removed.

#### **44.05      Procedure for seizure and sale**

- (1) Subject to subrules (2) and (3), where it appears to the bailiff that property subject to seizure and sale under a warrant is more than sufficient to satisfy the amount to be raised, the bailiff is to seize or sell only so much of the property as appears to be sufficient.

- (2) Subject to subrule (3), the bailiff is to seize or sell property:
  - (a) in the order the bailiff considers best for the prompt execution of the warrant of seizure and sale without undue expense;
  - (b) subject to paragraph (a), in the order the judgment debtor directs; and
  - (c) subject to paragraphs (a) and (b), in the order the bailiff considers best for minimising hardship to the judgment debtor and other persons.
- (3) Unless the judgment debtor so requests, the bailiff must not sell land under a warrant of seizure and sale until all other property available for sale under the warrant has been sold.
- (4) Subrule (3) does not apply where the only property of the judgment debtor available for seizure and sale under a warrant is land.
- (5) The Court may order that property subject to seizure and sale under a warrant be seized or sold otherwise than in accordance with this rule.

#### **44.06 Notice to judgment debtor**

- (1) The bailiff must serve on a person:
  - (a) who is the judgment debtor against whom a warrant of seizure and sale is issued; or
  - (b) who has custody of personal property of the judgment debtor referred to in paragraph (a),

a notice in accordance with Form 44B stating that the person to whom the notice is addressed is responsible for the safekeeping of the judgment debtor's personal property in the person's custody that has been seized under the warrant of seizure and sale.

- (2) A person served with a notice under subrule (1) must not, except with the bailiff's written consent, interfere with, dispose of, or remove any seized property from the place where it was seized or situated when the notice was served.

#### **44.07 Time and place of sale**

The bailiff must put up for sale all property to be sold under a warrant of seizure and sale:

- (a) as early as practicable, having regard to the interests of the parties; and

- (b) at the place that seems to the bailiff best for a beneficial sale of the property.

#### **44.08 Advertisement of sale**

- (1) Before putting property up for sale under a warrant of seizure and sale, the bailiff must advertise the sale by giving notice of the date, time and place of sale, and of particulars of the property, in the manner the bailiff considers best to achieve publicity.
- (2) The bailiff is to advertise the sale of land only when he or she is reasonably satisfied that a sealed copy of the warrant of seizure and sale has been served on the Registrar-General and that a memorial of the warrant has been entered on the original Certificate of Title under the *Land Title Act*.
- (3) An advertisement relating to the intended sale of land is to include:
  - (a) a description of the land, including its location, in terms that will enable interested persons to identify it;
  - (b) a statement in general terms of the improvements (if any) that the bailiff believes to be on the land;
  - (c) a statement of the last known address of the judgment debtor; and
  - (d) a statement of the judgment debtor's interest in the land according to the Register under the *Land Title Act* and of the entries in the Register that affect or may affect the land.
- (4) The judgment creditor must serve a copy of the advertisement referred to in subrule (3) personally on the judgment debtor not later than 14 days before the date of the proposed sale.
- (5) The Court may dispense with service under subrule (4).

### **Part 45 Warrant of delivery**

#### **45.01 Application for warrant**

- (1) A person in whose favour the Court makes an order for:
  - (a) the delivery of goods; or
  - (b) the delivery of goods or recovery of their assessed value,may apply to a Registrar in accordance with rule 43.01 for the issue of a warrant of delivery to enforce the order.

- (2) A warrant of delivery is to be in accordance with Form 45A.

**45.02      Enforcement where order includes payment of money**

Part 44 applies with the necessary changes to the enforcement of a part of an order for the delivery of goods that is for the payment of money.

**45.03      Enforcement where order for value of goods only**

If an order is for the assessed value of goods only, the order may be enforced by the same means as any other order for the payment of money.

**Part 46              Warrant of possession**

**46.01      Application for warrant**

- (1) A person in whose favour the Court makes an order for the possession of land may apply to a Registrar in accordance with rule 43.01 for the issue of a warrant of possession to enforce the order.
- (2) A warrant of possession is to be in accordance with Form 46A.

**46.02      Goods need not be removed**

On the execution of a warrant of possession, the bailiff need not remove goods found on land.

**46.03      Enforcement where order includes payment of money**

Part 44 applies with the necessary changes to the enforcement of a part of an order for possession of land that is for the payment of money.

**Part 47              Examination of judgment debtor**

**47.01      Application for examination summons**

- (1) If a judgment debtor defaults in the payment of a judgment debt, a judgment creditor may apply to a Registrar for the issue of an examination summons under section 26 of the Act by filing:
- (a) an application in accordance with Form 47A; and
  - (b) an examination summons in accordance with Form 47B.

- (2) The judgment creditor may specify in the application particular property or matters on which he or she wishes the judgment debtor to be examined.
- (3) Where the judgment debtor is a corporation, the examination summons is to require an officer of the corporation to attend to be orally examined.

#### **47.02      Filing and issue of examination summons**

- (1) The judgment creditor must file:
  - (a) sufficient copies of the examination summons to enable service on each judgment debtor who is to be examined; and
  - (b) a further copy for the Registrar who is to conduct the examination.
- (2) The Registrar who issues the examination summons must mark on it the date, time and place fixed for the examination of the judgment debtor.
- (3) Where the examination is to be conducted by a Registrar other than the Registrar who issued the examination summons, the issuing Registrar must as soon as practicable forward a copy of the summons and the application to the Registrar who is to conduct the examination.

#### **47.03      Service of summons and declaration**

Not later than 14 days before the date fixed for the examination, the judgment creditor must serve personally on each judgment debtor who is to be examined:

- (a) a copy of the examination summons; and
- (b) a judgment debtor's declaration of financial circumstances in accordance with:
  - (i) if the judgment debtor is an individual – Form 47C; or
  - (ii) if the judgment debtor is a corporation – Form 47D.

#### **47.04      Judgment debtor to complete declaration**

- (1) Not later than 7 days before the date fixed for the examination, the judgment debtor who is to be examined must:
  - (a) complete and sign the declaration of financial circumstances;
  - (b) return the original to the Court; and

- (c) send a copy to the judgment creditor.
- (2) The fact that a completed Form 47C or 47D has not been received by the Court does not prevent the issue of other process.

#### **47.05 Examination of judgment debtor**

- (1) At an examination, a judgment debtor summoned to attend must produce the documents described in the examination summons.
- (2) An examination need not be conducted in open court.
- (3) In an examination, the judgment debtor may be examined by:
  - (a) the Registrar conducting the examination;
  - (b) the judgment creditor; or
  - (c) a person in the exclusive employ of a judgment creditor.
- (4) An examination need not be confined to matters in the judgment debtor's declaration of financial circumstances.

#### **47.06 Orders Registrar may make**

After the examination of a judgment debtor, the Registrar who conducted the examination may make an order for payment of the judgment debt that the circumstances require, including but not limited to:

- (a) an attachment of earnings order under Part 48;
- (b) an attachment of debts order under Part 49; or
- (c) an instalment order under Part 50.

#### **47.07 Failure to attend for examination**

If, at the time fixed (whether originally or on adjournment) for the examination:

- (a) the judgment debtor who is to be examined fails to attend before the Court;
- (b) the Court has no information that satisfies it that the judgment debt has been paid; and
- (c) there is proof:
  - (i) of service on the judgment debtor of the examination summons; or

- (ii) of notification of the date, time and place fixed for an adjourned examination,

the Court may:

- (d) adjourn the examination; or
- (e) make an order that:
  - (i) subject to the conditions in subparagraph (ii), a warrant for the arrest of the judgment debtor may be issued; and
  - (ii) the judgment debtor may avoid arrest if, not later than 14 days after the date on which the order was made, he or she pays the amount owing to the judgment debtor or contacts the Court to make arrangements to attend before the Court to be examined and is examined as arranged.

#### **47.08 Copy of order**

A Registrar must without delay forward a sealed copy of an order made under rule 47.07(e) to the judgment debtor and judgment creditor.

#### **47.09 Application for arrest warrant**

- (1) The judgment creditor may, not less than 14 days after the date on which an order under rule 47.07(e) is made, apply for the issue of a warrant for the arrest of the judgment debtor if, at the time of the application, the judgment debtor has failed to:
  - (a) pay the judgment debt in full; or
  - (b) attend before the Court to be examined.
- (2) An application for a warrant for the arrest of a judgment debtor is to be in accordance with Form 47E and is to be filed with a warrant in accordance with Form 47F.

#### **47.10 Duration of arrest warrant**

- (1) A warrant for the arrest of a judgment debtor is valid for execution for 12 months after the date on which it is issued.
- (2) The validity of a warrant for the arrest of a judgment debtor may be extended in accordance with rule 43.04.

## **Part 48                    Attachment of earnings order**

### **48.01      Definitions**

In this Part, unless the contrary intention appears:

**appropriate deduction** means the amount that the Court considers to be:

- (a) a reasonable deduction from the net earnings; and
- (b) not more than is necessary,

to pay the judgment debt within a reasonable time after an attachment of earnings order is made.

**earnings** means money payable to a judgment debtor by way of:

- (a) wages or salary, including fees, bonuses, commission, pay in lieu of leave or retirement benefit, overtime pay or other profits arising from the judgment debtor's office or employment; or
- (b) a pension, including:
  - (i) an annuity for past services whether or not the services were rendered to the person paying the annuity; and
  - (ii) periodic payments of compensation for the loss, abolition or relinquishment of, or a reduction in profits arising from, an office or employment,

but does not include a pension under the *Social Security Act 1991* of the Commonwealth or the *Veterans' Entitlements Act 1986* of the Commonwealth.

**employer** means a person (including the Crown, a Minister of the Crown and a statutory authority representing the Crown) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to a judgment debtor.

**net earnings** means the earnings payable to a judgment debtor by an employer on a pay-day after the deduction of:

- (a) tax instalments under the *Income Tax Assessment Act 1936* of the Commonwealth; and
- (b) superannuation contributions under the *Superannuation Act 1986* of the Commonwealth.

**protected earnings** means the amount of the net earnings below which the Court considers it unreasonable for the earnings to be reduced by a payment to the judgment creditor made in compliance with an attachment of earnings order, having regard to the resources and needs of the judgment debtor and any other person for whom the judgment debtor provides or reasonably may provide.

#### **48.02 Attachment of earnings order**

- (1) If a Registrar is satisfied that a judgment debtor:
  - (a) is a person to whom earnings are payable or are likely to become payable; and
  - (b) has failed to comply with an order for the payment of money,the Registrar may make an attachment of earnings order in accordance with this Part.
- (2) Where an attachment of earnings order is in force, a Registrar must not:
  - (a) issue a warrant;
  - (b) issue other process of execution; or
  - (c) make an order,

for the enforcement of the order to which the attachment of earnings order relates unless the Court orders otherwise.

#### **48.03 Attachment of earnings order in place of other order**

Where an application is made to the Court to enforce an order for the payment of money, the Court may make an attachment of earnings order instead of making some other order.

#### **48.04 Application for attachment of earnings order**

- (1) A judgment creditor may apply for an attachment of earnings order by filing:
  - (a) an attachment of earnings summons in accordance with Form 48A; and
  - (b) an affidavit in accordance with Form 48B.
- (2) The affidavit may contain statements of fact based on information and belief if the grounds are set out.

- (3) When a Registrar issues an attachment of earnings summons, he or she must fix a date, time and place for the hearing of the application and mark them on the summons.
- (4) Not later than 14 days before the date fixed for the hearing, the judgment creditor must serve personally on the judgment debtor:
  - (a) a copy of the attachment of earnings summons;
  - (b) a copy of the affidavit; and
  - (c) a judgment debtor's declaration of financial circumstances in accordance with Form 47C.
- (5) Not later than 7 days before the date fixed for the hearing, the judgment debtor must:
  - (a) complete and sign the declaration of financial circumstances;
  - (b) return the original declaration to the Court; and
  - (c) serve a copy on the judgment creditor.

#### **48.05      Order in absence of judgment debtor**

- (1) If the judgment debtor fails to attend the hearing, a Registrar may make an attachment of earnings order if he or she has sufficient information about the judgment debtor's financial circumstances and is satisfied that the judgment debtor:
  - (a) was served with a copy of the attachment of earnings summons and affidavit;
  - (b) had a reasonable opportunity of attending the hearing; and
  - (c) is employed by an identified employer.
- (2) For the purposes of this rule, a Registrar may act on:
  - (a) the assumption that the debtor is earning the average weekly wage for the Territory at the time of the hearing;
  - (b) evidence given by or on behalf of the judgment debtor's employer;
  - (c) evidence given by the judgment debtor's spouse;
  - (d) information given in the judgment debtor's declaration of financial circumstances; or

- (e) information given in an examination of the judgment debtor under Part 47.
- (3) If the Registrar has, in his or her opinion, sufficient evidence to determine the appropriate deduction and the protected earnings and that evidence includes:
  - (a) information given in the judgment debtor's declaration of financial circumstances; or
  - (b) information given in an examination of the judgment debtor under Part 47,

the Registrar may make an attachment of earnings order with the appropriate deduction and the protected earnings specified in dollars.

- (4) If the Registrar does not have sufficient evidence to determine the appropriate deduction and the protected earnings in dollars, the Registrar may make an attachment of earnings order with those amounts specified as percentages of the net earnings, provided that the protected earnings are specified as 80% or more.

#### **48.06      Form and content of order**

- (1) An attachment of earnings order is to be in accordance with Form 48C.
- (2) An attachment of earnings order is to specify:
  - (a) the date on which and the amount for which the order for the payment of money was made;
  - (b) the amount owing in respect of the judgment debt on the date the attachment of earnings order is made;
  - (c) the appropriate deduction;
  - (d) the protected earnings; and
  - (e) an amount, specified in dollars, the employer may deduct from the net earnings and pay to himself or herself for the administrative costs of making payments in compliance with the attachment of earnings order.

#### **48.07      When order comes into force**

An attachment of earnings order comes into force at the end of 7 days after the day on which the order is served on the employer.

#### **48.08      Service of order**

- (1) The judgment creditor must serve an attachment of earnings order personally on the judgment debtor and employer.
- (2) The judgment creditor must also serve personally on the employer:
  - (a) a notice in accordance with Form 48D informing the employer of the effect of the attachment of earnings order and the employer's obligation under this Part; and
  - (b) 2 copies of a notice in accordance with Form 48E.

#### **48.09      Notice by person who is not employer**

- (1) If a person served with an attachment of earnings order directed to that person is not the judgment debtor's employer at the time of service, the person must, promptly after service, give notice of that fact to a Registrar and the judgment creditor in accordance with Form 48E.
- (2) If a person served with an attachment of earnings order directed to the person is the employer of the judgment debtor at the time of service, but later ceases to be the judgment debtor's employer, the person must, promptly after ceasing to be the judgment debtor's employer, give notice of that fact to a Registrar and the judgment creditor in accordance with Form 48E.

#### **48.10      Payments by employer**

- (1) For the purposes of this rule, **excess** means the amount by which the net earnings are in excess of the protected earnings specified in an attachment of earnings order.
- (2) Where an attachment of earnings order is in force, on each pay-day that there is an excess the employer to whom the order is directed must make payments out of the excess in accordance with this rule.
- (3) Subject to subrule (4), the employer:
  - (a) may first pay to himself or herself the amount specified in the order for the employer's administrative costs; and
  - (b) must then pay to the judgment creditor the appropriate deduction specified in the order.

- (4) If the excess is insufficient to allow for payment in full under subrule (3), the employer:
  - (a) on that pay-day – may first pay as much as the excess allows towards the administrative costs;
  - (b) on that pay-day – must then pay as much as the excess allows towards the appropriate deduction; and
  - (c) on a later pay-day – must pay the deficit in accordance with subrule (5).
- (5) If on a pay-day there remains an excess after payment under subrule (3), the employer must pay from that excess as much of the total deficit from previous pay-days as the excess allows:
  - (a) first towards the outstanding administrative costs; and
  - (b) then towards the outstanding appropriate deductions.

#### **48.11 Notice to judgment debtor of payments**

An employer who makes a payment in compliance with an attachment of earnings order must give the judgment debtor a notice specifying the particulars of the payment.

#### **48.12 Multiple attachment of earnings orders**

- (1) Where 2 or more attachment of earnings orders are in force in respect of an employee (whether made under these Rules or otherwise), the employer to whom the orders are directed must:
  - (a) comply with the orders according to:
    - (i) the respective dates; or
    - (ii) if served on the same date – the respective times, they were served on the employer; and
  - (b) disregard an order served on the employer at a later date or time until an order served earlier has been complied with.
- (2) For the purpose of this rule, where an attachment of earnings order is varied under rule 48.15, it is to be taken to have been made as varied on the date the attachment of earnings order was made.

#### **48.13      Failure of employer to comply with order**

- (1) If the employer wilfully fails to comply with the attachment of earnings order, the judgment creditor may apply to have the order enforced against the employer by filing:
  - (a) an application in accordance with Form 48F; and
  - (b) an affidavit in support of the application.
- (2) A Registrar must fix a date, time and place for the hearing of the application and mark them on the application.
- (3) The judgment creditor must serve the application and affidavit personally on the employer not later than 14 days before the date fixed for the hearing.

#### **48.14      Determination of earnings**

- (1) An employer may apply to the Court for a determination as to whether payments of a particular description are earnings for the purpose of an attachment of earnings order.
- (2) An application under subrule (1) is to be made in the proceeding in which the attachment of earnings order is made.
- (3) An applicant under subrule (1) does not incur a liability for failing to comply with the attachment of earnings order with respect to a payment of earnings to the judgment debtor of the description specified in the application while the application, or an appeal from an order made at the hearing of the application, is pending.

#### **48.15      Discharge, suspension or variation of order**

- (1) The judgment creditor or the judgment debtor may apply to the Court for an order to discharge, suspend or vary an attachment of earnings order.
- (2) The judgment creditor or judgment debtor must serve an order discharging, suspending or varying an attachment of earnings order on:
  - (a) the judgment debtor or judgment creditor, as the case may be; and
  - (b) the employer.
- (3) An order discharging, suspending or varying an attachment of earnings order comes into force at the end of 7 days after the day on which the order is served on the employer.

#### **48.16      Cessation of order**

- (1) An attachment of earnings order ceases to have effect:
  - (a) on being discharged under rule 48.15; or
  - (b) unless the Court orders otherwise, on the making of another order for the enforcement of the order for the payment of money in relation to which the attachment of earnings order was made.
- (2) When an attachment of earnings order ceases to have effect, a Registrar must promptly give notice to the employer in accordance with Form 48G.
- (3) When an attachment of earnings order ceases to have effect, the employer does not incur a liability for treating the order as still in force at any time before:
  - (a) a copy of the order discharging the attachment of earnings order is served on the employer (where applicable); or
  - (b) the end of 7 days after the day on which notice is given under subrule (2),whichever occurs first.

### **Part 49                      Attachment of debts order**

#### **49.01      Interpretation**

- (1) In this Part:

**debts** does not include earnings under Part 48.

**garnishee** means a person from whom a judgment creditor claims that a debt is due or accruing to a judgment debtor.
- (2) For the purposes of the definition of **garnishee** in subrule (1), an amount standing to the credit of a judgment debtor in an account in a bank, building society, co-operative housing society or similar society, credit union, credit society or investment fund or corporation is a debt due or accruing to the judgment debtor, whether or not a demand or notice is required before money may be withdrawn.

#### **49.02      When attachment of debts order may be made**

- (1) For the enforcement of an order for the payment of money, a Registrar may order that all debts due or accruing to the judgment debtor from a garnishee specified in the order made by the Registrar are to be attached to satisfy the judgment debt.
- (2) A debt may be attached under this Part if it is due or accruing to the judgment debtor from the garnishee on the day on which a judgment creditor applies for an attachment of debts order.

#### **49.03      Application for order**

- (1) A judgment creditor may apply for an attachment of debts order by filing:
  - (a) a garnishee summons in accordance with Form 49A; and
  - (b) an affidavit stating:
    - (i) that the judgment debt is unsatisfied, either wholly or to a specified amount;
    - (ii) that a debt is due or accruing to the judgment debtor from the garnishee;
    - (iii) the particulars identifying the transaction between the judgment debtor and the garnishee under which the debt is due or accruing; and
    - (iv) that the garnishee is in the Territory.
- (2) An affidavit under this rule may contain statements of fact based on information and belief if the grounds are set out.
- (3) The Registrar who issues the summons must mark on it the date, time and place fixed for the hearing of the application.

#### **49.04      Service of summons and affidavit**

The judgment creditor must serve a copy of the garnishee summons and affidavit personally on the garnishee and judgment debtor not later than 14 days before the date fixed for the hearing of the application.

**49.05      Dispute of liability by garnishee**

- (1) If a garnishee disputes liability for payment of the debt to the judgment debtor, he or she may file and serve on the judgment creditor and judgment debtor an affidavit stating that fact and the grounds on which liability is disputed.
- (2) The affidavit is to be served not less than 7 days before the date fixed for the hearing.
- (3) At the hearing, the Court must determine liability or give directions for its determination.

**49.06      Claim by another person**

- (1) A person (other than the judgment debtor) who claims to be entitled to an attached debt or to a charge or lien on it may apply to the Court to determine the claim or entitlement or to give directions for its determination.
- (2) An application under subrule (1) is to be made in the proceeding in which the garnishee summons is issued.

**49.07      Attachment of debts order**

- (1) An attachment of debts order is to be in accordance with:
  - (a) where the attached debt is less than the judgment debt, interest and costs – Form 49B; or
  - (b) where the attached debt is more than the judgment debt, interest and costs – Form 49C.
- (2) A Registrar may refuse to issue a garnishee summons or to make an attachment of debts order if the Registrar is of the opinion that the order sought is worthless or vexatious because of the smallness of the amount to be recovered or the debt sought to be attached or otherwise.

**49.08      Service of order**

- (1) A judgment creditor must serve an attachment of debts order personally on the garnishee not later than 7 days after the order is made.
- (2) An attachment of debts order binds the debt to which it applies on service of the order.

#### **49.09      Time for payment by garnishee**

- (1) A garnishee must pay a debt due, in accordance with an attachment of debts order, not later than 21 days after service of the order on the garnishee.
- (2) A garnishee must pay a debt accruing, in accordance with an attachment of debts order, not later than 21 days after the accrual of the debt.

#### **49.10      Failure to comply**

If a garnishee fails to comply with an attachment of debts order, the judgment creditor may apply to the Court to have the order enforced against the garnishee.

#### **49.11      Discharge of garnishee**

A payment made by a garnishee in compliance with, or an execution levied against a garnishee under, an attachment of debts order is a valid discharge of the garnishee's liability to the judgment debtor to the extent of the amount paid or levied even if subsequently the garnishee proceedings are set aside or the order from which they arose is reversed or varied.

### **Part 50            Instalment order**

#### **50.01      Application for instalment order**

- (1) Where, under section 27(2)(b) of the Act, a judgment creditor or judgment debtor applies for an instalment order, he or she must file an application in accordance with Form 50A.
- (2) A judgment creditor or judgment debtor may apply for the variation or cancellation of an instalment order by filing an application in accordance with Form 50B.
- (3) Where the applicant under subrule (1) or (2) is the judgment creditor, he or she must also file an affidavit stating the facts on which the application is based.
- (4) Where the applicant under subrule (1) or (2) is the judgment debtor, he or she must also file a declaration of financial circumstances in accordance with Form 47C or 47D, whichever is applicable.
- (5) Copies of the application and affidavit are to be served on the other party as soon as practicable after they are filed.

- (6) The filing of an application for an instalment order operates as a stay of execution unless the Court orders otherwise.

**50.02 Registrar may make or refuse to make order**

- (1) A Registrar must consider an application filed under rule 50.01 as soon as practicable after it is filed and may:
- (a) make an order:
    - (i) that the judgment debt be paid in instalments;
    - (ii) that an instalment order be varied or cancelled; or
    - (iii) that the Court considers appropriate; or
  - (b) refuse to make the order sought.
- (2) A Registrar must, as soon as practicable, give to the judgment creditor and judgment debtor:
- (a) a copy, in accordance with Form 50C, of an order made under subrule (1)(a); or
  - (b) a notice, in accordance with Form 50D, of refusal to make an order under subrule (1)(b).

**50.03 Notice of objection**

- (1) Not later than 14 days after the date of:
- (a) the order made under rule 50.02(1)(a); or
  - (b) the notice of refusal to make an order under rule 52.02(1)(b),
- the judgment creditor or judgment debtor may object to the order or refusal by filing a notice in accordance with Form 50E.
- (2) On the filing of a notice of objection, a Registrar must fix a date, time and place for the hearing of the objection, to be held not later than 14 days after the notice of objection is filed, and mark them on the notice.
- (3) A copy of the notice of objection is to be served on the other party as soon as practicable after it is filed.

#### **50.04      Judgment debtor to produce documents**

At the hearing of an objection referred to in rule 50.03(2), the judgment debtor must produce the documents necessary to prove the statements in the judgment debtor's declaration of financial circumstances.

#### **50.05      Consent to instalment order**

A person on whom an application is served under rule 50.01(5) may consent to the order sought by filing and serving a notice of consent in accordance with Form 50F.

#### **50.06      Instalment agreement**

- (1) A judgment debtor and a judgment creditor may enter into an agreement for the payment of a judgment debt by instalments (in this rule called an ***instalment agreement***), whether or not an instalment order has been made.
- (2) Each party must sign the instalment agreement in the presence of a witness (other than the other party) who must also sign the agreement.
- (3) An instalment agreement is to be:
  - (a) in writing, and may be in accordance with Form 50G; and
  - (b) filed not later than 7 days after the parties have signed the agreement.
- (4) When a signed instalment agreement is filed, it has the same effect as an order of the Court for the payment of money by instalments.

### **Part 51            Charging order**

#### **51.01      Definitions**

In this Part, unless the contrary intention appears:

***securities*** includes:

- (a) stock issued by, funds of or an annuity granted by the Commonwealth or a State or Territory of the Commonwealth;
- (b) stock of a corporation; and
- (c) dividends or interest payable on securities.

**stock** includes shares, debenture stock, bonds, notes or other security.

### **51.02      Application for charging order**

- (1) A judgment creditor may apply to the Court for a charging order under section 22(13) of the Act by filing:
  - (a) a charging summons in accordance with Form 51A; and
  - (b) an affidavit in support of the application.
- (2) A judgment creditor may apply for a charging order without notice.
- (3) When a Registrar issues a charging summons, he or she must fix a date, time and place for the hearing of the application and mark them on the summons.

### **51.03      Charging summons**

- (1) A charging summons is to identify the securities in respect of which it is filed and state that:
  - (a) on service of the charging summons on the government or corporation to which it is addressed, the government or corporation must not, except by order of the Court:
    - (i) cause or permit a transfer of any of the securities; or
    - (ii) pay to a person a dividend or interest on any of the securities; and
  - (b) on service of the charging summons on the judgment debtor, a disposition by the judgment debtor of his or her interest in any of the securities made before the application for a charging order is heard by the Court is invalid as against the judgment creditor unless the Court orders otherwise.

### **51.04      Evidence in supporting affidavit**

- (1) An affidavit in support of an application for a charging order is to:
  - (a) state that the judgment debt is unsatisfied, either wholly or to a specified amount;
  - (b) identify the securities in respect of which the charging order is sought and state in whose name they stand; and
  - (c) state that the judgment debtor has a beneficial interest in the securities and describe that interest.

- (2) An affidavit under this rule may contain statements of fact based on information and belief if the grounds are set out.

**51.05      Service of summons**

- (1) Not later than 7 days before the date for the hearing as marked on the charging summons, the judgment creditor must serve a copy of the charging summons and supporting affidavit:
- (a) on the judgment debtor; and
  - (b) personally on the government or corporation.
- (2) The Court may dispense with service on the judgment debtor.

**51.06      Effect of service of summons**

- (1) If, without the authority of the Court, a government or corporation served with a charging summons:
- (a) causes or permits any of the securities to which the charging summons relates to be transferred; or
  - (b) pays to a person a dividend or interest on any of the securities,
- it is liable to pay to the judgment creditor an amount equal to the value of the securities transferred or the dividend or interest paid, or so much of that value as is sufficient to pay the judgment debt.
- (2) A disposition by the judgment debtor of his or her interest in any of the securities to which a charging summons relates made:
- (a) after the service of the summons on the judgment debtor; and
  - (b) before the application for the charging order is heard,
- is invalid as against the judgment creditor unless the Court orders otherwise.

**51.07      Charging order**

- (1) On the hearing of an application, the Court may make a charging order with respect to securities to which the charging summons relates.
- (2) If the judgment debtor:
- (a) does not attend the hearing of the application; or

- (b) attends the hearing but does not dispute the evidence in the affidavit in support of the application,

the Court may make a charging order on the evidence before it.

### **51.08      Effect and enforcement of charge**

A charge imposed by a charging order has the same effect, and gives the judgment creditor the same remedies for enforcing it, as if it were a valid charge effectively given by the judgment debtor.

### **51.09      Variation or discharge of order**

The Court may at any time, by order:

- (a) vary the effect under rule 51.06 of the service of a charging summons; or
- (b) vary or discharge a charging order.

## **Part 52              Appointment of receiver**

### **52.01      Application for appointment of receiver**

- (1) A judgment creditor may apply for the appointment of a receiver by way of equitable execution in accordance with Order 39 of the *Supreme Court Rules*.
- (2) Order 39 of the *Supreme Court Rules* applies to a receiver appointed under this Part in the same way as it applies to a receiver appointed for any other purpose.

### **52.02      Determination of application**

Before determining an application for the appointment of a receiver by way of equitable execution, the Court:

- (a) must have regard to:
  - (i) the amount claimed by the judgment creditor;
  - (ii) the amount likely to be obtained by the receiver; and
  - (iii) the probable costs of his appointment; and
- (b) may direct an inquiry on these or any other matters.

## **Part 53            Sequestration**

### **53.01      Application for sequestration order**

- (1) A person seeking to enforce an order for the payment of money into the Court may apply for a sequestration order referred to in section 22(15) of the Act.
- (2) Where a person applies for a sequestration order against a corporation, the person may apply for an order for the sequestration of the property of:
  - (a) the corporation;
  - (b) an officer of the corporation; or
  - (c) the corporation and an officer of the corporation.
- (3) A person applies for a sequestration order by filing:
  - (a) a sequestration summons in accordance with Form 53A; and
  - (b) an affidavit in support of the sequestration summons.
- (4) A Registrar must fix a date, time and place for the hearing of the application and mark them on the sequestration summons.

### **53.02      Service of summons**

- (1) A copy of the sequestration summons and affidavit is to be served personally on the person ordered to pay money into the Court.
- (2) Where:
  - (a) the person ordered to pay money into the Court is a corporation; and
  - (b) sequestration of the property of an officer of the corporation is sought,

a copy of the sequestration summons and affidavit is to be served personally on the corporation and the officer.

### **53.03      Sequestration order against officer**

Where:

- (a) the person ordered to pay money into the Court is a corporation; and

- (b) an order is made for the sequestration of the property of an officer of the corporation (whether or not an order for sequestration is also made against the corporation),

the sequestration order:

- (c) is to give the same authority and direction to the sequestrators with respect to the real and personal estate of the officer as in the case of an order against a corporation; and
- (d) is to provide that the sequestrators must keep the estate under sequestration in their hands until the corporation complies with the order to be enforced by sequestration or until further order.

#### **53.04      Discharge of order**

The Court may discharge a sequestration order.

## **Chapter 3      Miscellaneous**

### **Part 54        Repeal**

#### **54.01      Repeal**

- (1) The *Local Court Rules* (Regulations 1990, No. 21; 1990, No. 58; 1991, No. 29; 1991, No. 70; 1992, No. 43 and 1994, No. 31) in force immediately before the commencement of these Rules are repealed.
- (2) The *Local Court (Small Claims Fees) Rules* (Regulations 1990, No. 59 and 1991, No. 46) are repealed.

**Schedule 1 Forms**

rule 3.07(1)

**FORM 3A**

rule 3.10(1)

**AUTHORISATION TO FILE DOCUMENTS BY ELECTRONIC  
TRANSMISSION**

TO [*name and address of authorised person*]

You are authorised to file documents in the Local Court by electronic transmission.

The filing date of a document filed by electronic transmission is the date on which it is received by the Court.

You must keep a hard copy of every document filed by electronic transmission and you must provide the Court with a hard copy if requested by a Registrar to do so.

Dated:

Chief Magistrate

---

**FORM 5A**

rule 5.04(2)

**NOTICE OF TRANSFER OF PROCEEDING FROM SUPREME COURT TO  
LOCAL COURT**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

[FULL NAME]

Defendant

TO [NAME AND ADDRESS OF PARTY]

On [date] an order was made in the Supreme Court that this proceeding be transferred to the Local Court at [venue].

The Local Court has received the court file relating to this proceeding and has assigned the above claim number to the proceeding.

\* The plaintiff must:

- (a) file in the Local Court a concise statement of the particulars of the plaintiff's claim not later than 14 days after being served with this notice; and
- (b) serve a copy on the other parties not later than 7 days after filing the statement of particulars.

\* A conciliation conference has been listed to take place at the Court at [address of Court] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

All parties must attend the conciliation conference.

An individual must attend the conference personally and be prepared to discuss all issues. An officer or employee of a corporation must be authorised by the corporation to attend the conference and to settle the matter if possible. A partner of a firm must have the unfettered written authority of all the other partners to attend the conference and to settle the matter if possible.

Attendance at the conference on behalf of the Territory must be by an employee (as defined in the *Public Sector Employment and Management Act*) of the agency for which the Territory is conducting the proceeding, authorised in writing by the Chief executive Officer of that agency to attend the conference and to settle the matter if possible.

A person attending the conference may be accompanied by a legal representative.

If a plaintiff fails to attend, the Court may strike out the claim. If a defendant fails to attend, the Court may give the plaintiff leave to proceed as if a notice of defence had not been filed or may make other orders it considers appropriate. A party who is unable to attend should contact a Registrar of the Local Court. A Registrar may give you leave to attend by teleconferencing. The Court may dispense with the requirement of attendance in person (either physically or by teleconferencing) in special circumstances.

Dated:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 5B**

rule 5.18(2)

**NOTICE OF DISCONTINUANCE OR WITHDRAWAL**

*[Heading as in originating process]*

TO *[NAME AND ADDRESS OF PARTY]*  
AND TO THE COURT

The *[identify party]* gives notice that:

\* the \*claim/counterclaim\* filed on *[e.g. 2 December 1997]* is discontinued.

\* the notice of defence filed on *[e.g. 2 December 1997]* is withdrawn.

*[signature of party  
or legal practitioner]*

Dated: *[e.g. 2 March 1998]*

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 7A**

rule 7.02(1)(a)

**STATEMENT OF CLAIM**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

[FULL NAME]

Defendant

TO THE DEFENDANT

This statement of claim has been brought against you by the plaintiff for the claim set out below.

IF YOU INTEND TO DEFEND this claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this statement of claim:

- (a) file a notice of defence with a Registrar of the Local Court at [venue];  
and
- (b) serve a copy on the plaintiff.

IF YOU DO NOT file and serve a notice of defence, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PLAINTIFF CLAIMS [set out concise statement of the nature of the claim] particulars of which are set out below, and seeks [set out statement of amount, relief or remedy sought].

\*If you pay the amount of \$ and costs of \$ to the plaintiff or the plaintiff's legal practitioner without filing and serving a notice of defence you may avoid further costs.

**PARTICULARS OF CLAIM**

[set out particulars of claim]

[signature of plaintiff  
or legal practitioner]

Filed:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This statement of claim was filed:  
\*by the plaintiff in person.  
\*for the plaintiff by [*name of plaintiff's legal practitioner*] of [*name of firm*], legal practitioner(s), of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]
2. The address of the plaintiff is:
3. The address for service of the plaintiff is: [*If the plaintiff sues in person, the address in 2. If the plaintiff sues by a legal practitioner – the address in 1.*]
4. The address of the defendant is:

\* Delete if inapplicable.

### **WHAT TO DO WHEN YOU GET A STATEMENT OF CLAIM**

The person called the plaintiff has a claim against you and wants the Court to decide it.

You can:

1. File a notice of defence.  
  
You must fill out the form headed "NOTICE OF DEFENCE" that came with this claim explaining why you are not responsible for part or all of the amount the plaintiff claims. This form should be filed with a Registrar at the Court and a copy served on the plaintiff.
2. Pay the amount of the claim and the plaintiff's legal costs.  
  
If you intend to do this you should contact the plaintiff or the plaintiff's legal practitioner immediately and make arrangements to pay. Make sure you get any agreements in writing.
3. File an application for an instalment order.  
  
If you admit you owe the amount claimed but cannot pay it all at once you may apply to the Court for an instalment order. Forms for this are available from the Court office. You must file the original with the Court and serve a copy on the plaintiff.

---

**Warning: DO NOT IGNORE THIS FORM OR A JUDGMENT MAY BE MADE AGAINST YOU FOR THE WHOLE AMOUNT OF THE CLAIM AND ADDITIONAL LEGAL COSTS. IF JUDGMENT IS ENTERED AGAINST YOU, THE JUDGMENT DEBT (THE AMOUNT YOU MUST PAY TO THE PLAINTIFF) CARRIES INTEREST FROM THE DATE OF JUDGMENT AT THE RATE FIXED IN ACCORDANCE WITH RULE 59.02 OF THE SUPREME COURT RULES. INFORMATION ABOUT THE JUDGMENT DEBT MAY BE GIVEN TO CREDIT INFORMATION SUPPLIERS.**

If you do not understand what you have to do or need help contact:

- . A legal practitioner – look under "solicitors" in the Yellow pages.
- . Law Society of the Northern Territory – they will refer you to a legal practitioner who can help with your particular matter (Phone: 89815104)
- . Northern Territory Legal Aid Commission (Phone: Darwin 89993000, Alice Springs 89515377, Katherine 89738704)
- . Aboriginal Legal Aid (Phone: Darwin 89815266, Alice Springs 89522933 Katherine 89721133, Nhulunbuy 89871300)
- . A Registrar of the Court.

### AFFIDAVIT OF SERVICE

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

[FULL NAME]

Defendant

NAME OF DEPONENT:

DATE SWORN:

I,

(full name)

of

(address)

say on oath

I did at

(time)

on

(day)

(month)

(year)

serve the defendant

*(full name of defendant)*

with this statement of claim by delivering a true copy of the statement of claim to the defendant at

*(address)*

I identified the defendant as follows:

Sworn at

on

*(place)*

*(date)*

before me

\*Justice of the Peace/Commissioner for Oaths\*

\*Commissioner for Affidavits or Declarations or Notary Public (*for service under Service and Execution of Process Act 1992 (Cwlth)*)

\* Delete if inapplicable.

Filed by:

Address:

Telephone:

Fax:

---

**FORM 7B**

rule 7.02(1)(b)

**STATEMENT OF CLAIM IN RELATION TO MOTOR VEHICLE COLLISION**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

[FULL NAME]

Defendant

TO THE DEFENDANT

This statement of claim has been brought against you by the plaintiff for the claim set out below.

IF YOU INTEND TO DEFEND this claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this statement of claim:

- (a) file a notice of defence with a Registrar of the Local Court at [venue];  
and
- (b) serve a copy on the plaintiff.

IF YOU DO NOT file and serve a notice of defence, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PLAINTIFF CLAIMS damages arising out of a collision, details of which are set out below.

\*If you pay the amount of \$        and costs of \$        to the plaintiff or the plaintiff's legal practitioner without giving notice of defence you may avoid further costs.

**PARTICULARS OF CLAIM**

WHAT IS THE NATURE OF YOUR CLAIM? (*e.g. cost of repairs to motor vehicle; cost of repairs to damaged fence.*)

WHERE DID YOUR CLAIM ARISE? (*Give the location of the collision, and in the space below draw a sketch plan of the collision with names of roads, &c., identify your vehicle as "1", the vehicle driven by the defendant as "2" and any other vehicles involved as "3", "4", "5", &c.*)

WHEN DID YOUR CLAIM ARISE?

---

HOW DID THE COLLISION HAPPEN? (*You must set out here in as much detail as you can how the collision happened and why you believe the defendant is at fault. If the space is insufficient you may attach other sheets.*)

#HOW MUCH ARE YOU CLAIMING?

*[signature of plaintiff  
or legal practitioner]*

# You must attach an itemised quotation giving full details of property damage.

Filed:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This statement of claim was filed:  
\*by the plaintiff in person.  
\*for the plaintiff by *[name of plaintiff's legal practitioner]* of *[name of firm]*, legal practitioner(s), of *[business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.]*
2. The address of the plaintiff is:
3. The address for service of the plaintiff is: *[If the plaintiff sues in person, the address in 2. If the plaintiff sues by a legal practitioner – the address in 1.]*
4. The address of the defendant is:

\* Delete if inapplicable.

### **WHAT TO DO WHEN YOU GET A STATEMENT OF CLAIM**

The person called the plaintiff has a claim against you and wants the Court to decide it.

You can:

1. File a notice of defence.

You must fill out the form headed "NOTICE OF DEFENCE" that came with this claim explaining why you are not responsible for part or all of the amount the plaintiff claims. This form should be filed with the Court and a copy served on the plaintiff.

2. Pay the amount of the claim and the plaintiff's legal costs.

If you intend to do this you should contact the plaintiff or his or her legal practitioner immediately and make arrangements to pay. Make sure you get any agreements in writing.

3. File an application for an instalment order.

If you admit you owe the amount claimed but cannot pay it all at once you may apply to the Court for an instalment order. Forms for this are available from the Court office. You must file the original with the Court and serve a copy on the plaintiff.

**Warning: DO NOT IGNORE THIS FORM OR A JUDGMENT MAY BE MADE AGAINST YOU FOR THE WHOLE AMOUNT OF THE CLAIM AND ADDITIONAL LEGAL COSTS. IF JUDGMENT IS ENTERED AGAINST YOU, THE JUDGMENT DEBT (THE AMOUNT YOU MUST PAY TO THE PLAINTIFF) CARRIES INTEREST FROM THE DATE OF JUDGMENT AT THE RATE FIXED IN ACCORDANCE WITH RULE 59.02 OF THE SUPREME COURT RULES. INFORMATION ABOUT THE JUDGMENT DEBT MAY BE GIVEN TO CREDIT INFORMATION SUPPLIERS.**

If you do not understand what you have to do or need help contact:

- . A legal practitioner – look under "solicitors" in the Yellow pages.
- . Law Society of the Northern Territory – they will refer you to a legal practitioner who can help with your particular matter (Phone: 89815104)
- . Northern Territory Legal Aid Commission (Phone: Darwin 89993000, Alice Springs 89515377, Katherine 89738704)
- . Aboriginal Legal Aid (Phone: Darwin 89815266, Alice Springs 89522933 Katherine 89721133, Nhulunbuy 89871300)
- . A Registrar of the Court.

---

**AFFIDAVIT OF SERVICE**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

[FULL NAME]

Defendant

NAME OF DEPONENT:  
DATE SWORN:

I,  
(full name)  
of  
(address)

say on oath

I did at (time) on (day) (month) (year)

serve the defendant  
(full name of defendant)

with this statement of claim by delivering a true copy of the statement of claim  
to the defendant at  
(address)

I identified the defendant as follows:

Sworn at (place) on (date)

before me

\*Justice of the Peace/Commissioner for Oaths\*

\*Commissioner for Affidavits or Declarations or Notary Public (for service  
under Service and Execution of Process Act 1992 (Cwth))

\* Delete if inapplicable.

Filed by:  
Address:  
Telephone:

Fax:

---

**FORM 7C**

rule 7.08(1)

**ORIGINATING APPLICATION BETWEEN PARTIES**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Applicant

and

[FULL NAME]

Respondent

TO THE COURT

The applicant applies to the Court for the following orders or relief:

*[brief statement of orders or relief applied for]*

\* The applicant relies on *[identify specific provision of legislation]*

The facts, matters and circumstances supporting this application are:

*[sufficient particulars to support the application]*

*[signature of applicant  
or legal practitioner]*

TO THE RESPONDENT

This proceeding has been commenced against you by the applicant who has applied to the Court for the order or relief referred to above.

IF YOU INTEND TO APPEAR before the Court in respect of this proceeding **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this originating application:

- (a) file with a Registrar of the Local Court at [venue] a notice of intention to appear; and
- (b) serve a copy of the notice on the applicant.

After you have filed a notice to appear, the Court will fix a date, time and place for a **CONCILIATION CONFERENCE** and will send you and the applicant a notice containing the necessary information about the conference.

---

**IF YOU DO NOT** file and serve a notice of intention to appear, the applicant may **OBTAIN JUDGMENT AGAINST YOU** without further notice.

Filed:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This originating application was filed:  
\*by the applicant in person.  
\*for the applicant by [*name of applicant's legal practitioner*] of [*name of firm*], legal practitioner(s), of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]
2. The address of the applicant is:
3. The address for service of the applicant is: [*If the applicant acts in person, the address in 2. If the applicant is represented by a legal practitioner – the address in 1.*]
4. The address of the respondent is:

\* Delete if inapplicable.

### **WHAT TO DO WHEN YOU GET AN ORIGINATING APPLICATION**

The person called the applicant has commenced a proceeding against you in the Court.

**YOU MUST, NOT LATER THAN 28 DAYS** after being served with this application, fill out the accompanying notice headed "NOTICE OF INTENTION TO APPEAR", file the notice with a Registrar at the Court, and serve a copy on the applicant. The Court will then fix a date, time and place for a conciliation conference and will send you and the applicant a notice containing the necessary information about the conference. If you do not file a notice of intention to appear, the Court may make a judgment against you without further notice.

**Warning: IF JUDGMENT IS ENTERED AGAINST YOU AND THE COURT HAS ORDERED YOU TO PAY AN AMOUNT OF MONEY TO THE APPLICANT, THAT AMOUNT CARRIES INTEREST FROM THE DATE OF JUDGMENT AT THE RATE FIXED IN ACCORDANCE WITH RULE 59.02 OF THE SUPREME COURT RULES. INFORMATION ABOUT THE JUDGMENT DEBT MAY BE GIVEN TO CREDIT INFORMATION**

---

**SUPPLIERS.**

If you do not understand what you have to do or need help contact:

- . A legal practitioner – look under "solicitors" in the Yellow pages.
- . Law Society of the Northern Territory – they will refer you to a legal practitioner who can help with your particular matter (Phone: 89815104)
- . Northern Territory Legal Aid Commission (Phone: Darwin 89993000, Alice Springs 89515377, Katherine 89738704)
- . Aboriginal Legal Aid (Phone: Darwin 89815266, Alice Springs 89522933, Katherine 89721133, Nhulunbuy 89871300)
- . A Registrar of the Court.

**AFFIDAVIT OF SERVICE**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Applicant

and

[FULL NAME]

Respondent

NAME OF DEPONENT:  
DATE SWORN:

I,  
(full name)  
of  
(address)  
say on oath

I did at (time) on (day) (month) (year)

serve the respondent  
(full name of respondent)

with this originating application by delivering a true copy of the originating application to the respondent at  
(address)

I identified the respondent as follows:

Sworn at \_\_\_\_\_ on \_\_\_\_\_  
(place) (date)

before me

\*Justice of the Peace/Commissioner for Oaths\*

\*Commissioner for Affidavits or Declarations or Notary Public (*for service under Service and Execution of Process Act 1992 (Cwth)*)

\* Delete if inapplicable.

Filed by:

Address:

Telephone:

Fax:

---

**FORM 7D**

rules 7.09(b) and 7.11(2)

**NOTICE OF INTENTION TO APPEAR**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Applicant

and

[FULL NAME]

Respondent

TO THE APPLICANT  
AND TO THE COURT

[Full name of respondent] gives notice of the respondent's intention to appear before the Court in this proceeding.

[signature of respondent  
or legal practitioner]

Filed:

1. This notice was filed:  
\*by the respondent in person.  
\*for the respondent by [name of respondent's legal practitioner] of [name of firm], legal practitioner(s) of [business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.]
2. The address of the respondent is:
3. The address for service of the respondent is: [If the respondent acts in person, the address in 2. If the respondent is represented by a legal practitioner – the address in 1.]

\* Delete if inapplicable.

---

**FORM 7E**

rule 7.13(1)

**ORIGINATING APPLICATION**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

[APPLICANT'S FULL NAME]

Applicant

TO THE COURT

The applicant applies to the Court for the following orders or relief:

[*brief statement of orders or relief applied for*]

\* The applicant relies on [*identify specific provision of legislation*]

The facts, matters and circumstances supporting this application are:

[*sufficient particulars to support the application*]

[*signature of applicant  
or legal practitioner*]

The application will be heard by the Court at [*address of Court*] at a.m./p.m.  
on or as soon afterwards as the business  
of the Court allows.

Filed:

Registrar

1. This originating application was filed:  
\*by the applicant in person.  
\*for the applicant by [*name of applicant's legal practitioner*] of [*name of firm*], legal practitioner(s), of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]
2. The address of the applicant is:
3. The address for service of the applicant is: [*If the applicant acts in person, the address in 2. If the applicant is represented by a legal practitioner – the address in 1.*]

\* Delete if inapplicable.

---

**FORM 8A**

rule 8.02(1)(a)

**NOTICE OF DEFENCE**

*[Heading as in originating process]*

TO THE PLAINTIFF  
AND TO THE COURT

The defendant's defence is as follows:

*[set out particulars of defence and summary of facts on which you rely].*

**\*COUNTERCLAIM**  
(Rule 9.02)

THE DEFENDANT CLAIMS *[set out concise statement of the nature of the claim]* particulars of which are set out below, and seeks *[set out statement of amount, relief or remedy sought]*

**\*PARTICULARS OF CLAIM**

*[set out particulars]*

*[signature of defendant  
or legal practitioner]*

Filed:

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This notice was filed:  
\*by the defendant in person.  
\*for the defendant by *[name of defendant's legal practitioner]* of *[name of firm]*, legal practitioner(s) of *[business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.]*
2. The address of the defendant is:
3. The address for service of the defendant is: *[If the defendant defends in person, the address in 2. If the defendant defends by a legal practitioner – the address in 1.]*

\* Delete if inapplicable.

---

**FORM 8B**

rule 8.05(2)

**NOTICE OF CONDITIONAL DEFENCE**

*[Heading as in originating process]*

TO THE PLAINTIFF  
AND TO THE COURT:

The defendant denies, on the grounds set out below, that the Local Court has jurisdiction to hear and determine this proceeding and applies to have the proceeding \*stayed/set aside\*:

*[set out grounds]*

*[signature of defendant  
or legal practitioner]*

Filed:

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This notice was filed:  
\*by the defendant in person.  
\*for the defendant by *[name of defendant's legal practitioner]* of *[name of firm]*, legal practitioner(s) of *[business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.]*
2. The address of the defendant is:
3. The address for service of the defendant is: *[If the defendant defends in person, the address in 2. If the defendant defends by a legal practitioner – the address in 1.]*

\* Delete if inapplicable.

---

**FORM 11A**

rule 11.01

**APPLICATION FOR ORDER FOR DEFAULT JUDGMENT**

*[Heading as in originating process]*

TO THE COURT

The *[identify party]* applies for an order for default judgment on the following grounds:

\*The defendant failed to file a notice of defence within 28 days after service on the defendant of the statement of claim.

\*The respondent failed to file a notice of intention to appear within 28 days after service on the respondent of the originating application between parties.

\*The Court made an order on *[date]* under rule \*10.04(1)(b) / \*16.08(1)(c) / \*17.07(2) / \*32.10(e) permitting the *[identify party]* to proceed as if a notice of defence had not been filed.

\*The Court made an order on *[date]* under rule 28.02 that the notice of defence be struck out.

\*The claim is for a \*debt of/liquidated demand for\* \$*[amount claimed]* and the *[identify party]* seeks judgment for \$*[total amount]* made up as follows:

*[set out details of how amount is made up]*

\*The *[identify party]* applies for the assessment of \*damages/value of goods\*.

*[signature of party  
or legal practitioner]*

Filed:

\* Delete if inapplicable.

---

**FORM 13A**

rule 13.02(1)

**THIRD PARTY NOTICE**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

[FULL NAME]

Defendant

and

[FULL NAME]

Third Party

TO [NAME OF THIRD PARTY]  
OF [ADDRESS]

The plaintiff has brought this proceeding against the defendant for the claim set out in the statement of claim attached.

The defendant disputes the plaintiff's claim on the grounds set out in the notice of defence attached and claims to be entitled to relief against you on the grounds set out in the statement of claim below.

IF YOU INTEND TO DEFEND this claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this notice:

- (a) file a notice of defence with a Registrar of the Local Court at [venue];  
and
- (b) serve a copy on the defendant.

IF YOU DO NOT file and serve a notice of defence, the defendant may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

**STATEMENT OF CLAIM**

*[Set out in separate, consecutively numbered paragraphs all the material facts relied on for the claim against the third party and state precisely the relief claimed]*

*[signature of defendant  
or legal practitioner]*

Filed:

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**Warning: IF JUDGMENT IS ENTERED AGAINST YOU, THE JUDGMENT DEBT (THE AMOUNT YOU MUST PAY TO THE PLAINTIFF) CARRIES INTEREST FROM THE DATE OF JUDGMENT AT THE RATE FIXED IN ACCORDANCE WITH RULE 59.02 OF THE SUPREME COURT RULES. INFORMATION ABOUT THE JUDGMENT DEBT MAY BE GIVEN TO CREDIT INFORMATION SUPPLIERS.**

1. This notice was filed by:
    - \*the defendant in person.
    - \*for the defendant by [*name of defendant's legal practitioner*] of [*name of firm*], legal practitioner(s) of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]
  2. The address of the defendant is:
  3. The address for service of the defendant is: [*If the defendant defends in person, the address in 2. If the defendant defends by a legal practitioner – the address in 1.*]
- \* Delete if inapplicable.

---

**FORM 13B**

rule 13.03(1)

**NOTICE CLAIMING CONTRIBUTION**

*[Heading as in originating process]*

TO THE DEFENDANT *[NAME]*

The plaintiff has brought this proceeding against the defendants for *[give brief statement of plaintiff's claim]*.

The defendant *[name]* claims contribution from you if the plaintiff is successful in the claim against *[name]* on the grounds set out in the statement of claim below.

IF YOU INTEND TO DEFEND this claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this notice:

- (a) file a notice of defence with a Registrar of the Local Court at *[venue]*; and
- (b) serve a copy on the defendant *[name]*.

IF YOU DO NOT file and serve a notice of defence, the defendant may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

**STATEMENT OF CLAIM**

*[Set out in separate, consecutively numbered paragraphs all the material facts relied on for the claim against the defendant and state precisely the relief claimed]*

*[signature of defendant  
or legal practitioner]*

Filed:

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**Warning: IF JUDGMENT IS ENTERED AGAINST YOU, THE JUDGMENT DEBT (THE AMOUNT YOU MUST PAY TO THE PLAINTIFF) CARRIES INTEREST FROM THE DATE OF JUDGMENT AT THE RATE FIXED IN ACCORDANCE WITH RULE 59.02 OF THE SUPREME COURT RULES. INFORMATION ABOUT THE JUDGMENT DEBT MAY BE GIVEN TO CREDIT INFORMATION SUPPLIERS.**

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**FORM 13C**

rule 13.03(2)

**NOTICE CLAIMING CONTRIBUTION FROM TORT-FEASOR UNDER  
SECTION 12 OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT**

*[Heading as in originating process]*

TO THE DEFENDANT *[NAME]*

The plaintiff has brought this proceeding against the defendants to recover damages for loss sustained *[give brief statement of plaintiff's claim]*.

The defendant *[name]* claims contribution from you under section 12 of the *Law Reform (Miscellaneous Provisions) Act* if the plaintiff is successful in the claim against *[name]* to the extent of such amount as may be found by the Court to be just and equitable, having regard to your responsibility for such damages, on the grounds set out in the statement of claim below.

IF YOU INTEND TO DEFEND this claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this notice:

- (a) file a notice of defence with a Registrar of the Local Court at *[venue]*; and
- (b) serve a copy on the defendant *[name]*.

IF YOU DO NOT file and serve a notice of defence, the defendant may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

**STATEMENT OF CLAIM**

*[Set out in separate, consecutively numbered paragraphs all the material facts relied on for the claim against the tort-feasor and state precisely the relief claimed]*

*[signature of defendant  
or legal practitioner]*

Filed:

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**Warning: IF JUDGMENT IS ENTERED AGAINST YOU, THE JUDGMENT DEBT (THE AMOUNT YOU MUST PAY TO THE PLAINTIFF) CARRIES INTEREST FROM THE DATE OF JUDGMENT AT THE RATE FIXED IN ACCORDANCE WITH RULE 59.02 OF THE SUPREME COURT RULES. INFORMATION ABOUT THE JUDGMENT DEBT MAY BE GIVEN TO CREDIT INFORMATION SUPPLIERS.**

---

**FORM 14A**

rule 14.06(1)(b)

**NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION**

*[Heading as in originating process]*

TO *[NAME OF EXECUTION CREDITOR]*  
OF *[ADDRESS]*

*[Name of claimant]* has claimed *\*the property/certain property\** (*where only certain goods are claimed, enumerate them*) *\*taken/to be taken\** in execution by me as bailiff under the warrant of execution issued in this proceeding.

If, **NOT LATER THAN 7 DAYS** after being served with this notice, you serve on me a notice stating that you admit the claim, you will not be liable for fees incurred by me after your notice is served.

If you dispute the claim you may, **NOT LATER THAN 7 DAYS** after being served with this notice, serve a notice in writing on me stating that you dispute the claim.

If you admit part and dispute part of the claim you may, **NOT LATER THAN 7 DAYS** after being served with this notice, serve on me a notice stating that you admit part of the claim and dispute part of the claim. You must specify in the notice those parts of the claim that are admitted and those disputed.

If you do not serve on me a notice admitting the claim within the time stipulated, or if you dispute any part of the claim, I may apply to the Court for an interpleader order under Part 14 of the *Local Court Rules* for the purpose of obtaining a determination of the claimant's rights to the property *\*taken/to be taken\** by me.

My address for service is:

Dated: *[e.g. 2 March 1998]*

*[signed]*  
Bailiff

\* Delete if inapplicable

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 15A**

rule 15.09(1)

**ORDER APPROVING COMPROMISE OF CLAIM BY INFANT**

*[Heading as in originating process]*

COURT:

DATE MADE:

ORIGINATING PROCESS: *[state whether proceeding commenced by application or statement of claim, &c.]*

HOW OBTAINED: *[state whether made on application with date of application or at hearing with date of commencement of hearing.]*

APPEARANCE: *[set out appearance or non-appearance of any person entitled to attend and, if attending, whether by legal practitioner.]*

MATTERS TAKEN INTO CONSIDERATION:

1. The \*plaintiff/defendant\* was born on *[date]*.
2. By a compromise entered into on *[date]* the defendant proposes to pay and the plaintiff wishes to accept \$        plus the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.
3. The Court read the following material:
  - (a) *[identify affidavits by date and name of deponent]*;
  - (b) *[identify documents]*.
4. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. The compromise be approved.

*[Set out other orders made]*

Dated:

BY THE COURT  
Registrar/Magistrate

\* Delete if inapplicable.

---

**FORM 15B**

rule 15.09(1)

**ORDER APPROVING COMPROMISE OF CLAIM BY PERSON UNDER  
DISABILITY OTHER THAN AN INFANT**

*[Heading as in originating process]*

COURT:

DATE MADE:

ORIGINATING PROCESS: *[state whether proceeding commenced by application or statement of claim, &c.]*

HOW OBTAINED: *[state whether made on application with date of application or at hearing with date of commencement of hearing.]*

APPEARANCE: *[set out appearance or non-appearance of any person entitled to attend and, if attending, whether by legal practitioner.]*

**MATTERS TAKEN INTO CONSIDERATION**

1. The date of birth of the \*plaintiff/defendant\* on whose behalf the proceeding is \*brought/defended\* is *[date]*.
2. The date on which \*plaintiff/defendant\* became a person under disability is *[date]*.
3. By a compromise entered into on *[date]* the defendant proposes to pay and the plaintiff wishes to accept \$            plus the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.
4. The Court read the following material:
  - (a) *[identify affidavits by date and name of deponent]*;
  - (b) *[identify documents]*.
5. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. The compromise be approved.

*[Set out other orders made]*

Dated:

BY THE COURT  
Registrar/Magistrate

\* Delete if inapplicable.

**FORM 16A**

rule 16.01(2)

**REQUIREMENT FOR AFFIDAVIT VERIFYING LIST OF DOCUMENTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

You are required by the *[requesting party]* to swear an affidavit verifying your list of documents and to serve the affidavit on the *[requesting party]* not later than 14 days after service of this notice on you.

Dated: *[e.g. 2 March 1998]*

*[signed]*

---

**FORM 16B**

rule 16.02(1)

**LIST OF DOCUMENTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

I, the above-named *[identify party]*, say as follows:

1. I have in my possession, custody or power, the documents enumerated in Part 1 of Schedule 1 relating to the questions in this proceeding.
2. The documents enumerated in Part 2 of Schedule 1 are privileged, and I object to producing them.

The documents are privileged on the following grounds:

*(e.g.)*

(a) as to documents numbered 4 – 6, that *[grounds of privilege]*;

(b) as to documents numbered 7 – 9, that *[grounds of privilege].)*

3. I have had, but no longer have, in my possession, custody or power, the documents enumerated in Schedule 2 relating to the questions in the proceeding.

*(e.g.)*

(a) Document numbered *[no.]* was last in my possession, custody or power on *[date]* and I believe that *[state belief as to what has become of it].)*

4. To the best of my knowledge, information and belief neither I nor my legal practitioner nor any other person on my behalf has now, or ever had, in my or his or her possession, custody or power, any documents relating to a question in the proceeding other than the documents enumerated in Schedules 1 and 2.

Dated: *[e.g. 2 March 1998]*

*[signed]*

*[Describe each document in the Schedules as original or copy and number each of them]*

SCHEDULE 1

PART 1  
DOCUMENTS IN PARTY'S POSSESSION

PART 2  
PRIVILEGED DOCUMENTS

SCHEDULE 2  
DOCUMENTS NO LONGER IN PARTY'S POSSESSION

**FORM 16C**

rule 16.04(1)

**NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

The *[requesting party]* requires you to produce, not later than 7 days after service of this notice on you, for inspection the following documents referred to in your *[list of documents, statement of claim, notice of defence, affidavit, &c.]*:

*[describe documents requested]*.

You are required to arrange with *[requesting party]* a time and a place where the documents may be inspected.

Dated: *[e.g. 2 March 1998]*

*[signed]*

**FORM 19A**

rule 19.03(1)

**ADMISSION OF DEBT**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

I, *[name]* admit I owe the amount of \$        being the total amount contained in the plaintiff's statement of claim and consisting of the amount of \$        and costs of \$        .

I agree to the entering of judgment in the amount stated.

My address is:

Dated: *[e.g. 2 March 1998]*

Signed:

**FORM 19B**

rule 19.04(2)

**ADMISSION OF FACTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

I, *[party]*, admit the following facts.

1. *[Specify each fact admitted]*
- 2.

Dated: *[e.g. 2 March 1998]*

*[signed]*

**FORM 19C**

rule 19.05(2)

**NOTICE TO DISPUTE FACTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

If you do not, within *[specify a number of days not less than 14]* days after service of this notice on you serve a notice on the *[party serving this notice]* disputing any fact specified below, that fact will, for the purpose of this proceeding only, be taken to be admitted by you in favour of the *[party serving this notice]*.

If you do serve a notice disputing a fact, and afterwards that fact is proved, you must pay the costs of proof unless the Court orders otherwise.

1. *[specify each fact]*

2.

Dated: *[e.g. 2 March 1998]*

*[signed]*

**FORM 19D**

rule 19.05(3)

**NOTICE DISPUTING FACTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

The *[party serving this notice]* disputes the following facts specified in the *[identify party's]* notice dated *[e.g. 2 March 1998]*.

1. *[Specify each disputed fact]*
- 2.

Dated: *[e.g. 5 March 1998]*

*[signed]*

**FORM 19E**

rule 19.06(2)

**NOTICE TO DISPUTE AUTHENTICITY OF DOCUMENTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

If you do not, within *[specify a number of days not less than 14]* days after service of this notice on you serve a notice on the *[party serving this notice]* disputing the authenticity of a document specified below, the authenticity of the document will, for the purpose of this proceeding only, be taken to be admitted by you in favour of the *[party serving this notice]*.

If you do serve a notice disputing the authenticity of a document, and afterwards the authenticity of the document is proved, you must pay the costs of proof unless the Court orders otherwise.

1. *[Specify each document]*
- 2.

Dated: *[e.g. 2 March 1998]*

*[signed]*

**FORM 19F**

rule 19.06(3)

**NOTICE DISPUTING AUTHENTICITY OF DOCUMENTS**

*[Heading as in originating process]*

TO THE *[IDENTIFY PARTY]*

The *[party serving this notice]* disputes the authenticity of the following documents specified in the *[identify party's]* notice dated *[e.g. 2 March 1998]*.

1. *[Specify each disputed document]*
- 2.

Dated: *[e.g. 5 March 1998]*

*[signed]*

---

**FORM 20A**

rule 20.13(a)

**NOTICE OF DEPOSIT**

*[Heading as in originating process]*

TO THE PLAINTIFF

The defendant has paid into the Court \$ .

\*The sum is in answer to the plaintiff's claim for *[specify]*. \*The sum takes into account the defendant's claim for *[specify]* on the defendant's counterclaim.

\*The sum is in answer to the following claims of the plaintiff *[specify]* \*and after taking into account the defendant's claim for *[specify]* on the defendant's counterclaim.

\*Of the sum:

\$ is in answer to the plaintiff's claim for *[specify]* on which the plaintiff claims \$ \*and after taking into account the defendant's claim for *[specify]* on the defendant's counterclaim

and \$ is in answer to the claim for *[specify]* on which the plaintiff claims \$ \*and after taking into account the defendant's claim for *[specify]* on the defendant's counterclaim.

Dated: *[e.g. 2 March 1998]*

*[signed]*

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 20B**

rule 20.14(3)

**NOTICE OF WITHDRAWAL OF DEPOSIT**

*[Heading as in originating process]*

TO THE PLAINTIFF

With the leave of the Court granted on *[date]*, the defendant withdraws the deposit of \$        paid into the Court by the defendant on *[date]* relating to the plaintiff's claim of *[specify]*.

Dated: *[e.g. 5 March 1998]*

*[signed]*

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 20C**

rule 20.15(2)  
and (3)(d)

**NOTICE OF ACCEPTANCE**

*[Heading as in originating process]*

TO THE DEFENDANT

The plaintiff accepts \$            paid into the Court by the defendant [*name*], in satisfaction of the claims in answer to which it was paid, as against [*name of defendant*] and \*abandons all the plaintiff's other claims as against [*name of defendant*]/abandons those claims as against the defendants [*names of other defendants*]\*.

Dated: [*e.g. 5 March 1998*]

[*signed*]

**FORM 20D**

rule 20.15(3)(b)

**NOTICE CONFIRMING DEPOSIT**

*[Heading as in originating process]*

TO THE PLAINTIFF

The defendant confirms the notice dated [e.g. 2 March 1998] of deposit of \$        paid into the Court before the beginning of the hearing of the proceeding.

Dated: [e.g. 5 March 1998]

[signed]

---

**FORM 22A**

rule 22.02

**AFFIDAVIT OF EVIDENCE OF ASSESSMENT OR REPAIR OF MOTOR  
VEHICLE**

*(To be filled out and sworn by car repairer or assessor)*

NAME OF DEPONENT: [NAME]

DATE SWORN: [date]

I [full name]

of [address]

being [e.g., car repairer, assessor, panel beater, &c.], have  
\*assessed/repaired\* vehicle number [registration number] belonging to [owner  
of car] on [date of assessment].

I have seen the statement of claim and consider the damage consistent with  
the details of the accident described in the claim.

The following repairs \*were completed/are needed\* and the amounts specified  
represent a fair and reasonable charge for that work.

*[Itemise repairs and costs]*

Sworn at

*(place)*

on

*(date)*

by

Before me

\*Justice of the Peace/Commissioner for Oaths\*

\* Delete if inapplicable.

**FORM 23A**

rule 23.03(1)(a)

**SUMMONS TO GIVE EVIDENCE**

*[Heading as in originating process]*

TO *[NAME]*  
OF *[ADDRESS]*

**THE COURT ORDERS** that you attend for the purpose of giving evidence:

- (a) before the Court;
- (b) at *[address of Court]*;
- (c) at *[time]* on *[date]* and until you are excused from further attending.

Issued:

Registrar

Filed by:

**NOTE:**

- 1. If you do not comply with this summons you may be arrested.
- 2. Any question concerning this summons should be addressed not to the Court but to *[name of legal practitioner or party]*.
- 3. Conduct money must be given or offered with this summons.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 23B**

rule 23.04(a)

**SUMMONS FOR PRODUCTION OF DOCUMENTS**

*[Heading as in originating process]*

TO *[NAME]*  
OF *[ADDRESS]*

**THE COURT ORDERS** that you attend and bring with you this summons and the documents and things described in the Schedule at *[address of Court]* at *[time]* on *[date]* and until you are excused from further attending.

Instead of attending, you may take this summons and the documents and things described in the Schedule to a Registrar of the Local Court at *[venue]* by hand or by post, in either case so that a Registrar receives them no later than 2 business days before the date on which you are required to attend.

SCHEDULE

*[description of documents and things]*

Issued:

Registrar

Filed by:

**NOTE:**

1. If you do not comply with this summons you may be arrested.
2. Documents and things taken to the Court by you may be returned by post to you at your address shown on this summons. You may request in writing that they be posted to you at another address or you may ask to collect them from the Court.
3. Any question concerning this summons should be directed not to the Court but to *[name of legal practitioner or party]*.
4. Conduct money must be given or offered with this summons.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 23C**

rule 23.04(b)

**SUMMONS TO CORPORATION FOR PRODUCTION OF DOCUMENTS**

*[Heading as in originating process]*

TO *[NAME OF CORPORATION]*  
OF *[ADDRESS]*

**THE COURT ORDERS** that:

1. *[Name of corporation]*, called ***the corporation***, must produce this summons and the documents and things described in the Schedule by an appropriate officer attending and producing them at *[address of Court]* at *[time]* on *[date]* and until you are excused from further attending.

Instead of attending, the corporation may produce this summons and the documents and things described in the Schedule to a Registrar of the Local Court at *[venue]* by hand or by post, in either case so that a Registrar receives them not later than 2 business days before the date on which the officer is required to attend.

2. The officer who is to attend must make enquiries for the purpose of answering, and on attending must answer, the questions that the Court requires the officer to answer concerning the possession or custody of those documents and things.

**SCHEDULE**

*[description of documents and things]*

Issued:

Registrar

Filed by:

**NOTE:**

1. If you do not comply with this summons an officer of the corporation may be arrested.
2. Documents and things taken to Court by the corporation may be returned by post to the corporation at its address shown on this summons. It may request in writing that they be posted to it at another address or it may ask to collect them from the Court.

3. A question concerning this summons should be directed not to the Court but to [*name of legal practitioner or party*].
4. Conduct money must be given or offered with this summons.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.



---

**FORM 29A**

rule 29.02

**APPLICATION IN SUMMARY PROCEEDING FOR RECOVERY OF  
POSSESSION OF LAND**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Plaintiff

and

\*[FULL NAME]

\*Defendant

\*(The plaintiff does not know  
the name of any person in  
occupation to make defendant)

\*TO THE DEFENDANT AND TO EVERY PERSON IN OCCUPATION OF  
THE LAND AT [DESCRIPTION OF LAND]

\*TO EVERY PERSON IN OCCUPATION OF THE LAND AT [DESCRIPTION  
OF LAND]

This proceeding has been commenced by the plaintiff for the recovery of land  
described as follows:

*[Describe land so as to be physically identifiable]*

You are ordered to attend before the Court for the hearing of the application.

The application will be heard by the Court at [address of Court] at a.m./p.m.  
on or as soon afterwards as the  
business of the Court allows.

Filed:

Registrar

**NOTE: IF YOU INTEND TO DEFEND THIS PROCEEDING YOU MUST, NOT  
LATER THAN 7 DAYS AFTER BEING SERVED WITH THIS APPLICATION:**

- (a) file an affidavit, stating particulars of your defence and a summary of  
the facts on which you rely, with a Registrar of the Local Court at  
[venue];
- (b) serve a copy on the plaintiff; and
- (c) attend before the Court at the date, time and place specified above.

IF YOU DO NOT file and serve an affidavit stating your defence, the plaintiff may OBTAIN JUDGMENT AGAINST YOU without further notice.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This application was filed:  
\*by the plaintiff in person.  
*\*for the plaintiff by [name of plaintiff's legal practitioner] of [name of firm], legal practitioner(s), of [business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.]*
2. The address of the plaintiff is:
3. The address for service of the plaintiff is: *[If the plaintiff sues in person, the address in 2. If the plaintiff sues by a legal practitioner – the address in 1.]*
- \*4. The address of the defendant is:

\* Delete if inapplicable.

---

**FORM 29B**

rule 29.08

**JUDGMENT IN SUMMARY PROCEEDING FOR RECOVERY OF LAND**

*[Heading as in originating process]*

DATE GIVEN:

HOW OBTAINED:

APPEARANCE: *[set out appearance or non-appearance of any person entitled to attend and, if attending, whether by legal practitioner.]*

THE JUDGMENT OF THE COURT IS THAT:

1. The plaintiff recover possession of the land described as *[description of land so as to be physically identifiable]*.
- \*2. The defendant pay \*the plaintiff \$ costs/the plaintiff's costs to be assessed\*.

*[other orders]*

Dated:

BY THE COURT

Registrar/Magistrate

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 29C**

rule 29.09(3)

**WARRANT OF POSSESSION IN SUMMARY PROCEEDING FOR  
RECOVERY OF LAND**

*[Heading as in originating process]*

TO THE BAILIFF

In respect of the judgment dated [e.g. 2 March 1998] by which it was ordered that the plaintiff recover possession of the land described in the Schedule (*where there is a defendant*: and that the defendant pay the plaintiff \$ costs or the plaintiff's costs, which have been taxed at \$ ).

*(The following is applicable where there is no defendant.)*

**YOU ARE AUTHORISED** to enforce the order by entering on the land and causing [*party in whose favour order made*] to have possession of it.

*(The following is applicable where there is a defendant.)*

**YOU ARE AUTHORISED** to enforce the order by entering on the land and causing [*party in whose favour order made*] to have possession of it and by seizing and selling property of [*party against whom order made*] sufficient to pay the money owing to [*party in whose favour order made*] in respect of the order. (*Continue as in Form 46A.*)

SCHEDULE

*[Describe land as in judgment]*

Issued:

BY THE COURT

Registrar

Issued at the request of the plaintiff.

*(Where there is a defendant)* The last known address of the defendant (*continue as in Form 44A*).

**FORM 30A**

rule 30.01

**APPLICATION UNDER SECTION 48 OF *COMMERCIAL TENANCIES ACT*  
OR *TENANCY ACT* FOR WARRANT OF POSSESSION**

LOCAL COURT  
AT [*VENUE*]

Claim No.

BETWEEN THE  
APPLICANT  
(*person*  
*seeking*  
*warrant*)

.....  
.....  
.....

name  
address for  
service

and

LESSEE  
(*tenant*)

.....  
.....  
.....

name  
address

TO THE LESSEE

The applicant applies to the Court for a warrant of possession authorising an officer of the Court or a member of the Police Force to evict the lessee from the following premises:

[*describe premises*]

The applicant states:

1. \*I am the lessor.  
\*I am the agent of the lessor authorised in writing.
2. I gave the lessee notice to quit on [*date*].
3. The notice required the lessee to quit the premises by [*date*].
4. The date in paragraph 3 is less than 60 days ago.
5. A copy of the notice to quit is attached to this application.

[*signature of applicant*]

The application will be heard by the Court at [*address of Court*] at a.m./p.m.  
on or as soon afterwards as the  
business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 30B**

rule 30.02

**APPLICATION UNDER SECTION 51 OF TENANCY ACT FOR ORDER  
TERMINATING LEASE OF DWELLING HOUSE**

LOCAL COURT  
AT [VENUE]

Claim No.

APPLICANT  
(*person  
seeking  
warrant*)

.....  
.....  
.....

name

address for  
service

The applicant applies to the Court for an order terminating the lease of the premises described below and for the issue of a warrant of possession authorising an officer of the Court or a member of the Police Force to evict the lessee [*name and address*] from the premises.

**DESCRIPTION OF PREMISES**

[*describe premises*]

The applicant states:

1. \*I am the lessor.  
\*I am the agent of the lessor authorised in writing.
2. I gave the lessee notice of my intention to seek an order terminating the lease on [*date*].
3. A copy of the notice to quit is attached to this application.

[*signature of applicant*]

The application will be heard by the Court at [address of Court] at a.m./p.m.  
on or as soon afterwards as the  
business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**FORM 30C**

rule 30.03

**APPLICATION UNDER SECTION 51A(1) OF TENANCY ACT FOR ORDER TERMINATING LEASE**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN THE  
APPLICANT  
(tenant)

.....  
.....  
.....

name

address for  
service

and

LESSOR  
(landlord)

.....  
.....  
.....

name

address

TO THE LESSOR

The applicant applies to the Court for an order terminating the lease over the following premises:

[describe premises]

The application is made on the following grounds:

[specify grounds]

[signature of applicant]

The application will be heard by the Court at [address of Court] at a.m./p.m.  
on or as soon afterwards as the  
business of the Court allows.

Filed:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 30D**

rule 30.04

**APPLICATION UNDER SECTION 51A(4) OF TENANCY ACT FOR  
WARRANT OF POSSESSION**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN THE  
APPLICANT  
(*person  
seeking  
warrant*)

.....  
.....  
.....

name  
address for  
service

and

LESSEE  
(*tenant*)

.....  
.....  
.....

name  
address

TO THE LESSEE

The applicant applies to the Court for a warrant of possession authorising an officer of the Court or a member of the Police Force to evict the lessee from the following premises:

[*describe premises*]

The applicant states:

1. \*I am the lessor.  
\*I am the agent of the lessor authorised in writing.
2. The Court made an order terminating the lease on [*date*] and the lessee has not delivered up possession.

[*signature of applicant*]

The application will be heard by the Court at [*address of Court*] at a.m./p.m.  
on or as soon afterwards as the business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 30A-A**

rule 30A.01

**APPLICATION FOR DECLARATION THAT TERM OF TENANCY IS HARSH OR UNCONSCIONABLE**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN THE ..... name  
APPLICANT  
(person ..... address for  
seeking ..... service  
declaration)

and

RESPONDENT ..... name  
..... address

TO THE RESPONDENT

The tenant is a party to a tenancy agreement in respect of the following premises:

[describe premises]

The applicant applies to the Court under section 22 of the *Residential Tenancies Act* for an order that the following term of the tenancy agreement in relation to those premises is harsh and unconscionable:\*

[specify term]

[signature of applicant]

The application will be heard by the Court at [address of Court] at a.m./p.m. on [date] or as soon afterwards as the business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office. If you fail to attend at the hearing of this application, the Court may hear the matter in your absence.

**FORM 30A-B**

rules 30A.02 and 30A.03

**APPLICATION UNDER DIVISION 4 OF PART 11 OF RESIDENTIAL TENANCIES ACT FOR ORDER TERMINATING TENANCY AND APPLICATION FOR ORDER FOR POSSESSION OF PREMISES**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN THE  
APPLICANT ..... name  
(person ..... address for  
seeking ..... service  
order)

and

RESPONDENT ..... name  
..... address

TO THE RESPONDENT

The applicant applies to the Court under section of the *Residential Tenancies Act* for an order terminating the tenancy at the following premises:

[describe premises]

The applicant states:

- 1. \*I am the landlord/tenant.  
\*I am the agent of the landlord authorised in writing.
- 2. I seek the termination of the tenancy on the following grounds:

AND/OR\*

The applicant applies to the Court under section 104 of the *Residential Tenancies Act* for an order for possession in relation to those premises\*.

The applicant states:

- 1. \*I am the landlord/tenant.  
\*I am the agent of the landlord authorised in writing.
- 2. I gave the tenant a notice of termination on (date).

3. I attach a copy of the notice of termination.

*[signature of applicant]*

The application will be heard by the Court at *[address of Court]* at a.m./p.m. on *[date]* or as soon afterwards as the business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office. If you fail to attend at the hearing of this application, the Court may hear the matter in your absence.

**FORM 30A-C**

rule 30A.04

**APPLICATION FOR ORDER FOR POSSESSION OF PREMISES IF  
HEAD TENANCY FORFEITED**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN THE  
APPLICANT ..... name  
(person  
seeking ..... address for  
order) ..... service

and

RESPONDENT ..... name  
..... address

**PREMISES TO WHICH APPLICATION RELATES:**

[describe premises]

The applicant applies to the Court under section 107 of the *Residential Tenancies Act* for the following order(s):

- \* An order for possession in relation to the premises.
- \* An order vesting the landlord's interest under the tenancy agreement in me so that the tenant holds the above premises directly from me as landlord.

The applicant states:

I have the following interest in the premises:

[e.g. I have purchased it/have been granted a mortgage over it.]

[signature of applicant]

The application will be heard by the Court at [address of Court] at a.m./p.m. on [date] or as soon afterwards as the business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office. If you fail to attend at the hearing of this application, the Court may hear the matter in your absence.

**FORM 31A**

rule 31.07(a)

**IRREVOCABLE BANK GUARANTEE**

*[Heading as in originating process]*

TO THE COURT

The *[name of bank]* of *[address]* undertakes to be responsible for the payment into the Court of \$ , being security to be given by the plaintiff for the defendant's costs as ordered by the Court on *[date]*.

The bank guarantees that it will pay \$ into the Court if ordered by the Court to do so.

The bank acknowledges that this undertaking may be amended or revoked only with the leave of the Court or discharged by payment of \$ into the Court.

Dated: *[e.g. 2 March 1998]*

*\*[sealed by the Bank  
\*signed by an officer of the  
bank authorised in writing]*

\* Delete if inapplicable.

**FORM 31B**

rule 31.08(2)(b)

**NOTICE OF DISCHARGE AND PAYMENT INTO COURT**

*[Heading as in originating process]*

The *[name of bank]* of *[address]*, which guaranteed the payment of \$ into the Court on behalf of the plaintiff in this proceeding, discharges the guarantee and pays into the Court the total sum of money guaranteed.

Dated: *[e.g. 5 March 1998]*

*[\*sealed by the Bank  
\*signed by an officer of the  
bank authorised in writing]*

\* Delete if inapplicable.

## FORM 32A

rules 7.12(1) and 32.01(1)

### NOTICE OF CONCILIATION CONFERENCE

*[Heading as in originating process]*

A conciliation conference has been listed to take place at the Court at [address of Court] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

All parties must attend the conciliation conference.

An individual must attend the conference personally and be prepared to discuss all issues. An officer or employee of a corporation must be authorised by the corporation to attend the conference and to settle the matter if possible. A partner of a firm must have the unfettered written authority of all the other partners to attend the conference and to settle the matter if possible.

Attendance at the conference on behalf of the Territory must be by an employee (as defined in the *Public Sector Employment and Management Act*) of the Agency for which the Territory is conducting the proceeding who is authorised in writing by the Chief Executive Officer of that Agency to attend the conference and to settle the matter if possible.

A person attending the conference may be accompanied by a legal representative.

If a plaintiff or applicant fails to attend, the Court may strike out the claim or originating application. If a defendant fails to attend, the Court may give the plaintiff leave to proceed as if a notice of defence had not been filed or may make other orders it considers appropriate. If a respondent fails to attend, the Court may make the orders it considers appropriate. A party who is unable to attend should contact a Registrar of the Local Court. A Registrar may give you leave to attend by teleconferencing. The Court may dispense with the requirement of attendance in person (either physically or by teleconferencing) in special circumstances.

Dated:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 32B**

rule 32.04(5)

**SCHEDULING ORDER**

*[Heading as in originating process]*

At a conciliation conference held at the Court at *[place]* at *[time]* on *[date]*:

(a) the following persons attended:

*[list parties or representatives]*

(b) the following details were given by the parties:

*[list details, in relation to each party, of matters referred to in rule 32.04]*

(c) the following undertakings were given:

*[list each undertaking and name of party or party's legal practitioner giving undertaking]*

(d) the Court gave the following directions:

*[list directions given]*

Dated:

Registrar

---

**FORM 32C**

rule 32.05

**CASE MANAGEMENT STATEMENT***[Heading as in originating process]**(comments to be as brief as possible)*

	Plaintiff(s) [Comments]	Defendant(s) [Comments]
1. The parties certify that this proceeding is ready for hearing (Yes/No)		
2. All pleadings have been completed and delivered and pleadings are closed (Yes/No)		
3. All particulars requested have been furnished (Yes/No)		
4. Discovery of documents has been given by the parties (Yes/No)		
5. Inspection of documents has taken place (Yes/No)		
6. All necessary medical examinations have taken place (Yes/No)		
7. The parties require further medical examinations prior to the hearing (Yes/No)		
8. All reports and statements have been served (Yes/No)		

9. Where counsel is required,  
counsel has been briefed  
(Yes/No)
10. Counsel's advice on  
evidence has been obtained  
(Yes/No)
11. All witnesses should be  
available at the hearing  
(Yes/No)
12. The length of hearing is  
estimated at
13. (a) Offers of settlement  
made under Part 20  
(Yes/No)  
  
(b) The prospects of  
settlement are:
14. Details of witnesses:
  - (a) Within the jurisdiction
    - (i) The number of  
experts:
    - (ii) The number of  
non-experts:
  - (b) Outside the jurisdiction
    - (i) The number of  
experts:
    - (ii) The number of  
non-experts:
15. The directions required  
are:
  - (a) For the plaintiff:
  - (b) For the defendant:

16. Other relevant facts regarding the fixing of a hearing date are:
- (a) For the plaintiff:
  - (b) For the defendant:
17. The shortest notice on which each party would be ready to commence the hearing is:
18. The issues to be determined at the hearing are:

Dated: [e.g. 2 March 1998]

.....  
Legal practitioner for the  
plaintiff(s)

.....  
Legal practitioner for the  
defendant(s)

---

**FORM 34A**

rule 34.04(b)

**NOTICE OF ASSESSMENT OF DAMAGES OR VALUE OF GOODS**

*[Heading as in originating process]*

An assessment of \*damages/value of goods\* has been listed to take place at the Court at [*address of Court*] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

All parties may attend the assessment in person or by a legal representative. A person attending the assessment may be accompanied by a legal representative.

Not less than 7 days before the date fixed for the assessment, the party for whom the assessment is to be made must file and serve an affidavit on the other party stating the amount claimed and the facts and calculations on which the amount is based.

The attendance of witnesses and production of documents for the purposes of the assessment may be ordered by summons in accordance with Part 23 of the *Local Court Rules*.

Dated:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 35A**

rule 35.03(1)(a)

**ORDER**

*[Heading as in originating process]*

COURT:

DATE MADE:

ORIGINATING PROCESS: *[state whether proceeding commenced by application or statement of claim, &c.]*

HOW OBTAINED: *[state whether made on application with date of application or at hearing with date of commencement of hearing.]*

APPEARANCE: *[set out appearance or non-appearance of any person entitled to attend and, if attending, whether by legal practitioner.]*

OTHER MATTERS: *[state any finding of jurisdictional fact, undertaking of party or other matter as directed by Court.]*

THE COURT ORDERS THAT:

1. *[terms of order]*
- 2.

Dated:

BY THE COURT

Registrar/Magistrate

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 35B**

rule 35.06(2)(a)

**NOTICE OF CONSENT**

*[Heading as in originating process]*

TO THE COURT

The \*plaintiff/defendant\* consents to the Court making an order that:

1. *[terms of order]*
- 2.

Dated: *[e.g. 2 March 1998]*

*[signed]*

\* Delete if inapplicable.



**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 37A**

rule 37.04(2)(a)

**NOTICE OF APPEAL**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

In the matter of an appeal under  
[section and name of the Act  
under which the appeal is made]

BETWEEN

[FULL NAME]

Appellant

and

[FULL NAME]

Respondent

TO THE \*RESPONDENT/FIRST RESPONDENT\*  
\*AND TO THE SECOND RESPONDENT

The appellant appeals against the following decision:

[set out briefly the substance of the order or decision appealed against].

The date of order or decision: [specify date on which order or decision made]

Grounds of appeal: [set out specifically and concisely the grounds of appeal]

IF YOU INTEND TO DEFEND this appeal **YOU MUST, NOT LATER THAN 7 DAYS** after being served with this notice:

- (a) file a notice of appearance in accordance with Form 37B with a Registrar of the Local Court at [venue]; and
- (b) serve a copy on the appellant.

IF YOU DO NOT file and serve a notice of appearance, the Court may make the orders it considers appropriate.

[signed by appellant]

A prehearing conference has been listed to take place at the Court at [address of Court] at a.m./p.m. on \_\_\_\_\_ or as soon afterwards as the business of the Court allows.

All parties must attend the prehearing conference. A party may attend:

- (a) in person;
- (b) by an agent authorised in writing by the party; or

- (c) by a legal practitioner or, unless the Court orders otherwise, by an articulated clerk.

With the leave of the Court, a party may attend:

- (a) in the case of a corporation – by an officer or employee of the corporation;  
(b) in the case of a firm – by a partner or employee of the firm; or  
(c) by some other person.

A person attending a conference may be accompanied by a legal representative.

If an appellant fails to attend, the Court may dismiss the appeal or make the orders it considers appropriate. If a respondent fails to attend, the Court may hear the appeal if satisfied that this notice was properly served on the respondent. A party who is unable to attend should contact a Registrar of the Local Court. A Registrar may give you leave to attend by teleconferencing.

Filed:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This notice of appeal was filed:  
\*by the appellant in person.  
*\*for the appellant by [name of appellant's legal practitioner] of [name of firm], legal practitioner(s), of [business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.]*
2. The address of the appellant is:
3. The address for service of the appellant is: *[If the appellant sues in person, the address in 2. If the appellant sues by a legal practitioner – the address in 1.]*
4. The address of the respondent is:

\* Delete if inapplicable.

**FORM 37B**

rules 37.05

**NOTICE OF APPEARANCE**

*[Heading as in Form 37A]*

TO THE APPELLANT

\**[Name of respondent]*, the \*respondent/\*first respondent/second respondent\*,  
of *[address]*, appears in this appeal.

The address for service of the respondent named above is: *[address for  
service]*

Dated: *[e.g. 5 March 1998]*

*[signed]*

\* Delete if inapplicable

---

**FORM 37C**

rule 37.12(1)

**NOTICE OF APPEAL UNDER SECTION 150 OF RESIDENTIAL  
TENANCIES ACT OR SECTION 19 OF TENANCY ACT**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN

[FULL NAME]

Appellant

and

THE COMMISSIONER OF TENANCIES

Respondent

TO THE COMMISSIONER OF TENANCIES  
AND TO THE OTHER PERSONS AFFECTED BY THE COMMISSIONER'S  
ORDER, DETERMINATION, VARIATION OR DECISION

The appellant appeals against your order, determination, variation or decision  
of [date].

Describe order, determination, variation or decision:

[signature of applicant]

**NOTE: IF YOU INTEND TO DEFEND this appeal YOU MUST, NOT LATER  
THAN 7 DAYS** after being served with this notice:

- (a) file a notice of appearance in accordance with Form 37D with a Registrar of the Local Court at [venue]; and
- (b) serve a copy on the appellant.

IF YOU DO NOT file and serve a notice of appearance, the Court may make the orders it considers appropriate.

A prehearing conference has been listed to take place at the Court at [address of Court] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

All parties must attend the prehearing conference. A party may attend:

- (a) in person;
- (b) by an agent authorised in writing by the party; or
- (c) by a legal practitioner or, unless the Court orders otherwise, by an articulated clerk.

With the leave of the Court, a party may attend:

- (a) in the case of a corporation – by an officer or employee of the corporation;

- (b) in the case of a firm – by a partner or employee of the firm; or
- (c) by some other person.

A person attending a conference may be accompanied by a legal representative.

If an appellant fails to attend, the Court may dismiss the appeal. If the Commissioner or other person to whom this notice is addressed fails to attend, the Court may hear the appeal if satisfied that this notice was properly served. A party who is unable to attend should contact a Registrar of the Local Court. A Registrar may give you leave to attend by teleconferencing.

Filed:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This notice of appeal was filed:
  - \*by the appellant in person.
  - \*for the appellant by [*name of appellant's legal practitioner*] of [*name of firm*], legal practitioner(s), of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]
2. The address of the appellant is:
3. The address for service of the appellant is: [*If the appellant sues in person, the address in 2. If the appellant sues by a legal practitioner – the address in 1.*]
4. The address of the Commissioner of Tenancies is:
5. The names and addresses of all other persons affected by the order, determination, variation or decision are:

\* Delete if inapplicable.

**FORM 37D**

rule 37.13

**NOTICE OF APPEARANCE**

*[Heading as in Form 37C]*

TO THE APPELLANT

\*The Commissioner of Tenancies appears in this appeal.

The address for service of the Commissioner of Tenancies is: *[address for service]*

\**[Name of person affected by decision/variation]* appears in this appeal.

The address for service of the person named above is: *[address for service]*

Dated: *[e.g. 5 March 1998]*

*[signed]*

\* Delete if inapplicable

---

**FORM 38A**

rule 38.12(1)(a)

**SUMMONS FOR TAXATION OF COSTS**

*[Heading as in originating process]*

TO *[IDENTIFY EACH PARTY OR OTHER PERSON TO WHOM SUMMONS IS ADDRESSED AND STATE ADDRESS OF EACH PERSON NOT A PARTY.]*

You are summoned to attend before the taxing officer at *[address of Court]* at     a.m./p.m. on                                     for the hearing of an application by *[identify party]* for the costs that are payable to that party by *[identify party liable for costs]* under *[identify the judgment, etc., by which payable]* to be taxed in accordance with the bill of costs served with this summons.

Issued:

Registrar

This summons was filed by:

**NOTE:** Whether or not you attend on the day for hearing referred to above, the costs claimed in the bill may be allowed unless, not later than 7 days before the date fixed for taxation, you file and serve on the *[identify party]* a notice in accordance with Form 38B identifying by list each item in the bill to which you object and stating specifically and concisely the grounds of objection to each item. Failure to file that notice amounts to an admission of the items in the bill.

**FORM 38B**

rule 38.13(1)

**NOTICE OF OBJECTION TO BILL OF COSTS**

*[Heading as in originating process]*

TO *[identify party]*

The *[objecting party]* objects to the items in your bill of costs specified below for the reasons specified in relation to each item.

*[list items objected to and state specifically and concisely the grounds of objection to each item]*

Filed:

This notice was filed by:

---

**FORM 43A**

rule 43.01(2)

**APPLICATION FOR ISSUE OF WARRANT OF EXECUTION**

*[Heading as in originating process]*

TO THE COURT

*[Party in whose favour order made]*, applies for a warrant of *[type of warrant]* to be issued in respect of the order dated *[e.g. 27 October 1997]* against *[party against whom order made]* of *[party's last-known address]* for the payment of \*\$        together with costs of \$        /costs of \$        \*.

The applicant nominates *[NAME OF LICENSED PRIVATE BAILIFF]* of *[bailiff's address]* as the private bailiff who is to execute the warrant applied for.

The money owing on the date of this application in respect of the order is as follows:

\$

Total amount owing, excluding interest  
Total interest accrued on the above amount  
Practitioner's costs of this application  
Filing fee for this application  
Bailiff's fees for executing warrant to be issued

TOTAL

PARTICULARS OF HOW INTEREST CALCULATED

*[enter particulars]*

The daily rate of interest now accruing is \$*[daily rate]*

PARTICULARS OF AMOUNTS RECEIVED

*[list dates and amounts paid on account  
or recovered under previous warrant]*

Dated: *[e.g. 2 March 1998]*

*[signed]*

---

**FORM 44A**

rule 44.02(2)

**WARRANT OF SEIZURE AND SALE**

*[Heading as in originating process]*

TO THE BAILIFF

On [e.g. 27 October 1997], the Local Court ordered:

\*[*name of judgment debtor*], the judgment debtor, to pay \$            to [*name of judgment creditor*], the judgment creditor, together with costs of \$            .

\*[*name of judgment debtor*], the judgment debtor, to pay costs of \$            to [*name of judgment creditor*], the judgment creditor.

**YOU ARE AUTHORISED** to enforce the order by seizing and selling property of the judgment debtor sufficient to pay the money owing to the judgment creditor in respect of the order and for that purpose **YOU ARE AUTHORISED** to enter and remain on premises (whether land or a building) you believe on reasonable grounds to be owned or occupied by the judgment debtor.

\*The property of the judgment debtor includes land described as follows:

*[description of land]*

The amount of \$            is now payable by the judgment debtor to the judgment creditor, made up as follows:

- \*1. \$            , being \$            exclusive of costs and \$            for costs;
- \*1. \$            for costs;
- \*2. \$            , being interest at    % per annum, the rate for the time being fixed in accordance with law, on \$[*amount owing, exclusive of costs*] from the date of the order;
3. \$            , being interest at    % per annum, the rate for the time being fixed in accordance with law, on \$[*amount of costs*] from [*applicable date*];
4. \$            , being the practitioner's costs and filing fee in respect of the issue of this warrant;
5. \$            , being the bailiff's fee for executing this warrant.

The daily rate of interest now accruing on the amount owing is \$[*daily rate*]. (*if applicable*)

From the proceeds raised by the sale of the judgment debtor's property you must pay into the Local Court all the money owing in respect of the order unless you are a private bailiff to whom section 33(1) of the *Commercial and Private Agents Licensing Act* applies, in which case you may retain the amount specified in this warrant as the bailiff's fee for executing the warrant.

Immediately after you have performed all your obligations under this warrant you must endorse on the warrant a statement of the date, time and place you executed the warrant and the results of the execution, including how the proceeds of the sale are to be distributed.

If you attempt to execute under this warrant but are unable to do so, you must endorse on the warrant a statement of the dates, times, places and results of those attempts.

Issued:

BY THE COURT

Registrar

Issued at the request of the judgment creditor.

The last-known address of the judgment debtor is [address].

*(Add the following if address is different.)* The address of the place where it is believed that property of the judgment debtor may be found is [address].

\* Delete if inapplicable and re-number as required.

---

**FORM 44B**

rule 44.06(1)

**NOTICE REQUIRING SAFEKEEPING OF SEIZED PROPERTY**

*[Heading as in originating process]*

TO *[NAME OF JUDGMENT DEBTOR OR NAME OF PERSON WHO HAS CUSTODY OF PERSONAL PROPERTY OF JUDGMENT DEBTOR]*  
OF *[ADDRESS]*

On *[date]*, the Local Court ordered *[name of judgment debtor]*, the judgment debtor, to pay \$        to *[name of judgment creditor]*, the judgment creditor.

A warrant of *[type of warrant]* issued by the Local Court on *[e.g. 2 March 1998]* authorises me to seize and sell property of the judgment debtor sufficient to pay the money owing to the judgment creditor. The warrant also authorises me to claim from the proceeds of the sale an amount for my fees for executing the warrant, being \$        .

Until the sale of the judgment debtor's property seized under the warrant, you are responsible for the safekeeping of the seized property in your custody. You must not interfere with, dispose of or remove any of the seized property without my consent.

Dated: *[e.g. 5 March 1998]*

*[signed]*  
Bailiff  
*[bailiff's address]*

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 45A**

rule 45.01(2)

**WARRANT OF DELIVERY**

*[Heading as in originating process]*

TO THE BAILIFF

*(The following is applicable where order is for delivery of goods only, with or without an award of damages for their detention.)*

On [e.g. 27 October 1997] the Local Court ordered that [party against whom order made] deliver the goods described in the Schedule to [party in whose favour order made] and pay (add following if applicable) [\$ damages for their detention and] costs of \$ .

**YOU ARE AUTHORISED** to enforce the order by causing the goods described in the Schedule to be delivered to [party in whose favour order made] and by seizing and selling property of [party against whom order made] sufficient to pay the money owing to [party in whose favour order made] in respect of the order.

The amount of \$ is now payable by [party against whom order made] to [party in whose favour order made], made up as follows:

- \*1. \$ for damages, being \$ exclusive of costs and \$ for costs;
- \*1. \$ for costs;
- \*2. \$ , being interest at % per annum, the rate for the time being fixed in accordance with law, on \$[amount of damages exclusive of costs] from the date of the order; (if applicable)
3. \$ , being interest at % per annum, the rate for the time being fixed in accordance with law, on \$[amount of costs] from [applicable date];
4. \$ , being the practitioner's costs and filing fee in respect of the issue of this warrant;
5. \$ , being the bailiff's fee for executing this warrant.

*(The following is applicable where order is for delivery of goods OR payment of their assessed value, with or without an award of damages for their detention.)*

---

On [e.g. 27 October 1997] the Local Court ordered that [party against whom order made] deliver the goods described in the Schedule to [party in whose favour order made] or pay \$ , their assessed value, (include following if applicable) [and \$ damages for their detention] and costs of \$ .

**YOU ARE AUTHORISED** to enforce the order by causing the goods to be delivered to [party in whose favour order made] and by seizing and selling property of [party against whom order made] sufficient to pay the money owing to [party in whose favour order made] in respect of the order.

The amount of \$ is now payable by [party against whom order made] to [party in whose favour order made], made up as follows:

- \*1. if you cannot cause the goods to be delivered, \$[assessed value of the goods], being the assessed value of the goods;

(continue list by including relevant items from 1. to 5. above and re-numbering as required)

(the following is applicable in all warrants of delivery)

The daily rate of interest now accruing on the amount owing is \$[daily rate]. (if applicable)

From the proceeds (continue as in Form 44A)

Immediately after (continue as in Form 44A)

If you attempt (continue as in Form 44A)

#### SCHEDULE

[Describe goods as in order]

Issued:

BY THE COURT

Registrar

Issued at the request of [party in whose favour order made]

The last-known address of [party against whom order made] is [address].

(Add following if address is different.) The address of the place where it is believed that property of [party against whom order made] may be found is [address].

\* Delete if inapplicable.

---

**FORM 46A**

rule 46.01(2)

**WARRANT OF POSSESSION***[Heading as in originating process]*

TO THE BAILIFF

On [e.g. 27 October 1997] the Local Court ordered that [party in whose favour order made] recover possession of the land described in the Schedule and that [party against whom order made] pay [party in whose favour order made] (add following if applicable) [\$ for damages and] costs of \$ .

**YOU ARE AUTHORISED** to enforce the order by entering on the land and causing [party in whose favour order made] to have possession of it and by seizing and selling property of [party against whom order made] sufficient to pay the money owing to [party in whose favour order made] in respect of the order.

The amount of \$ is now payable by [party against whom order made] to [party in whose favour order made], made up as follows:

- \*1. \$ for damages, being \$ exclusive of costs and \$ for costs;
- \*1. \$ for costs;
- \*2. \$ , being interest at % per annum, the rate for the time being fixed in accordance with law, on \$[amount of damages exclusive of costs] from the date of the order;
- 3. \$ , being interest at % per annum, the rate for the time being fixed in accordance with law, on \$[amount of costs] from [applicable date];
- 4. \$ , being the practitioner's costs and filing fee in respect of the issue of this warrant;
- 5. \$ , being the bailiff's fee for executing this warrant.

The daily rate of interest now accruing on the amount owing is \$[daily rate]. (if applicable)

From the proceeds (continue as in Form 44A)

Immediately after (continue as in Form 44A)

If you attempt (continue as in Form 44A)

SCHEDULE

*[describe land as in order]*

Issued:

BY THE COURT

Registrar

Issued at (*continue as in Form 45A*)

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**FORM 47A**

rule 47.01(1)(a)

**APPLICATION FOR ISSUE OF EXAMINATION SUMMONS**

*[Heading as in originating process]*

*[Judgment creditor's name]*, the judgment creditor, of *[address]*, applies for the issue of an examination summons against *[judgment debtor's name]*, the judgment debtor, of *[address]*.

On *[e.g. 27 October 1997]* it was ordered that the judgment debtor pay the judgment creditor the amount of \*\$            together with costs/costs of \$        \*.  
The judgment debtor has defaulted in the payment of the judgment debt.

The money owing on the date of this application in respect of the order is as follows:

	\$
Total amount owing, excluding interest	
Total interest accrued on the above amount	
Practitioner's costs of this application	
Filing fee for this application	
Fee for service of examination summons	
<b>TOTAL</b>	_____
	_____

The daily rate of interest now accruing is \$*[daily rate]*

\* The judgment creditor requests that the judgment debtor be examined about the following matters in particular:

*[enter details of property or financial matters]*

Dated: *[e.g. 2 March 1998]*

*[signed]*

\* Delete if inapplicable.

**FORM 47B**

rule 47.01(1)(b)

**SUMMONS TO ATTEND FOR ORAL EXAMINATION**

*[Heading as in originating process]*

TO *[NAME OF JUDGMENT DEBTOR]*

**\*You are/An officer of the corporation is\* summoned** to attend before the Court to be orally examined as to your financial circumstances generally and your means and ability to satisfy the order made against you on *[e.g. 27 October 1997]* in favour of *[name of judgment creditor]* for \*\$ together with costs/costs of \$ \*.

\*You are/The officer is\* required to produce to the Court at the examination the following documents:

*[description of documents].*

\*You/The officer\* must attend at the Court at *[address of Court]* for the hearing of the application at a.m./p.m. on or as soon afterwards as the business of the Court allows.

Issued:

BY THE COURT  
Registrar

**AMOUNTS NOW OWING**

Total amount owing, excluding interest	\$
Total interest accrued on the above amount	
Practitioner's costs of this application	
Filing fee for this application	
Fee for service of examination summons	
<b>TOTAL</b>	_____

The daily rate of interest now accruing is \$*[daily rate]*.

NOTE: If you do not attend at the Court as directed by this summons, the Court may issue a warrant for \*your arrest/the arrest of an officer of the corporation\*.

**NOTE TO JUDGMENT DEBTOR:** If you do not attend at the Court as directed by this summons, the Court may issue **a warrant for \*your arrest/the arrest of an officer of the corporation\***. If the Court is required to postpone its business on the date fixed for the hearing of this application,

the Court will hear the application on the date it next sits at the address stated above and you must contact a Registrar of the Local Court nearest to you for the new date fixed for the hearing.

**NOTE TO JUDGMENT CREDITOR:** If the Court is required to postpone its business on the date fixed for the hearing of this application, you may contact a Registrar of the Local Court nearest to you for the new date fixed for the hearing. You are not required to serve another summons on the judgment debtor.

\* Delete if inapplicable.

**Do not ignore this summons.** If you do not understand it or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 47C**

rules 47.03(b)(i),  
48.04(4)(c) and 50.01(4)

**JUDGMENT DEBTOR'S DECLARATION OF FINANCIAL  
CIRCUMSTANCES**

*(where judgment debtor is not a corporation)*

*[Heading as in originating process]*

TO *[NAME OF JUDGMENT DEBTOR]*  
OF *[ADDRESS]*

You are required to complete this form by giving the information requested below. The completed form signed by you must be returned to the Court and a copy sent to *[name of judgment creditor]* at *[address for service]* not later than 7 days before the date of the oral examination to which you have been summoned by the Court.

*[signed]*

**DECLARATION**

I  
*(full name)*, *(occupation)*  
of  
*(full residential address)*

do solemnly and sincerely declare that the following information and annexures *(if any)* are true and correct.

And I make this solemn declaration by virtue of the *Oaths Act* conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at  
*(place)*

on  
*(date e.g. 5 March 1998)*

Signed:

**NOTE:** A person wilfully making a false statement in a declaration is liable to a penalty of \$2,000 or imprisonment for 12 months, or both.

This document does not have to be witnessed.

## FINANCIAL INFORMATION

### 1. AMOUNT AND SOURCE OF WEEKLY INCOME

#### Occupation

(a) If working for an employer:

Name and address of employer:

Gross wage:

Current overtime (if any):

Car and other allowances and commission:

(b) If self-employed or in partnership:

Average pre-tax earnings for last 12 months:

(c) If unemployed:

Length of last employment:

Date when last employment ceased:

Gross weekly amount:

Pension or other benefit received:

Worker's compensation received:

Maintenance received:

Superannuation received:

Board or rent received:

#### Miscellaneous income:

Average weekly interest on bank, credit union  
or building society deposit, debentures, &c.:

Average weekly dividend on shares:

Other income (give particulars):

**TOTAL GROSS WEEKLY INCOME:     \$**

### 2. PROPERTY AND ASSETS

Land, including vacant land:

For each piece of land:

Market value:

Amount of mortgage:

Net value:

Motor vehicle:

For each motor vehicle:

Year, make and model:

Amount owing to finance company:

Net value:

Deposit in bank, credit union,  
building society, &c.:  
Other investments including shares,  
debentures, bonds:

Money owing to you:  
From , \$  
From , \$  
Total:

Value of interest in partnership or business:

Furniture, household and personal goods:  
Market value:  
Amount owing to finance company:  
Net value:

Life insurance policies:  
Give particulars and state surrender  
value of each policy:

Other assets (give particulars):

**TOTAL PROPERTY AND ASSETS: \$**

**3. WEEKLY DEBTS, LIABILITIES & OTHER FINANCIAL OBLIGATIONS**

Income tax:  
Superannuation:  
Housing (mortgage, rent,  
board, hospital or institution):  
Local government rates:  
Water and sewerage rates:  
Land tax:  
Child care expenses incurred for the  
purpose of earning income:  
Maintenance actually paid:  
Instalment payments such as household  
goods or tools of trade:

To , \$  
To , \$

Total:  
Electricity and gas:  
Food:  
Other general household expenses:

Motor vehicle expenses (registration,  
insurance, maintenance, fuel):  
Fares:

Telephone:  
Insurance policy premiums:  
School fees and other school expenses:  
Clothing and shoes:  
Medical and chemist expenses:  
Entertainment:  
Payments on court orders and fines:  
Other expenses (give particulars):

Total:

Other debts outstanding  
Give particulars of debts under  
hire purchase, leasing credit  
card or other credit contracts,  
department store accounts,  
guarantee or personal loan:

\$ , to , due on

\$ , to , due on

Total:

**TOTAL DEBTS, &c.: \$**

4. Identify each asset referred to in paragraph 2 that is owned jointly, and give the name of the other owner or owners:

5. Identify each debt referred to in paragraph 3 that is due jointly, and give the name of the other debtor or debtors:

6. Give particulars of any other circumstances which affect the financial situation of the judgment debtor such as the number and age of dependants, marital status and health:

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 47D**

rules 47.03(b)(ii)  
and 50.01(4)

**JUDGMENT DEBTOR'S DECLARATION OF FINANCIAL  
CIRCUMSTANCES**

*(where the judgment debtor is a corporation)*

*[Heading as in originating process]*

TO *[NAME OF JUDGMENT DEBTOR]*  
OF *[ADDRESS]*

The appropriate officer of *[name of judgment debtor]*, authorised by *[name of judgment debtor]*, is required to complete this form by giving the information requested below. The completed form signed by the appropriate officer must be returned to the Court and a copy sent to *[name of judgment creditor]* at *[address for service]* not later than 7 days before the date of the oral examination to which you have been summoned by the Court.

*[signed]*

**DECLARATION**

I,  
*(full name)*  
the  
*(state office held e.g. director, secretary)*  
of *[name of judgment debtor]*,

being authorised by the judgment debtor to act on its behalf in making this declaration, do solemnly and sincerely declare that the following information and annexures *(if any)* are true and correct.

And I make this solemn declaration by virtue of the *Oaths Act* conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at  
*(place)*  
on  
*(date e.g. 5 March 1998)*

Signed:

**NOTE:** A person wilfully making a false statement in a declaration is liable to a penalty of \$2,000 or imprisonment for 12 months, or both.

This document does not have to be witnessed.

---

**FINANCIAL INFORMATION**

**1. AMOUNT AND SOURCE OF WEEKLY RECEIPTS**

Average weekly trading income:

Average weekly interest on bank,  
credit union or building society  
deposit, debentures, &c.:

Average weekly dividend on shares:

Other receipts(give particulars):

Total:

**TOTAL GROSS WEEKLY RECEIPTS: \$**

**2. PROPERTY AND ASSETS**

Land, including vacant land:

For each piece of land:

Market value:

Amount of mortgage:

Net value:

Motor vehicle:

For each motor vehicle:

Year, make and model:

Market value:

Plant and equipment, including furniture:

Market value:

Stock:

Deposit in bank, credit union,  
building society, &c.:

Other investments including shares,  
debentures, bonds:

Money owing to you by creditors:

From , \$

From , \$

Total:

---

Other assets (give particulars):

**TOTAL PROPERTY AND ASSETS:     \$**

**3.     WEEKLY   DEBTS,   LIABILITIES   &   OTHER   FINANCIAL  
          OBLIGATIONS**

Tax:

Superannuation:

Mortgage or rent:

Local government rates:

Water and sewerage rates:

Land tax:

Electricity and gas:

Motor vehicle expenses (registration,  
insurance, maintenance, fuel):

Telephone:

Insurance policy premiums:

Other expenses (give particulars):

Total:

Other debts outstanding:

Give particulars of debts under  
hire purchase, leasing credit  
card or other credit contracts,  
guarantee or personal loan:

\$                   , to   , due on

\$                   , to   , due on

**TOTAL DEBTS, &c.:     \$**

4.     Identify each asset referred to in paragraph 2 that is owned jointly, and give the name of the other owner or owners:

5.     Identify each debt referred to in paragraph 3 that is due jointly, and give the name of the other debtor or debtors:

6.     Give particulars of any other circumstances which affect the financial situation of the judgment debtor.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 47E**

rule 47.09(2)

**APPLICATION FOR ISSUE OF WARRANT FOR ARREST OF JUDGMENT DEBTOR**

*[Heading as in originating process]*

*[Judgment creditor's name]*, the judgment creditor, of *[address]*, pursuant to an order dated *[e.g. 19 January 1998]*, applies for the issue of a warrant for the arrest of *[judgment debtor's name]*, the judgment debtor, of *[address]*, who failed to attend before the Local Court at the time and place appointed by the summons issued on *[e.g. 18 December 1997]* to be examined concerning the judgment debtor's financial circumstances.

On *[e.g. 27 October 1997]* it was ordered that the judgment debtor pay the judgment creditor the sum of \$ \_\_\_\_\_, including costs.

The money owing on the date of this application in respect of the order is as follows:

	\$
Total amount owing, excluding interest	
Total interest accrued on the above amount	
Practitioner's costs of this application	
Filing fee for this application	
<b>TOTAL</b>	_____
	_____

**PARTICULARS OF HOW INTEREST CALCULATED**

*[enter particulars]*

The daily rate of interest now accruing is \$*[daily rate]*

**PARTICULARS OF AMOUNTS RECEIVED**

*[list dates and amounts paid on account or recovered under previous warrant]*

Dated: *[e.g. 5 March 1998]*

*[signed]*

---

**FORM 47F**

rule 47.09(2)

**WARRANT FOR ARREST OF JUDGMENT DEBTOR ON DISOBEDIENCE  
TO SUMMONS**

*[Heading as in originating process]*

TO \*THE BAILIFF \*ALL MEMBERS OF THE POLICE FORCE OF THE  
NORTHERN TERRITORY.

*[Name of judgment debtor]*, a judgment debtor, of *[address]* has failed to attend before the Local Court at the time and place appointed by the summons issued on *[e.g. 18 December 1997]* to be examined concerning the judgment debtor's financial circumstances.

I authorise you to enter and search by day or by night any dwelling-house, ship or place where *[name of judgment debtor]* is suspected to be, using all necessary force for that purpose and if necessary breaking any outer door or window, and to apprehend the judgment debtor and to bring the judgment debtor before the Court.

Issued:

BY THE COURT

Registrar

\* Delete if inapplicable.



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**FORM 48B**

rule 48.04(1)(b)

**AFFIDAVIT IN SUPPORT OF ATTACHMENT OF EARNINGS SUMMONS**

*[Heading as in originating process]*

NAME OF DEPONENT:

DATE SWORN:

I, *[name of judgment creditor]* of *[address]*, the judgment creditor in this proceeding, make oath and say that:

- \*1. On *[e.g. 27 October 1997]*, the Local Court ordered *[name of judgment debtor]*, the judgment debtor, to pay \$        to me together with costs of \$        .
- \*1. On *[e.g. 27 October 1997]*, the Local Court ordered *[name of judgment debtor]*, the judgment debtor, to pay me costs of \$        .
2. In respect of that order, \$        is now owing, made up as follows:
  - \*(a) \$        , being \$        exclusive of costs and \$        for costs;
  - \*(a) \$        for costs;
  - \*(b) \$        , being interest at % per annum, the rate for the time being fixed in accordance with law, on \$*[amount owing, exclusive of costs]* from the date of the order;
  - (c) \$        , being interest at % per annum, the rate for the time being fixed in accordance with law, on \$*[amount of costs]* from *[applicable date]*;
  - (d) \$        , being the practitioner's costs and filing fee in respect of the issue of the attachment of earnings summons;
  - (e) \$        , being the fee for service of the attachment of earnings summons.
- \*3. The daily rate of interest now accruing on the amount owing is \$*[daily rate]*.
4. The judgment debtor is employed by *[name of employer]* of *[address]* as a *[occupation]*.

Sworn &c.

\* Delete if inapplicable and re-number as required.

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**FORM 48C**

rule 48.06(1)

**ATTACHMENT OF EARNINGS ORDER**

*[Heading as in originating process]*

**THE COURT FINDS THAT:**

1. On *[date]* the Local Court ordered *[name of judgment debtor]*, the judgment debtor, to pay to *[name of judgment creditor]*, the judgment creditor, \*\$ together with costs/costs of \$ \*.
2. The judgment debtor has failed to comply with the order and \$ is now owing in respect of the judgment debt.
3. The judgment debtor was served with a copy of the attachment of earnings summons and \*attended/had a reasonable opportunity of attending\* the hearing referred to in the summons.
4. The judgment debtor is employed by *[name of employer]* at *[address]* in the Northern Territory as a *[occupation]* and is a person to whom earnings are payable or are likely to become payable by that employer.

**THE COURT ORDERS THAT:**

1. *[Name of employer]* must, for the purpose of securing payment of the judgment debt of \$ , while *[name of judgment debtor]* is employed by that employer, or until this order ceases to have effect, make deductions out of the net earnings of *[name of judgment debtor]* and payments to *[name of judgment creditor]* of *[address]* in accordance with this order.
2. The protected earnings are \*\$ / % of the net earnings\* in respect of each pay-day.
3. The appropriate deduction is \*\$ / % of the net earnings\* in respect of each pay-day.
4. Subject to paragraph 6, on each pay-day that the net earnings are in excess of the protected earnings specified in paragraph 2, the employer may first pay to himself or herself, out of that excess, \$ for the administrative costs of complying with this order.
5. Subject to paragraph 6, following payment of the administrative costs in accordance with paragraph 4, the employer must pay to the judgment creditor, out of the remaining excess, the appropriate deduction specified in paragraph 3.

6. If on a pay-day the amount of net earnings in excess of the protected earnings is insufficient to allow for payment in full of the administrative costs or appropriate deduction, on that pay-day the employer may first pay as much as the excess allows towards the administrative costs, must then pay as much as the excess allows towards the appropriate deduction, and must pay the deficit in accordance with paragraph 7.
7. If on a pay-day, after payment of the administrative costs and appropriate deduction in full, the net earnings remain in excess of the protected earnings, the employer must pay from that excess as much of the total deficit from previous pay-days as the excess allows, first towards the outstanding administrative costs and then towards the outstanding appropriate deductions.

Dated:

BY THE COURT

Registrar

\* Delete if inapplicable

**NOTE:** An attachment of earnings order comes into force at the end of 7 days after the day on which the order is served on the employer.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 48D**

rule 48.08(2)(a)

**NOTICE TO EMPLOYER**

*[Heading as in originating process]*

The attachment of earnings order served with this notice requires you to deduct from the net earnings payable to *[name of judgment debtor]* as your employee, on each pay-day until the order is discharged or suspended, the amount referred to in the order as the appropriate deduction, and to pay that amount to *[name of judgment creditor]*, the judgment creditor, towards securing payment of \$ .

**EARNINGS AND DEDUCTIONS**

**Earnings** means money payable to a judgment debtor by way of:

- (a) wages or salary, including fees, bonuses, commission, pay in lieu of leave or retirement benefit, overtime pay or other profits arising from the judgment debtor's office or employment; or
- (b) a pension, including:
  - (i) an annuity for past services whether or not the services were rendered to the person paying the annuity; and
  - (ii) periodic payments of compensation for the loss, abolition or relinquishment of, or a reduction in profits arising from, an office or employment,

but does not include a pension under the *Social Security Act 1991* of the Commonwealth or the *Veterans' Entitlements Act 1986* of the Commonwealth.

**Net earnings** means the earnings payable to a judgment debtor on a pay-day after the deduction of:

- (a) tax instalments under the *Income Tax Assessment Act 1936* of the Commonwealth; and
- (b) superannuation contributions under the *Superannuation Act 1986* of the Commonwealth.

**Appropriate deduction** means the amount that the Court considers to be:

- (a) a reasonable deduction from the net earnings; and
- (b) not more than is necessary,

to pay the judgment debt within a reasonable time after an attachment of earnings order is made.

**Protected earnings** means the amount of the net earnings below which the Court considers it unreasonable for the earnings to be reduced by a payment to the judgment creditor, having regard to the resources and needs of the judgment debtor and of any other person for whom the judgment debtor provides or reasonably may provide.

### **APPLICATION TO COURT IF DOUBT ABOUT EARNINGS**

If you are in doubt whether payments to the judgment debtor of a particular description are earnings for the purpose of the attachment of earnings order, you may apply to the Court to have that question determined.

### **NOTICE TO EMPLOYEE**

You are required to give the judgment debtor a notice specifying particulars of the payments made by you under the attachment of earnings order, including the payment for your administrative costs in respect of the order.

### **NOTICE IF YOU ARE NOT THE EMPLOYER**

You must promptly give notice in accordance with Form 48F to a Registrar of the Local Court and the judgment creditor:

- (a) if you are not the employer of the judgment debtor; or
- (b) if you are now the employer of the judgment debtor but later cease to employ the judgment debtor – after you cease to be the employer.

### **EMPLOYEE NOT TO BE DISMISSED OR PREJUDICED**

A person who dismisses an employee, injures an employee in his or her employment or alters an employee's position to his or her prejudice because an attachment of earnings order has been made, or because the person is required to make payments under the order in relation to the employee, may be dealt with as for contempt of court.

Dated:

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 48E**

rules 48.08(2)(b)  
and 48.09

**NOTICE THAT JUDGMENT DEBTOR NOT EMPLOYED**

*[Heading as in originating process]*

TO A REGISTRAR  
AT *[ADDRESS OF COURT]*

AND TO *[NAME OF JUDGMENT CREDITOR]*  
OF *[ADDRESS]*

I refer to the order made on *[e.g. 2 March 1998]* that I make payments to *[name of judgment creditor]*, the judgment creditor, out of the net earnings of *[name of judgment debtor]*, the judgment debtor, and give notice that:

\* The judgment debtor is not employed by me.

\* I ceased to be the judgment debtor's employer on \_\_\_\_\_  
*(date)*

Dated:

*(e.g. 5 March 1998)*

*[signature of employer]*

\* Delete if inapplicable.

---

**FORM 48F**

rule 48.13(1)(a)

**APPLICATION FOR ENFORCEMENT OF ATTACHMENT OF EARNINGS  
ORDER AGAINST EMPLOYER**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

Between

[FULL NAME]

Judgment Creditor

and

[FULL NAME]

Judgment Debtor

and

[FULL NAME]

Employer

TO [NAME OF EMPLOYER]

You are ordered to attend before the Court for the hearing of an application by the judgment creditor for an order that the attachment of earnings order made on [e.g. 15 December 1997] be enforced against you as the employer of the judgment debtor.

The application will be heard by the Court at [address of Court] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

Filed:

Registrar

This application was filed by the judgment creditor.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 48G**

rule 48.16(2)

**NOTICE OF CESSATION OF ATTACHMENT OF EARNINGS ORDER**

*[Heading as in originating process]*

TO *[NAME OF EMPLOYER]* OF *[ADDRESS]*, THE EMPLOYER OF *[NAME OF JUDGMENT DEBTOR]*.

The attachment of earnings order made on *[date]*, which ordered you to make payments to *[name of judgment creditor]* out of the earnings payable to *[name of judgment debtor]*, ceased to have effect on *[date]* because *[state reason]*.

Dated:

Registrar

**NOTE:** Any adjustments to the employee's salary as a consequence of the cessation of the attachment of earnings order must be made not later than 7 days after receiving this notice.

The employer does not incur a liability for treating the attachment of earnings order as still in force at any time before the end of 7 days after receipt of this notice or (if applicable) at any time before a copy of an order discharging the attachment of earnings order is served on the employer, whichever occurs first.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 49A**

rule 49.03(1)(a)

**GARNISHEE SUMMONS**

IN THE LOCAL COURT  
AT [VENUE]

Claim No.

Between

[FULL NAME]

Judgment Creditor

and

[FULL NAME]

Judgment Debtor

and

[FULL NAME]

Garnishee

TO [NAME OF GARNISHEE]  
OF [ADDRESS]

You are summoned to attend before the Court for the hearing of an application by the judgment creditor for an order that you, the garnishee:

\*pay to the judgment creditor the debt due from you to the judgment debtor,

\*pay to the judgment creditor in such amount or amounts and at such time or times as the Court may direct the debt accruing from you to the judgment debtor,

*(continue)*

or so much of that debt as may be sufficient to satisfy the judgment debt payable by the judgment debtor to the judgment creditor under an order made by the Court on [e.g. 2 March 1998] for \$ , interest accrued and accruing on the judgment debt and the costs of the judgment creditor in respect of the garnishee proceedings. The sum required to satisfy the judgment debt, interest and costs is \$ , and is made up as follows:

- (a) \$ , the amount due and unpaid under the judgment;
- (b) \$ , the amount of interest accrued and accruing;
- (c) \$ , the costs of the garnishee proceeding.

The debt in respect of which this summons is filed is [give details of the debt].

---

The application will be heard by the Court at [*address of Court*] at a.m./p.m.  
on or as soon afterwards as the business of  
the Court allows.

Issued:

Registrar

This summons is filed by:

**NOTE:** Money owing under the debt to the extent of the judgment is not to be paid to the judgment debtor unless the court so orders.

You may dispute liability for payment of the debt to the judgment debtor by filing and serving on the judgment creditor and the judgment debtor, **NOT LATER THAN 7 DAYS** before the date of the hearing referred to above, an affidavit stating that fact and disclosing the grounds on which liability is disputed.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 49B**

rule 49.07(1)(a)

**ATTACHMENT OF DEBTS ORDER**  
*(where garnishee debt less than judgment debt,  
interest and judgment creditor's costs)*

*[Heading as in Form 49A]*

**THE COURT ORDERS THAT:**

1. The garnishee (*where appropriate insert here: after deducting \$* for the costs of the garnishee application) pay immediately to the judgment creditor \$ , the debt due from the garnishee to the judgment debtor and that in default of payment action may be taken against the garnishee.

*(or where the debt is not due but accruing)*

The garnishee pay to the judgment creditor \$ , the debt accruing from the garnishee to the judgment debtor, as follows:

*[state the amount or amounts to be paid and the time or times of payment as directed by the Court]*

and that in default of payment action may be taken against the garnishee.

2. The costs of the judgment creditor of the garnishee application, being an amount of \$ , be added to the judgment debt and the interest accrued on that debt and be retained by the judgment creditor out of the money recovered by the judgment creditor under this order in priority to the judgment debt and interest.

Dated:

BY THE COURT

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 49C**

rule 49.07(1)(b)

**ATTACHMENT OF DEBTS ORDER**  
*(where garnishee debt more than judgment debt,  
interest and judgment creditor's costs)*

*[Heading as in Form 49A]*

**THE COURT ORDERS THAT:**

1. The garnishee pay immediately to the judgment creditor \$ \_\_\_\_\_, being so much of the debt due from the garnishee to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued on that debt and the costs of the judgment creditor of the garnishee proceedings, and that in default of payment action may be taken against the garnishee.

*(or where the debt is not due but accruing)*

The garnishee pay to the judgment creditor \$ \_\_\_\_\_, being so much of the debt accruing from the garnishee to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued on that debt and the costs of the judgment creditor of the garnishee proceedings as follows:

*[state the amount or amounts to be paid and the time or times of payment as directed by the Court]*

and that in default of payment action may be taken against the garnishee.

*(where appropriate add)*

2. The garnishee be at liberty to retain \$ \_\_\_\_\_ for the garnishee's costs of the garnishee proceedings out of the balance of the debt due (or accruing) from him or her to the judgment debtor.

Dated:

BY THE COURT

Registrar

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

---

**FORM 50A**

rule 50.01(1)

**APPLICATION FOR ORDER FOR PAYMENT OF JUDGMENT DEBT BY  
INSTALMENTS**

*[Heading as in originating process]*

TO A REGISTRAR  
AND *[NAME OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR]*

This application is made by the \*judgment creditor/judgment debtor\* of *[usual place of residence or of business or registered office]*, with respect to the order dated *[e.g. 27 October 1997]* made in the Local Court that *[name of judgment debtor]*, the judgment debtor, must pay *[name of judgment creditor]*, the judgment creditor, \*\$ together with costs/costs of \$ \*.

\$ is now owing under the order, being:

- \*(a) \$ , the amount due under the order;
- (b) \$ , the amount of costs; and
- (c) \$ , the amount of interest. *(if capable of calculation where the judgment debtor applies)*

The \*judgment creditor/judgment debtor\* applies to the Court for an order for the payment by instalments of the amount owing as follows:

*[state the amount of each instalment, weekly, monthly or other period, the number of instalments and the dates of the first and last instalments]*

The judgment debtor is unable to pay the amount owing in one sum because *[state briefly why]*.

The address for service of *[identify the applicant]* is:

The usual or last-known place of residence or of business or registered office of the \*judgment debtor/judgment creditor\* is:

Dated: *[e.g. 5 March 1998]*

*[signed]*

\* Delete if inapplicable and re-number as required.

**NOTE:** If the applicant is the **JUDGMENT DEBTOR**, he or she **MUST FILE AND SERVE** with this application a declaration of financial circumstances in accordance with Form 43C or 43D. If the applicant is the **JUDGMENT CREDITOR**, he or she **MUST FILE AND SERVE** with this application an

affidavit stating the facts on which the application is based.

A Registrar of the Local Court will consider this application and **THE PARTIES WILL BE NOTIFIED** as soon as practicable of the Registrar's decision and how to object to that decision if they so wish.

**THE PARTY SERVED WITH THIS APPLICATION MAY CONSENT** to the order sought by filing and serving a notice of consent in accordance with Form 50F.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

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**FORM 50B**

rule 50.01(2)

**APPLICATION FOR VARIATION OR CANCELLATION OF ORDER FOR  
PAYMENT OF JUDGMENT DEBT BY INSTALMENTS**

*[Heading as in originating process]*

TO A REGISTRAR  
AND *[NAME OF JUDGMENT CREDITOR OR JUDGMENT DEBTOR]*

This application is made by the \*judgment creditor/judgment debtor\* of *[usual place of residence or of business or registered office]*, with respect to the order dated *[e.g. 27 October 1997]* made in the Local Court that *[name of judgment debtor]*, the judgment debtor, must pay *[name of judgment creditor]*, the judgment creditor, \*\$ together with costs/costs of \$ \*.

On *[e.g. 24 November 1997]* an order was made that the judgment debtor pay \$ , the amount then owing under the order, by instalments as follows:

*[insert terms of order]*

The judgment debtor has:

\* paid the instalments in accordance with the order.

\* failed to pay the instalments due under the order on *[date]* and on *[date]*. The instalments are now in arrears in the amount of \$ .

\$ is now owing under the order, being:

\*(a) \$ , the amount due under the order;

(b) \$ , the amount of costs; and

(c) \$ , the amount of interest. *(if capable of calculation where the judgment debtor applies)*

The \*judgment creditor/judgment debtor\* applies for an order that the order made on *[e.g. 24 November 1997]*:

\*be varied as follows:

*[give particulars of variation sought stating amount of each instalment, weekly, monthly or other period, the number of instalments, the dates of the first and last instalments and the name and address of person to be paid under the order as varied].*

\*be cancelled.

The grounds on which the application is made are:

*[where the judgment debtor applies, give particulars of any material change in the circumstances of the judgment debtor since the date of the order]*

*[where the judgment creditor applies, give particulars of any allegation that there has been a substantial increase in the property or means of the judgment debtor or that any information given by the judgment debtor in support of the application for the order for the payment of the judgment debt by instalments or in any agreement for the payment of the judgment debt by instalments was inaccurate].*

The address for service of *[identify the applicant]* is:

The usual or last-known place of residence or of business or registered office of the \*judgment debtor/judgment creditor\* is:

Dated: *[e.g. 5 March 1998]*

*[signed]*

\* Delete if inapplicable and re-number as required.

**NOTE:** If the applicant is the **JUDGMENT DEBTOR**, he or she **MUST FILE AND SERVE** with this application a declaration of financial circumstances in accordance with Form 43C or 43D. If the applicant is the **JUDGMENT CREDITOR**, he or she **MUST FILE AND SERVE** with this application an affidavit stating the facts on which the application is based.

A Registrar of the Local Court will consider this application and **THE PARTIES WILL BE NOTIFIED** as soon as practicable of the Registrar's decision and how to object to that decision if they so wish.

**THE PARTY SERVED WITH THIS APPLICATION MAY CONSENT** to the order sought by filing and serving a notice of consent in accordance with Form 50F.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

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**FORM 50C**

rule 50.02(2)(a)

**ORDER RELATING TO PAYMENT OF JUDGMENT DEBT BY  
INSTALMENTS**

*[Heading as in originating process]*

**THE COURT ORDERS THAT:**

\**[Name of judgment debtor]*, the judgment debtor, pay to *[name of judgment creditor]*, the judgment creditor, \$ \_\_\_\_\_, being the amount owing in respect of an order for the payment of money dated *[e.g. 27 October 1997]*, by instalments as follows:

*[state amount of each instalment, weekly, monthly or other period for payment, number of instalments, dates of payments of first and last instalments to be made and address of person to be paid].*

(OR)

\*The order made on *[e.g. 24 November 1997]* that the judgment debtor pay by instalments \$ \_\_\_\_\_, which was then owing under a judgment for the judgment creditor against the judgment debtor dated *[e.g. 27 October 1997]*, be varied as follows:

*[complete appropriately]*

(OR)

\*The order made on *[e.g. 24 November 1997]* that the judgment debtor pay by instalments \$ \_\_\_\_\_, which was then owing under a judgment for the judgment creditor against the judgment debtor dated *[e.g. 27 November 1997]*, be cancelled.

(OR)

*[if other order made, complete as appropriate]*

Dated:

BY THE COURT

Registrar

\* Delete if inapplicable.

**NOTE: IF YOU OBJECT** to the order being made in the terms above, **YOU MUST, NOT LATER THAN 14 DAYS** after the date of this notice, file a notice of objection in accordance with Form 50E at the Court and serve a copy on the other party.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 50D**

rule 50.02(2)(b)

**NOTICE OF REFUSAL TO MAKE ORDER RELATING TO PAYMENT OF  
JUDGMENT DEBT BY INSTALMENTS**

*[Heading as in originating process]*

TO *[NAME OF JUDGMENT CREDITOR]*  
AND TO *[NAME OF JUDGMENT DEBTOR]*

**TAKE NOTICE** that on *[date]* I refused an application by the \*judgment creditor/judgment debtor\* for the following order:

*[complete appropriately]*

**IF YOU OBJECT** to the refusal to make the order sought, **YOU MUST, NOT LATER THAN 14 DAYS** after the date of this notice, file a notice of objection in accordance with Form 50E at the Court and serve a copy on the other party.

Dated:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.



**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

**FORM 50F**

rule 50.05

**NOTICE OF CONSENT TO ORDER RELATING TO PAYMENT OF DEBT  
BY INSTALMENTS**

*[Heading as in originating process]*

TO THE COURT

The \*judgment creditor/judgment debtor\* consents to the Court making an order that:

1. *[terms of order]*

2.

Dated: *[e.g. 2 March 1998]*

*[signed]*

\* Delete if inapplicable.

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**FORM 50G**

rule 50.06(3)(a)

**INSTALMENT AGREEMENT**

*[Heading as in originating process]*

1. This agreement is made between *[name of judgment creditor]*, the judgment creditor, of *[usual place of residence or of business or registered office]* and *[name of judgment debtor]*, the judgment debtor, of *[usual place of residence or of business or registered office]* with respect to the order dated *[e.g. 2 March 1998]* made in the Local Court that the judgment debtor must pay the judgment creditor \*\$        together with costs/costs of \$        \*.
2. \$        is now owing under the order, being:
  - \*(a) \$        , the amount due under the judgment;
  - (b) \$        , the amount of costs; and
  - (c) \$        , the amount of interest.
3. The parties agree that the judgment debtor will pay and the judgment creditor will accept payment of *[\$amount owing under order]* by instalments as follows:
  - (a) *[number of instalments]*;
  - (b) *[amount of each instalment]*;
  - (c) *[weekly, monthly or other period for payment]*;
  - (d) *[date of payment of:*  
*first instalment*  
*last instalment]*;
  - (e) *[name and address of person to whom payment to be made]*;

4. The judgment debtor acknowledges that on the filing of this agreement, if a failure to comply with this agreement continues for 14 days or more, the judgment creditor may take further action to enforce the order referred to in paragraph 1.

Dated: [e.g. 5 March 1998]

Signed by the judgment creditor:

Signed by witness:

Name:

Contact address or telephone number:

Signed by the judgment debtor:

Signed by witness:

Name:

Contact address or telephone number:

\* Delete if inapplicable. Re-number where required.

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**FORM 51A**

rule 51.02(1)(a)

**CHARGING SUMMONS**

*[Heading as in originating process]*

TO *[NAME OF PERSON TO WHOM SUMMONS IS DIRECTED]*  
OF *[ADDRESS]*  
AND TO *[NAME OF JUDGMENT DEBTOR]*

You are summoned to attend before the Court on the hearing of an application by *[name of judgment creditor]*, the judgment creditor, for an order that certain securities *[or as the case may be]* in which *[name of judgment debtor]*, the judgment debtor, has a beneficial interest, namely, *[give particulars sufficient to identify the securities and the interest of the judgment debtor]*, stand charged to the extent of the value of the entire beneficial interest of the judgment debtor in the securities or of so much of that value as may be sufficient to satisfy a judgment debt payable by the judgment debtor to the judgment creditor under an order made in the Local Court on *[e.g. 2 March 1998]* for \$ , made up as follows:

- (a) \$ , the amount due and unpaid under the judgment debt;
- (b) \$ , the amount of interest accrued or estimated to accrue; and
- (c) \$ , the estimated costs of the charging order proceeding.

The application will be heard by the Court at *[address of Court]* at a.m./p.m. on or as soon afterwards as the business of the Court allows.

Issued:

BY THE COURT

Registrar

This summons is filed by:

**NOTE:** To *[name of person to whom summons is directed]*.

Upon service of this summons you must not, except by order of the Court, cause or permit a transfer of any of the above-mentioned securities to be made or pay to a person any dividend or interest on those securities.

**NOTE:** To the judgment debtor.

Unless the Court orders otherwise, any disposition by you of your interests in any of the above-mentioned securities made after service of this summons and before the application for the charging order is heard by the Court is invalid as against the judgment creditor.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.



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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION****Local Court Rules (SL No. 5, 1998)**

Notified	20 May 1998
Commenced	1 June 1998 (r 1.02, s 2 <i>Local Court Amendment Act 1997</i> (Act No. 20, 1997) and <i>Gaz G19</i> , 20 May 1998, p 2)

**Amendment of Local Court Rules (SL No. 37, 1998)**

Notified	7 October 1998
Commenced	7 October 1998

**Amendments of Local Court Rules (SL No. 38, 2000)**

Notified	5 July 2000
Commenced	5 July 2000

**Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)**

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz G38</i> , 27 September 2000, p 2)

**Amendments of Local Court Rules (SL No. 26, 2001)**

Notified	30 May 2001
Commenced	30 May 2001

**Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)**

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and <i>Cth Gaz S285</i> , 13 July 2001)

**3****LIST OF AMENDMENTS**

r 1.09	amd No. 26, 2001, r 14; Act No. 17, 2001, s 12
r 3.05	amd No. 26, 2001, r 2
r 4.07	amd No. 26, 2001, r 14
r 5.05	sub No. 26, 2001, r 3
r 5.06	amd No. 26, 2001, r 4
r 6.04	amd Act No. 17, 2001, s 12
r 6.05	amd No. 26, 2001, r 14; Act No. 17, 2001, s 12
pt 7 hdg	amd No. 26, 2001, r 5
pt 7	
div 1 hdg	ins No. 26, 2001, r 6
pt 7	
div 2 hdg	ins No. 26, 2001, r 7
rr 7.07 – 7.14	ins No. 26, 2001, r 7
r 11.01	amd No. 26, 2001, r 8
r 11.02	amd No. 26, 2001, r 9
r 14.04	amd No. 26, 2001, r 14
r 14.07	amd No. 26, 2001, r 14
r 18.08	amd No. 26, 2001, r 14
r 24.06	amd No. 26, 2001, r 14
r 25.04	amd No. 26, 2001, r 14
pt 30 hdg	amd No. 38, 2000, r 2
r 30.01A	ins No. 38, 2000, r 3
r 30.01	amd No. 38, 2000, r 4
r 30.04A	ins No. 38, 2000, r 5
r 30.05	amd No. 38, 2000, r 6
pt 30A hdg	ins No. 38, 2000, r 7
rr 30A.01 –	
30A.06	ins No. 38, 2000, r 7
r 31.02	amd Act No. 17, 2001, s 12
r 35.04	amd No. 26, 2001, r 14
pt 37	
div 2 hdg	sub No. 38, 2000, r 8
rr 37.10 –	
37.16	sub No. 38, 2000, r 8
rr 37.17 –	
37.20	ins No. 38, 2000, r 8
r 38.08	sub No. 38, 2000, r 9
pt 41 hdg	rep No. 37, 1998
rr 41.01 –	
41.02	rep No. 37, 1998
r 43.01	amd No. 26, 2001, r 10
r 43.02	amd No. 26, 2001, r 11
r 43.05	amd No. 26, 2001, r 12
r 44.08	amd Act No. 45, 2000, s 13
r 51.01	amd Act No. 17, 2001, s 12
sch 1	amd No. 38, 2000, r 10; No. 26, 2001, rr 13 and 14
sch 2	rep No. 37, 1998