

NORTHERN TERRITORY OF AUSTRALIA

SMALL CLAIMS RULES

As in force at 30 October 2002

Table of provisions

Part 1	Preliminary	
Division 1	Citation and commencement	
1.01	Citation	1
1.02	Commencement	1
Division 2	Application of Rules	
1.03	Definitions	1
1.04	Application	1
1.05	time for doing act in pending proceeding	2
Division 3	Interpretation	
1.06	Definitions	2
Division 4	Miscellaneous	
1.07	Exercise of power	4
1.08	Procedure wanting or in doubt	4
1.09	Jurisdiction of Judicial Registrar	4
1.10	Jurisdiction of Registrar	4
1.11	Referral of application to magistrate	5
Part 2	Non-compliance with Rules	
2.01	Effect of non-compliance	5
2.02	Proceeding commenced by wrong process	5
2.03	Application to set aside	5
2.04	Dispensing with compliance	6
Part 3	Time and documents	
Division 1	Time	
3.01	Calculating time	6
3.02	Time for service	6
3.03	Extending or reducing time	7
3.04	Fixing time	7

Division 2 Documents

3.05	Content and form	7
3.06	Registrar may return document	8
3.07	Prescribed forms	8
3.08	General power of amendment	8
3.09	How document is filed	9

Part 4 Parties

Division 1 General

4.01	Names of parties	9
4.02	Person under disability	9
4.03	Executors, administrators and trustees	9
4.04	Partners and sole traders	9
4.05	Corporations	9
4.06	Power to act by legal practitioner, &c.	10
4.07	Appearance by party	10

Division 2 Person under disability

4.08	Definition	10
4.09	Litigation guardian	10
4.10	Person who may be litigation guardian	11
4.11	Consent of litigation guardian	11
4.12	Appointment, &c., of litigation guardian by Court	11
4.13	Pleading admissions by person under disability	12
4.14	Litigation guardian liable for costs	12

Part 5 General procedure in Court

Division 1 Venue of Court

5.01	Proper venue	12
5.02	Objection to venue	13
5.03	Transfer of proceeding	13
5.04	Order under section 23 or 24 of the Act	13

Division 2 Commencement of proceeding and making application

5.05	How proceeding commenced	14
5.06	Interlocutory or other application	14

Division 3 Discontinuance or withdrawal

5.07	Discontinuance or withdrawal	14
------	------------------------------------	----

Part 6	Service	
6.01	Documents to be served.....	15
6.02	When personal service necessary.....	15
6.03	How personal service effected.....	15
6.04	Personal service on particular party	15
6.05	Personal service on firm or company	16
6.06	Address for service.....	16
6.07	How ordinary service effected	17
6.08	Identity of person served	18
6.09	Acceptance of service by legal practitioner.....	18
6.10	Substituted service	18
6.11	Confirmation of informal service	19
6.12	Service on agent.....	19
6.13	Service under agreement	20
6.14	No service Christmas Day or Good Friday	20
6.15	Declaration of service	20
Part 7	Statement of claim	
7.01	Filing statement of claim.....	20
7.02	Form and content	20
7.03	Claim not to be divided	21
7.04	Service.....	22
7.05	Time for service	22
Part 8	Notice of defence	
8.01	Filing and service.....	22
8.02	Form and content	23
8.03	Specific defences	23
8.04	Money claim as defence	24
Part 9	Counterclaim	
9.01	Defendant may counterclaim	24
9.02	Content.....	25
9.03	Hearing of counterclaim.....	25
9.04	Counterclaim after judgment for plaintiff, &c.....	25
Part 10	Payment of money in satisfaction of claim	
10.01	Payment to plaintiff in satisfaction of claim	25
10.02	Payment into Court of whole claim	25
10.03	Payment into Court of part of claim	26
Part 11	Admissions and offer to pay	
11.01	Definition.....	27

11.02	Restrictive effect of admission	27
11.03	Voluntary admission of facts and offer to pay	27
11.04	Notice to dispute facts	28
11.05	Notice to dispute authenticity of documents	28
11.06	Costs of proof	28
11.07	Judgment on admissions	29

Part 12 Order in default of defence

12.01	When party may apply for order	29
12.02	Affidavit or statutory declaration required	29
12.03	Registrar may make order or refer to magistrate	30
12.04	Party may apply for re-hearing	31

Part 13 Joinder of claims and parties

13.01	Joinder of claims.....	31
13.02	Joinder of parties	31
13.03	Removal, addition or substitution of party.....	32
13.04	Consolidation or hearing together.....	32

Part 14 Applications

14.01	Definition.....	32
14.02	Form of application	32
14.03	Filing	33
14.04	Service.....	33
14.05	Person served to file affidavit.....	33
14.06	Failure to attend hearing.....	33
14.07	Attendance by teleconferencing	33

Part 15 Affidavits and statutory declarations

15.01	Affidavit or statutory declaration may be used	34
15.02	Form of affidavit or statutory declaration	34

Part 16 Evidence

16.01	Manner of giving evidence.....	34
16.02	Inspection by Court.....	34

Part 17 Witness summons

17.01	Order to attend	35
-------	-----------------------	----

Part 18 Prehearing conference

18.01	When prehearing conference held.....	35
18.02	Who to attend prehearing conference	35

18.03	Attendance by teleconferencing	36
18.04	Procedure at prehearing conference	37
18.05	Consequences of failure to attend, &c.....	37
18.06	Order by consent.....	38
18.07	Order by arbitration.....	38
18.08	Confidentiality	38

Part 19 Hearing

19.01	Fixing date for hearing	38
19.02	Directions.....	39
19.03	Adjournment	39
19.04	Absence of party.....	39
19.05	Party may apply for re-hearing	39
19.06	Financial resources	39

Part 20 Assessment of damages or value of goods

20.01	Interpretation	39
20.02	When order for assessment may be made.....	40
20.03	Manner of assessment	40
20.04	Notice to parties.....	40
20.05	Evidence by affidavit.....	40
20.06	Summons to give evidence or produce documents	41
20.07	Order to state amount.....	41

Part 21 Orders

21.01	General relief	41
21.02	Date of effect	41
21.03	Form of order.....	41
21.04	Certified copy.....	41
21.05	Time for compliance	42
21.06	Order by consent.....	42
21.07	Party may apply for re-hearing	43

Part 22 instalment orders

22.01	Definitions.....	43
22.02	Instalment order.....	43
22.03	Application for instalment order	44
22.04	Registrar may make or refuse to make order	44
22.05	Notice of objection	45
22.06	Judgment debtor to produce documents	45
22.07	Consent to instalment order.....	45
22.08	Instalment agreement.....	45

Part 23 Re-hearing

23.01	Application for re-hearing.....	46
23.02	Service.....	46
23.03	Terms of order.....	47
23.04	Re-hearing date.....	47

Part 24 Costs

24.01	Application of <i>Local Court Rules</i>	47
-------	---	----

Part 25 Interest on judgment and costs

25.01	Definition.....	47
25.02	Interest on judgment and costs.....	47
25.03	Interest on costs in interlocutory application.....	47
25.04	Interest up to judgment.....	47
25.05	No interest while instalment order in force.....	48

Part 27 Enforcement

27.01	Enforcement under <i>Local Court Rules</i>	48
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Part 28 Repeal

28.01	Repeal.....	48
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Schedule 1 Forms

Schedule 2

ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 30 October 2002

SMALL CLAIMS RULES

Rules under the Small Claims Act

Part 1 Preliminary

Division 1 Citation and commencement

1.01 Citation

These Rules may be cited as the *Small Claims Rules*.

1.02 Commencement

These Rules come into operation on the commencement of the *Small Claims 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 *Small Claims Rules* in force immediately before the commencement date.

pending proceeding means a proceeding in the Small Claims Division of the Court to which, immediately before the commencement date, the former Rules applied.

1.04 Application

- (1) These Rules apply to every proceeding:
 - (a) commenced under the Act; or
 - (b) in which an order is made under section 24 of the Act that it be dealt with as if commenced under the Act,

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 part of the former Rules 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 time for doing act in pending proceeding

Where the time for doing an act in a pending proceeding is specified in process issued or 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.

Division 3 Interpretation

1.06 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.

Court means the Local Court and includes a Judicial Registrar, acting Judicial Registrar, Registrar, Deputy Registrar and acting Registrar exercising the jurisdiction of the Court under these Rules.

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

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

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

jurisdictional limit means the limit specified in section 5 of the Act.

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;
- (d) the Commonwealth Director of Public Prosecutions; or
- (e) an AGS lawyer within the meaning of section 55I of the *Judiciary Act 1903* of the Commonwealth.

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.

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

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

proceeding means a claim in the Small Claims Division.

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.

Small Claims Division means the Court exercising the jurisdiction conferred on it by the Act.

teleconferencing means the use of telephone or closed circuit television.

the Act means the *Small Claims Act*.

Division 4 Miscellaneous

1.07 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) is to 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.

1.08 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 under the *Local Court Rules*.

- (2) An act done in accordance with an order made 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.

1.09 Jurisdiction of Judicial Registrar

Subject to practice directions given by the Chief Magistrate, a Judicial Registrar may exercise all the jurisdiction of the Court in accordance with the Act and these Rules.

1.10 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 Part 2 (non-compliance with Rules);
 - (b) consider an application for a re-hearing under Part 23; or
 - (c) preside at the hearing or re-hearing of a proceeding.

- (2) A Registrar may make an order under section 23 or 24 of the Act only with the consent of all the parties to the proceeding.
- (3) 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).

1.11 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.

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 an 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 7.05, 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) and (3) 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) indicate that the proceeding is under the *Small Claims Act*;
 - (e) 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;
 - (f) state the title of the proceeding and give a short description of the document; and
 - (g) 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) Dates (other than months), amounts and other numbers are to be expressed in figures and not in words.
- (4) 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;
 - (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.

Part 4 Parties

Division 1 General

4.01 Names of parties

A person who commences a proceeding is the party called the plaintiff and a person against whom a proceeding is commenced is the party called the defendant.

4.02 Person under disability

A person under a disability may commence or defend a proceeding in accordance with Division 2 of this Part.

4.03 Executors, administrators and trustees

A person may commence or defend a proceeding in the capacity of an executor, administrator or trustee.

4.04 Partners and sole traders

A proceeding may be commenced or defended by:

- (a) a partnership; or
- (b) a person trading under a business name,
in the name of the firm.

4.05 Corporations

- (1) A corporation may commence or defend a proceeding.
- (2) 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.

4.06 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.

4.07 Appearance by party

Subject to rule 18.02, a party may appear in Court:

- (a) in person;
- (b) by a legal practitioner;
- (c) by an articled 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 firm – by a partner or employee of the firm;
 - (iii) in enforcement proceedings – by a commercial agent; or
 - (iv) by some other person.

Division 2 Person under disability

4.08 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.

4.09 Litigation guardian

- (1) Except where otherwise provided 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.

4.10 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.

4.11 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 be in accordance with Form 4A and 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.

4.12 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.

4.13 Pleading admissions by person under disability

A person under a disability is not to 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.

4.14 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.

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 the 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 the 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 Order under section 23 or 24 of the Act

For the purpose of satisfying itself that an order under section 23 or 24 of the Act will not be unfair to any of the parties, the Court must have regard to the following matters:

- (a) the complexity of the issues of law and fact;
- (b) the need for interlocutory steps;
- (c) the need for expert witnesses;

- (d) the likely costs of the proceeding;
- (e) the amount of the claim;
- (f) the nature of the claim;
- (g) any other matter the Court considers relevant.

Division 2 Commencement of proceeding and making application

5.05 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 Part 7.

5.06 Interlocutory or other application

Unless the Court orders otherwise, an interlocutory or other application is to be made under Part 14.

Division 3 Discontinuance or withdrawal

5.07 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 or counterclaim; or
 - (b) withdraw a notice of defence.
- (2) A notice of discontinuance or withdrawal in accordance with Form 5A 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 a proceeding must not begin a similar proceeding for the same claim without the leave of the Court or the consent of the defendant.
- (5) The leave referred to in subrule (4) may be obtained by application without giving notice to the other party.

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 4.08:
 - (i) on the person who, under Division 2 of Part 4, 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 statement of claim; or

- (b) if the plaintiff sues in person – the address for service in Australia as stated in the statement of claim.
- (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 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) a copy of the order and of the originating process are to be sent without delay 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 No service Christmas Day or Good Friday

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

6.15 Declaration of service

- (1) A person serving a document other than a statement of claim or application for a re-hearing may file a declaration of service in accordance with Form 6A.
- (2) A person who makes a declaration of service must include in the declaration a description of each document served or annex to the declaration a copy of each document served.

Part 7 Statement of claim

7.01 Filing statement of claim

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.

7.02 Form and content

- (1) A statement of claim is to be in accordance with:
 - (a) Form 7A if the claim is for a debt or fixed amount of damages;
 - (b) Form 7B if the claim arises from a motor vehicle collision; or
 - (c) Form 7C in any other case.

- (2) A statement of claim is to:
- (a) state the full name of the plaintiff, 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, including the date on which and the place where the claim arose;
 - (iii) a statement of the relief or remedy sought;
 - (iv) in the case of a claim for a fixed 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 estimated 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.

7.03 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 for more than the jurisdictional limit may:
 - (a) 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.

7.04 Service

- (1) A statement of claim, including a notice of defence, is to be served personally on each defendant unless the Court orders otherwise.
- (2) The person who serves a statement of claim must:
 - (a) complete and sign the declaration of service included in a copy of the statement of claim; and
 - (b) file the copy of the statement of claim containing the declaration of service,not later than 21 days after serving the document.

7.05 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.

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 Part A of the statement of claim or Form 8A;
 - (b) state the full name and 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)(c), 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 after 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 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.

Part 9 Counterclaim

9.01 Defendant may counterclaim

- (1) A defendant who has a claim against the plaintiff may counterclaim in the proceeding by completing the part of a notice of defence that relates to a counterclaim.
- (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 Content

A counterclaim is to contain:

- (a) a concise statement of the nature of the defendant's claim;
- (b) particulars of the defendant's claim, including the date on which and the place where the claim arose; 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 Payment of money in satisfaction of claim**10.01 Payment to plaintiff in satisfaction of claim**

- (1) A plaintiff may, at any time before judgment, accept an amount of money in full satisfaction of the plaintiff's claim.
- (2) As soon as practicable after accepting an amount of money under subrule (1), the plaintiff must notify the Court in writing of the acceptance.
- (3) On receipt of written notification from the plaintiff, a Registrar must discontinue the proceeding.

10.02 Payment into Court of whole claim

- (1) A defendant may at any time before judgment pay into the Court, in full satisfaction of the claim, the amount of money claimed.
- (2) On receipt of money paid into the Court under subrule (1), a Registrar must:
 - (a) give the defendant a receipt for the money;
 - (b) pay out the money to the plaintiff; and

- (c) discontinue the action.

10.03 Payment into Court of part of claim

- (1) A defendant may at any time before judgment pay into the Court, in full satisfaction of the claim, an amount of money less than the amount claimed.
- (2) On receipt of money paid into the Court under subrule (1), a Registrar must:
 - (a) give the defendant a receipt for the money; and
 - (b) notify the plaintiff of the payment in accordance with Form 10A.
- (3) Not later than 14 days after the date of the notice of payment under subrule (2)(b), the plaintiff:
 - (a) may accept the payment of money in full satisfaction of the claim by completing and filing Part A of Form 10A; or
 - (b) may reject the payment by completing and filing Part B of Form 10A.
- (4) Where a plaintiff does not file an acceptance or rejection under subrule (3), he or she is taken to have rejected the payment of money.
- (5) If a plaintiff accepts the payment of money in accordance with subrule 3(a), a Registrar must:
 - (a) pay out the money to the plaintiff; and
 - (b) discontinue the claim.
- (6) If a plaintiff does not accept the payment of money, a Registrar must pay out the money to the defendant if requested by the defendant to do so.
- (7) If a plaintiff does not accept the payment of money and the defendant who paid the money into the Court does not request that the money be returned to him or her, the money is to be paid out only in accordance with an order of the Court.

Part 11 Admissions and offer to pay

11.01 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.

11.02 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.

11.03 Voluntary admission of facts and offer to pay

- (1) The defendant may:
 - (a) admit facts in favour of the plaintiff;
 - (b) admit liability for the plaintiff's entire claim; or
 - (c) admit liability for part of the plaintiff's claim.
- (2) The defendant admits facts or liability by:
 - (a) completing, filing and serving on the plaintiff Part B of the notice of defence; or
 - (b) filing and serving on the plaintiff a notice of admission in accordance with Form 11A.
- (3) A defendant who admits facts or liability under subrule (1) may offer to pay the plaintiff an amount of money, in full or by instalments, in satisfaction of the claim.
- (4) A defendant must sign a notice of admission in the presence of a witness who is not the plaintiff.
- (5) A witness referred to in subrule (4) must sign the notice of admission and write his or her name and address under the signature.

11.04 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 11B.
- (3) A party served with a notice under subrule (1) may dispute a fact specified in the notice by filing and serving, within the time expressed in that notice, a notice in accordance with Form 11C.
- (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).

11.05 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 11D.
- (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 11E.
- (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).

11.06 Costs of proof

Where a party:

- (a) serves a notice under rule 11.04(3) disputing a fact and later the fact is proved in the proceeding; or

- (b) serves a notice under rule 11.05(3) disputing the authenticity of a document and later its authenticity is proved in the proceeding,

subject to section 29 of the Act, the party must pay the costs of proof.

11.07 Judgment on admissions

- (1) A party may apply for judgment on the basis of admissions made by the other party.
- (2) Where a defendant has admitted the full claim but not paid money into court, a Registrar must enter judgment for the plaintiff.
- (3) Where a defendant has made an offer to pay that has been accepted by the plaintiff, a Registrar may enter judgment for the plaintiff to the extent of the defendant's offer.

Part 12 Order in default of defence

12.01 When party may apply for order

A party may apply for an order for default judgment in accordance with Form 12A:

- (a) where a defendant fails to file a notice of defence within 28 days after service of the statement of claim on the defendant; or
- (b) where the Court makes an order under rule 18.05(e) permitting the plaintiff or other party to proceed as if a notice of defence had not been filed.

12.02 Affidavit or statutory declaration required

- (1) Where an application under rule 12.01 relates to a claim:
 - (a) for a debt or demand for a fixed amount;
 - (b) to perform work;
 - (c) for relief from payment; or
 - (d) to return or replace goods,

the application is to be filed with a statutory declaration, stating the extent to which the claim is still unsatisfied, made not less than 7 days before filing the application.

- (2) Where an application under rule 12.01 relates to a claim not referred to in subrule (1), the application is to be filed with:
- (a) a statutory declaration or affidavit stating the extent to which the claim is unsatisfied, made not less than 7 days before filing the application; and
 - (b) 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 filing the application.

12.03 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.

12.04 Party may apply for re-hearing

A party against whom an order for default judgment is made may apply in accordance with Part 23 for the order to be set aside and for the proceeding to be re-heard.

Part 13 Joinder of claims and parties

13.01 Joinder of claims

- (1) Unless the Court orders otherwise, 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.

13.02 Joinder of parties

- (1) Unless the Court orders otherwise, 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.
- (3) A person must consent in writing, or in the manner the Court orders, to his or her joinder as a plaintiff.

13.03 Removal, addition or substitution of party

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

- (a) a person cease to be a party;
- (b) a person be added as a party; or
- (c) a person who is added as a party be substituted for a person who has ceased to be a party.

13.04 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 14 Applications**14.01 Definition**

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

14.02 Form of application

An application in a proceeding is to be:

- (a) in accordance with Form 14A 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.

14.03 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.

14.04 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 and, in any case, 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.

14.05 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.

14.06 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.

14.07 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 15 Affidavits and statutory declarations

15.01 Affidavit or statutory declaration may be used

An affidavit or statutory declaration may be used in a proceeding.

15.02 Form of affidavit or statutory declaration

- (1) An affidavit is to be in a form that complies with Part 22 of the *Local Court Rules*.
- (2) A statutory declaration is to be in a form that complies with the *Oaths Act*.

Part 16 Evidence

16.01 Manner of giving evidence

Unless the Court orders otherwise or these Rules provide otherwise, evidence at the hearing of a proceeding or application may be given:

- (a) orally;
- (b) by affidavit; or
- (c) by statutory declaration.

16.02 Inspection by Court

The Court may inspect a place, process or thing.

Part 17 Witness summons**17.01 Order to attend**

- (1) The Court may, by summons, order a person to attend at the hearing of a proceeding or 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) A witness summons is to be issued in accordance with Part 23 of the *Local Court Rules*.

Part 18 Prehearing conference**18.01 When prehearing conference held**

- (1) At any stage of a proceeding, the Court may order that a prehearing conference be held.
- (2) Unless the Court orders otherwise, a Registrar must fix a date, time and place for a prehearing conference
 - (a) on the filing of:
 - (i) a notice of defence without an offer to pay money in satisfaction of the claim; or
 - (ii) a notice rejecting money paid into the Court or an offer to pay;
 - (b) 14 days after the date of a notice of payment into the Court in accordance with Form 10A, if the plaintiff does not accept the payment; or
 - (c) 14 days after the filing of a notice of admission without an offer to pay,whichever occurs first.
- (3) Where a Registrar fixes a date, time and place for a prehearing conference, the Registrar must send a notice in accordance with Form 18A to each party.

18.02 Who to attend prehearing conference

- (1) Each party must attend 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 prehearing conference referred to in subrule (1)(b), (c) or (d) includes an authorisation to settle the matter 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 under rule 18.03, attend by teleconferencing.
 - (5) The Court may dispense with the requirement of attendance in person (whether physically or by teleconferencing) in special circumstances.

18.03 Attendance by teleconferencing

- (1) A party wishing to attend a 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 in the prehearing conference and pay the costs in connection with their use.

18.04 Procedure at prehearing conference

- (1) At a prehearing conference, the Court must clarify the issues in dispute and may:
 - (a) conciliate or mediate between the parties; or
 - (b) arbitrate the dispute under rule 18.07(1).
- (2) At a prehearing conference, the Court may:
 - (a) give the directions that it considers necessary for the expeditious determination of the proceeding;
 - (b) refer the parties to a mediation conference;
 - (c) adjourn the prehearing conference and fix a date, time and place for the adjourned conference; or
 - (d) fix a date, time and place for the hearing of the proceeding.
- (3) Where, at the time a notice of defence is filed:
 - (a) an application for an order for default judgment under Part 12 has been filed; and
 - (b) no order has been made under rule 12.03,at the prehearing conference, the Court must deal with:
 - (c) the application for default judgment; and
 - (d) the defence.

18.05 Consequences of failure to attend, &c.

If a party does not:

- (a) attend a prehearing conference after receiving notice to attend;
 - (b) prepare adequately for a prehearing conference; or
 - (c) comply with an order or a direction of the Court,
- 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) list the proceeding before a magistrate; or
- (g) make any other order it considers appropriate.

18.06 Order by consent

- (1) If the parties at a prehearing conference reach agreement, the Court may make an order in accordance with the terms the parties have consented to.
- (2) An order under this rule:
 - (a) is to be stated to be an order by consent; and
 - (b) has the same force and effect as if it had been made at the hearing of the proceeding.

18.07 Order by arbitration

- (1) If the parties at a prehearing conference consent, a magistrate or Judicial Registrar may arbitrate the dispute.
- (2) An order under this rule:
 - (a) is to be stated to be pursuant to an arbitration by request; and
 - (b) has the same force as if it had been made at the hearing of the proceeding.

18.08 Confidentiality

Unless the parties consent, evidence of things said or admissions made by a party in the course of conciliation or mediation during a prehearing 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.

Part 19 Hearing

19.01 Fixing date for hearing

At any stage of a proceeding, the Court may fix a date for the hearing of the proceeding by serving on each party a notice in accordance with Form 19A.

19.02 Directions

The Court may give directions relating to the conduct of the hearing of a proceeding.

19.03 Adjournment

At any stage of a proceeding, the Court may adjourn the proceeding:

- (a) to a time and place that is fixed or is to be fixed by the Court;
or
- (b) indefinitely.

19.04 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 under section 29 of the Act.

19.05 Party may apply for re-hearing

A party against whom an order is made under rule 19.04(a)(i) or (ii) may apply in accordance with Part 23 to have the order set aside and the proceeding re-heard.

19.06 Financial resources

At any stage of a proceeding after judgment, admission of liability or finding of liability, the Court may examine a party on his or her ability to pay money or otherwise satisfy a claim or counterclaim.

Part 20 Assessment of damages or value of goods**20.01 Interpretation**

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

20.02 When order for assessment may be made

- (1) At any stage of a proceeding, the Court may order damages to be assessed.
- (2) A Registrar may order damages to be assessed:
 - (a) on the filing of an admission of liability under Part 11;
 - (b) on making an order for default judgment under Part 12; or
 - (c) on making a consent order under Part 18 or 21.

20.03 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.

20.04 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 20A not later than 14 days before the date fixed for the assessment.

20.05 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.

20.06 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 under Part 17.

20.07 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 21 Orders**21.01 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.

21.02 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.

21.03 Form of order

- (1) An order of the Court, whether final or otherwise is to be:
 - (a) in accordance with Form 21A;
 - (b) signed by a magistrate or Registrar; and
 - (c) sealed by the Court.
- (2) The Court must forward a sealed order to each party.

21.04 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 payable under regulation 5(1) of the *Small Claims Regulations*, the Court must provide the certified copy.

21.05 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.

21.06 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 21B; 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.

21.07 Party may apply for re-hearing

A party who applies under section 20 of the Act to have a final order set aside and a re-hearing of the proceeding must do so in accordance with Part 23.

Part 22 instalment orders

22.01 Definitions

In this Part:

judgment creditor means a person to whom a judgment debt is owed.

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 a person who is liable to pay a judgment debt.

22.02 Instalment order

- (1) The Court may order that a judgment debtor pay a judgment debt by instalments.

- (2) An instalment order may be made:
 - (a) by the Court of its own motion; or
 - (b) on the application of a party.
- (3) While an instalment order is being complied with, it operates as a stay of enforcement of the judgment concerned.
- (4) Failure to comply with an instalment order does not terminate the stay of enforcement referred to in subsection (3) until the failure has continued for 14 days.

22.03 Application for instalment order

- (1) Where a judgment creditor or judgment debtor applies for an instalment order, he or she must file an application in accordance with Form 22A.
- (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 22B.
- (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 22C or 22D, 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 enforcement unless the Court orders otherwise.

22.04 Registrar may make or refuse to make order

- (1) A Registrar must consider an application filed under rule 22.03 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 22E, of an order made under subrule (1)(a); or
 - (b) a notice, in accordance with Form 22F, of refusal to make an order under subrule (1)(b).

22.05 Notice of objection

- (1) Not later than 14 days after the date of:
 - (a) the order made under rule 22.04(1)(a); or
 - (b) the notice given under rule 22.04(b),

the judgment creditor or judgment debtor may object to the order or refusal by filing a notice in accordance with Form 22G.
- (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.

22.06 Judgment debtor to produce documents

At the hearing of an objection referred to in rule 22.05(2), the judgment debtor must produce the documents necessary to prove the statements in the judgment debtor's declaration of financial circumstances.

22.07 Consent to instalment order

A person on whom an application is served under rule 22.03(5) may consent to the order sought by filing and serving a notice of consent in accordance with Form 22H.

22.08 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 22J; 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 23 Re-hearing

23.01 Application for re-hearing

- (1) A party may apply for an order under section 20 of the Act that a final order be set aside and the proceeding be re-heard.
- (2) An application referred to in subrule (1) is to be in accordance with Form 23A.
- (3) 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 a final order.

23.02 Service

- (1) A copy of the application and affidavit is to be served personally on each other party unless the Court orders otherwise.
- (2) The person who serves an application under subrule (1) must:
 - (a) complete and sign the declaration of service included in a copy of the application; and
 - (b) file the copy of the application containing the declaration of service,as soon as practicable after service.

23.03 Terms of order

The Court may order that a final order in a proceeding be set aside on the terms the Court considers appropriate.

23.04 Re-hearing date

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

Part 24 Costs**24.01 Application of *Local Court Rules***

Part 38 of the *Local Court Rules* applies with the necessary changes to a costs order under section 29 of the Act.

Part 25 Interest on judgment and costs**25.01 Definition**

In this Part, **taxation** means a taxation of costs under Part 38 of the *Local Court Rules*.

25.02 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.

25.03 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.

25.04 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 demand for a fixed amount (whether or not another claim is also made in the proceeding); and
 - (b) the plaintiff is entitled under Part 12 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 any 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.

25.05 No interest while instalment order in force

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

Part 27 Enforcement

27.01 Enforcement under *Local Court Rules*

A judgment or order of the Court in a proceeding is to be enforced in accordance with Chapter 2 of the *Local Court Rules*.

Part 28 Repeal

28.01 Repeal

The *Small Claims Rules* (Regulations 1989, No. 12 and 1992,

No. 49) as in force immediately before the commencement of these Rules are repealed.

Schedule 1 Forms

rule 3.07(1)

FORM 4A
Small Claims Act

rule 4.11(2)

CONSENT TO BE LITIGATION GUARDIAN

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between full name
the plaintiff:

..... address

and full name
the defendant:

..... address

.....

TO THE REGISTRAR

I,
(full name of litigation guardian)

of
(address)

have consented to my appointment as the litigation guardian of
(name of person under disability)

The above-named is a person under a disability for the following reason:

I declare that I have no interest in this proceeding that is adverse to the
interest of the person under a disability named above.

.....
(signature of litigation guardian)

Dated: (e.g. 5 March 1998).

FORM 5A
Small Claims Act

rule 5.07(2)

NOTICE OF DISCONTINUANCE OR WITHDRAWAL

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between	full name
the plaintiff:	
.....	address
.....	
and	full name
the defendant:	
.....	address
.....	

TO THE * DEFENDANT/PLAINTIFF *
ADDRESS:
AND TO THE COURT

The * defendant/plaintiff * gives notice that:

* the * claim/counterclaim * is discontinued.

* the notice of defence is withdrawn.

Dated:

.....
*signature of * plaintiff/defendant **

* 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 6A
Small Claims Act

rule 6.15

DECLARATION OF SERVICE

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between	full name
the plaintiff:	
.....	address
.....	
and	full name
the defendant:	
.....	address
.....	

I,
(full name)
of
(address)
do solemnly and sincerely declare that I served

(name of person served)

* with the original of the document/s that is/are annexed to this declaration.

* with (give a description of the document/s)

(Complete the following for personal service.)

I served the person named above at
(place)
at on
(time) (day) (date) (month) (year)

* by handing it to that person.

* by putting it down in the person's presence and telling that person the nature of the document.

The person named above is:

* the plaintiff/the defendant *

* a director of the * plaintiff/defendant * corporation. #

* a partner of the * plaintiff/defendant * firm/* a person at the * plaintiff/defendant * firm's place of business who is apparently in the service of the person carrying on business and who is apparently of or above the age of 16 years/* the resident agent of the * plaintiff/defendant * firm/ a person

apparently in the service of the resident agent of the * plaintiff/defendant * firm and who is apparently of or above the age of 16 years *.

I identified the person named above as follows:

* by * leaving it at/sending it by post to * the registered office of the * plaintiff/defendant * corporation.

* by * leaving it at/sending it by post to * the office of the * liquidator/official manager * of the * plaintiff/ defendant * corporation.

* by sending it * by registered post/as certified mail * addressed to the * plaintiff/defendant * firm at its * place of business/ resident agent's address in the Territory *.

* Annexed hereto and marked "A" is a true copy of the document evidencing service of the statement of claim by mail.

(Complete the following for ordinary service.)

I served the document referred to above by – *(Give facts and relevant dates and annex any documents in support.)*

(Complete the following in all cases.)

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)

.....
Signature of person making declaration

* Delete if inapplicable.

Where a document is served personally on the directors, it must be served on each of 2 directors who reside in Australia or the External Territories unless the corporation has only 1 director.

NO WITNESS IS REQUIRED FOR THIS DECLARATION

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.

FORM 7A
Small Claims Act

rule 7.02(1)(a)

STATEMENT OF CLAIM FOR DEBT OR DAMAGES

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between full name
the plaintiff:
(*person* address
claiming money) for service
.....
and name
the defendant:
(*person* address
claimed against)
.....

TO THE DEFENDANT

The plaintiff claims that you owe the plaintiff the amount of \$ on the following grounds: (*Give a concise statement of the nature and particulars of your claim and how the amount claimed is calculated or estimated.*)

Date claim arose:

Place claim arose:

The plaintiff seeks an order by the Court that you pay \$ to the plaintiff.

Is interest claimed under a written agreement? * Yes/No *
If yes, at what rate:

.....
Signature of plaintiff

Filed:

Registrar

(*Please print legibly.*)

Name of plaintiff's solicitor (if any):

Solicitor's reference number:

Name, business address, telephone and facsimile numbers of solicitor's firm:

If solicitor acting as agent – name, business address, telephone and facsimile numbers of agent:

INSTRUCTIONS FOR DEFENDANT – PLEASE READ CAREFULLY

1. If you wish to defend the claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim:
 - (a) complete part A of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.

2. If you wish to admit all or part of the claim or make an offer to pay **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim:
 - (a) complete Part B of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.If you make an offer to pay less than the full claim, you should also defend the remainder of the claim.

3. If you have a claim against the plaintiff **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim: and
 - (a) complete Part C and either Part A or Part B of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.

4. If you do not take one of the above steps within 28 days, the plaintiff may obtain an order against you and may enforce the order against your property.

Warning: IF THE PLAINTIFF OBTAINS AN ORDER AGAINST YOU AND 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.

5. If you have to go to Court, a notice will be sent to your address for service.

 6. If you are uncertain about what to do, contact the Court. A Guide to Small Claims is available free from the Court to assist you.
-

PART A

rule 8.02(1)(a)

NOTICE OF DEFENCE

TO THE PLAINTIFF

I intend to defend the claim against me on the following grounds: *(State your defence(s) and the particulars of defence, including a summary of facts on which you rely.)*

COUNTERCLAIM

rule 9.01(1)

(Complete if you have a claim against the plaintiff.)

The defendant claims against you:

- * the amount of \$
- * an order for:

The claim is made on the following grounds: *(Give a concise statement of the nature of your claim and the facts on which it is based.)*

Date claim arose:

Place claim arose:

.....
Signature of Defendant

Name:

Filed:

Registrar

(Please print legibly.)

Defendant's address for service:

Name of defendant's solicitor (if any):

Solicitor's reference number:

Name, business address, telephone and facsimile numbers of solicitor's firm:

If solicitor acting as agent – name, business address, telephone and facsimile numbers of agent:

Not later than 28 days after the date of service, the person serving these documents must return one copy to the Court with the declaration of service below completed and signed.

DECLARATION OF SERVICE

rule 7.04(2)

I,
 (*full name*)
of
 (*address*)

do solemnly and sincerely declare that I served

(*name of person served*)
with a copy of this statement of claim:

* at
 (*place*)
at on
 (*time*) (*day*) (*date*) (*month*) (*year*)

* by handing it to that person.

* by putting it down in the person's presence and telling that person the nature of the document.

The person named above is:

* the defendant.

* a director of the defendant corporation. #

* a partner of the defendant firm /* a person at the defendant firm's place of business who is apparently in the service of the person carrying on business in the name of the defendant and who is apparently of or above the age of 16 years/* the resident agent of the defendant firm/ a person apparently in the service of the resident agent of the defendant firm and who is apparently of or above the age of 16 years *.

I identified the person named above as follows:

* by * leaving it at/sending it by post to * the registered office of the defendant corporation.

* by * leaving it at/sending it by post to * the office of the * liquidator/official manager * of the defendant corporation.

* by sending it * by registered post/as certified mail * addressed to the defendant firm at its * place of business/ resident agent's address in the Territory *.

* Annexed hereto and marked "A" is a true copy of the document evidencing service of the statement of claim by mail.

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)

.....
Signature of person making declaration

* Delete if inapplicable.

Where a statement of claim is served personally on the directors, it must be served on each of 2 directors who reside in Australia or the External Territories unless the corporation has only 1 director.

NO WITNESS IS REQUIRED FOR THIS DECLARATION

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.

FORM 7B
Small Claims Act

rule 7.02(1)(b)

STATEMENT OF CLAIM ARISING FROM MOTOR VEHICLE COLLISION

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between name
the plaintiff: address
(person claiming for service
money)

and name
the defendant: address
(person claimed
against)

TO THE DEFENDANT

The plaintiff claims that you owe the plaintiff the amount of \$ in respect of a motor vehicle collision on the following grounds: (*Give particulars – see notes for plaintiff.*)

The plaintiff seeks an order by the Court that you pay \$ to the plaintiff.

.....
Signature of plaintiff

Filed:

Registrar

(Please print legibly.)

Name of plaintiff's solicitor (if any):

Solicitor's reference number:

Name, business address, telephone and facsimile numbers of solicitor's firm:

If solicitor acting as agent – name, address, telephone and facsimile numbers of agent:

INSTRUCTIONS FOR DEFENDANT – PLEASE READ CAREFULLY

1. If you wish to defend the claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim:
 - (a) complete part A of this document; and
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.

2. If you wish to admit all or part of the claim or make an offer to pay **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim:
 - (a) complete Part B of this document; and
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.If you make an offer to pay less than the full claim, you should also defend the remainder of the claim.

3. If you have a claim against the plaintiff **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim: and
 - (a) complete Part C and either Part A or Part B of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.

4. If you do not take one of the above steps within 28 days, the plaintiff may obtain an order against you and may enforce the order against your property.

Warning: IF THE PLAINTIFF OBTAINS AN ORDER AGAINST YOU AND 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.

5. If you have to go to Court, a notice will be sent to your address for service.

 6. If you are uncertain about what to do, contact the Court. A Guide to Small Claims is available free from the Court to assist you.
-

PART A

rule 8.02(1)(a)

NOTICE OF DEFENCE

TO THE PLAINTIFF

I intend to defend the claim against me on the following grounds: (*State your defence(s) and the particulars of defence, including a summary of facts on which you rely.*)

COUNTERCLAIM

rule 9.01(1)

(*Complete if you have a claim against the plaintiff.*)

The defendant claims against you:

* the amount of \$

* an order for:

The claim is made on the following grounds: (*Give concise statement of the nature of the claim and the facts on which it is based.*)

.....
Signature of Defendant

Name:.....

Filed:

Registrar

(*Please print legibly.*)

Defendant's address for service:

Name of defendant's solicitor (if any):

Solicitor's reference number:

Name, business address, telephone and facsimile numbers of solicitor's firm:

If solicitor acting as agent – name, business address, telephone and facsimile numbers of agent:

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? (*You must attach an itemised quotation giving full details of damage.*)

SERVICE OF CLAIM

This Statement of Claim is to be served **personally** on the defendant. You may serve the form or arrange for service by a private bailiff or licensed process server.

This form is to be served not later than 12 months after the filing date. If you cannot serve the defendant in this time, contact the Court staff for advice.

If you wish to serve the document outside the Northern Territory, contact the Court staff for advice.

Not later than 28 days after the date of service, the person serving these documents must return one copy to the Court with the declaration of service below completed and signed.

DECLARATION OF SERVICE

rule 7.04(2)

I,
 (full name)
of
 (address)

do solemnly and sincerely declare that I served

(name of person served)
with a copy of this statement of claim:

* at
 (place)
at on
 (time) *(day)* *(date)* *(month)* *(year)*

* by handing it to that person.

* by putting it down in the person's presence and telling that person the nature of the document.

The person named above is:

* the defendant.

* a director of the defendant corporation. #

* a partner of the defendant firm /* a person at the defendant firm's place of business who is apparently in the service of the person carrying on business in the name of the defendant and who is apparently of or above the age of 16 years/* the resident agent of the defendant firm/ a person apparently in the service of the resident agent of the defendant firm and who is apparently of or above the age of 16 years *.

I identified the person named above as follows:

* by * leaving it at/sending it by post to * the registered office of the defendant corporation.

* by * leaving it at/sending it by post to * the office of the * liquidator/official manager * of the defendant corporation.

* by sending it * by registered post/as certified mail * addressed to the defendant firm at its * place of business/ resident agent's address in the Territory *.

* Annexed hereto and marked "A" is a true copy of the document evidencing service of the statement of claim by mail.

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)

.....
Signature of person making declaration

* Delete if inapplicable.

Where a statement of claim is served personally on the directors, it must be served on each of 2 directors who reside in Australia or the External Territories unless the corporation has only 1 director.

NO WITNESS IS REQUIRED FOR THIS DECLARATION

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.

FORM 7C
Small Claims Act

rule 7.02(1)(c)

STATEMENT OF CLAIM FOR WORK TO BE DONE, GOODS TO BE RETURNED OR REPLACED, &c.

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between	.....	name
the plaintiff:		
(person making	.....	address
claim)		for service
	
and	.....	name
the defendant:		
(person claimed	.....	address
against)		
	

TO THE DEFENDANT

The plaintiff claims: *(Give particulars of claim.)*

Date claim arose:

Place claim arose:

The plaintiff seeks an order by the Court that:

Is interest claimed under a written agreement? * Yes/No *

If yes, at what rate:

.....
Signature of plaintiff

Filed:

Registrar

* Delete if inapplicable.

(Please print legibly.)

Name of plaintiff's solicitor (if any):

Solicitor's reference number:

Name, business address, telephone and facsimile numbers of solicitor's firm:

If solicitor acting as agent – name, business address, telephone and facsimile numbers of agent:

INSTRUCTIONS FOR DEFENDANT – PLEASE READ CAREFULLY

1. If you wish to defend the claim **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim:
 - (a) complete part A of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.

2. If you wish to admit all or part of the claim or make an offer to pay **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim:
 - (a) complete Part B of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.If you make an offer to pay less than the full claim, you should also defend the remainder of the claim.

3. If you have a claim against the plaintiff **YOU MUST, NOT LATER THAN 28 DAYS** after being served with this claim: and
 - (a) complete Part C and either Part A or Part B of this document;
 - (b) return a copy of the document to the Court; and
 - (c) serve a copy of the document on the plaintiff.

4. If you do not take one of the above steps within 28 days, the plaintiff may obtain an order against you and may enforce the order against your property.

Warning: IF THE PLAINTIFF OBTAINS AN ORDER AGAINST YOU AND 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.

5. If you have to go to Court, a notice will be sent to your address for service.

 6. If you are uncertain about what to do, contact the Court. A Guide to Small Claims is available free from the Court to assist you.
-

PART A

rule 8.02(1)(a)

NOTICE OF DEFENCE

TO THE PLAINTIFF

I intend to defend the claim against me on the following grounds: (*State your defence(s) and the particulars of defence, including a summary of facts on which you rely.*)

COUNTERCLAIM

rule 9.01(1)

(*Complete if you have a claim against the plaintiff.*)

The defendant claims against you:

- * the amount of \$
- * an order for:

The claim is made on the following grounds: (*Give a concise statement of the nature of the claim and the facts on which it is based.*)

Date claim arose:

Place claim arose:

.....
Signature of Defendant

Name:

Filed:

Registrar

* Delete if inapplicable.

(*Please print legibly.*)

Defendant's address for service:

Name of defendant's solicitor (if any):

Solicitor's reference number:

Name, business address, telephone and facsimile numbers of solicitor's firm:
If solicitor acting as agent – name, business address, telephone and facsimile numbers of agent:

Not later than 28 days after the date of service, the person serving these documents must return one copy to the Court with the declaration of service below completed and signed.

DECLARATION OF SERVICE

rule 7.04(2)

I,
 (full name)
of
 (address)

do solemnly and sincerely declare that I served

(name of person served)
with a copy of this statement of claim:

* at
 (place)
at on
 (time) *(day)* *(date)* *(month)* *(year)*

* by handing it to that person.

* by putting it down in the person's presence and telling that person the nature of the document.

The person named above is:

* the defendant.

* a director of the defendant corporation. #

* a partner of the defendant firm /* a person at the defendant firm's place of business who is apparently in the service of the person carrying on business in the name of the defendant and who is apparently of or above the age of 16 years/* the resident agent of the defendant firm/ a person apparently in the service of the resident agent of the defendant firm and who is apparently of or above the age of 16 years *.

I identified the person named above as follows:

* by * leaving it at/sending it by post to * the registered office of the defendant corporation.

* by * leaving it at/sending it by post to * the office of the * liquidator/official manager * of the defendant corporation.

* by sending it * by registered post/as certified mail * addressed to the defendant firm at its * place of business/ resident agent's address in the Territory *.

* Annexed hereto and marked "A" is a true copy of the document evidencing service of the statement of claim by mail.

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)

.....
Signature of person making declaration

* Delete if inapplicable.

Where a statement of claim is served personally on the directors, it must be served on each of 2 directors who reside in Australia or the External Territories unless the corporation has only 1 director.

NO WITNESS IS REQUIRED FOR THIS DECLARATION

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.

FORM 18A
Small Claims Act

rule 18.01(3)

NOTICE OF PREHEARING CONFERENCE

[Heading as in originating process]

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.

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 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 a party 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 19A
Small Claims Act

rule 19.01

NOTICE OF HEARING

[Heading as in originating process]

TO ALL PARTIES

The hearing of this proceeding 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.

Issued:

Registrar

FORM 20A
Small Claims Act

rule 20.04(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 21A
Small Claims Act

rule 21.03(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:

[terms of order]

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 21B
Small Claims Act

rule 21.06(2)(a)

NOTICE OF CONSENT TO ORDER

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between	full name
the plaintiff:	
.....	address
.....	
and	full name
the defendant:	
.....	address
.....	

TO THE COURT

The * plaintiff/defendant * consents to the Court making an order that: (set out *terms of order*)

Dated:

.....
Signature of * plaintiff/defendant *

* Delete if inapplicable.

FORM 22A
Small Claims Act

rule 22.03(1)

**APPLICATION FOR ORDER FOR PAYMENT OF JUDGMENT DEBT BY
INSTALMENTS**

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the	.....	full name
judgment creditor:	.....	address
	
and the	.....	full name
judgment debtor:	.....	address
	

TO A REGISTRAR
AND * JUDGMENT CREDITOR / JUDGMENT DEBTOR *

This application is made by the * judgment creditor/ judgment debtor * with respect to the order dated # made in the Local Court that the judgment debtor must pay the judgment creditor \$.

\$ 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 applicant's address for service is:

The usual or last-known place of residence or of business or registered office of the * judgment debtor/judgment creditor * is:

Dated:

.....
Signature of applicant

* Delete if inapplicable and re-number as required.

Enter date of order.

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 22C or 22D. 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 22H.

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 22B
Small Claims Act

rule 22.03(2)

**APPLICATION FOR VARIATION OR CANCELLATION OF ORDER FOR
PAYMENT OF JUDGMENT DEBT BY INSTALMENTS**

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the	.....	full name
judgment creditor:	.....	address
	
and the	.....	full name
judgment debtor:	.....	address
	

TO A REGISTRAR
AND THE * JUDGMENT CREDITOR/ JUDGMENT DEBTOR *

This application is made by the * judgment creditor/ judgment debtor * with respect to the order dated # made in the Local Court that the judgment debtor must pay the judgment creditor * \$.

On # 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 # and on # .
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 instalment order made on #

* be varied as follows: *(Give particulars of variation sought stating amount of each instalment, weekly, monthly or other period for payment, 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 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:

.....
Signature of applicant

* Delete if inapplicable. Re-number if required.

Enter date.

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 22C or 22D. 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 22H.

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 22C
Small Claims Act

rule 22.03(4)

JUDGMENT DEBTOR'S DECLARATION OF FINANCIAL CIRCUMSTANCES

(Where judgment debtor is not a corporation.)

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the	.....	full name
judgment creditor:	.....	address for service
	
and the	.....	full name
judgment debtor:	.....	address
	

TO THE JUDGMENT DEBTOR
OF:

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 the judgment creditor at address for service below not later than 7 days before the date of the oral examination to which you have been summoned by the Court.

.....
Signature of judgment creditor

Judgment creditor's address for service:

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 deposits with ADIs (e.g. banks, credit unions or building societies), debentures etc.:

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:

Deposits in ADIs (e.g. banks, credit unions, building societies etc.):

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):

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 22D
Small Claims Act

rule 22.03(4)

JUDGMENT DEBTOR'S DECLARATION OF FINANCIAL CIRCUMSTANCES

(Where the judgment debtor is a corporation.)

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the	.....	full name
judgment creditor:	.....	address for service
	
and the	.....	full name
judgment debtor:	.....	address
	

TO THE JUDGMENT DEBTOR
OF:

The appropriate officer of the judgment debtor, authorised by the 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 the judgment creditor at the judgment creditor's address for service not later than 7 days before the date of the oral examination to which you have been summoned by the Court.

.....
Signature of judgment creditor

DECLARATION

I,
(full name)
the
(state office held e.g. director, secretary)
of
(name of corporation)

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 deposits in ADIs (e.g. banks, credit unions or building society), debentures etc.:

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:

Deposits in ADIs (e.g. banks, credit unions, building societies etc.):

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. If any of the assets referred to in paragraph 2 is owned jointly, identify each asset and give the name of the other owner or owners:

5. If any of the debts referred to in paragraph 3 is due jointly, identify each debt 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 22E
Small Claims Act

rule 22.04(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.

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 22G 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 22F
Small Claims Act

rule 22.04(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 22G at the Court and serve a copy on the other party.

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 22G
Small Claims Act

rule 22.05(1)

**NOTICE OF OBJECTION
TO ORDER OR REFUSAL TO MAKE ORDER FOR PAYMENT, VARIATION
OR CANCELLATION OF JUDGMENT DEBT BY INSTALMENTS**

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the	.....	full name
judgment creditor:	.....	address
	
and the	.....	full name
judgment debtor:	.....	address
	

TO A REGISTRAR
AND * JUDGMENT CREDITOR/JUDGMENT DEBTOR *

I,
(full name of person objecting)
the * judgment creditor/judgment debtor * object to the Court:

* making the order dated #

* refusing to make an order as notified in the notice dated #

I object on the following grounds: (*State grounds of objection.*)

.....
Signature of applicant

The hearing of this objection has been listed to take place at the Court at at a.m./p.m. on or as soon afterwards as the business of the Court allows.

The address for service of the person objecting is:

The usual or last-known place of residence or of business or registered office of the * judgment debtor/judgment creditor * is:

Filed:

Registrar

* Delete if inapplicable.

Enter date.

NOTICE TO JUDGMENT DEBTOR: To prove your statutory declaration of financial circumstances and for the Court to fully examine your ability to pay the money owing, you must bring to the hearing documents such as pay slips, tax returns, bank account statements and passbooks, rent slips, statement of unemployment/sickness/disability benefits or any other document which may be of assistance to the Court. If you do not bring these documents, the Court may adjourn the hearing and order you to produce them.

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 22H
Small Claims Act

rule 22.07

**NOTICE OF CONSENT TO ORDER RELATING TO PAYMENT OF DEBT
BY INSTALMENTS**

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the	.....	full name
judgment creditor:	.....	address
	
and the	.....	full name
judgment debtor:	.....	address
	

TO THE COURT

The * judgment creditor/judgment debtor * consents to the Court making an order that: (*Set out terms of order.*)

Dated:

.....
Signature of * judgment creditor/judgment debtor *

* Delete if inapplicable.

FORM 22J
Small Claims Act

rule 22.08(3)(a)

INSTALMENT AGREEMENT

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between the full name
judgment creditor: address
..... for service
.....
and the full name
judgment debtor: address
..... for service
.....

1. This agreement is made between the judgment creditor of +
and the judgment debtor of +
with respect to the order dated # 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
 - \$, the amount of interest.
3. The parties agree that the judgment debtor will pay and the
judgment creditor will accept payment of the amount owing under
the order by instalments as follows:
 - (a)

(number of instalments)
 - (b)

(amount of each instalment)

(c)

(weekly, monthly or other period for payment)

(d)

(dates of payment of first and 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:

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:

+ Enter the usual place of residence or of business or registered office.

* Delete if inapplicable and re-number where required.

Enter date.

FORM 23A
Small Claims Act

rule 23.01(2)

APPLICATION FOR ORDER TO BE SET ASIDE AND RE-HEARING

IN THE LOCAL COURT
AT
(PLACE)

Claim No.

Between	full name
the plaintiff:	
.....	address
	for service
.....	
and	full name
the defendant:	
.....	address
	for service
.....	

TO THE COURT
AND TO
(NAME AND ADDRESS OF OTHER PARTY TO PROCEEDING)

The * plaintiff/defendant * applies to the Court for an order that the order made by the Court on # be set aside and the proceeding be re-heard as soon as possible.

* On # the Court made an order for default judgment against me as follows: (*Set out terms of order.*)

I did not file a notice of defence in the above proceeding for the reasons stated in the affidavit filed with this application. The affidavit also states my intention to defend the claim and the particulars of my defence.

(OR)

* I did not appear at the Court in the above proceeding on # . In my absence, the Court made an order against me as follows: (*Set out terms of order.*)

I did not appear in the proceeding for the reasons stated in the affidavit filed with this application.

(OR)

* On # I consented to the following order being made: (*Set out terms of order.*)

I consented to the final order for the reasons stated in the affidavit filed with this application.

.....
Signature of applicant

The hearing of this application has been listed to take place at the Court at _____ at _____ a.m./p.m. on _____ or as soon afterwards as the business of the Court allows.

Filed:

Registrar

* Delete if inapplicable.

Enter date.

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.

DECLARATION OF SERVICE

rule 23.02(a)

I,
 (full name)
of
 (address)
do solemnly and sincerely declare that I served

(name of person served)
with a copy of this application:

* at
 (place)
at on
 (time) *(day)* *(date)* *(month)* *(year)*

* by handing it to that person.

* by putting it down in the person's presence and telling that person the nature of the document.

The person named above is:
* the plaintiff/the defendant *.
* a director of the * plaintiff/defendant * corporation. #

* a partner of the * plaintiff/defendant * firm/* a person at the * plaintiff/defendant * firm's place of business who is apparently in the service of the person carrying on business and who is apparently of or above the age of 16 years/* the resident agent of the * plaintiff/defendant * firm/ a person apparently in the service of the resident agent of the * plaintiff/defendant * firm and who is apparently of or above the age of 16 years *.

I identified the person named above as follows:

* by * leaving it at/sending it by post to * the registered office of the * plaintiff/defendant * corporation.

* by * leaving it at/sending it by post to * the office of the * liquidator/official manager * of the * plaintiff/ defendant * corporation.

* by sending it * by registered post/as certified mail * addressed to the * plaintiff/defendant * firm at its * place of business/ resident agent's address in the Territory *.

* Annexed hereto and marked "A" is a true copy of the document evidencing service of the statement of claim by mail.

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)

.....
Signature of person making declaration

* Delete if inapplicable.

Where an application is served personally on the directors, it must be served on each of 2 directors who reside in Australia or the External Territories unless the corporation has only 1 director.

NO WITNESS IS REQUIRED FOR THIS DECLARATION

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.

Schedule 2

rule 26.01(1)

Document in respect of which filing fee is prescribed	Fee
Statement of claim	\$65
Application for a re-hearing under Part 23	\$50

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Small Claims Rules (SL No. 6, 1998)***

Notified	20 May 1998
Commenced	1 June 1998 (r 1.02, s 2 <i>Small Claims Amendment Act 1997</i> (Act No. 21, 1997) and <i>Gaz G19</i> , 20 May 1998, p 2)

Amendment of Small Claims Rules (SL No. 38, 1998)

Notified	7 October 1998
Commenced	7 October 1998

Amendments of Small Claims Rules (SL No. 27, 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)

Amendments of Small Claims Rules (SL No. 55, 2001)

Notified	13 February 2002
Commenced	13 February 2002 (r 1, s 2 <i>Small Claims Amendment Act 2001</i> (Act No. 63, 2001), s 2 <i>Local Court Amendment Act 2001</i> (Act No. 64, 2001) and <i>Gaz G6</i> , 13 February 2002, p 4)

Statute Law Revision Act 2002 (Act No. 18, 2002)

Assent date	7 June 2002
Commenced	7 June 2002

Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)

Assent date	13 September 2002
Commenced	30 October 2002 (<i>Gaz G43</i> , 30 October 2002, p 3)

3

LIST OF AMENDMENTS

r 1.06	amd Act No. 17, 2001, s 16; Act No. 18, 2002, s 8
r 1.12	rep No. 55, 2001, r 3
r 3.05	amd No. 27, 2001, r 2
r 6.04	amd Act No. 17, 2001, s 16
r 6.05	amd No. 27, 2001, r 5; Act No. 17, 2001, s 16
r 6.15	amd No. 27, 2001, r 3
r 21.04	amd No. 55, 2001, r 4
r 23.05	rep No. 55, 2001, r 5
pt 26 hdg	rep No. 55, 2001, r 5
rr 26.01 – 26.04	rep No. 55, 2001, r 5
sch 1	amd No. 27, 2001, rr 4 and 5; Act No. 38, 2002, s 7
sch 2	amd No. 38, 1998