

NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT RULES

As in force at 1 January 1997

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FORMS

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 1997

SUPREME COURT RULES

Rules under the *Supreme Court Act*

Chapter 1 **General Rules of procedure in civil proceedings**

Order 1 **Preliminary**

Part 1 **Application of Chapter**

1.01 **Definitions**

In this Part:

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

former Rules means the Rules of the Supreme Court as in force immediately before the commencement date.

pending proceeding means a civil proceeding in the Court to which, immediately before the commencement date, the former Rules applied.

1.02 **Application**

- (1) Subject to subrule (3), this Chapter applies to every civil proceeding commenced in the Court on or after the commencement date.
- (2) Subject to this Part, this Chapter, with the necessary changes, applies to a pending proceeding, and anything required or permitted to be done under this Chapter with respect to a proceeding commenced on or after the commencement date shall or may be done in a pending proceeding.
- (3) This Chapter does not apply to a civil proceeding commenced in the Court on or after the commencement date to which any other Rules of the Supreme Court apply except as those other Rules provide.

- (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 Part, anything so done or omitted to be done before the commencement date shall be taken to have been done or omitted under this Chapter.
- (5) Where the time for entering an appearance in a pending proceeding is limited by the originating process in the proceeding and, before the commencement date, a defendant had not entered an appearance in the proceeding, the time limited for the purpose of the filing by the defendant of an appearance under this Chapter is the time limited in the originating process.
- (6) If before the commencement date an originating process issued in a pending proceeding for service on a defendant out of the Territory had not been served on that defendant, the former Rules continue to apply with respect to the service of the originating process on the defendant out of the Territory as if this Chapter had not been made and, in particular:
 - (a) the Court may make an order authorizing service of the originating process on the defendant out of the Territory;
 - (b) nothing in this Chapter affects an order authorizing such service made before the commencement date; and
 - (c) if the defendant is served out of the Territory in accordance with an order of the Court and does not file an appearance within the time limited, the plaintiff is entitled to enter or apply for judgment, and Order 21, with the necessary changes, applies as if the proceeding had been commenced by writ after the commencement date and the writ had been served on the defendant within the Territory.
- (6.1) Where originating process issued in a pending proceeding has not been served on a defendant who is out of the Territory, the former Rules continue to apply with respect to the service of the originating process on the defendant out of the Territory as if these Rules had not been made.
- (7) If an endorsement of claim on a writ of summons in a pending proceeding did not stand in place of or otherwise constitute a statement of claim under the former Rules, then, in respect of a defendant to whom the plaintiff had not delivered a statement of claim before the commencement date, the plaintiff shall serve a statement of claim on that defendant:

- (a) if the defendant entered an appearance before the commencement date – within 14 days after the commencement date; or
 - (b) if the defendant files an appearance after the commencement date – within 14 days after appearance.
- (8) An endorsement of claim on a writ of summons in a pending proceeding which stood in place of or otherwise constituted a statement of claim under the former Rules shall be taken to be a statement of claim for the purposes of these Rules.

1.03 Jurisdiction not affected

Nothing in this Chapter limits the jurisdiction, power or authority which the Court had immediately before the commencement date.

1.04 Proceedings in another Court

- (1) Except as the Court otherwise orders, these Rules, with the necessary changes, apply to proceedings commenced in another court and remitted or transferred to or removed into the Court on or after the commencement date as if they were a proceeding commenced in the Court on the day they were remitted, transferred or removed.
- (2) For the purpose of this Part, a proceeding commenced in another court and remitted or transferred to or removed into the Court before the commencement date shall be taken to be a pending proceeding.

1.05 Judgment in pending proceeding

- (1) In this rule a reference to a judgment entered or given includes a reference to an order made.
- (2) Except as provided in this rule, this Chapter applies to a judgment entered or given in a pending proceeding as if it had been entered or given in a proceeding commenced after the commencement date.
- (3) A judgment entered or given in a pending proceeding before the commencement date may be enforced in accordance with this Chapter but otherwise has the same force and effect as if this Chapter had not been made.
- (4) Without limiting subrule (3):
 - (a) no appeal may be brought, application to set aside or vary made or other proceeding taken in respect of a judgment

entered or given before the commencement date which could not have been brought, made or taken in respect of that judgment under the former Rules immediately before the commencement date; and

- (b) process commenced under the former Rules to enforce a judgment entered or given before the commencement date may be continued or carried out and aided in accordance with the former Rules.

1.06 Payment into court

- (1) In this rule ***payment into court***, in relation to a pending proceeding, means the payment into court of an amount of money in satisfaction of the claim in the manner provided by the former Rules, and includes the lodging with the Master of a notice offering to consent to judgment.
- (2) Where a payment into court was made in a pending proceeding before the commencement date, the former Rules shall continue to apply with respect to the payment as if this Chapter had not been made.
- (3) Without limiting subrule (2), a second or further payment into court may be made in accordance with the former Rules or this Chapter
- (4) In a pending proceeding a plaintiff may serve an offer of compromise in accordance with this Chapter on a defendant whether or not the defendant has made a payment into court.
- (5) In a pending proceeding a defendant, whether or not he has made a payment into Court, may serve an offer of compromise on the plaintiff under Order 26.

1.07 Amendment

Rule 36.01(6) and (8) does not apply to a pending proceeding.

1.08 Costs

- (1) In this rule ***relevant date*** means the date declared under Rules amending this Chapter to be the relevant date for the purposes of this rule.
- (2) The amount of costs for work done in a pending proceeding before the relevant date shall be determined in accordance with the former Rules, with the necessary changes, and the amount of costs for work done in the proceeding on or after that date shall be determined in accordance with this Chapter.

- (3) For the purpose of this rule, work done in a pending proceeding on or after the relevant date in accordance with the former Rules shall, so far as practicable, be taken to have been done in accordance with this Chapter.

1.08A Proper officer for purposes of *Sentencing Act*

The Proper Officer of the Court for the purposes of:

- (a) sections 11(4)(b), 13(4)(b), 21, 25 and 96 of the *Sentencing Act*, is the Master, a Registrar or the sheriff;
- (b) section 43(8) of the *Sentencing Act*, is the associate to the Judge who made the order or the sheriff;
- (c) section 99(6)(a), (6)(b) and (7), is a Registrar or the sheriff; and
- (d) section 99(4) of the *Sentencing Act*, is the associate to the Judge who made the order.

Part 2 Interpretation

1.09 Interpretation

- (1) In this Chapter, unless the contrary intention appears:

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

discovery means discovery and inspection of documents or discovery by written interrogatories or oral examination.

judgment given means a judgment given by the Court at the trial of a proceeding or on the hearing of an application in a proceeding.

legal practitioner means:

- (a) a person whose name is on the Roll of Legal Practitioners kept in pursuance of section 16 of the *Legal Practitioners Act*;
- (b) the Secretary within the meaning of section 8 of the *Law Officers Act*;
- (c) the Secretary to the Attorney-General's Department of the Commonwealth; or

- (d) an officer of the Attorney-General's Department of the Commonwealth authorized under section 55E(4) of the *Judiciary Act 1903* of the Commonwealth to act in the name of the Australian Government Solicitor.

make discovery of documents means make an affidavit of documents complying with the requirements of this Chapter, file the affidavit and serve a copy on the party or person entitled to the discovery.

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

order made means an order made by the Court at the trial of a proceeding or on the hearing of an application in a proceeding.

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

pleading includes an endorsement of claim on a writ which constitutes a statement of claim, and includes particulars of a pleading.

Proper Officer means an officer of the Court in charge of the Registry or an officer of the Court appointed by the Chief Justice in relation to the exercise of a power or the performance of a duty under this Chapter.

question means a question, issue or matter for determination by the Court, whether of fact or law or of fact and law, raised by the pleadings or otherwise at any stage of a proceeding by the Court, by a party or by a person, not a party, who has a sufficient interest.

Registrar includes the Master.

Registry means the Office of the Court at Darwin or Alice Springs.

Solicitor means a person who under the *Legal Practitioners Act* or any other Act may lawfully practice in the Territory as a legal practitioner on his own account or in partnership with another legal practitioner.

Taxing Master means the officer of the Court whose duty it is to tax costs in the Court.

- (2) In this Chapter, unless the contrary intention appears, a reference to:
- (a) a Judge is a reference to the Court constituted by a Judge; and
 - (b) a proceeding commenced by writ includes a proceeding in respect of which an order has been made under rule 4.07.
- (3) Unless the contrary intention appears, nothing in these Rules shall be construed as allowing the Registrar (who is not the Master) to exercise the jurisdiction of the Court (including under section 26 or 27 of the Act).

Part 3 Miscellaneous

1.10 Exercise of power

- (1) In exercising a power under this Chapter the Court:
- (a) shall endeavour to ensure that all questions in the proceeding are effectively, completely, promptly and economically determined; and
 - (b) may give any direction or impose any term or condition it thinks fit.
- (2) The Court may exercise a power under this Chapter of its own motion or on the application of a party or of a person who has a sufficient interest.

1.11 Procedure wanting or in doubt

- (1) Where the manner or form of the procedure:
- (a) for commencing or for taking a step in a proceeding; or
 - (b) by which the jurisdiction, power or authority of the Court is exercisable,
- is not prescribed by this Chapter, a direction under section 72 of the Act or by or under any other Act, or for any other reason there is doubt as to the manner or form of that procedure, the Court shall determine what procedure is to be adopted and may give directions.
- (2) An act done in accordance with a determination or direction under subrule (1) is regular and sufficient.

- (3) An application for directions under this rule with respect to the commencement of a proceeding shall be made by originating motion in which no person is named as the defendant and an application for directions with respect to a proceeding already commenced shall be made by summons.

1.12 Act by corporation

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

1.13 Corporation a party

Except where otherwise provided by or under an Act or this Chapter, a corporation, whether or not a party, shall not take a step in a proceeding except by a solicitor.

1.14 Power to act by solicitor

Unless the contrary intention appears, an act, matter or thing which under the Act or this Chapter or otherwise by law is required or permitted to be done by a party may be done by the party's solicitor.

1.15 Signature of solicitor

- (1) Where a signature by a solicitor is required or permitted for the purpose of a proceeding, the signature of that solicitor:
- (a) by a partner of the solicitor;
 - (b) by a solicitor who is an agent of the solicitor;
 - (c) by a partner of that agent; or
 - (d) by a legal practitioner in the employ of that solicitor or that agent,

shall be as sufficient for that purpose as the signature of that solicitor, except in the case of an oath or affirmation.

- (2) A signature made in pursuance of subrule (1) shall be accompanied by an indication of the capacity in which the signature is made.

Order 2 Non-compliance with Chapter

2.01 Effect of non-compliance

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

2.02 Originating process

The Court shall not wholly set aside a proceeding or the originating process by which a proceeding was commenced on the ground that the proceeding was commenced by the wrong process.

2.03 Application to set aside for irregularity

The Court shall not set aside a proceeding or a step taken in a proceeding, or a document, judgment or order in a proceeding, on the ground of a failure to which rule 2.01 applies on the application of a party unless the application is made within a reasonable time, and before the applicant has taken a fresh step, after becoming aware of the irregularity.

2.04 Dispensing with compliance

The Court may dispense with compliance with a requirement of this Chapter, either before or after the occasion for compliance arises.

Order 3 Time, vacations and Court office

Part 1 Time

3.01 Calculating time

- (1) A period of time fixed by this Chapter or by a judgment or order, or by a document, in a proceeding shall be calculated in accordance with this rule.

- (2) Where a period of one day or longer is to begin on, or to be calculated from, a day or event, the day or the day of the event shall be excluded.
- (3) Where a period of one day or longer is to end on, or to be calculated to, a day or event, the day or the day of the event shall be included.
- (4) Where a period of 5 days or less would include a day on which the Registry is closed, that day shall be excluded.
- (5) Where the last day for doing an act at the Registry of the Court is a day on which the Registry is closed, the act may be done on the next day the Registry is open.

3.02 Extension and abridgement

- (1) The Court may extend or abridge a time fixed by this Chapter or by an order fixing, extending or abridging time.
- (2) The Court may extend 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) A time fixed by this Chapter or by an order fixing, extending or abridging time may be extended by consent without an order of the Court.

3.03 Fixing time

Where no time is fixed by this Chapter or by a judgment or order for doing an act in a proceeding, the Court may fix a time.

3.04 Process in vacation

- (1) In calculating the time fixed by these Rules or by a judgment or order fixing, extending or abridging time, the period from 24 December to 9 January next following shall be excluded, unless the Court otherwise orders.
- (2) Where the Court makes an order under subrule (1), the party on whose application the order was made shall serve a copy of the order:
 - (a) in the case of an order with respect to the time for appearance to originating process – with the originating process; and
 - (b) in any other case – on every other party forthwith.

3.05 Proceedings after a year

Where a year or longer has elapsed since a party has taken a step in a proceeding, a party desiring the proceeding to continue shall give to every other party not less than one month's notice in writing of his desire.

Part 2 Sitting and vacation

3.06 Vacations

- (1) In this rule ***vacation*** means a period declared by the Chief Justice to be a vacation of the Court.
- (2) A hearing or trial shall not be held in vacation unless the Chief Justice otherwise directs.
- (3) Nothing in this rule prevents:
 - (a) the Court or a Judge from sitting during vacation to dispose of urgent business; or
 - (b) the Chief Justice from appointing a Judge from time to time to be available to deal with urgent business arising during vacation.

Part 3 Court office

3.07 Registry

The Registry shall be open on every day of the year except Saturdays, Sundays or a day appointed as a public holiday under the *Public Holidays Act* and the hours of the Registry shall be from 9.00 a.m. to 4.00 p.m. unless the Chief Justice directs otherwise.

Order 4 Process in the Court

4.01 How proceeding commenced

Except where otherwise provided by or under an Act or this Chapter, a proceeding shall be commenced by writ or by originating motion.

4.02 Interlocutory application

An interlocutory or other application in a proceeding made on notice to a person shall be by summons.

4.03 Names of parties

- (1) Subject to this rule, a person who commences a proceeding shall be called a plaintiff and a person against whom a proceeding is commenced shall be called a defendant.
- (2) A person who commences a proceeding under rule 32.03, 32.05, 37.02 or 75.06(3) shall be called an applicant and the person against whom the proceeding is commenced shall be called a respondent.

4.04 When writ required

Except as provided by rules 4.05 and 4.06, a proceeding shall be commenced by writ.

4.05 When originating motion required

A proceeding shall be commenced by originating motion:

- (a) where there is no defendant to the proceeding;
- (b) where by or under an Act an application is authorized to be made to the Court; or
- (c) where required by this Chapter.

4.06 Optional commencement by originating motion

A proceeding may be commenced by originating motion where:

- (a) it is unlikely that there will be a substantial dispute of fact; and
- (b) for that reason it is appropriate that there be no pleadings or discovery.

4.07 Continuance as writ of proceeding by originating motion

Where a proceeding in which there is a defendant is commenced by originating motion but ought by or under an Act or this Chapter to have been commenced by writ, or might in the opinion of the Court more conveniently continue as if commenced by writ:

- (a) the Court may order that the proceeding continue as if it had been commenced by writ and may, in particular, order that any affidavit already filed in the proceeding shall stand as pleadings, with or without liberty to a party to add to those pleadings or to apply for particulars of the pleadings or that pleadings be served between the parties, and that the parties have discovery of each other; and

- (b) by virtue of that order, the proceeding shall be taken to have been duly commenced for all purposes on the day the originating motion was filed.

4.08 Urgent case

In an urgent case the Court may, on the application of a person who intends to commence a proceeding and on his undertaking to commence the proceeding within such time as the Court directs, make an order which it might make if the applicant had commenced the proceeding and the application were made in the proceeding.

Order 5 Content, filing and duration of originating process

5.01 Definitions

In this Order:

originating process means a writ, originating motion or other process by which a proceeding is commenced.

writ does not include a writ of habeas corpus.

5.02 Form of originating process

- (1) A writ shall be in Form 5A.
- (2) An originating motion shall be in Form 5B, 5C, 5D, or 5E, whichever is appropriate.

5.03 Appearance

- (1) A writ and, unless there is no defendant, an originating motion shall be endorsed with a statement to the effect that, if the defendant does not file an appearance within the time stated in the originating process, the plaintiff may obtain judgment against the defendant without further notice.
- (2) Except as provided in subrule (3), the time for appearance to be stated in the originating process shall be as provided by rule 8.04.
- (3) An originating motion under Order 53 which names a defendant shall state that the defendant may file an appearance on or before the day specified in the originating motion for application to the Master.

5.04 Endorsement of claim on writ

- (1) A writ shall contain an endorsement of claim.
- (2) The endorsement of claim shall be:
 - (a) a statement of claim; or
 - (b) a statement sufficient to give, with reasonable particularity, notice of the nature of the claim and the cause of the claim and of the relief or remedy sought in the proceeding.
- (3) An endorsement of claim on a writ shall constitute a statement of claim if, but only if, it is headed "Statement of Claim".

5.05 Endorsement of claim on motion

An originating motion shall specify the relief or remedy sought and the Act, if any, under which the claim is made and, where it includes a question to be answered, the question shall be stated.

5.06 Endorsement as to capacity

Where a party sues or is sued in a representative capacity, the originating process shall be endorsed with a statement showing that capacity.

5.07 Address of parties

- (1) An originating process shall be endorsed with:
 - (a) the address of the plaintiff and, where the plaintiff sues in person and that address is outside the Territory, also an address within the Territory for service in accordance with rule 6.05;
 - (b) the address of all defendants; and
 - (c) where the plaintiff sues by a solicitor, the name or firm and the business address within the Territory of the solicitor and also, if the solicitor is the agent of another, the name or firm and the business address of the principal.
- (2) Where a solicitor shown in an endorsement under subrule (1) is a firm or body corporate, the endorsement shall also show the member of the firm or body corporate having responsibility for the conduct of the matter.

- (3) Where an originating process is endorsed with the name of a solicitor:
 - (a) the solicitor shall, on request in writing by a defendant, declare in writing whether the originating process was filed by the solicitor; and
 - (b) if the solicitor declares in writing that the originating process was not filed by him, the Court may stay the proceeding.

5.08 Place of trial

- (1) A writ shall be endorsed with a statement of the place of trial desired.
- (2) If the writ is not endorsed with a statement as to the place or trial, the plaintiff shall be taken to desire trial in Darwin.
- (3) The plaintiff may endorse an originating motion with a statement of the place of trial desired and, if the originating motion is not so endorsed, the plaintiff shall be taken to desire trial in Darwin.

5.09 Stay on payment of costs

- (1) Where in a proceeding commenced by writ the plaintiff claims a debt only, the writ shall be endorsed with a statement of the amount of the debt and the amount claimed for costs and a statement that the proceeding will come to an end if, within the time limited for filing an appearance, the defendant pays the amounts so claimed to the plaintiff, if the plaintiff sues in person, or his solicitor if the plaintiff sues by a solicitor.
- (2) Where a writ is endorsed in accordance with subrule (1) and the defendant pays the amounts claimed within the time limited for filing an appearance, then, except as provided by subrule (3), the proceeding shall come to an end.
- (3) The defendant may, notwithstanding the payment, have the costs taxed and, if more than 20% is disallowed, the plaintiff's solicitor shall pay the costs of taxation.

5.10 Petition

A petition shall include at the end the name of the person intended to be served, if any, or, if no person is intended to be served, a statement to that effect.

5.11 Filing of originating process

- (1) A proceeding shall be commenced by filing the originating process in the Registry.
- (2) The originating process filed shall be signed by the solicitor for the plaintiff or by the plaintiff where the plaintiff sues in person.
- (3) On an originating process being filed or at a later time, the Proper Officer, on the request of the plaintiff, shall seal a sufficient number of copies of the originating process for service and proof of service.
- (4) In a proceeding commenced by originating motion, where the relief or remedy sought includes the construction of an instrument other than an Act, a copy of the instrument or, where it exceeds 25 pages, of the relevant parts, shall be lodged with the Proper Officer at the time the originating motion is filed.
- (5) If the Registry is closed and the plaintiff produces an originating process to the Court and undertakes that the originating process will be lodged in the Registry on the day it is next open, the Court may initial the originating process and such number of copies as are required for services or proof of service and, on being so initialled, the originating process shall be taken to have been filed.

5.12 Duration and renewal of originating process

- (1) A writ or an originating motion shall be valid for service for one year after the day it is filed.
- (2) Where a writ or originating motion has not been served on a defendant, the Court may from time to time, by order, extend the period of validity for such period, being not more than 12 months from the date of the order, as it thinks fit.
- (3) An order may be made under subrule (2) before or after expiry of the writ or originating motion.
- (4) The plaintiff may apply under subrule (2) without notice to the defendant but, if the Court considers that the defendant ought to be heard, the Court shall adjourn the further hearing and direct the plaintiff to give notice to the defendant by summons or otherwise.
- (5) Where an order is made under subrule (2), the Proper Officer shall stamp any sealed copy of the originating process for service with the date of the order and the extended date of validity.

Order 6 Service

6.001 Application to companies

Notwithstanding anything in this Order, a document served on a company within the meaning of the Corporations Law shall be effectively served for the purposes of these Rules if it is served as provided by section 220 of the Corporations Law.

6.01 When personal service necessary

A document required or permitted to be served in a proceeding may be served personally but, unless personal service is required by this Chapter or by order, need not be served personally.

6.02 Personal service of originating process

- (1) Except where otherwise provided by or under an Act or this Chapter, originating process shall be served personally on each defendant.
- (2) Where a defendant to an originating process files an unconditional appearance, the originating process shall be taken to have been served on the defendant personally on the day on which the appearance is filed or on such earlier day as is proved.

6.03 How personal service effected

- (1) Personal service of a document is effected by leaving a copy of the document with the person to be served or, if he does not accept the copy, by putting the copy down in his presence and telling him the nature of the document.
- (2) In the case of originating process, the copy for service shall be sealed in accordance with rule 5.11(3).
- (3) To effect personal service it shall not be necessary to show the original document.

6.04 Service on particular defendants

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

- (a) in the case of a corporation – on the mayor, chairman, president or other officer of the corporation, or on the town clerk, clerk, treasurer, manager, secretary or other similar officer of the corporation;

- (b) in the case of an infant – on a parent or guardian of the infant, and, if there is none, on the person with whom the infant resides or in whose care he is;
- (c) in the case of a **person under a disability** as defined in rule 15.01:
 - (i) on the person who, in accordance with rule 15.03(2), would be entitled to be litigation guardian in a proceeding to which the person under a disability was party; or
 - (ii) if there is no such person – on the person with whom the person under a disability resides or in whose care he is;
- (d) in the case of the Commonwealth of Australia or the Crown in right of the Commonwealth – on the Attorney-General for the Commonwealth; or
- (e) in the case of the Territory or the Crown in right of the Territory – on the Attorney-General or on the Solicitor for the Northern Territory.

6.05 Address for service

- (1) The address for service of a plaintiff shall be:
 - (a) where the plaintiff sues by a solicitor – the business address of that solicitor endorsed on the originating process, being an address not more than 15 kilometres from the registry at which the originating process is filed or, where the business address of the plaintiff's solicitor is more than that distance from that registry, the business address of the solicitor's agent whose office is within that distance; or
 - (b) where the plaintiff sues in person – an address within 15 kilometres of the Registry in which the originating process is issued endorsed on the originating process.
- (2) The address for service of a defendant shall be:
 - (a) where the defendant appears by a solicitor – the business address of that solicitor stated in the notice of appearance, being an address not more than 15 kilometres from the registry at which the originating process is filed or, where the business address of the defendant's solicitor is more than that distance from that registry, the business address of the solicitor's agent whose office is within that distance; or

- (b) where the defendant appears in person – an address within 15 kilometres of the Registry in which the originating process is issued stated in the notice of appearance.

6.06 How ordinary service effected

- (1) Where personal service of a document is not required, the document may be served:
 - (a) by leaving it at the proper address of the person to be served;
 - (b) by sending it by prepaid post to the person to be served at his proper address;
 - (c) where provision is made by or under an Act for service of a document on a corporation (other than a company within the meaning of the Corporations Law), by serving it in accordance with that provision; or
 - (d) where the solicitor for a party has facilities for the reception of documents in a document exchange – by delivering it into those facilities.
- (2) For the purpose of subrule (1), the proper address of a person is the address for service of that person in the proceeding but if, at the time service is to be effected, the person has no address for service, the proper address is:
 - (a) in the case of an individual – the person's usual or last known place of residence or of 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; and
 - (c) in the case of a corporation:
 - (i) where the corporation is a company within the meaning of the Corporations Law – the registered office of the company situated as indicated in section 220 of the Corporations Law; and
 - (ii) where the corporation is not a company – the registered or principal office of the corporation.
- (3) Where no person can be found at the address for service of a plaintiff who sues or a defendant who has appeared in person, a document in the proceeding may be served on that plaintiff or defendant by filing it.

- (3.1) A party who serves a document by filing in accordance with subrule (3) shall endorse on a backsheet or on the back of the last sheet a statement that it is filed as such service.
- (4) The day of service of a document, where it is delivered into the facilities of a document exchange in accordance with subrule (1)(d), shall be taken to be:
- (a) the day following the day on which it was so delivered; or
 - (b) where it was delivered on a Friday, the following Monday.
- (5) In this rule **document exchange** means a document exchange for the time being approved by the Chief Justice on the recommendation of the Law Society of the Northern Territory.

6.07 Identity of person served

For the purposes of proof of service, evidence of a statement by a person of his identity or that he holds some office is evidence of his identity or that he holds that office.

6.08 Acceptance of service by solicitor

Where in a proceeding a document is required or permitted to be served on a person and a solicitor makes on a copy of the document a note that the solicitor accepts service of the document on behalf of the person to be served, the document shall, unless the solicitor is shown not to have had authority to accept service, be taken to have been duly served on that person on the day on which the solicitor made the note or on such other day as is proved.

6.09 Substituted service

- (1) Where for any reason it is impracticable to serve a document in the manner required by this Chapter, the Court may order that, instead of service, such steps be taken as it specifies for the purpose of bringing 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 be taken to have been served on the happening of a specified event or on the expiry of a specified time.
- (3) The Court may make an order under subrule (1) notwithstanding that the person to be served is out of the Territory or was out of the Territory when the proceeding commenced.

6.10 Confirmation of informal service

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

6.11 Service by filing

- (1) Where the service of a document on a party to a proceeding is required or permitted but personal service is not required, and that party is in default of appearance or has no address for service in the proceeding, the filing of the document shall, unless the Court otherwise orders, have effect as service of the document on that party.
- (2) A party who serves a document by filing in accordance with subrule (1) shall endorse on a backsheet or on the back of the last sheet a statement that it is filed as such service.

6.12 Service on agent

- (1) Where a contract has been entered into in the Territory by or through an agent residing or carrying on business in the Territory on behalf of a principal residing or carrying on business out of the Territory, originating process in a proceeding relating to or arising out of the contract may, by leave of the Court given before the determination of the agent's authority or of his business relations with the principal, be served on the agent.
- (2) Where an order giving leave is made under subrule (1):
 - (a) the order shall limit a time within which the defendant shall file an appearance; and
 - (b) a copy of the order and of the originating process shall without delay be sent by pre-paid post to the defendant at his proper address out of the Territory.

6.13 Service under agreement

Where the parties to a proceeding have, before or after the commencement of the proceeding, agreed that originating process or any other document in the proceeding may be served on a party or on a person on behalf of a party in a manner or at a place (whether in or out of the Territory) specified in the agreement, service in accordance with the agreement is sufficient service.

6.14 Recovery of vacant land

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

6.15 Service of notice by the Court

Where under this Chapter or under an order of the Court a notice or other document is to be given to or served on a person by the Court, the notice or document shall, unless this Chapter otherwise provides or the Court otherwise orders, be sufficiently given or served in a manner in which a document not requiring to be served personally may be served under this Order.

6.16 Affidavit of service

- (1) In the case of personal service of a document, an affidavit of its service shall state by whom it was served, the hour of the day, day of the week and date on which it was served, the place of service and the manner of identification of the person served.
- (2) In any other case of service of a document, an affidavit of its service shall state, with relevant dates, the facts constituting service.

Order 7 Service out of the Territory

Part 1 When service out of the Territory is allowed

7.01 For what claims

- (1) Originating process may be served out of the Territory without order of the Court where:
 - (a) the whole subject-matter of the proceeding is land situate in the Territory (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
 - (b) an act, deed, will, contract, obligation or liability affecting land situate in the Territory is sought to be construed, rectified, set aside or enforced in the proceeding;
 - (c) relief is sought against a person domiciled or ordinarily resident in the Territory;
 - (d) the proceeding is for the administration of the estate of a person who died domiciled in the Territory or is for a relief or remedy which might be obtained in such a proceeding;
 - (e) the proceeding is for the execution, as to property situate in the Territory, of the trusts of a written instrument of which the person to be served is a trustee and which ought to be executed according to the law of the Territory;
 - (f) the proceeding is brought to enforce, rescind, dissolve, rectify, annul or otherwise affect a contract, or to recover damages or other relief in respect of the breach of a contract, and the contract:
 - (i) was made in the Territory;
 - (ii) was made by or through an agent carrying on business or residing in the Territory on behalf of a principal carrying on business or residing out of the Territory; or
 - (iii) is governed by the law of the Territory;
 - (g) the proceeding is brought in respect of a breach committed in the Territory of a contract wherever made, even though the breach was preceded or accompanied by a breach out of the Territory that rendered impossible the performance of that part of the contract which ought to have been performed in the Territory;

- (h) the proceeding is founded on a contract the parties to which have agreed that the Court shall have jurisdiction to entertain a proceeding in respect of the contract;
 - (j) the proceeding is founded on a tort committed in the Territory;
 - (k) the proceeding is brought in respect of damage suffered wholly or partly in the Territory and caused by a tortious act or omission wherever occurring;
 - (m) an injunction is sought ordering the defendant to do or refrain from doing anything in the Territory, whether or not damages are also claimed in respect of a failure to do or the doing of that thing;
 - (n) the proceeding is properly brought against a person duly served in or out of the Territory and another person out of the Territory is a necessary or proper party to the proceeding;
 - (p) the proceeding is either brought by a mortgagee of property situated in the Territory (other than land) and seeks:
 - (i) the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property; or
 - (ii) redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property, but does not seek, except so far as permissible under another paragraph of this subrule a personal judgment or order for the payment of moneys due under the mortgage; or
 - (q) the proceeding is brought under the *Civil Aviation (Carriers' Liability) Act 1959* of the Commonwealth.
- (2) In this rule **mortgage** includes a charge or lien, **mortgagee** means a person entitled to, or interested in, a mortgage and **mortgagor** means a person entitled to, or interested in, property subject to a mortgage.

7.02 Endorsement on originating process

- (1) Originating process which is served out of the Territory in accordance with this Order shall be endorsed with a statement showing the facts and the particular paragraph of subrule 7.01(1) relied on in support of service.

- (2) If the originating process does not contain the endorsement referred to in subrule (1) at the time it is filed, the plaintiff may, in accordance with subrule (3), amend the originating process to include the endorsement.
- (3) The originating process shall be taken to be amended on the filing by the plaintiff of a copy with the endorsement included.
- (4) On the filing of an amended copy of the originating process under subrule (3) or at a later time a Registrar, on the request of the plaintiff, shall seal a sufficient number of copies, as amended, for service and proof of service.

7.03 Mode of service out of the Territory

Originating process which is to be served out of the Territory need not be served personally if it is served in accordance with the law of the place in which service is effected.

7.04 Leave to proceed where no appearance

- (1) Where no appearance is filed by a party served with originating process out of the Territory, the Court, if satisfied that the subject matter of the proceeding so far as it concerns that party is within rule 7.01 and that the originating process was duly served on that party, may order that the plaintiff be at liberty to proceed.
- (2) An application for an order under subrule (1) shall be supported by affidavit or other evidence showing the grounds on which the application is made.

7.05 Stay, setting aside service, &c.

- (1) The Court may make an order of a kind referred to in rule 8.09 on application by a party served with originating process out of the Territory.
- (2) Without limiting subrule (1), the Court may make an order under this rule on the ground:
 - (a) that service out of the Territory is not authorized by this Chapter; or
 - (b) that the Territory is not a convenient forum for the trial of the proceeding.
- (3) The Court may make an order under this rule before an application is made under rule 7.04 or before an order of the Court is made on such an application.

7.06 Service of other process by leave

The Court may, by order, allow service out of the Territory of:

- (a) originating process in a proceeding in relation to the wardship, custody, management or welfare of a minor or the custody, management or welfare of a person who is incapable of managing his affairs;
- (b) an originating motion in a proceeding brought under an Act; or
- (c) a summons, order or notice in a proceeding.

7.07 Service of counterclaim or third party notice

- (1) This rule applies to:
 - (a) a counterclaim against the plaintiff and another person joined as defendants under rule 10.03 where the person joined is not already a party to the proceeding; and
 - (b) a third party notice filed in accordance with Order 11.
- (2) A counterclaim or third party notice may be served out of the Territory without leave where the claim made by the defendant in the counterclaim or third party notice is of such a kind that, if the claim were made by writ or other originating process, the originating process could be served out of the Territory without order of the Court under rule 7.01.
- (3) Where subrule (2) does not apply, the Court may, by order, allow service out of the Territory of a counterclaim or third party notice.

7.08 Application for leave

- (1) An application for leave under rule 7.06 or 7.07 shall be supported by affidavit or other evidence showing the grounds on which the application is made.
- (2) The Court may grant such leave if the case is a proper one for service out of the Territory.
- (3) On making an order under rule 7.06 or 7.07 the Court may give directions with respect to service and the time for filing an appearance or for attendance before it or otherwise.
- (4) Where a document is served out of the Territory by order of the Court made under rule 7.06 or 7.07, a copy of the order, a copy of an affidavit made in support of the application for the order and, unless the Court otherwise orders, a copy of an exhibit referred to

in the affidavit shall be served with the document.

Part 2 Service in foreign country

7.09 Application

This Part applies to the service of a document for the purpose of a proceeding in the Court:

- (a) in a Convention country pursuant to a Convention; or
- (b) in such other country as the Attorney-General, by instrument filed in the proceeding, specifies.

7.10 Documents required

A person (in this Part called *the applicant*) requiring a document to be served in another country under this Part shall:

- (a) lodge with the Proper Officer:
 - (i) the document to be served;
 - (ii) unless English is an official language in the country concerned, a translation of the document in accordance with rule 7.11;
 - (iii) a copy of the document and of any translation;
 - (iv) such further copies of the document and of the translation as a Registrar directs; and
 - (v) if a special manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned, a translation of the request; and
- (b) file:
 - (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) a request and undertaking in accordance with rule 7.12.

7.11 Translation

A translation of a document lodged under rule 7.10 shall:

- (a) be a translation into an official language of the country in which service is required; and

- (b) bear a certificate of the translator, in that language, stating that it is an accurate translation of the document.

7.12 Request and undertaking

- (1) A request and undertaking filed under rule 7.10 shall contain:
 - (a) a request by the applicant to a Registrar that a sealed copy of the document to be served be transmitted to the country concerned for service on a specified person;
 - (b) if the applicant requires service pursuant to a Convention, a reference to the Convention; and
 - (c) an undertaking by the solicitor for the applicant or, where there is no solicitor, by the applicant, to pay to the Proper officer an amount equal to the expenses incurred in consequence of the request for service.
- (2) A Registrar may require the applicant or his solicitor to give security to the Registrar's satisfaction for the expenses referred to in subrule (1)(c).

7.13 Procedure on lodgment and filing

- (1) Where documents are lodged and filed in accordance with rule 7.10, the Proper Officer shall seal with the seal of the Court the documents lodged and shall send them to the Attorney-General for transmission for service, together with such letter of request, if any, as is necessary.
- (2) A letter of request shall be in Form 7A.

7.14 Evidence of service

Where a Proper Officer has sent documents to the Attorney-General in accordance with rule 7.13 and afterwards a certificate purporting to be a certificate of a judicial authority or other responsible person in the country concerned or of an Australian or British consular authority in that country as to service or attempted service or non service is filed, the certificate shall be evidence of the matters stated in the certificate.

7.15 Order for payment of expenses

Where a person has given an undertaking in accordance with rule 7.10 and 7.12 and does not, within 14 days after service on him of an account of expenses incurred in consequence of the request for service, pay to the Proper officer the amount of the expenses, the Court may, on application by a Registrar:

- (a) order the applicant or his solicitor (where the undertaking was given by the solicitor) or both of them, to pay the amount of the expenses to the Proper officer; and
- (b) stay the proceeding until payment so far as concerns the whole or a part of a claim for relief by the applicant.

Order 8 Appearance

8.01 Application

This Order applies to a proceeding commenced by writ or originating motion.

8.02 Appearance before taking step

Except as provided by rule 8.08 or 8.09 or by leave of the Court, a defendant shall not take a step in a proceeding unless he has first filed an appearance.

8.03 Who to file appearance

- (1) Except as provided in rule 15.02, a defendant may file an appearance by a solicitor or in person.
- (2) A corporation may file an appearance by a person duly authorized by it to so act.

8.04 Time for appearance

Unless the Court otherwise orders, the time stated in the writ or originating motion for the defendant to file an appearance shall be:

- (a) where the originating process to be served in the Territory:
 - (i) is filed in the Darwin Registry and the place of service is within 200 Kilometres from Darwin – not less than 7 days after service;
 - (ii) is filed in the Alice Springs Registry and the place of service is within 200 Kilometres from Alice Springs – not less than 7 days after service; or
 - (iii) is filed in the Darwin or Alice Springs Registry and place of service is not within 200 Kilometres from the filing Registry – not less than 14 days after service;
- within the Commonwealth – not less than 21 days after service;

- (c) where the originating process is to be served in New Zealand or in Papua New Guinea – not less than 28 days after service; and
- (d) in any other case – not less than 42 days after service.

8.05 Mode of filing appearance

- (1) An appearance shall be filed by filing a notice of appearance in the Registry in which the originating process is filed and, on the same or the next working day, serving on the plaintiff a copy of the notice sealed in accordance with subrule (3).
- (2) A notice of appearance shall be in Form 8A.
- (3) On the filing of a notice of appearance the Proper officer shall seal with the seal of the Court a sufficient number of copies for service.
- (4) A sealed copy of the notice of appearance shall be taken to have been duly served on the plaintiff if on the day the notice is filed, or on the next working day, the defendant takes an appropriate step in accordance with rule 6.06 (1) to serve the copy on the plaintiff.

8.06 Content of notice of appearance

- (1) A notice of appearance shall state:
 - (a) where the defendant appears in person – the address of the defendant and, if that address is out of the Territory, an address of the defendant in the Territory for service; or
 - (b) where the defendant appears by a solicitor – the address of the defendant and the name or firm and the business address in the Territory of the solicitor and also, if the solicitor is an agent of another, the name or firm and the business address of the principal.
- (2) Where a solicitor shown in a notice of appearance is a firm or body corporate, the notice shall also show the member of the firm or body corporate having responsibility for the conduct of the matter.
- (3) Where the address of a defendant shown in a notice of appearance is not genuine, the Court may set aside the appearance and allow the plaintiff to continue the proceeding as if the appearance had not been filed.

8.07 Late appearance

- (1) A defendant may file an appearance at any time, but after judgment an appearance shall not be filed without the leave of the Court.

- (2) Where a defendant files an appearance after the time for appearance stated in the writ or originating motion, the time he has within which to serve a defence or for any other purpose, unless the Court otherwise orders, shall be calculated from the last day for appearance according to the writ or originating motion.

8.08 Conditional appearance

- (1) A defendant may file a conditional appearance.
- (2) A notice of conditional appearance shall be in Form 8B.
- (3) A conditional appearance shall have effect for all purposes as an unconditional appearance unless, on application by the defendant, the Court otherwise orders.
- (4) An application under subrule (3) shall be made by summons within 14 days after the day the conditional appearance is filed.

8.09 Setting aside writ or originating motion

Notwithstanding rule 8.08, the Court may exercise its jurisdiction to:

- (a) set aside a writ or originating motion or its service;
- (b) make an order under rule 46.08; or
- (c) stay a proceeding,

on application made by the defendant before filing an appearance, whether conditional or not.

Order 9 Joinder of claims and parties

9.01 Joinder of claims

A plaintiff may join any number of claims against a defendant whether the plaintiff makes the claims in the same or in different capacities and whether the claims are made against the defendant in the same or in different capacities.

9.02 Permissive joinder of parties

- (1) Two or more persons may be joined as plaintiffs or defendants in a proceeding:
 - (a) where:
 - (i) if separate proceedings were brought by or against each of them, a common question of law or fact would arise in all the proceedings; and
 - (ii) all rights to relief claimed in the proceeding (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions; or
 - (b) subject to subrule (2), where the Court, before or after the joinder, gives leave to do so.
- (2) The Court shall not give leave under subrule (1)(b) unless it is satisfied that the joinder:
 - (a) will not embarrass or delay the trial of the proceeding;
 - (b) will not prejudice a party; or
 - (c) is not otherwise inconvenient.

9.03 Joinder of necessary parties

- (1) Except by order of the Court or as provided by or under an Act, where the plaintiff claims relief to which any other person is entitled jointly with him, all persons so entitled shall be parties to the proceeding, and a person who does not consent to being joined as a plaintiff shall be made a defendant.
- (2) Where the plaintiff claims relief against a defendant who is liable jointly with another person and also liable severally, that other person need not be made a defendant to the proceeding.
- (3) Where persons are liable jointly, but not severally, under a contract and the plaintiff in respect of that contract claims against some but not all of those persons, the Court may stay the proceeding until the other persons so liable are added as defendants.
- (4) The Court may make an order under subrule (1) before or after the non-joinder.

9.04 Joinder inconvenient

Notwithstanding rules 9.01 and 9.02, where a joinder of claims or parties may embarrass or delay the trial of the proceeding or cause prejudice to a party or is otherwise inconvenient, the Court may order that:

- (a) there be separate trials;
- (b) a claim be excluded;
- (c) a party be compensated by an award of costs or otherwise for being required to attend, or be relieved from attending, any part of a trial in which he has no interest; or
- (d) a person made a party cease to be a party on condition that the person be bound by the determination of the questions in the proceeding or without any such condition.

9.05 Effect of misjoinder or non-joinder of party

A proceeding shall not be defeated by reason of the misjoinder or non-joinder of a party or person and the Court may determine all questions in the proceedings so far as they affect the rights and interests of the parties.

9.06 Additional, removal, substitution of party

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

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

9.07 Procedure for addition of party

- (1) A person shall not be added as a plaintiff without his consent signified in writing or in such other manner as the Court orders.
- (2) An application by a person for an order adding him as a party shall, unless the Court otherwise orders, be supported by an affidavit showing his interest in the questions in the proceeding or the question to be determined as between him and a party to the proceeding.
- (3) Without limiting rule 9.06(b), where a person not a party to a proceeding for the recovery of land is in possession by himself or by a tenant of the whole or a part of the land, the Court may order that he be added as a defendant.

9.08 Defendant deceased at commencement of proceeding

- (1) Where a cause of action survives against the estate of a deceased person, a person wishing to obtain a judgment in respect of that cause of action may, if no grant of representation has been made, bring a proceeding against the estate of the deceased.
- (2) Without limiting subrule (1), a proceeding brought against "the estate of A.B. deceased" shall be taken to have been brought against "A.B.'s" estate in accordance with that subrule.
- (3) A proceeding commenced naming as defendant a person who was dead when the proceeding commenced shall, if the cause of action survives and no grant of representation had been made at the time the proceeding commenced, be taken to have been commenced against the estate of the deceased in accordance with subrule (1).
- (4) A proceeding naming as defendant a person who was dead when the proceeding commenced shall, if the cause of action survives and a grant of representation had been made at the time the proceeding commenced, be taken to have been commenced against the personal representative of the deceased as representing the estate of the deceased.
- (5) In a proceeding within subrule (1) or (3), the Court may appoint a person to represent the estate of the deceased for the purpose of the proceeding or, if a grant of representation has been made since the commencement of the proceeding, order that the personal representative of the deceased be made a party to the proceeding, and order that the proceeding be carried on against the person so appointed or against the personal representative, as if he had been substituted for the estate.

- (6) In a proceeding within subrule (4), the Court may order that the personal representative of the deceased be made a party and that the proceeding be carried on against the personal representative as representing the estate of the deceased.
- (7) An application for an order under subrule (5) or (6) shall be made during the period of validity for service of the writ or other originating process, unless the Court otherwise orders.
- (8) Before making an order under subrule (5), the Court may require notice to be given to an insurer of the deceased who has an interest in the proceeding and to a person having an interest in the estate.
- (9) Where no grant of representation has been made, a judgment or order given or made in the proceeding shall bind the estate of the deceased to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceeding.
- (10) In this rule ***grant of representation*** means a grant of probate or administration in the Territory or the resealing of a foreign grant in the Territory.

9.09 Change of party on death, bankruptcy

- (1) Where a party to a proceeding dies but the cause of action survives, or where a party becomes bankrupt, the proceeding shall not abate by reason of the death or bankruptcy but may be carried on in accordance with subrule (2).
- (2) Where at any stage of a proceeding the interest or liability of a party is assigned or transmitted to or devolves on another person, the Court may order that the other person be added as a party to the proceeding or made a party in substitution for the original party and that the proceeding be carried on as so constituted.
- (3) Unless the Court otherwise directs, the person on whose application an order is made under subrule (2) shall serve the order on every party to the proceeding and on every person who ceases to be a party or becomes a party as plaintiff by virtue of the order and, in the case of a person who becomes a defendant, shall serve that person personally with the order and with the writ or other originating process sealed in accordance with rule 5.11.
- (4) A person on whom originating process is served in accordance with subrule (3) shall file an appearance in the proceeding within such time as the Court directs.

- (5) Where an order is made without notice to a person on whom it is served, an application by the person to set aside or vary the order shall be made within 14 days after service.

9.10 Failure to proceed after death of party

- (1) Where a party dies and a cause of action in the proceeding survives but no order is made under rule 9.09(2) substituting a personal representative of the deceased party as party, the Court may, on application by a party or by a person to whom liability on the cause of action survives on the death, order that, unless an order for substitution is made within a specified time, the proceeding be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability or the cause of action survives on the death.
- (2) On making an order under subrule (1), the Court may, whether or not a grant of representation within the meaning of rule 9.08(10) has been made, direct that, if the proceeding is dismissed by virtue of the order, costs of the proceeding be awarded:
 - (a) where the plaintiff dies – to the defendant against the personal representative of the deceased out of the estate of the deceased; and
 - (b) where the defendant dies – to the personal representative of the deceased against the plaintiff.
- (3) Where the plaintiff dies, the Court shall not make an order under subrule (1) unless due notice of the application for it has been given to the personal representative, if any, of the deceased and to all other persons having an interest in the estate of the deceased who, in the opinion of the Court, should be notified.
- (4) Where a defendant serves a counterclaim, this rule, with the necessary changes, applies as if the plaintiff were the defendant and the defendant were the plaintiff.

9.11 Amendment of proceedings after change of party

- (1) Where an order is made under rule 9.06 or 9.08, the writ or other originating process filed in the Court shall be amended accordingly within the time specified in the order or, where no time is specified, within 14 days after the making of the order, and a reference to the order, the date of the order and the date on which the amendment is made shall be endorsed on the originating process.
- (2) The filing of a copy of the originating process amended and endorsed as required by subrule (1) is a sufficient compliance with that subrule.

- (3) Where an order is made under rule 9.06 or 9.08 adding or substituting a person as defendant:
- (a) the proceeding against the new defendant commences on the amendment of the filed originating process in accordance with subrule (1) or (2);
 - (b) the plaintiff shall serve the amended originating process on that defendant within such time as the Court directs and, unless the Court otherwise orders, it shall be served personally; and
 - (c) unless the Court otherwise orders:
 - (i) where the new defendant is an added defendant – the proceeding shall be continued as if the new defendant were an original defendant; and
 - (ii) where the new defendant is a substituted defendant – all things done in the course of the proceeding before it was commenced against the new defendant shall have effect in relation to the new defendant as they had in relation to the old defendant, except that the filing of an appearance by the old defendant shall not dispense with the filing of an appearance by the new.

9.12 Consolidation or trial together

- (1) Where 2 or more proceedings are pending in 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 the proceedings to be consolidated, or to be tried at the same time or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them.

- (2) An order for the trial together of 2 or more proceedings or for the trial of one immediately after the other, shall be subject to the discretion of the trial Judge.

9.13 Conduct of proceeding

The Court may give the conduct of the whole or a part of a proceeding to such person as it thinks fit.

Order 10 Counterclaim

10.01 Application of Order

This Order applies only to a proceeding commenced by writ and to a proceeding in respect of which an order has been made under rule 4.07(a).

10.02 When counterclaim allowed

- (1) A defendant who has a claim against the plaintiff may counterclaim in the proceeding.
- (2) Rule 9.01 applies to a counterclaim as if the plaintiff were the defendant and the defendant were the plaintiff.
- (3) A defendant who counterclaims shall plead his defence and the counterclaim in one document called a defence and counterclaim.

10.03 Counterclaim against plaintiff and another person

A defendant may join with the plaintiff as defendant to the counterclaim another, whether a party to the proceeding or not, who, if the defendant were to bring a separate proceeding, could be properly joined with the plaintiff as a party in accordance with rule 9.02.

10.04 Procedure after counterclaim against another person

- (1) Where a defendant joins a person as a defendant to the counterclaim under rule 10.03, the defence and counterclaim shall contain a second title of the proceeding showing who is the plaintiff to the counter-claim and who are the defendants to it.
- (2) The defendant shall serve on the person joined as a defendant to the counterclaim a copy of the defence and counterclaim and:
 - (a) where the person so joined is already a party to the proceeding – the copy shall be served within the time fixed by rule 14.04 for serving a defence; and

- (b) where the person joined is not already a party – the copy shall be served personally and, unless the Court otherwise orders, shall be served within 14 days after the expiration of the time fixed by rule 14.04 for serving a defence.
- (3) The person joined as a defendant to the counterclaim shall, on service of a copy of the defence and counterclaim, if not already a party, become a party and be in the same position as if he had been sued as defendant in the ordinary way by the defendant making the counterclaim.
- (4) Without limiting subrule (3), where the person joined as defendant to the counterclaim is not already a party to the proceeding, Orders 8, 11, 14 and 21 apply as if the counterclaim were a writ the endorsement of claim on which constituted a statement of claim in accordance with rule 5.04, the defendant making the counterclaim were a plaintiff and the person joined were a defendant in the proceeding.
- (5) A counterclaim served on a defendant to the counterclaim who is not already a party shall commence with a notice in Form 10A.
- (6) A notice of appearance by a defendant to a counterclaim who is not already a party shall be in Form 10B.

10.05 Trial of counterclaim

A counterclaim shall be tried at the trial of the claim of the plaintiff unless the Court otherwise orders.

10.06 Counterclaim inconvenient

Notwithstanding rules 10.02, 10.03 and 10.05, where a counterclaim may embarrass or delay the trial of the claim of the plaintiff or cause prejudice to a party or otherwise cannot conveniently be tried with that claim, the Court may:

- (a) order separate trials of the counterclaim and the claim of the plaintiff;
- (b) order that a claim included in the counterclaim be excluded;
- (c) strike out the counterclaim without prejudice to the right of the defendant to assert the claim in a separate proceeding; or
- (d) order that a person joined as a defendant to the counterclaim cease to be a party to it.

10.07 Stay of claim

Where the defendant by his defence admits the claim of the plaintiff and counterclaims, the Court may stay the original proceeding until the counterclaim is disposed of.

10.08 Counterclaim on stay, etc., of original proceeding

A counterclaim may be prosecuted notwithstanding that judgment is given for the plaintiff in the original proceeding or that the original proceeding is stayed, discontinued or dismissed.

10.09 Judgment for balance

Where the plaintiff succeeds on the claim and the defendant succeeds on the counterclaim and a balance in favour of one of them results, the Court may give judgment for the balance.

Order 11 Third party procedure

11.01 Claim by third party notice

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

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

the defendant may join the third party as a party to the proceeding, and make the claim against the third party, by filing and serving a third party notice.

11.02 Statement of claim on third party notice

A third party notice shall be in Form 11A, and shall be endorsed with a statement of claim.

11.03 Time for appearance

- (1) A third party notice shall state a time within which the third party may file an appearance in the proceeding.

- (2) The time under subrule (1) shall be:
- (a) where the notice is to be served in the Territory – within the time limited by rule 8.04(a); and
 - (b) where the notice is to be served out of the Territory:
 - (i) within the time limited by rule 8.04(b), (c), or (d) in the case of appearance by a defendant to a writ, whichever is appropriate; or
 - (ii) within the time limited by an order of the Court authorizing service of the notice.

11.04 Filing and service of third party notice

- (1) A claim by third party notice shall be commenced by filing the notice in the Court, whereupon the third party becomes a party to the proceeding.
- (2) A third party notice shall be filed and served on the third party in the same manner as originating process is filed and served on a defendant.

11.05 Time for third party notice

- (1) In a proceeding commenced by writ or in respect of which an order has been made under rule 4.07(a), a defendant may not file a third party notice until he has first served a defence.
- (2) A defendant may file a third party notice:
 - (a) within 28 days after the time limited for the service of a defence; or
 - (b) at any time with the leave of the Court or the consent in writing of the plaintiff and all other parties who have appeared.

11.06 Leave to file third party notice

An application for leave to file a third party notice shall be made on notice to the plaintiff but the Court may direct notice to be given to any other party who has appeared.

11.07 Period of service

- (1) A third party notice shall be served on the third party within 60 days after it is filed.

- (2) Notwithstanding subrule (1), the Court may fix another period for the service of a third party notice either before the notice is filed or at the time it grants leave under rule 11.05(2) to file the notice.
- (3) Where a third party notice has not been served on the third party, the Court, from time to time by order, may extend the period for service of the notice for such further period as it thinks fit.
- (4) An order may be made under subrule (3) before or after expiry of the period for service.
- (5) At the time of service of a third party notice on a third party there shall also be served a copy of:
 - (a) an order or consent under rule 11.05(2)(b);
 - (b) an order under subrule (2) made before the third party notice was filed fixing a period for service of the notice;
 - (c) an order under subrule (3);
 - (d) the writ or other originating process; and
 - (e) any pleadings or affidavits filed and served in the proceeding.
- (6) Within the period for service of the third party notice on the third party, a copy of the notice shall be served on the plaintiff and on all other parties who have appeared.
- (7) If a copy of the third party notice is not served in accordance with subrule (6), the Court may, on application by the plaintiff or the third party, order that the questions between the plaintiff and the defendant be tried before and separately from the questions between the defendant and the third party.

11.08 Appearance by third party

- (1) A third party may file an appearance within the time limited for appearance or within such further time as the Court allows.
- (2) A third party who files an appearance shall, on the same day, serve a sealed copy of the notice of appearance on the plaintiff.
- (3) Rule 8.05, with the necessary changes, applies to an appearance by a third party under this rule.

11.09 Defence of third party

- (1) A third party who files an appearance shall serve a defence to the statement of claim endorsed on the third party notice, within 14 days after filing the appearance.
- (2) The third party may, on a ground not raised by the defendant in his defence, serve a defence to the statement of claim of the plaintiff by which he disputes the liability to the plaintiff of the defendant by whom the third party was joined.
- (3) Rule 14.09 applies to a claim by a third party notice as if the claim were a proceeding commenced by writ.
- (4) Where a third party files an appearance, the defendant by whom he was joined shall serve on the third party a copy of all pleadings that may from time to time be served between the plaintiff and that defendant.

11.10 Counterclaim by third party

- (1) A third party who has a claim against the defendant may assert the claim in the proceeding by way of counterclaim and rule 10.02 applies as if the claim by the third party notice were a proceeding commenced by writ.
- (2) A third party who counterclaims may join the plaintiff as defendant to the counterclaim along with the defendant if the plaintiff and defendant could be joined properly as defendants in accordance with rule 9.02 in a separate proceeding brought against them by the third party.

11.11 Default by third party

- (1) Where at the time a judgment is entered or given for the plaintiff against the defendant by whom the third party was joined the third party has not filed an appearance or after appearance has not served a defence and the time limited for filing an appearance or serving a defence has expired:
 - (a) the third party shall be taken to admit the claims stated in the third party notice and shall be bound by the judgment between the plaintiff and the defendant insofar as it is relevant to the claim or question stated in the notice; and
 - (b) the defendant may at any time after satisfaction of the judgment or, with the leave of the Court, before satisfaction, enter judgment against the third party for a contribution or indemnity claimed in the notice and, with the leave of the Court, for any other relief or remedy claimed.

- (2) If a third party or the defendant by whom he was joined fails to serve a pleading within the time limited, the Court may give such judgment for the party not in default or make such orders as it thinks fit.
- (3) The Court may set aside or vary a judgment or order made or given under subrule (1)(b) or (2).

11.12 Discovery and trial

Where the third party files an appearance:

- (a) the third party and the defendant by whom he was joined may have discovery of one another; and
- (b) unless the Court otherwise orders:
 - (i) the third party may attend and take part at the trial of the proceeding;
 - (ii) at the trial the questions between the defendant and the third party shall be tried concurrently with the questions between the plaintiff and the defendant; and
 - (iii) the third party shall be bound by the result of the trial.

11.13 Third party directions

- (1) Where the third party files an appearance, the Court may:
 - (a) where the liability of the third party to the defendant by whom he was joined as third party is established – give judgment for that defendant against the third party;
 - (b) order that a claim or question stated in the third party notice be tried in such manner as it directs;
 - (c) give the third party leave to defend the proceeding, either alone or jointly with a defendant, or to attend and take part at the trial; and
 - (d) generally make such orders and give such directions as are necessary to ensure that all questions in the proceeding are effectually and completely determined and adjudicated on and as to the extent to which the third party is to be bound by a judgment or decision in the proceeding.

- (2) The Court may make an order or give a direction under subrule (1) either before or after a judgment in the proceeding has been entered or given for the plaintiff against the defendant and may, at any time, vary or rescind such an order or direction.

11.14 Judgment between defendant and third party

- (1) Where a third party has been joined under this Order, the Court may, at or after the trial of the proceeding or on its determination otherwise than by trial, give judgment for the defendant by whom the third party was joined against the third party or for the third party against that defendant.
- (2) Where judgment is given for the plaintiff against the defendant and judgment is given for that defendant against a third party, unless the Court otherwise orders, the judgment against the third party shall not be enforced until the judgment against the defendant has been satisfied.

11.15 Claim against another party

- (1) Where a party claims as against another party a relief of the kind described in rule 11.01, the party may make the claim against the other party by filing and serving a notice in accordance with this rule.
- (2) Subrule (1) does not apply where the claim could be made by counterclaim in the proceeding.
- (3) No appearance to a notice under subrule (1) is necessary if the party on whom it is served has filed an appearance in the proceeding or is a plaintiff, but otherwise this Order, with the necessary changes, applies as if the defendant had filed and served a third party notice under rule 11.01 and the party on whom the notice was served were a third party joined under that rule.
- (4) Except as provided by subrule (5), a notice under subrule (1) shall, with the necessary changes, be in accordance with Form 11A and be endorsed with a statement of claim.
- (5) Where a party claims against another party contribution pursuant to section 12 of the *Law Reform (Miscellaneous Provisions) Act*, a notice under subrule (1) shall be in accordance with Form 11B.

11.16 Fourth and subsequent parties

- (1) Where a third party has filed an appearance this Order, with the necessary changes, applies as if the third party were a defendant.

- (2) Where a person joined under this Order as a party by a third party has filed an appearance, this Order as applied by this rule has effect as regards such further person and any other person or persons so joined and so on successively.
- (3) A third or subsequent party may not make a claim against another person (whether that person is a party to the proceeding or not) by notice under this Order without the leave of the Court.

11.17 Counterclaim

Where a defendant has served a counterclaim, this Order, with the necessary changes, applies as if the defendant were the plaintiff and the plaintiff were the defendant.

Order 12 Interpleader

12.01 Definitions

In this Order, unless the contrary intention appears:

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

execution creditor means a person for whom a warrant is issued.

property in dispute means a debt or other property which is the subject of proceedings under this Order.

sheriff includes a person to whom a warrant of execution is directed.

stakeholder means an applicant under rule 12.02.

warrant means a warrant of execution under this Chapter.

12.02 Stakeholder's interpleader

- (1) Where:
 - (a) a person is under a liability (otherwise than as a sheriff) in respect of a debt or other personal property; and
 - (b) he is sued or expects to be sued in a court for or in respect of the debt or property by 2 or more persons making adverse claims to or in respect of the debt or property,

the Court may, on application by him, grant relief by way of interpleader.

- (2) Where a stakeholder is sued in a proceeding in the Court for or in respect of the property in dispute, an application under subrule (1) shall be made by summons in the proceeding.
- (3) A summons under subrule (2) shall be served on each party to the proceeding who is a claimant and shall be served personally on each claimant who is not a party.
- (4) Where subrule (2) does not apply, an application under subrule (1) shall be commenced by originating motion in which all claimants are joined as defendants.

12.03 Sheriff's interpleader

- (1) Where a sheriff takes or intends to take personal property under a warrant, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice in writing of his claim to the sheriff.
- (2) A notice of claim under subrule (1) shall:
 - (a) state the name and address of the claimant, which address shall be the address for service;
 - (b) identify each item of personal property the subject of the claim; and
 - (c) state the grounds of the claim.

12.04 Sheriff's summons to state claim

- (1) Where a person who is entitled to give notice under rule 12.03 does not, within a reasonable time after having knowledge of the facts, give notice under that rule, the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by the person of a proceeding in a court against the sheriff for or in respect of anything done by the sheriff in execution of the warrant after the time when the person might reasonably have given notice under that rule.
- (2) A sheriff may apply for an order under subrule (1) by summons in the proceeding in which the warrant is issued and, if he so applies, he shall serve the summons personally on the person against whom the order is sought.

12.05 Notice to execution creditor

- (1) A sheriff shall on being given a notice of claim under rule 12.03, without delay, serve a copy of the notice, and also a notice in accordance with Form 12A, on the execution creditor.

- (2) The execution creditor may serve on the sheriff notice in writing that he admits or disputes the claim.

12.06 Admission of claim

Where an execution creditor admits a claim by notice under rule 12.05(2):

- (a) he shall not be liable for any fees or expenses incurred by the sheriff under the warrant after the notice is given;
- (b) the sheriff shall withdraw from possession of the property claimed; and
- (c) the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by the person whose claim is admitted of proceedings in a court against the sheriff or in respect of anything done by the sheriff in execution of the warrant.

12.07 Interpleader summons

- (1) Where under rule 12.05 a sheriff has served a notice of claim and a notice in accordance with Form 12A on the execution creditor, the sheriff may, by summons in the proceeding in which the warrant is issued, apply to the Court for relief by way of interpleader if the execution creditor:

- (a) does not within 7 days after the service of the notices under rule 12.05 serve on the sheriff notice in writing that he admits the claim; or
- (b) within that period of 7 days serves on the sheriff notice in writing that he disputes the claim,

and the Court may, if the claim has not been withdrawn, grant that relief.

- (2) A summons under subrule (1) shall be served on each party to the proceeding who claims an interest in the property in dispute and shall be served personally on each claimant who is not a party.

12.08 Powers of Court

On application for relief by way of interpleader, the Court may:

- (a) where a proceeding in the Court is pending in which the applicant is sued for or in respect of any of the property in dispute – order that a claimant be added as a defendant in the proceeding in addition to or in substitution for the applicant, or

order that the proceeding be stayed or dismissed;

- (b) order that a question between the claimants be stated and tried and direct which of the claimants is to be plaintiff and which defendant;
- (c) where proceedings in another court are pending in which the applicant is sued for or in respect of any of the property in dispute restrain the further continuance of those proceedings;
- (d) order the applicant to pay or transfer any of the property in dispute into court or otherwise to dispose of it;
- (e) where a claimant claims to be entitled by way of security for debt to any of the property in dispute – make orders for the sale of any of the property and for the application of the proceeds of sale;
- (f) summarily determine a question of fact or law arising on the application; and
- (g) make such order or give such judgment as it thinks fit.

12.09 Default by claimant

- (1) Where a claimant:
 - (a) has been given due notice of the hearing of an application for relief by way of interpleader and does not attend on the hearing; or
 - (b) does not comply with an order made on such an application,the Court may order that the claim and all persons claiming under the claimant be barred from prosecuting the claimant's claim against the applicant and all persons claiming under the applicant.
- (2) An order under subrule (1) does not affect the rights of the claimants as between themselves.

12.10 Neutrality of applicant

- (1) Where a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or give judgment against the applicant, unless it is satisfied that the applicant:
 - (a) claims no interest in the property in dispute except for charges or costs; and
 - (b) does not collude with a claimant.

- (2) Where a sheriff applies for relief by way of interpleader, the Court may require him to satisfy it on the matters mentioned in subrule (1) and it may, if not satisfied on those matters, dismiss the application.
- (3) Nothing in this rule affects the power of the Court in other cases to dismiss the application or give judgment against the applicant.

12.11 Order in several proceedings

- (1) Where an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any of the property in dispute, the Court may make an order in any 2 or more of those proceedings.
- (2) An order made under subrule (1) shall be entitled in all the proceedings in which it is made and is binding on all the parties to them.

12.12 Trial of interpleader question

- (1) Order 49, with the necessary changes, applies to the trial of an interpleader question.
- (2) On the trial of an interpleader question the Court may finally determine all question arising on the application for relief by way of interpleader.
- (3) An interpleader question, including any other question arising on the application for relief, may, with the consent of all parties, be tried by the Master.

Order 13 Pleadings

13.01 Formal requirements

- (1) A pleading shall:
 - (a) specify the name of the legal practitioner, if any, who has the conduct of the proceeding on behalf of the party filing the pleading;
 - (b) be signed and dated by that legal practitioner or, where there is no such legal practitioner, by the party;
 - (c) contain a description of the pleading; and
 - (d) be divided into paragraphs numbered consecutively and each allegation, so far as practicable, shall be contained in a separate paragraph.

- (2) Where a pleading has been settled by counsel or a legal practitioner other than the legal practitioner referred to in subrule (1)(a), the name of counsel or that other legal practitioner and the fact that it was so settled shall be noted on the pleading.
- (3) A pleading shall be signed by the legal practitioner who settled it or, where the pleading was not settled by a legal practitioner, by the party.

13.02 Content of pleading

- (1) A pleading shall:
 - (a) contain in a summary form a statement of all the material facts on which the party relies but not the evidence by which those facts are to be proved;
 - (b) where a claim, defence or answer of the party arises by or under an Act identify the specific provision relied on; and
 - (c) state specifically the relief or remedy, if any, claimed.
- (2) A party may, by his pleading:
 - (a) raise a point of law; and
 - (b) plead a conclusion of law if the material facts supporting the conclusion are pleaded.

13.03 Document or conversation

The effect of a document or the purport of a conversation, if material, shall be pleaded as briefly as possible and the precise words of the document or conversation shall not be pleaded unless those words are themselves material.

13.04 Fact presumed true

A party need not plead a fact if it is presumed by law to be true or the burden of disproving it lies on the opposite party, unless the other party has specifically denied it in his pleading.

13.05 Condition precedent

An allegation of the performance or occurrence of a condition precedent necessary for the claim or defence of a party shall be implied in the party's pleading.

13.06 Implied contract or relation

Where it is alleged that a contract or relation between persons is to be implied from a series of letters or conversations or other circumstances, it shall be sufficient to allege the contract or relation as a fact and to refer generally to the letters, conversations or circumstances without setting them out in detail.

13.07 Matter which must be pleaded

- (1) A party shall, in a pleading subsequent to a statement of claim, plead specifically a fact or matter which:
 - (a) the party alleges makes a claim or defence of the opposite party not maintainable;
 - (b) if not pleaded specifically, might take the opposite party by surprise; or
 - (c) raises a question of fact not arising out of the preceding pleading.
- (2) In a proceeding for the recovery of land:
 - (a) the endorsement of a claim on the writ or, if that endorsement does not constitute a statement of claim, the statement of claim, shall describe the land so that it is physically identifiable; and
 - (b) the defendant shall plead specifically every ground of defence on which he relies and a plea that he is in possession of the land by himself or his tenant is not sufficient.
- (3) A claim for exemplary damages shall be specifically pleaded together with the facts on which the party pleading relies.

13.08 Subsequent fact

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

13.09 Inconsistent pleading

- (1) A party may in a pleading make inconsistent allegations of fact if the pleading makes it clear that the allegations are pleaded in the alternative.
- (2) A party shall not in a pleading make an allegation of fact, or raise a new claim, inconsistent with an allegation made or claim raised in a previous pleading by him.

- (3) Subrule (2) does not affect the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

13.10 Particulars of pleading

- (1) A pleading shall contain the necessary particulars of a fact or matter pleaded.
- (2) Without limiting subrule (1), particulars shall be given if they are necessary to enable the opposite party to plead or to define the questions for trial or to avoid surprise at the trial.
- (3) Without limiting subrule (1), a pleading shall contain particulars of any:
- (a) misrepresentation, fraud, breach of trust, wilful default or undue influence; or
 - (b) disorder or disability of the mind, malice, fraudulent intention or other condition of the mind, including knowledge or notice, which is alleged.
- (4) The pleading of a party who claims damages for bodily injury shall state:
- (a) particulars, with dates and amounts, of all earnings lost in consequence of the injury complained of;
 - (b) particulars of loss of earning capacity, if any, resulting from the injury;
 - (c) the date of the party's birth; and
 - (d) the name and address of each of the party's employers commencing from the day being 12 months before he sustained the injury, the time of commencement and the duration of each employment and the total net amount, after deduction of tax, that was earned in each employment.
- (5) In a proceeding for libel the endorsement of a claim on the writ or, if that endorsement does not constitute a statement of claim, the statement of claim, shall state sufficient particulars to identify the publication in respect of which the proceeding is commenced.
- (6) Particulars of a debt, damages or expenses which exceed a page shall be set out in a separate document referred to in the pleading and the pleading shall state whether the document has already been served (and, if so, when) or is to be served with the pleading.

13.11 Order for particulars

- (1) The Court may order a party to serve on another party particulars or further and better particulars of a fact or matter stated in the party's pleading or in an affidavit filed on his behalf ordered to stand as a pleading.
- (2) The Court shall not make an order under subrule (1) before service of the defence, unless the order is necessary or desirable to enable the defendant to plead or for some other special reason.
- (3) The Court may refuse to make an order under subrule (1) if the party applying for the order did not first apply by letter for the particulars he requires.

13.12 Admission and denials

- (1) Except as provided in subrule (4), every allegation of fact in a pleading shall be taken to be admitted unless it is denied specifically or by necessary implication or is stated to be not admitted in the pleading of the opposite party, or unless a joinder of issue under rule 13.13 operates as a denial of it, and a general denial of the allegations, or a general statement that they are not admitted, shall not be sufficient.
- (3) Where the party pleading intends to prove facts which are different from those pleaded by the opposite party, it is not sufficient for the party merely to deny or not to admit the facts so pleaded but the party shall plead the facts he intends to prove.
- (4) An allegation that a party has suffered damage, and an allegation as to the amount of damages, shall be taken to be denied unless specifically admitted.

13.13 Denial by joinder of issue

- (1) No reply or subsequent pleading merely joining issue shall be served.
- (2) At the close of pleadings a joinder of issue on the pleading last served shall be implied.
- (3) No joinder of issue, express or implied, shall be made on a statement of claim or counterclaim.
- (4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which issue is joined unless, in the case of an express joinder of issue, such an allegation is excepted from the joinder and is stated to be admitted, in which case the joinder of issue operates as a denial of every other allegation.

13.14 Money claim as defence

Where a defendant has a claim against a plaintiff for the recovery of a debt or damages, the claim may be relied on as a defence to the whole or part of a claim made by the plaintiff for the recovery of a debt or damages and may be included in the defence and set off against the plaintiff's claim, whether or not the defendant also counterclaims for that debt or those damages.

13.15 Counterclaim

This Order, with the necessary changes, applies to a counterclaim as if it were a statement of claim, and to a defence to counterclaim as if it were a defence.

Order 14 Service of pleadings

14.01 Statement of claim endorsed on writ

Where the endorsement of a claim on a writ constitutes a statement of claim in accordance with rule 5.04, no statement of claim shall be served.

14.02 Statement of claim not endorsed on writ

Where the endorsement of a claim on a writ does not constitute a statement of claim in accordance with rule 5.04 and a defendant files an appearance, the plaintiff shall serve a statement of claim on that defendant within 14 days after his appearance, unless the Court otherwise orders.

14.03 Alteration of claim as endorsed on writ

- (1) Where a statement of claim is served in a proceeding commenced by writ, the plaintiff may in the statement alter, modify or extend the claim as endorsed on the writ without amendment of the endorsement.
- (2) The Court may, by order, allow the plaintiff to serve a statement of claim the effect of which will be to add a new cause of action to, or substitute a new cause of action for, a cause of action disclosed in the writ.
- (3) Where the Court makes an order under subrule (2), it may further order that the plaintiff amend the endorsement of claim on the writ to make it conform to the statement of claim.

14.04 Service of defence

In a proceeding commenced by writ, a defendant who files an appearance shall serve a defence:

- (a) where the endorsement of claim on the writ constitutes a statement of claim in accordance with rule 5.04 – within 14 days after filing the appearance;
- (b) where the plaintiff serves a statement of claim – within 14 days after service of the statement of claim; or
- (c) within such time as the Court directs.

14.05 Reply

Where the plaintiff is required to serve a reply, it shall be served within 14 days after service of the defence, unless the Court otherwise orders.

14.06 Pleading after reply

No pleading subsequent to a reply shall be served without an order of the Court.

14.07 Defence to counterclaim

Where the defendant sets up a counterclaim in the defence, the plaintiff or a person joined as a defendant to the counterclaim who is already a party to the proceeding shall serve a reply and defence to the counter-claim or a defence to the counterclaim within 14 days after service of the defence and counterclaim, unless the Court otherwise orders.

14.08 Close of pleadings

Unless the Court otherwise orders, pleadings shall be closed:

- (a) where no pleading beyond a defence is ordered or served – at the expiration of 14 days after service of the defence; and
- (b) where pleadings beyond a defence are ordered or served – at the expiration of 14 days after service of the last of those pleadings.

14.09 Order as to pleadings

Notwithstanding anything contained in this Order, in a proceeding commenced by writ the Court may order that:

- (a) a party serve a pleading;

- (b) the service of a pleading be dispensed with; or
- (c) the proceeding be tried without pleadings.

14.10 Filing of pleadings

A party who serves a pleading on another party shall, without delay after service, file a copy of the pleading.

Order 15 Person under disability

15.01 Interpretation

In this Order *person under a disability* means an infant or a person who is incapable (by reason of age, injury, disease, senility, illness or physical or mental infirmity) of managing his affairs in relation to the proceeding.

15.02 Litigation guardian of person under disability

- (1) Except where otherwise provided by or under an Act, a person under a disability shall commence or defend a proceeding by his litigation guardian.
- (2) Except where otherwise provided by this Chapter, anything in a proceeding that is required or permitted by this Chapter to be done by a party shall or may, if the party is a person under a disability, be done by his litigation guardian.
- (3) A litigation guardian of a person under a disability shall act by a solicitor.

15.03 Appointment of litigation guardian

- (1) A person may be a litigation guardian of a person under a disability if he is not himself a person under a disability and he has no interest in the proceeding adverse to that of the person under a disability.
- (2) Where a person is authorized by or under an Act to conduct legal proceedings in the name of or on behalf of a person under a disability, he shall, unless the Court otherwise orders, be entitled to be the litigation guardian of the person under a disability in a proceeding to which his authority extends.
- (3) Where after a proceeding is commenced a party to the proceeding becomes a person under a disability, the Court shall appoint a litigation guardian of that party.

- (4) Where the interests of a party who is a person under a disability so require, the Court may appoint or remove a litigation guardian or substitute another person as the litigation guardian.
- (5) Where a party has a litigation guardian in a proceeding, no other person shall act as the litigation guardian, unless the Court otherwise orders.
- (6) Except where a litigation guardian has been appointed by the Court, the name of a person shall not be used in a proceeding as the litigation guardian of a person under a disability unless there is first filed in the Registry the written consent of the person to be the litigation guardian.
- (7) A consent under subrule (6) shall include a statement detailing the circumstances that constitute the proposed litigant to be a person under a disability and a certificate by the proposed litigation guardian that he has no interest in the proceeding adverse to that of the person under a disability.

15.04 No appearance by person under disability

Where a defendant who is a person under a disability does not file an appearance within the time limited, the plaintiff shall not continue the proceeding unless a person is made the litigation guardian of the defendant in accordance with rule 15.03 or is appointed the litigation guardian by order of the Court.

15.05 Application to discharge or vary certain orders

An application to the Court on behalf of a person under a disability served with an order made without notice under rule 9.09 for the discharge or variation of the order shall be made:

- (a) if a litigation guardian is acting for that person in the proceeding in which the order is made – within 14 days after the service of the order on that person; or
- (b) if no litigation guardian is acting for that person in that proceeding – within 14 days after the appointment of a litigation guardian to act for him.

15.06 Pleading admission by person under disability

Notwithstanding anything in rule 13.12(1), a person under a disability shall not be taken to admit the truth of an allegation of fact made in the pleading of the opposite party unless in his pleading the person states that the allegation is admitted.

15.07 Discovery

- (1) Subject to subrule (2), a party shall be entitled to have discovery of a person under a disability as if that person were not under a disability.
- (2) The discovery shall be given by the person under a disability or his litigation guardian, whichever is appropriate.

15.08 Compromise of claim by person under disability

- (1) Where in a proceeding a claim is made by or on behalf of or against a person under a disability, no compromise, payment of money into Court, acceptance of money paid into Court or acceptance of an offer of compromise under Order 26, whenever entered into or made, so far as it relates to that claim, is valid without the approval of the Court.
- (2) Application for approval shall be by summons filed not later than 14 days after the compromise, payment or acceptance.
- (2.1) A copy of an affidavit in support of the application shall not be served.
- (3) The Court may dispense with the requirement of a summons where an application for approval is made at the trial of the proceeding.
- (4) On the application evidence shall be given of the date of the compromise, payment or acceptance and the date of birth of the person under a disability and the dates shall be stated in an order approving the compromise, payment or acceptance.
- (5) Where the acceptance of an offer of compromise is approved, the person under a disability shall be taken to have made or accepted the offer at the time of approval.
- (6) Where an order is made approving a compromise by which money is to be paid to a person under a disability, the forms of order in Form 15A and 15B shall, where appropriate, be used.

15.09 Execution against money in court

- (1) This rule applies where:
 - (a) a person under a disability is required by a judgment to pay money;
 - (b) money stands in court to the credit of that person or he has a beneficial interest in money or funds in court; and

- (c) under this Chapter the Court, on the application of the person entitled to enforce the judgment:
 - (i) may, order that the money in court, or so much of the money as is sufficient to satisfy the judgment, be paid to that person or, as the case may be; or
 - (ii) make an order imposing a charge on the beneficial interest of the person under a disability in the money or funds in court to secure the payment of the sum due under the judgment.
- (2) In determining whether to make an order for payment or an order imposing a charge, as the case may be, the Court shall have regard to the fact that the person liable under the judgment is a person under a disability, the purpose for which payment of the money or funds into court was made and the purpose for which the money or funds are held.

15.10 Counterclaim and claim by third party notice

This Order, with the necessary changes, applies to a counterclaim against a person under a disability who is joined as a defendant to the counterclaim under rule 10.03 and to a claim by a third party notice by or on behalf of or against a person under a disability.

Order 16 Executors, administrators and trustees

16.01 Representation of unascertained persons

- (1) This rule applies to a proceeding relating to:
 - (a) the administration of the estate of a deceased person;
 - (b) property subject to a trust; or
 - (c) the construction of an Act or an instrument.
- (2) The Court may appoint one or more persons to represent a person (including an unborn person) who or class which is or may be interested (whether presently or for a future, contingent or unascertained interest) in, or affected by, the proceeding where:
 - (a) the person, the class or a member of the class cannot be ascertained or cannot readily be ascertained;
 - (b) the person, class or a member of the class, although ascertained, cannot be found; or

- (c) although the person or the class and its members can be ascertained and found, it appears to the Court having regard to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined, it is expedient to make the order for the purpose of saving expense.
- (3) Where the Court makes an order under subrule (2), a judgment or order in the proceeding shall bind the person or members of the class represented as if he or they were parties.
- (4) Where a compromise of a proceeding is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties (including unborn or unascertained persons) but:
 - (a) there is a party in the same interest who assents to the compromise or on whose behalf the Court sanctions the compromise; or
 - (b) the absent persons are represented by a person appointed under subrule (2) and he so assents,

the Court, if satisfied that the compromise is for the benefit of the absent persons, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order is obtained by fraud or non-disclosure of a material fact.

16.02 Beneficiaries

- (1) Where a party sues or is sued as executor, administrator or trustee:
 - (a) it shall not be necessary to join as a party a person having a beneficial interest in the estate or under the trust; and
 - (b) a judgment or order in the proceeding shall bind all such persons as it does the executor, administrator or trustee.
- (2) Subrule (1) does not limit the power of the Court to order the addition of a party under rule 9.06 or to make an order under rule 16.01(2).

16.03 Deceased person

- (1) Where a deceased person was interested, or the estate of a deceased person is interested, in a question in a proceeding and the deceased person has no personal representative, the Court may:
 - (a) proceed in the absence of a person to represent the estate of the deceased; or
 - (b) by order (with the consent of the person appointed) appoint a person to represent the estate for the purpose of the proceeding.
- (2) An order under subrule (1), and a judgment or order subsequently given or made in the proceeding, binds the estate of the deceased person as it would had a personal representative of the deceased been a party.
- (3) Before making an order under this rule, the Court may require notice of the application for the order to be given to a person having an interest in the estate.

Order 17 Partners and sole proprietors

17.01 Partners

- (1) Where 2 or more persons carry on business as partners in the Territory, a proceeding may be commenced by or against them in the name of the firm (if any) of which they were partners when the cause of action accrued.
- (2) Subrule (1) applies where partners sue or are sued by:
 - (a) a partner of the same firm; or
 - (b) partners of another firm, and a partner of the one firm is a partner of the other.

17.02 Disclosure of partners

- (1) Where a proceeding is commenced by or against partners in the firm name under rule 17.01, another party may, by notice served at the address for service of the partners in the proceeding, require the partners to disclose in writing, within 14 days after service, the name and address of the usual or last known place of residence or of business of each person constituting the firm at the time when the cause of action accrued and whether since that time there has been any and if so what change in the membership of the firm.

- (2) Where partners fail to comply with a notice under subrule (1), the Court may:
 - (a) where the partners are plaintiffs – order that the proceeding be dismissed;
 - (b) where the partners are defendants – order that their defence be struck out; or
 - (c) in either case, make such other orders as it thinks fit.

17.03 Service of originating process

- (1) Originating process in a proceeding commenced against partners in the firm name under rule 17.01 may be served on:
 - (a) any one or more of the partners; or
 - (b) a person at the principal place of business of the partnership within the Territory who appears to have control or management of the partnership business there.
- (2) Originating process served under subrule (1) shall be taken to have been duly served on the partners whether or not a partner is out of the Territory.
- (3) Where a partnership has to the knowledge of the plaintiff been dissolved before the proceeding against the partners has commenced, the originating process shall be served on every person sought to be made liable in the proceeding.
- (4) Every person on whom originating process is served under subrule (1) shall be informed by notice in writing given at the time of service whether he is served as a partner or as a person having the control or management of the partnership business or in both characters and, in default of such notice, the person served shall be taken to be served as a partner.

17.04 Appearance by partners

Partners sued in the name of their firm shall appear individually in their own names but the proceeding shall, nevertheless, continue in the name of the firm.

17.05 No appearance except by partners

A person served with originating process as a person having the control or management of the partnership business shall not file an appearance unless he is a partner.

17.06 Appearance under objection of person sued as partner

- (1) A person served with originating process as a partner may file an appearance stating that he does so as a person served as a partner and that he denies that he was a partner at a material time or is liable as such.
- (2) An appearance filed under subrule (1) shall not preclude the plaintiff from otherwise serving the partners and, if no party has filed an appearance in the ordinary form, from obtaining judgment against the partners in the name of the firm in default of appearance.
- (3) Where an appearance is filed under subrule (1):
 - (a) the plaintiff may either apply to set it aside on the ground that the person filing it was a partner or is liable as a partner or leave that question to be determined at a later stage of the proceeding;
 - (b) the person filing the appearance may either apply to set aside the service on him on the ground that he was not a partner at a material time or liable as such or at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the partners or both; and
 - (c) the Court may give directions as to the mode and time of trial of the question of the liability of the person who filed the appearance or of the liability of the partners.
- (4) Rule 8.08 does not apply to an appearance filed under this rule.

17.07 Enforcement of judgment

- (1) A judgment given or order made against partners suing or sued in the name of their firm may, subject to subrule (2) and rule 17.08, be enforced against:
 - (a) property of the partnership; and
 - (b) a person who:
 - (i) filed an appearance as a partner;
 - (ii) having been served as a partner with originating process, failed to file an appearance;
 - (iii) admitted in his pleading that he is a partner; or

- (iv) was served with originating process as a partner and was adjudged to be a partner.
- (2) Where a party who has obtained a judgment or order against partners suing or sued in the name of their firm claims that a person is liable to satisfy the judgment or order as a partner and subrule (1) does not apply in relation to that person, the Court:
- (a) where liability is not disputed – may order that the judgment or order be enforced against that person; or
- (b) where the liability is disputed – may give directions for the trial of the question of liability.
- (3) An application under subrule (2) shall be made by summons served personally on the person against whom enforcement of the judgment or order is sought.

17.08 Enforcement between partners

A judgment given or order made against partners suing or being sued in the name of their firm in a proceeding of the kind referred to in rule 17.01(2)(a) or (b) shall not be enforced without the leave of the Court and, on application for leave, the Court may make an order that necessary accounts and inquiries be taken and made.

17.09 Attachment of debts

- (1) A debt due or accruing due from partners may be attached under this Chapter notwithstanding that a partner is resident out of the Territory if a partner or a person apparently having the control or management of the partnership business in the Territory is served with the garnishee summons.
- (2) The attendance of a partner before the Court on the hearing of a garnishee summons is a sufficient attendance by the partners.

17.10 Person using the business name

A person carrying on business in the Territory in a name or style other than his own may be sued in that name or style as if it were the name of a firm and rules 17.02 to 17.09, with the necessary changes, apply as if he were a partner and the name in which he carries on business were the name of his firm.

17.11 Charge on partner's interest

- (1) An application to the Court by a judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 23 of *The Partnership Act, 1891*, of the State of

South Australia in its application to the Territory as a law of the Territory and for such other orders as are by that Act authorized to be made, and every application to the Court by a partner of a judgment debtor made in consequence of the first mentioned application, shall be made by summons.

- (2) A summons filed by the judgment creditor under this rule and an order made on the summons, shall be served on the judgment debtor and on such of his partners as are in the Territory.
- (3) A summons filed by a partner of a judgment debtor under this rule, and an order made on the summons, shall be served on:
 - (a) the judgment creditor;
 - (b) the judgment debtor; and
 - (c) such of the other partners of the judgment debtor as do not join in the application and are in the Territory.
- (4) A summons or order served under this rule on some only of the partners of the judgment debtor shall be taken to have been served on all of the partners.

Order 18 Representative proceeding

18.01 Application

This Order applies where numerous persons have the same interest in a proceeding, but does not apply to a proceeding concerning:

- (a) the administration of the estate of a deceased person; or
- (b) property subject to a trust.

18.02 Proceeding by or against representative

A proceeding may be commenced and, unless the Court otherwise orders, continued by or against one or more persons having the same interest as representing some or all of them.

18.03 Order for representation by defendant

- (1) At any stage of a proceeding under rule 18.02 against one or more persons having the same interest, the Court may appoint one or more of:
 - (a) the defendants; or

- (b) the persons as representing whom the defendants are sued, to represent some or all of those persons in the proceeding.
- (2) Where the Court appoints a person who is not a defendant, it shall make an order under rule 9.06 adding the person as a defendant.

18.04 Effect of judgment

- (1) A judgment given or order made in a proceeding to which this Order applies binds the parties and all persons as representing whom the parties sue or are sued, as the case may be.
- (2) The judgment or order shall not be enforced against a person who is not a party, except by leave of the Court.
- (3) An application for leave shall be made by summons served personally on the person against whom enforcement of the judgment or order is sought.

Order 19 Notice of constitutional matter

19.01 Definitions

In this Order:

the Act means the *Judiciary Act 1903* of the Commonwealth.

State has the meaning ascribed in section 78AA of the Act.

19.02 Notice

- (1) Where a proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the Act, the party whose case raises the matter shall, unless the Court directs another party to do so, without delay file a notice of a constitutional matter.
- (2) A notice under subrule (1) shall state:
 - (a) specifically the nature of the matter; and
 - (b) the facts showing that the matter is one to which subrule (1) applies.
- (3) The notice shall be in Form 19A.

19.03 Filing and service

- (1) Subject to subrule (3), the party required or directed under rule 19.02 to file the notice shall serve a copy on:
 - (a) every other party; and
 - (b)
 - (i) the Attorney-General for the Commonwealth, if he or the Commonwealth is not a party; and
 - (ii) the Attorney-General of each State, if he or that State is not a party.
- (2) Unless the Court otherwise orders, the copy shall be served without delay after the notice is filed.
- (3) Service of a copy of the notice need not be effected on an Attorney-General if steps have been taken that could reasonably be expected to cause the matters to be notified to be brought to the attention of that Attorney-General.
- (4) The party serving a copy of the notice shall, without delay, file an affidavit of service.

Order 20 Change of solicitor

20.01 Notice of change

Where a solicitor acts for a party in a proceeding and the party changes his solicitor, the party shall, without delay, file notice of the change and serve a copy of the notice on the other parties and, where practicable, his former solicitor.

20.02 Party appointing solicitor

Where a party who has no solicitor in a proceeding appoints a solicitor to act for him in the proceeding, the solicitor shall, without delay, file notice of the appointment and serve a copy of the notice on the other parties.

20.03 Solicitor ceasing to act

- (1) Where a solicitor ceases to act for a party in a proceeding, unless a notice of change is filed and served under rule 20.01, the solicitor shall, without delay, file notice that he has ceased to act and serve a copy on all the parties.
- (2) A notice under subrule (1) shall state the party's address last known to the solicitor.

- (3) Except by leave of the Court, a solicitor shall not file a notice under subrule (1):
 - (a) where the address of the party in the notice is not within 15 kilometres of the Registry in which the originating process was filed; or
 - (b) after a proceeding has been set down for trial.

20.04 Removal of solicitor from record

- (1) Where a solicitor who has acted for a party in a proceeding has died, become bankrupt, cannot be found, has ceased to have the right of practising in the Court or for any reason has ceased to practise, and the party has not given notice under rule 20.01 or the solicitor has not given notice under rule 20.03, the Court may, on application made by another party to the proceeding, by order, declare that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the proceeding.
- (2) An application under subrule (1) shall be made by summons supported by an affidavit stating the facts on which the application is made and, unless the Court otherwise orders, the summons and a copy of the affidavit shall be served on the party to whose solicitor the application relates.
- (3) Where an order is made under subrule (1), the party on whose application it was made shall, without delay, serve a copy of the order on every other party to the proceeding and file an affidavit of service.

20.05 Address for service

- (1) The address for service of a party:
 - (a) who changes his solicitor and files and serves notice under rule 20.01, shall be the business address of the new solicitor;
 - (b) who appoints a solicitor in the circumstances referred to in rule 20.02, shall be the business address of the solicitor; or
 - (c) for whom a solicitor has ceased to act, where notice is filed and served by the solicitor under rule 20.03 without leave, shall be the address stated in the notice.
- (2) Where the Court under:
 - (a) rule 20.03(3)(a) gives a solicitor leave to file notice that he has ceased to act; or

(b) rule 20.04(1), by order, declares that a solicitor has ceased to act,

the Court may, by order, direct what address shall be the address for service of the party for whom the solicitor has ceased to act.

(3) Where the Court makes no order under subrule (2), a document in the proceeding which is not required to be served personally may be served on the party for whom the solicitor has ceased to act by filing it.

(3.1) A party who serves a document by filing in accordance with subrule (3) shall endorse on a backsheet or on the back of the last sheet a statement that it is filed as such service.

Order 21 Judgment in default of appearance or pleading

21.01 Default of appearance

- (1) This rule applies only to a proceeding commenced by writ.
- (2) Where a defendant does not file an appearance within the time limited, the plaintiff may enter or apply for judgment against that defendant in accordance with this Order.
- (3) Judgment shall not be entered or given for the plaintiff unless there is filed:
 - (a) an affidavit proving service of the writ on the defendant; and
 - (b) where the plaintiff applies for judgment in accordance with rule 21.04 and the endorsement of claim on the writ does not constitute a statement of claim in accordance with rule 5.04, a statement of claim.

21.02 Default of defence

- (1) Where a defendant, being required to serve a defence, does not do so within the time limited, the plaintiff may enter or apply for judgment against the defendant in accordance with this Order.
- (2) Judgment shall not be entered or given for the plaintiff unless an affidavit proving the default is filed.
- (3) Subrules (1) and (2), with the necessary changes, apply where the defendant has served a defence and by or under an order of the Court the defence is struck out.

21.03 Judgment for recovery of debt, damages or property

- (1) Where a claim is made for the recovery of a debt, damages or property, whether or not another claim is also made in the proceeding, and the plaintiff is entitled to judgment on that claim against a defendant in accordance with rule 21.01 or rule 21.02, the plaintiff may:
 - (a) for the recovery of a debt – enter final judgment against the defendant for an amount not exceeding the amount claimed in the writ or, if the plaintiff has served a statement of claim, the amount claimed in the statement of claim, together with interest from the commencement of the proceeding to the date of the judgment:
 - (i) on any debt which carries interest – at the rate it carries; and
 - (ii) on any other debt – at the rates payable on judgment debts during that time;
 - (b) for the recovery of damages – enter interlocutory judgment against the defendant for the damages to be assessed;
 - (c) for the recovery of land – enter judgment for possession of the land against the defendant;
 - (d) for the detention of goods – enter interlocutory judgment against that defendant:
 - (i) either for the delivery of goods or their value to be assessed or for the value of the goods to be assessed; and
 - (ii) if a claim is made for the recovery of damages for the detention of the goods, for the damages to be assessed.
- (2) On entering judgment under subrule (1) the plaintiff may also enter judgment for costs.
- (3) Where under subrule (1) damages or the value of goods are to be assessed, the assessment shall unless the Court otherwise orders, be made by the Master in accordance with Order 51.

21.04 Judgment other than for recovery of debt, damages or property

- (1) Where a claim is made other than for the recovery of a debt, damages or property, whether or not a claim for such recovery is also made in the proceeding, and the plaintiff is entitled to judgment

on the claim against a defendant in accordance with rule 21.01 or 21.02, the Court may give judgment for the plaintiff on the statement of claim.

- (2) An application for judgment under subrule (1) may be made without notice to the defendant.

21.05 Proceeding continued against other defendants

A plaintiff who enters or obtains judgment against a defendant in accordance with this Order may enforce the judgment and continue the proceeding against another defendant but, in a proceeding for the recovery of land against more than one defendant, a judgment for possession of the land shall not be enforced against a defendant unless judgment for possession has been entered or given against all the defendants.

21.06 Default of defence to counterclaim

Where a defendant serves a counterclaim, rule 21.02 applies as if the defendant were the plaintiff, the defence were the defence to the counterclaim and the plaintiff were the defendant.

21.07 Setting aside judgment

The Court may set aside or vary a judgment entered or given in accordance with this Order.

Order 22 Summary judgment for plaintiff

22.01 Scope of Order

This Order applies only to a proceeding commenced by writ.

22.02 Application for judgment

- (1) Where the defendant has filed an appearance, the plaintiff may at any time apply to the Court for judgment against the defendant on the ground that the defendant has no defence to the whole or part of a claim included in the writ or statement of claim, or no defence except as to the amount of a claim.
- (2) Subrule (1) does not apply to a claim for defamation malicious prosecution, false imprisonment or seduction or to a claim based on an allegation of fraud.

- (3) Where the writ or statement of claim includes a claim within subrule (2), the plaintiff may apply for judgment in respect of any other claim and continue the proceeding for the first-mentioned claim.
- (4) Except by order of the Court, the plaintiff shall make only one application for judgment under this Order.

22.03 Affidavit in support

- (1) An application for judgment shall be made by summons supported by an affidavit verifying the facts on which the claim or the part of the claim to which the application relates is based and stating that, in the belief of the deponent, there is no defence to that claim or part or no defence except as to the amount claimed.
- (2) Where a statement in a document tends to establish a fact within subrule (1) and at the trial of the proceeding the document would be admissible by or under the Evidence Act or any other Act to verify the fact, the affidavit under subrule (1) may set forth the statement.
- (3) An affidavit under subrule (1) may contain a statement of fact based on information and belief if the grounds are set out and, having regard to all the circumstances, the Court considers that the statement ought to be permitted.
- (4) The plaintiff shall serve the summons and a copy of the affidavit or affidavits in support and of any exhibit referred to in it on the defendant not later than 7 days before the day for hearing named in the summons.

22.04 Defendant to show cause

- (1) The defendant may, by affidavit or otherwise to the satisfaction of the Court, show cause against the application.
- (2) An affidavit under subrule (1) may contain a statement of fact based on information and belief if the grounds are set out.
- (3) Unless the Court otherwise orders, the defendant shall serve a copy of an affidavit and of an exhibit referred to in the affidavit on the plaintiff not later than 3 days before the day for the hearing named in the summons.

22.05 Affidavit in reply

Where the defendant serves an affidavit under rule 22.04, the Court may, by order, allow the plaintiff to rely on an affidavit in reply.

22.06 Hearing of application

- (1) On the hearing of the application the Court may:
 - (a) dismiss the application;
 - (b) give such judgment for the plaintiff against the defendant on the claim or the part of the claim to which the application relates as is appropriate having regard to the nature of the relief or remedy claimed, unless the defendant satisfies the Court that in respect of that claim or part a question ought to be tried or that there ought for some other reason be a trial of that claim or part;
 - (c) give the defendant leave to defend with respect to the claim or the part of the claim to which the application relates either unconditionally or on terms as to giving security, paying money into court, time, the mode of trial or otherwise; or
 - (d) with the consent of all parties, and notwithstanding rule 77.03 (1), dispose of the proceeding finally in a summary manner.
- (2) The Court may stay the execution of a judgment given under subrule (1)(b) until after the trial of a counterclaim made by the defendant in the proceeding.

22.07 Cross-examination on affidavit

- (1) The Court may order a party or the maker of an affidavit to attend and be examined and cross-examined or to produce any papers, books or documents, or copies of or extracts from them.
- (2) Where a party is a corporation, the Court may make an order under subrule (1) in respect of a director, manager, secretary or other similar officer of the corporation or a person purporting to act in such capacity.

22.08 Judgment on counterclaim

- (1) Where a defendant serves a counterclaim, he may at any time after service, on the ground that the plaintiff has no defence to the whole or part of a claim made in the counterclaim or no defence except as to the amount of a claim, apply to the Court for judgment against the plaintiff.
- (2) This Order, with the necessary changes, applies to an application under subrule (1) as if the plaintiff were the defendant and the defendant the plaintiff.

22.09 Assessment of damages

Where judgment is given under this Order for damages or the value of goods to be assessed, the assessment shall be made in accordance with Order 51.

22.10 Judgment where debt amount unascertained

Where on an application under this Order for judgment on a claim for a debt the amount is not established to the satisfaction of the Court, and where if the amount were established the Court would give judgment on the claim, the Court may make a declaration as to liability for the debt and order that its amount be ascertained in such manner as it directs, and give leave to enter judgment for the debt once the amount is ascertained.

22.11 Directions

- (1) Where leave is given to defend or where judgment is given on a claim or part of a claim but execution of the judgment is stayed pending the trial of a counterclaim or of the proceeding, as the case may be, the Court may give directions as to the further conduct of the proceeding.
- (2) The Court may direct that an affidavit made under this Order shall serve as a defence or defence and counterclaim and may order the proceeding to be immediately set down for trial and may define the questions to be tried.

22.12 Continuing for other claim or against other defendant

Where the plaintiff obtains judgment on a claim or part of a claim against a defendant, he may continue with the proceeding for another claim or for the remainder of the claim or against another defendant.

22.13 Judgment for delivery up of chattel

Where the Court gives judgment under this Order for the delivery up of a specific chattel, it may order the party against whom judgment is given to deliver up the chattel without giving the party an option to retain it on paying its assessed value.

22.14 Relief against forfeiture

A tenant may apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order, as if the judgment were given after trial.

22.15 Setting aside judgment

The Court may set aside or vary a judgment given against a party who does not attend on the hearing of an application under rule 22.02 or 22.08.

Order 23 Summary stay or dismissal of claim and striking out pleading

23.01 Stay or judgment in proceeding

(1) Where a proceeding generally or a claim in a proceeding:

- (a) does not disclose a cause of action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the Court,

the Court may stay the proceeding generally or in relation to a claim or give judgment in the proceeding generally or in relation to a claim.

(2) Where the defence to a claim in a proceeding:

- (a) does not disclose an answer;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the Court,

the Court may give judgment in the proceeding generally or in relation to the claim.

(3) In this Rule a claim in a proceeding includes a claim by counterclaim and a claim by third party notice and a defence includes a defence to a counterclaim and a defence to a claim by third party notice.

23.02 Striking out pleading

Where an endorsement of claim on a writ or originating motion or a pleading or a part of an endorsement of claim or pleading:

- (a) does not disclose a cause of action or defence;
- (b) is scandalous, frivolous or vexatious;
- (c) may prejudice, embarrass or delay the fair trial of the proceeding; or

(d) is otherwise an abuse of the process of the Court,

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

23.03 Summary judgment for defendant

On application by a defendant who has filed an appearance, the Court at any time may give judgment for the defendant against the plaintiff if the defendant has a good defence on the merits.

23.04 Affidavit evidence

- (1) On an application under rule 23.01 or 23.03 evidence shall be admissible for a party by affidavit or, if the Court thinks fit, orally.
- (2) On an application under rule 23.02 no evidence shall be admissible on the question whether an endorsement of claim or pleading offends against that rule.
- (3) Rule 22.07 applies to an affidavit under subrule (1).

23.05 Declaratory judgment

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

Order 24 Judgment on failure to prosecute or obey order for particulars or discovery

24.01 Want of prosecution

Where the plaintiff:

- (a) being required to serve a statement of claim, fails to do so within the time limited; or
- (b) being entitled under rule 48.02 to set the proceeding down for trial, does not do so within 28 days after the time he becomes entitled,

the Court may order that the proceeding be dismissed for want of prosecution.

24.02 Failure to obey order

- (1) Where a party fails to comply with an order to give particulars of a pleading or with an order for the discovery or inspection of documents or for answers to interrogatories, the Court may order:
 - (a) where the party is the plaintiff – that the proceeding be dismissed; or
 - (b) where the party is a defendant – that his defence, if any, be struck out.
- (2) A defendant whose defence is struck out in accordance with subrule (1)(b) shall, for the purpose of rule 21.02(1), be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.

24.03 Stay on non-payment of costs

Where a proceeding is dismissed for want of prosecution and the plaintiff is liable to pay the costs of the defendant of the proceeding and the plaintiff, before paying those costs, commences another proceeding for the same or substantially the same cause of action, the Court may by order stay the proceeding until those costs are paid.

24.04 Counterclaim and third party claim

This Order, with the necessary changes, applies to a counterclaim and to a claim by a third party notice as if the counterclaim or the third party claim were a proceeding.

24.05 Inherent jurisdiction

Nothing in this Order affects the inherent power of the Court:

- (a) to dismiss a proceeding for want of prosecution; or
- (b) to order that, on the failure of a party:
 - (i) to do an act or take a step which, under these Rules, he is required to do or take; or
 - (ii) to comply with an order that he do such an act or take such a step,

the proceeding be dismissed or the defence struck out and that judgment be entered or there be judgment accordingly.

24.06 Setting aside judgment

The Court may set aside or vary:

- (a) an order that a proceeding be dismissed for want of prosecution; or
- (b) a judgment entered or given on the failure of a party to do an act or take a step which under this Chapter the party is required to do or take or to comply with an order that he do such an act or take such a step.

Order 25 Discontinuance and withdrawal

25.01 Withdrawal of appearance

A party who has filed an appearance in a proceeding may withdraw the appearance at any time with the leave of the Court.

25.02 Discontinuance or withdrawal of proceeding or claim

- (1) This Rule applies only to a proceeding commenced by writ.
- (2) A plaintiff may discontinue a proceeding or withdraw a part of it:
 - (a) before the close of pleadings; or
 - (b) at any time, by leave of the Court or with the consent of all other parties.
- (3) A defendant may discontinue a counterclaim or withdraw a part of it:
 - (a) before the close of pleadings; or
 - (b) at any time, by leave of the Court or with the consent of all other parties to the counterclaim.
- (4) At any time the plaintiff may withdraw a defence to a counterclaim or a part of it and a defendant may withdraw his defence or a part of it.
- (5) Subrule (5) does not enable a party to withdraw an admission, or any other matter operating for the benefit of another party, without the consent of that party or the leave of the Court.
- (6) A defendant who has joined a third party may discontinue the claim made against the third party by the third party notice, or withdraw a part of the claim, at any time by leave of the Court or with the consent of the third party.

25.03 Proceeding not commenced by writ

A proceeding not commenced by writ may be discontinued, and a part of a proceeding not commenced by writ may be withdrawn, at any time by leave of the Court or with the consent of all other parties.

25.04 Notice of discontinuance or withdrawal

- (1) A discontinuance or withdrawal under rule 25.02 without the leave of the Court shall be made by filing a notice stating the extent of the discontinuance or withdrawal.
- (2) When the discontinuance or withdrawal is with the consent of other parties, the notice under subrule (1) shall be endorsed with the consent of each party who consents.
- (3) On the day the notice is filed or the next working day a copy shall be served on each other party.

25.05 Costs

Where a proceeding, counterclaim or claim by a third party notice is discontinued, or where part of a proceeding, counterclaim or a third party notice is withdrawn, liability for costs shall be determined in accordance with the relevant rules relating to costs.

25.06 Discontinuance or withdrawal no defence

The discontinuance of a proceeding, counterclaim or claim by a third party notice, or the withdrawal of a part of a proceeding, counterclaim or claim by a third party notice, shall not be a defence to a subsequent proceeding for the same, or substantially the same, cause of action, unless the Court otherwise provides by an order granting leave to discontinue or withdraw.

25.07 Stay on non-payment of costs

Where by reason of a discontinuance or a withdrawal under this Order a party is liable to pay the costs of another party and the party, before paying those costs, commences another proceeding for the same, or substantially the same, cause of action, the Court may, by order, stay the proceeding until those costs are paid.

Order 26 Offer of compromise

Part 1 Interpretation

26.01 Definitions

In this Order, unless the contrary intention appears:

claim includes a counterclaim and a claim made in accordance with Order 11.

defendant includes a defendant by counterclaim and a party against whom a claim is made in accordance with Order 11.

plaintiff includes a defendant who serves a counterclaim and a party who makes a claim in accordance with Order 11.

Part 2 Offer of compromise

26.02 Application

- (1) Where in a proceeding the plaintiff makes a claim for damages for or arising out of death or bodily injury, the plaintiff and the defendant may serve on one another an offer of compromise of that claim on the terms specified in the offer.
- (2) Where in a proceeding the plaintiff makes a claim not of the kind referred to in subrule (1), the defendant may serve on the plaintiff, but the plaintiff may not serve on the defendant, an offer of compromise of that claim on the terms specified in the offer.
- (3) For the purpose of this Part, an offer of compromise shall:
 - (a) be in writing and be prepared in accordance with rules 27.02 to 27.04 inclusive; and
 - (b) contain a statement to the effect that it is served in accordance with this Part.

26.03 Time for making, accepting, &c., offer

- (1) An offer of compromise may be served at any time before verdict or judgment in respect of the claim to which it relates.
- (2) A party may serve more than one offer of compromise.
- (3) An offer of compromise may be expressed to be limited as to the time the offer is open to be accepted after service on the party to whom it is made, but the time expressed shall not be earlier than 14 days after that service.

- (4) A party on whom an offer of compromise is served may accept the offer by serving notice of acceptance in writing on the party who made the offer before:
- (a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified, the expiration of 14 days after service of the offer; or
 - (b) a verdict or judgment in respect of the claim to which the offer relates,
- whichever event is the sooner.
- (5) An offer of compromise shall not be withdrawn during the time it is open to be accepted unless the Court otherwise orders.
- (6) An offer of compromise is open to be accepted within the period referred to in subrule (4) notwithstanding that during that period the party on whom it is served makes an offer of compromise to the party who served the offer of compromise, whether or not the offer made by the party served is made in accordance with this Part.
- (7) On the acceptance of an offer of compromise in accordance with subrule (4), unless the Court otherwise orders, the defendant shall pay the costs of the plaintiff in respect of the claim up to and including the day the offer was served.
- (8) If an offer of compromise contains a term which purports to negative or limit the operation of subrule (7), that term shall be of no effect for any purpose under this Part.

26.03.1 Offer involving payment

An offer of compromise providing for payment of an amount of money to a plaintiff shall, unless it otherwise provides, be taken to be an offer providing for payment of that amount within 14 days after acceptance of the offer.

26.04 Effect of offer

An offer of compromise made in accordance with this Part shall be taken to be an offer of compromise made without prejudice, unless the offer otherwise provides.

26.05 Disclosure of offer to Court

- (1) No statement of the fact that an offer of compromise has been made shall be contained in a pleading or affidavit.

- (2) Where an offer of compromise has not been accepted, then, except as provided by rule 26.08(6), no communication with respect to the offer shall be made to the Court on the trial of the proceeding until after all questions of liability and the relief to be granted have been determined.
- (3) Subrules (1) and (2) do not apply where an offer of compromise provides that the offer is not made without prejudice.

26.06 Party under disability

A person under a disability may make or accept an offer of compromise but no acceptance of an offer made by him and no acceptance by him of an offer is binding until the Court has approved the compromise.

26.07 Failure to comply with accepted offer

- (1) Where a party to an accepted offer of compromise fails to comply with the terms of an offer, then, unless for special cause the Court otherwise orders, the other party is entitled, as he may elect, to:
 - (a) judgment in the terms of the accepted offer; or
 - (b) where the party in default is:
 - (i) the plaintiff – an order that the proceeding be dismissed; and
 - (ii) the defendant – an order that his defence be struck out, and, in either case, to judgment accordingly.
- (2) Where a party to an accepted offer of compromise fails to comply with the terms of the offer and a defendant in the proceeding has made a claim by a counterclaim or a third party notice which is not the subject of the accepted offer, the Court may make such order or give such judgment under subrule (1) and make such order that the proceeding, counterclaim or claim by third party notice be continued, as it thinks fit.

26.08 Costs consequences of failure to accept

- (1) This rule applies to an offer of compromise which has not been accepted at the time of verdict or judgment.
- (2) Where an offer of compromise is made by a plaintiff and not accepted by the defendant and the plaintiff obtains a judgment on the claim to which the offer relates not less favourable to him than the terms of the offer, then, unless the Court otherwise orders, the

plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim taxed on the indemnity basis.

- (3) Where an offer of compromise is made by a defendant and not accepted by the plaintiff and the plaintiff obtains a judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim up to and including the day the offer was served taxed on the standard basis and the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim after the offer of compromise taxed on the standard basis.
- (4) For the purpose of subrule (3), where the offer of compromise was served on the first or a later day of the trial of the proceeding, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim to the opening of the Court next after the day on which the offer was served taxed on the standard basis and the defendant shall be entitled to his costs in respect of the claim thereafter taxed on the standard basis.
- (5) Where a plaintiff obtains judgment for the recovery of a debt or damages and:
 - (a) the amount for which the Court pronounces judgment includes an amount for interest or damages in the nature of interest; or
 - (b) by or under an Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the judgment amount,

for the purpose of determining the consequences as to costs referred to in subrules (2) and (3), the Court shall disregard so much of the amount recovered by or awarded to the plaintiff for interest or damages in the nature of interest as relates to the period after the day the offer of compromise was served.

- (6) For the purpose only of subrule (5), the Court may be informed of the fact that the offer of compromise was served, and of the date of service, but shall not be informed of its terms.
- (7) Subrules (2) and (3) shall not apply unless the Court is satisfied by the party serving the offer of compromise that he was at all material times willing and able to carry out his part of what was proposed in the offer.

26.09 Multiple defendants

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a debt or damages and rights of contribution or indemnity appear to exist between the defendants, the consequences as to costs referred to in rule 26.08 shall not apply to an offer of compromise unless:

- (a) in the case of an offer made by the plaintiff – the offer is made to all the defendants and is an offer of compromise of the claim against all of them; and
- (b) in the case of an offer made to the plaintiff:
 - (i) the offer is to compromise the claim against all defendants; and
 - (ii) where the offer is made by 2 or more defendants, by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the plaintiff for the whole amount of the offer.

26.10 Offer to contribute

- (1) Where in a proceeding a defendant makes a claim (in this rule called a **contribution claim**) to recover contribution or indemnity against a person, whether a defendant to the proceeding or not, in respect of a claim for a debt or damages made by the plaintiff in the proceeding, a party to the contribution claim may serve on any other party to the contribution claim an offer to contribute toward a compromise of the claim made by the plaintiff on the terms specified in the offer.
- (2) The Court may take an offer to contribute into account in determining whether it should order that the party on whom the offer to contribute was served should pay the whole or part of:
 - (a) the costs of the party who made the offer; or
 - (b) any costs which that party is liable to pay to the plaintiff.
- (3) Rules 26.04 and 26.05, with the necessary changes, apply to an offer to contribute as if it were an offer of compromise.

Part 3 Other compromise offers

26.11 Costs consequences in other cases

- (1) This rule applies where, in a proceeding in which the plaintiff makes a claim not of the kind referred to in subrule 26.02(1):
 - (a) the plaintiff has made an offer in writing to the defendant (whether or not expressed to be without prejudice) to compromise the claim on the terms specified in the offer; and
 - (b) at the time of verdict or judgment in respect of the claim the offer was open to be accepted but had not been accepted.
- (2) Where the plaintiff has made an offer to which subrule (1) applies and the plaintiff obtains a judgment on the claim no less favourable to him than the terms of the offer, the Court shall take those matters into account in determining what order to make for costs in respect of the claim.
- (3) The Court in exercising its discretion as to costs in accordance with subrule (2) may order that the defendant pay the costs of the plaintiff in respect of the claim, taxed on a solicitor and client basis from the commencement of the proceeding, from the day the offer was made or from such other time as it thinks fit.

Part 4 Payment into Court

26.12 Paying money into Court

A defendant may pay money into court in answer to a claim or, where interest is claimed under section 84 of the Act, in answer to that claim for interest, or in addition to money previously paid into Court under this Part.

26.13 Interest

Where an order for interest is claimed under section 84 of the Act on a claim for debt or damages and money is paid into Court in answer to, or allotted to, the claim for the recovery of the debt or damages, the money shall be presumed to include the interest which is also the subject of the claim.

26.14 Defendant to cross-claim

A defendant to a counterclaim may not pay money into Court in answer to a claim in respect of which he may, before the trial, make an offer to contribute towards a compromise as referred to in rule 26.10.

26.15 Payment into Court not an admission

Payment of money into Court is not an admission of liability.

26.16 Where tender before action pleaded

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

26.17 Notice of deposit

- (1) On paying money into court under this Part the defendant shall file a notice of deposit in accordance with Form 26A.
- (2) Where in a proceeding a plaintiff sues in respect of 2 or more claims and a defendant pays money into court under this Part, the defendant shall, in his notice of deposit:
 - (a) specify the claim in answer to which the money is paid in; and
 - (b) if the defendant allots part of the money to a claim or more than one claim, specify the amount of that part and the claim or claims to which he allots that part.

26.18 Order to allot

- (1) Where before the beginning of the trial a defendant pays money into court or allots money under this Part in answer to 2 or more claims, the Court may order the defendant specifically to allot the money amongst the various claims and to file an amended notice of deposit accordingly.
- (2) For the purposes of subrule (1), a claim arising under the *Compensation (Fatal Injuries) Act* on the death of a person and a claim surviving under the *Law Reform (Miscellaneous Provisions) Act* on the death of the same person is a single claim.

26.19 Abandonment of cross-claim

Where a defendant claims by way of counterclaims against a plaintiff and pays money into court under this Part, and in paying the money into court takes into account his claim against the plaintiff on the counter-claim with a view to its abandonment in case the plaintiff accepts the money, the defendant shall, in his notice of deposit, specify the claim on the counterclaim so taken into account.

26.20 Withdrawal by defendant

- (1) Subject to subrule (2), a defendant may, with the leave of the Court, withdraw the whole or a part of money paid into court by him under this Part.
- (2) A defendant may not make a withdrawal of money after the money has been accepted by the plaintiff.
- (3) A withdrawal under subrule (1) shall be made by filing a notice of withdrawal of deposit which shall be in accordance with Form 26B.
- (4) On the filing of a notice of withdrawal of deposit under subrule (1) the defendant is entitled to receive payment of the money.

26.21 Acceptance by plaintiff

- (1) A plaintiff may, within the time fixed by subrules (2), (3) and (4), accept money paid into court in satisfaction of the claim in answer to which the money is paid in, as against the defendant paying the money into Court.
- (2) Where the notice of deposit, or last notice of deposit, in answer to a claim is filed before the beginning of the trial, the plaintiff may accept the money in satisfaction of that claim within 14 days after service on him of the notice of deposit or last notice of deposit but before the beginning of the trial, by filing a notice of acceptance in accordance with Form 26C.
- (3) Where the notice of deposit, or last notice of deposit in answer to a claim, is filed after the beginning of the trial or a defendant, by notice served on the plaintiff after the trial begins, confirms a notice of deposit in accordance with Form 26D, the plaintiff may, subject to subrule (4), accept the money in satisfaction of the claim within 2 days after service on him of the notice of deposit, or last notice, by announcement to the Court during the trial or by filing a notice of acceptance.
- (4) A plaintiff shall not accept money in a case to which subrule (3) applies after the Judge gives his decision or begins to give his reasons for decision or after the Judge begins to sum up to the jury in case the trial is before a jury.
- (5) A defendant who serves notice of confirmation under subrule (3) shall file the notice on the day of service.
- (6) A plaintiff who accepts money by announcement to the Court under subrule (3) shall file a notice of acceptance in accordance with Form 26C on the day of the announcement.

- (7) Where a plaintiff sues in respect of more than one claim and he accepts money paid into court in answer to some one or more but not all of the claims, he may, by filing a notice (which may be combined with his notice of acceptance), abandon all his cause of action other than the cause of action to which the acceptance relates.
- (8) Where a plaintiff sues 2 or more defendants on a claim against them jointly and he accepts money brought into court by one or more but not all of those defendants in answer to that claim, he may, by filing a notice (which may be combined with his notice of acceptance), abandon his claim against the other or all the others of those defendants.
- (9) A plaintiff who accepts money under this rule is, subject to rule 26.23, entitled to receive payment of the money without an order.

26.22 Effect of acceptance

- (1) On a plaintiff accepting money under rule 26.21 in satisfaction of a claim as against a defendant paying money into court, the proceeding is stayed in relation to:
 - (a) that claim as against that defendant;
 - (b) an alternative claim against that or any other defendant;
 - (c) a claim abandoned under rule 26.21(7) or (8); and
 - (d) where the defendant, in paying the money into Court, has taken into account a counterclaim made by him as mentioned in rule 26.18, that counterclaim as against the plaintiff.
- (2) Where a defendant pays money into court in answer to a claim and the plaintiff accepts the money in satisfaction of the claim as against the defendant, the liability of another person (whether a party to the proceeding or not) jointly with the defendant in respect of the claim shall be satisfied in the amount of the money accepted but shall not be discharged by the acceptance, except to the extent of that satisfaction.

26.23 Order for payment out after acceptance

- (1) Where a plaintiff accepts money in satisfaction of a claim, the money shall not be paid out in the following circumstances except by order of the Court:
 - (a) where the plaintiff claims against 2 or more defendant and any one of them does not join in paying the money into court and does not consent to the payment out;
 - (b) where the plaintiff sues a defendant on an alternative claim and the defendant who does not join in paying the money into court and does not consent to the payment out;
 - (c) where the money is paid into court in answer to a claim to which the defendant paying the money into court pleads or otherwise properly raises a defence of tender before the commencement of the proceeding;
 - (d) where the plaintiff accepts the money after the beginning of the trial;
 - (e) where the plaintiff represents other persons in accordance with Order 18; or
 - (f) where the plaintiff is a person under a disability.
- (2) On an application for an order under subrule (1) the Court shall, so far as practicable, deal with all the costs of the proceeding.

26.24 Money not accepted

Where money paid into court by a defendant is not accepted in accordance with rule 26.21, the defendant is entitled to receive payment of the money.

26.25 Non disclosure

- (1) Subject to subrules (2) and (3), the fact that money has been paid into court shall not be:
 - (a) pleaded or disclosed in an affidavit; and
 - (b) disclosed to the Court at the trial or hearing of a question of liability or the amount of debt or damages until all such questions have been decided.

- (2) Subrule (1) does not apply where the money has been paid into court in answer to a claim to which the defendant pleads or otherwise properly raises a defence of tender before commencement of the proceeding.
- (3) Subrule (1)(b) does not apply:
 - (a) where the plaintiff accepts the money in pursuance of rule 26.21; or
 - (b) where the disclosure is necessary for the purpose of an application under this Part.

26.26 Effect of payment into Court

- (1) Where in pursuance of this Part a plaintiff before the trial or hearing begins:
 - (a) accepts money paid into court by a defendant in answer to a claim;
 - (b) abandons that claim as against all other defendants (if any) sued on that claim jointly with the defendant paying the money into court; and
 - (c) abandons all his other claims (if any),

then, after payment out, the plaintiff may, unless the Court otherwise orders, tax his costs of the proceeding in respect of his claims for relief against the defendant paying the money into court incurred before service of notice of the deposit of the money accepted.

- (2) A party whose costs under this rules are not paid within 7 days after the signing of a certificate of the taxation may enter judgment for the taxed costs.
- (3) Where a defendant who has counterclaimed pays money into court and in his notice of deposit states that he takes into account his counterclaim with a view to its abandonment in case the money is accepted and the money is accepted before the trial or hearing begins, that defendant may, unless the Court otherwise orders, tax his costs of the counter claim incurred before service of notice of the acceptance.
- (4) A defendant entitled under this rule to costs that are not paid within 7 days after the signing of a certificate of the taxation may enter judgment against the party accepting the money for the taxed costs.

- (5) Where a party has paid money into court, the Court may, in exercising its discretion as to costs, take into account that fact and the amount of the money paid into court.
- (6) Without limiting the discretion of the Court under subrule (5), the Court, in the exercise of its discretion, shall take into account the amount which an applicant recovers in respect of a claim in a proceeding as against the party paying money into court in respect of that claim.

Order 27 Content and form of Court documents

27.01 Conformity with Rules

Except to the extent that the nature of the document renders compliance impracticable, a document prepared by a party for use in the Court shall be prepared in accordance with this Chapter.

27.02 Content of document

- (1) A document shall be headed "In the Supreme Court of the Northern Territory of Australia at", stating in which Registry of the Court the proceeding commenced, and shall show an identifying number assigned by the Court to the proceeding.
- (2) Where a proceeding is commenced by originating motion and the claim of the plaintiff arises under an Act, the heading of a document shall also state "In the matter of", identifying the specific provision relied on.
- (3) A document in a proceeding between parties shall be entitled between the parties, naming them.
- (4) Except where otherwise provided by this Chapter, a document in a proceeding in which there is no defendant shall be entitled "The application of", naming the plaintiff.
- (5) Notwithstanding subrules (3) and (4), except in the case of originating process, a judgment authenticated in accordance with order 60 or process of execution, it shall be sufficient where there is more than one plaintiff to state the full name of the first plaintiff followed by the words "and another" or "and others", and similarly with respect to defendants.

27.03 Form of document

- (1) A document shall be of durable white paper 297 millimetres by 210 millimetres, the size known as International Paper Size A4, and be capable of receiving writing in ink.

- (2) Except in the case of a form published by the authority of the Law Society of the Northern Territory, one side only of the paper shall be used, with double spacing between the lines and a left-hand margin of not less than 40 millimetres.
- (3) The text of a document shall be printed or typewritten and shall be clear, sharp, legible and permanent.
- (4) A document shall not bear an erasure or alteration that causes material disfigurement.
- (5) A document shall be endorsed on a backsheet or on the back of the last sheet with the title of the proceeding and an identifying number, a short description of the document and the name and address and telephone number of the solicitor preparing it or, where the party acts without a solicitor, the name and address and telephone number of the party.
- (6) The Court may require a document in a proceeding to be prepared in any manner it thinks fit.
- (7) A document which is required to be signed before filing shall be signed by the party or by the party's solicitor in his own name and not in the name of his firm, or by counsel.

27.04 Numbers

Dates, amounts and other numbers shall be expressed in figures and not in words, except for months which may be expressed by words.

27.05 Copies on request

- (1) A party who prepares a document for use in the Court shall, at the request of another party entitled to a copy of the document, supply that other party with a copy of the document.
- (2) A person against whom an order is made without notice shall be entitled to a copy of a document used in support of the application for the order.
- (3) Unless the Court otherwise directs, whenever a party files a document other than a document relating to an ex parte application, that party shall on that or the next working day serve a copy of the document on every other party to the proceeding who then has an address for service.

27.06 Proper officer refusing to seal or accept document

- (1) The Proper Officer may refuse to seal an originating process without the direction of the Court where he considers that the form or contents of the document show that were the document to be sealed the proceeding so commenced would be irregular or an abuse of the process of the Court.
- (2) Where a document for use in the Court is not prepared in accordance with this Chapter or an order of the Court:
 - (a) the Proper Officer may refuse to accept it for filing without the direction of the Court; or
 - (b) the Court may order that the party responsible shall not be entitled to rely on it in any manner in the proceeding until a document which is duly prepared is made available.
- (3) The Court may direct the Proper Officer to seal an originating process or accept a document for filing.

27.07 Scandalous matter

Where a document for use in the Court contains scandalous, irrelevant or otherwise oppressive matter, the Court may order:

- (a) that the matter be struck out; or
- (b) if the document has been filed, that it be taken off the file.

Order 28 Filing and sealing of Court documents

28.01 How document is filed

A document in a proceeding is filed by filing it:

- (a) in the Registry where the proceeding commenced; or
- (b) with the Proper Officer in Court.

28.02 Place of filing

- (1) In respect of a proceeding for trial in Darwin, documents shall be presented in the Registry at Darwin for filing.
- (2) In respect of a proceeding for trial in Alice Springs, documents shall be presented in the Registry at Alice Springs for filing.
- (3) A document received in a registry for filing is not filed until it is accepted by a Proper Officer.

- (4) Notwithstanding subrules (1) and (2), where an urgent application is made in a proceeding, a document may be filed in connection with that application at the Registry at the place where the application is made.

28.03 Date of filing

The Registrar or Proper Officer, as the case requires, shall endorse the date and time of filing on every document filed.

28.04 Seal of Court

- (1) The Master, a Registrar, the Sheriff and a Proper Officer shall each have in his custody a stamp of a design approved by the Chief Justice.
- (2) A Registrar, a Deputy Sheriff and a Proper Officer at Alice Springs Registry shall have in their custody a stamp of a design approved by the Chief Justice with or without the additional words "Alice Springs Registry".
- (3) Marking of a document or a copy of a document with the Seal of the Supreme Court of the Northern Territory of Australia or with a Stamp of a design approved by the Chief Justice is sufficient compliance with a requirement of this Chapter or an order of the Court that the document or a copy be sealed with the Seal of the Court.

28.05 Inspection of documents

- (1) When the Registry of the Court is open, a person may, on payment of the proper fee, inspect and obtain a copy of a document filed in a proceeding.
- (2) Notwithstanding subrule (1):
- (a) no person may inspect or obtain a copy of a document which the Court has ordered remain confidential; and
- (b) a person not a party may not without leave of the Court inspect or obtain a copy of a document which in the opinion of a Registrar ought to remain confidential to the parties.

Order 29 Discovery and inspection of documents

29.01 Application and definition

- (1) Except where it otherwise provides, this Order applies only to a proceeding commenced by writ and to a proceeding in respect of which an order has been made under rule 4.07.
- (2) In this Order **possession** means possession, custody or power.

29.02 Discovery

- (1) Where the pleadings between parties are closed, there shall be discovery by the parties to the proceeding of all documents which are or have been in their possession relating to a question raised by the pleadings.
- (2) Nothing in this Order shall be taken to prevent the parties from agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

29.03 List of documents

- (1) Subject to this rule, the parties to a proceeding between whom pleadings are closed shall make discovery by exchanging lists of documents.
- (2) In compliance with subrule (1), each party shall, within 21 days after the pleadings are closed as between him and any other party or within such other time as the Court allows, make and deliver to that other party a list of the documents which are or have been in his possession relating to a matter in question between them in the proceeding.
- (3) Without prejudice to any directions given by the Court under rule 11.13, this subrule does not apply in a third party proceeding, including a proceeding under Order 11 involving fourth or subsequent parties.
- (4) Subrule (2) also applies to and in relation to a counterclaim.
- (5) A party to whom discovery of documents is required to be made under this rule may serve on the party required to make discovery a notice requiring him to make an affidavit verifying the list he is required to make under subrule (1).

- (6) A party on whom a notice under subrule (5) is served shall, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and deliver a copy of the affidavit to the party by whom the notice was served.
- (7) A copy of every list of documents or affidavit of documents exchanged or served pursuant to this rule shall be filed within 7 days after the day on which it was exchanged or served, as the case may be.

29.04 Form of list of documents

A list of documents for the purpose of rule 29.03(1) shall be in Form 29A and shall:

- (a) identify the documents which are or have been in the possession of the party making the list;
- (b) enumerate the documents in convenient order and describe each document or, in the case of a group of documents of the same nature, describe the group, sufficiently to enable the document or group to be identified;
- (c) distinguish those documents which are in the possession of the party making the list from those that have been but are no longer in his possession and shall, as to a document which has been but is no longer in the possession of the party, state when he parted with the document and his belief as to what has become of it; and
- (d) where the party making the list claims that a document in his possession is privileged from production, state sufficiently the grounds of the privilege.

29.05 Order limiting discovery

In order to prevent unnecessary discovery the Court may, before or after a party is required to make discovery by virtue of rule 29.02, order that discovery by a party shall not be required or shall be limited to such documents or classes of document, or to such of the questions in the proceeding, as are specified in the order.

29.06 Co-defendants and third party

- (1) A defendant who has pleaded is entitled to obtain from the party making discovery a copy of a list or, where an affidavit verifying a list has been served, an affidavit served:
 - (a) on the plaintiff by another defendant to the proceeding; or

- (b) on the plaintiff by that defendant.
- (2) Where the defendant has served a counterclaim joining another person with the plaintiff as defendant to the counterclaim in accordance with rule 10.03, subrule (1), with the necessary changes, applies as if the defendant were the plaintiff and the plaintiff and the other person were the defendants.
- (3) A third party who has pleaded is entitled to obtain from the party making discovery a copy of a list exchanged or, where an affidavit verifying a list has been served, an affidavit served, in accordance with this Order:
 - (a) by the plaintiff on the defendant by whom he was joined; or
 - (b) on the plaintiff by that defendant.
- (4) A party required by this rule to supply a copy of a list of documents or an affidavit verifying such a list shall supply it free of charge on a written request of the party entitled to it.

29.07 Order for discovery

- (1) Notwithstanding that the pleadings between parties are not closed, the Court may order that any of those parties make discovery of documents to any other of those parties.
- (2) In a proceeding:
 - (a) commenced by writ; or
 - (b) in respect of which an order under rule 4.07 has been made,the Court may at any stage order a party to make discovery of documents.
- (3) An order under subrules (1) or (2) may be limited to such documents or classes of document, or to such questions in the proceeding, as the Court thinks fit.

29.08 Order for particular discovery

- (1A) This rule applies to all proceedings in the Court.
- (1) Where at any stage of a proceeding, it appears to the Court from evidence or from the nature or circumstances of the case, or from a document filed in the proceeding, that there are grounds for a belief that a document or class of documents relating to a question in the proceeding may be or may have been in the possession of a party, the Court may order that party to make and serve on any other

party an affidavit stating whether the document or any and if so what document or documents of that class is or has been in his possession and, if it has been but is no longer in his possession, when he parted with it and his belief as to what has become of it.

- (2) An order may be made against a party under subrule (1) notwithstanding that he has already made or been required to make a list of documents or an affidavit verifying such a list.

29.09 Inspection of documents referred to in list of documents or affidavit

- (1) A party:
- (a) on whom, under rule 29.03 or 29.07, a list or affidavit of documents is served;
 - (b) on whom, under rule 29.08 an affidavit of documents is served; or
 - (c) to whom, under rule 29.06, a list or affidavit of documents is supplied,

may, by notice to produce in Form 29B served on the party making the list or affidavit, require the party to produce the documents in his possession referred to in the list or affidavit (other than a document which he objects to produce) for inspection.

- (2) A party on whom a notice to produce is served in accordance with subrule (1) shall, within 7 days after that service, serve on the party requiring production a notice appointing a time within 7 days after service of the notice under this subrule when, and a place where, the documents may be inspected.
- (3) The place for inspection under subrule (2) shall be within 15 kilometres of the Registry in which the originating process is filed, unless it is otherwise agreed by the parties or the Court otherwise orders.
- (4) A party to whom documents are produced for inspection under this rule may take copies of the documents.
- (5) For the purpose of subrule (4), taking a copy of a document includes photocopying the document and, if the party to whom a document is produced states that he wishes to have it photocopied, the party producing the document shall at his option either allow the other party to photocopy the document at such place as the parties agree or supply the other party with a photocopy of the document.

- (6) Unless the Court otherwise orders, the cost of a photocopy of a document supplied to a party in accordance with subrule (5) shall:
- (a) be borne by that party in the first instance and be ultimately a cost in the proceeding; and
 - (b) be in the amount allowed in the Scale of Costs for copy documents.

29.10 Inspection of documents referred to in pleadings and affidavits

- (1) This Rule applies to all proceedings.
- (2) Where in the originating process filed by a party, or in a pleading, in interrogatories or answers, in an affidavit or in a notice filed by a party, reference is made to a document, another party may, by notice to produce served on that party, require him to produce the document for inspection.
- (3) Except as provided by subrule (4), rule 29.09, with the necessary changes, applies to the production and inspection of a document under this rule.
- (4) A party on whom a notice to produce is served under subrule (2) is not required to produce a document for inspection where:
 - (a) he claims that the document is privileged from production and he makes and serves on the other party an affidavit in which he makes that claim and states sufficiently the grounds of the privilege; or
 - (b) the document is not in his possession and he makes and serves on the other party an affidavit in which he states that fact and states to the best of his knowledge, information and belief where the document is and in whose possession it is and, where the document has been but is no longer in his possession, when he parted with it and his belief as to what has become of it.
- (5) A notice to produce under subrule (2) shall be in Form 29B.

29.11 Order for discovery

Where a party:

- (a) fails to make discovery of documents in accordance with rules 29.03 and 29.04;
- (b) fails to serve a notice appointing a time for inspection of documents as required by rule 29.09 or 29.10;

- (c) objects to produce a document for inspection;
- (d) offers inspection unreasonable as to time or place; or
- (e) objects to allow a document to be photocopied or to supply a photocopy of the document,

the Court may order the party to do such act as the case requires.

29.12 Direction as to documents

- (1) Where a party is entitled under this Order to inspect a document which consists of:
 - (a) a device such as video tape, audio tape, disc, film or other means of recording, the Court may give directions for the screening or playing of that device and for the making by or supply to the party of a transcript of the recording (in so far as it can be transcribed) or a copy of the recording; or
 - (b) information which has been processed by or is stored in a computer, the Court may give directions for making the information available.
- (2) On an application under subrule (1) the Court may make an order for the costs and expenses of the party against whom an order giving directions is sought.
- (3) The Court may make an order giving directions on condition that the party applying give security for the costs and expenses of the party against whom the order is made.

29.13 Inspection of document by Court

Where an application is made for an order under rule 29.11 and a claim is made that the document is privileged from production or objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

29.14 Default on discovery

- (1) Without limiting rule 24.02, a party who within the time limited does not comply with an order under rule 29.08(2) or 29.11, or an order under rule 29.12(1) giving directions, is liable to committal.
- (2) Service on the solicitor for a party of an order for discovery or production of documents made against that party is sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that

he had no notice or knowledge of the order.

- (3) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice of the order to his client is liable to committal.

29.15 Copy list or affidavit to be filed

A copy of a list of documents or affidavit of documents served or exchanged pursuant to this Order shall be filed within 7 days after the day on which it is served or exchanged, as the case may be.

Order 30 Interrogatories

30.01 Definitions

In this Order, unless the contrary intention appears:

interrogating party means a party who serves interrogatories.

party interrogated means a party on whom interrogatories are served.

servant or agent, in relation to a corporation, includes officer and member.

30.02 When interrogatories allowed

- (1) Subject to this rule, a party may serve interrogatories on another party relating to a question between them in the proceeding.
- (2) At any time after pleadings between parties are closed but before a Certificate of Readiness is filed as referred to in rule 48.07 or the Master issues a certificate under rule 48.10(7), interrogatories may be served without leave of the Court by any party on any other party.
- (3) Where subrule (2) does not apply, the Court may order that a party may serve interrogatories on any other party.
- (4) By leave of the Court an interrogating party may serve further interrogatories.

30.03 Statement as to who to answer

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

30.04 Filing interrogatories and time for answers

Where interrogatories are served:

- (a) the interrogating party shall without delay file a copy; and
- (b) the party interrogated shall, within 28 days after service, answer by affidavit, file it and serve a copy on the interrogating party.

30.05 Source for answers to interrogatories

- (1) A party interrogated shall answer each interrogatory, insofar as it is not objectionable, in accordance with the following:
 - (a) the party shall answer from his own knowledge of the fact or matter which is enquired after by the interrogatory and, if he has no such knowledge, from a belief he has as to the fact or matter;
 - (b) a party who has no knowledge of the fact or matter inquired after shall be taken not to have a belief as to the fact or matter where he has no information relating to it on which to form a belief or where, if he has such information, for reasonable cause he has no belief that the information is true;
 - (c) except as provided by paragraph (d), the party shall answer from a belief he has as to the fact or matter inquired after irrespective of the source of the information on which the belief is formed;
 - (d) the party shall not be required to answer from his belief as to a fact or matter where the belief is formed on information that was given to him in a communication the contents of which he could not, on the ground of privilege, be compelled to disclose;
 - (e) where the party has no knowledge himself of the fact or matter inquired after, he shall, for the purpose of enabling himself to form a belief as to the fact or matter (so far as he can), make all reasonable enquiries to determine:
 - (i) whether a person has knowledge of the fact or matter which was acquired by that person in the capacity of his servant or agent; and
 - (ii) if that is the case, what that knowledge is;

- (f) the party shall make the inquiries referred to in paragraph (e) notwithstanding that at the time he is required to answer the interrogatory a person having the relevant knowledge has ceased to be his servant or agent; and
 - (g) where the party is a corporation, this rule with the necessary changes, applies as if the person who answers the interrogatories on behalf of the corporation were the party and, in particular, as if the reference in paragraph (e) to a servant or agent of the party were a reference to a servant or agent of the corporation.
- (2) Where an interrogatory relates to a fact or matter alleged in the pleading of the party interrogated, nothing in subrule (1)(d) affects the right of the interrogating party to obtain information as to that fact or matter pursuant to an application of the kind referred to in rule 13.11.

30.06 How interrogatories to be answered

- (1) A party interrogated shall answer each interrogatory specifically by answering the substance of the interrogatory without evasion, except in so far as it is objectionable on any of the grounds referred to in rule 30.07.
- (2) Where the party objects to answer an interrogatory, he shall state briefly the ground of objection and the facts, if any, on which it is based.

30.07 Ground of objection to answer

- (1) A party interrogated shall answer each interrogatory except to the extent that it may be objected to:
 - (a) because it does not relate to a question between him and the interrogating party;
 - (b) because it is unclear or vague or is too wide;
 - (c) because it is oppressive;
 - (d) because it requires him to express an opinion which he is not qualified to give;
 - (e) on the grounds of privilege; or
 - (f) on any other ground on which objection may be taken.

- (2) Without limiting subrule (1)(a), an interrogatory that does not relate to a question includes an interrogatory the sole purpose of which is to:
- (a) impeach the credit of the party interrogated;
 - (b) enable the interrogating party to ascertain whether he has a claim or defence other than that which he has raised in the proceeding; or
 - (c) enable the interrogating party to ascertain the evidence by which the party interrogated intends to prove his case, including the identity of witnesses.
- (3) A party may not object to answer an interrogatory on the ground that he cannot answer without going to a place which is not his usual place of residence or business if the interrogating party undertakes to pay the reasonable cost of his going there, unless the Court otherwise orders.

30.08 Who to answer interrogatories

- (1) Interrogatories shall be answered:
- (a) where the party interrogated is:
 - (i) a natural person – by the party;
 - (ii) a person under a disability – by that person or his litigation guardian, whichever is appropriate; or
 - (iii) a corporation – by an officer of the corporation or by a person duly authorized by it to answer; or
 - (b) by such person as the Court directs.
- (2) The answers of a person made in accordance with a direction given under subrule (1)(b) shall be as effective and binding in all respects as if made by the party interrogated.

30.09 Failure to answer interrogatories

Where a party interrogated fails to answer the interrogatories within the time limited or does not answer the interrogatories sufficiently, the Court may order that he answer or answer further, as the case may be, within such time as it directs.

30.10 Non-compliance with order

- (1) Without limiting rule 24.02, a party who does not within the time limited comply with an order made under rule 30.09 is liable to committal.
- (2) Service on the solicitor for a party of an order made against that party under rule 30.09 is sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.
- (3) A solicitor on whom such an order made against his client is served who fails without reasonable excuse to give notice of the order to his client is liable to committal.

30.11 Answers as evidence

- (1) On an application in or at the trial of a proceeding, a party may tender as evidence:
 - (a) one or more answers to interrogatories given by another party without tendering the other; or
 - (b) part of an answer to an interrogatory without tendering the whole of the answer.
- (2) On the tender of the whole or part of an answer to an interrogatory, the Court may look at the whole of the answers and if any other answer or any part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without the other answer or part, the Court may reject the tender unless that other answer or part is also tendered.
- (3) Where the answer of a party interrogated is stated to be given on the basis of belief and the answer is received into evidence, the Judge or the jury, as the case may be, shall give the answer such weight as the circumstances require.

Order 31 Discovery by oral examination

31.01 Definitions

In this Order, unless the contrary intention appears:

examining party means a party who orally examines or is to examine orally another party in accordance with this Order.

examiner means an examiner appointed under this Order.

party examined means a party orally examined or to be orally examined by another party in accordance with this Order and includes, where the party is a corporation, the officer of the corporation or other person attending to be examined in accordance with rule 31.08(1).

31.02 When available

- (1) Where under this Chapter a party may serve interrogatories on another party relating to a question between them in the proceeding, that party may, subject to this rule, orally examine the other party on oath in relation to that question.
- (2) A party shall not be orally examined under this Order by another except with his consent given in accordance with rule 31.04.
- (3) A party who has consented to be orally examined by another shall not be required to answer written interrogatories served by the other unless he has undertaken to do so.

31.03 Party a corporation

A party which is a corporation may be orally examined under this Order.

31.04 How application made and consent given

- (1) A party seeking to interrogate another party in accordance with this order shall serve on that other party a request in writing that the party served consent to be so interrogated.
- (2) A notice under subrule (1) may nominate an examiner for the purpose of the examination.
- (3) A party served with notice under subrule (1) may by notice in writing served on the party requiring the examination:
 - (a) consent to be so examined before the examiner nominated;
 - (b) consent to be examined, but not before the examiner nominated; or
 - (c) refuse to be so examined.
- (4) Where subrule (3)(b) applies, the party accepting to be examined may in his notice state the name of an examiner before whom he consents to be examined.

- (5) In the event of subrule (4) applying, the party giving notice under subrule (1) may by notice in writing given to the other party consent to the appointment of the examiner so named.
- (6) Where parties do not agree as to the name of an examiner, the consent required by rule 31.02(2) shall not be taken to have been given.
- (7) If agreement is reached between the parties under this rule, the party seeking the examination shall file a Memorandum of Agreement which shall consist in one document of the copies of each of the notices given under this rule which constitute the agreement reached.

31.05 Effect of consent

Where the consent of a party to be orally examined is filed under rule 31.04:

- (a) the party shall be liable to be examined in accordance with this Order;
- (b) if the party fails to comply with an order of the Court to attend an examination or answer a question, rule 24.02, with the necessary changes, applies as if the failure were a failure of a kind referred to in that rule; and
- (c) at the trial of or on the hearing of an application in the proceeding the examining party may, in accordance with rule 30.11, use in evidence the answers given under this Order by the party examined and that rule, with the necessary changes, applies as if the answers were answers of the party examined to written interrogatories served by the examining party.

31.06 Appointment of examiner

- (1) An examination shall be held before an examiner who has been appointed by agreement of the parties in accordance with rule 31.04 and who consents to be appointed.
- (2) The consent of the examiner shall be in writing and be filed.

31.07 Attendance on examination

- (1) The time and place of the examination shall be determined by the examiner.
- (2) The party examined shall attend the examination to be examined by the examining party.

- (3) Counsel and the solicitor for each party may attend the examination.
- (4) If the party examined fails to attend an examination, the Court may order that the party attend to be examined in accordance with this Order at such time and place as it directs.

31.08 Party a corporation

- (1) Where the party examined is a corporation:
 - (a) an officer of the corporation; or
 - (b) by agreement of the party examined and the examining party, a person who is not an officer,shall be examined and an answer given shall be taken to be the answer of the corporation.
- (2) Unless the party examined and the examining party otherwise agree, nothing in subrule (1) authorizes the examination of more than one person.

31.09 Powers of examiner

The examiner is empowered to administer such oaths and receive such affirmations as necessary for the purpose of the examination and may adjourn the examination from time to time and from place to place.

31.10 Record of examination

- (1) A deposition of the examination of the party examined shall be made.
- (2) Where objection is taken to a question, proceedings before the examiner with respect to the objection shall be recorded in the deposition.
- (3) The deposition shall be authenticated by the signature of the examiner and without delay after signing the deposition the examiner shall give notice in writing to the party examined and the examining party of the authentication.

31.11 How party to be examined

- (1) On the examination the party examined shall be questioned by or on behalf of the examining party and no questions shall be asked of the party examined by his own counsel or solicitor.

- (2) The examination shall be in the nature of an examination-in-chief of the party examined by the examining party.
- (3) The party examined shall answer each question asked of him unless it may be objected to on a ground referred to in rule 30.07 and that rule, with the necessary changes, applies as if the examination were an examination of the party by written interrogatories.
- (4) Where the party examined answers a question, he shall answer in accordance with rules 30.05 and 30.06(1) and those rules, with the necessary changes, apply as if the examination were an examination of the party by written interrogatories.
- (5) A question may be answered by the counsel or solicitor for the party examined and the answer shall be taken to be the answer of the party.
- (6) Where rule 30.05(1)(e) applies, the examiner may adjourn the examination to enable the party examined to make the inquiries referred to in that rule.

31.12 Procedure on objection to question

- (1) This rule applies where objection is taken to answering a question on the examination.
- (2) The party examined shall state each ground of objection to answering but, unless the Court otherwise orders, is not required to answer the question.
- (3) The examining party may apply to the Court under rule 31.13 for an order that the party examined answer the question.

31.13 Order to answer question

- (1) An application by the examining party under rule 31.12(3) shall be made to the Master by summons identifying each question to which the application relates.
- (2) The Master may order that the party examined answer a question in respect of which the application is made.
- (3) If an order is made under subrule (2), unless the Master otherwise orders, the party shall answer the question before the examiner and the Master may direct that the examining party be at liberty to ask such further questions of the party examined as the case requires.

- (4) The Master may order that the party examined answer the question in writing and may direct whether that answer shall be given on oath.

31.14 Costs

The costs of an examination shall be costs in the proceeding, unless the Court otherwise orders.

Order 32 Preliminary discovery and discovery from non-party

32.01 Definitions

In this Order, unless the contrary intention appears:

applicant means applicant for an order under this Order.

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

possession means possession, custody or power.

32.02 Privilege

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

- (a) in the case of an order under rule 32.03 or 32.05 – if the applicant had commenced a proceeding against him;
- (b) in the case of an order under rule 32.04 or 32.06 – if the applicant had made him a party to the proceeding; or
- (c) in the case of an order under rule 32.07 – if he had been served with a subpoena for production of the document at the trial of the proceeding.

32.03 Discovery to identify a defendant

- (1) Where an applicant, having made reasonable inquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this rule called ***the person concerned***) and it appears that a person has or is likely to have knowledge of facts, or has or is likely to have

or has had or is likely to have had in his possession a document or thing, tending to assist in the ascertainment of the description, the Court may order that the person, and in the case of a corporation, the corporation by an appropriate officer, shall:

- (a) attend before the Court to be orally examined in relation to the description of the person concerned; or
 - (b) make discovery to the applicant of all documents which are or have been in his or its possession relating to the description of the person concerned.
- (2) Where the Court makes an order under subrule (1)(a), it may:
- (a) order that the person or corporation against whom or which the order is made produce to the Court on the examination any document or thing in his or its possession relating to the description of the person concerned; or
 - (b) direct that the examination be held before the Master.

32.04 Party an applicant

Rule 32.03, with the necessary changes, applies where the applicant is a party to a proceeding and wishes to make in the proceeding against a person who is not a party a claim which he could properly have made in the proceeding had the person been a party.

32.05 Discovery from prospective defendant

Where:

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

the Court may order that the person shall make discovery to the applicant of a document of the kind described in paragraph (c).

32.06 Party an applicant

Rule 32.05, with the necessary changes, applies where the applicant is a party to a proceeding and there is reasonable cause to believe that he has or may have the right to obtain against a person who is not a party relief which he could properly have claimed in the proceeding had the person been a party.

32.07 Discovery from non-party

On the application of a party to a proceeding the Court may order that a person who is not a party and in respect of whom it appears that he has or is likely to have or has had or is likely to have had in his possession a document which relates to a question in the proceeding shall make discovery to the applicant of any such document.

32.08 Procedure

- (1) An application under rule 32.03 or 32.05 shall be made by originating motion to which the person against whom the order is sought shall be made respondent.
- (2) An application under rule 32.04, 32.06 or 32.07 shall be made by summons served on every party to the proceeding and served personally on the person against whom the order is sought.
- (3) An order shall not be made under the rules referred to in subrules (1) or (2) except by a Judge.
- (4) An originating motion under subrule (1) or a summons under subrule (2) shall be supported by an affidavit:
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the document or class of documents in respect of which the order is sought.
- (5) A copy of the supporting affidavit shall be served on every person on whom the originating motion or the summons is served.

32.09 Inspection of documents

Rule 29.09, with the necessary changes, applies to the inspection of the documents referred to in an affidavit of documents made and served in accordance with this Order as if the affidavit were an affidavit of documents as mentioned in rule 29.09(1).

32.10 Directions as to documents

Rule 29.12, with the necessary changes, applies to the inspection of a document under this Order.

32.11 Costs

- (1) On an application under this Order the Court may make an order for the costs and expenses of the applicant, of the person against whom the order is made or sought and of a party to the proceeding, including the costs of making and serving an affidavit of documents, of producing a document for inspection in accordance with rule 32.09 or of complying with a direction given under rule 32.10.
- (2) The Court may make an order under this Order on condition that the applicant give security for the costs and expenses of the person against whom the order is made.

Order 33 Medical examination and service of hospital and medical reports

33.01 Application

This Order applies to a proceeding in which the plaintiff claims damages for bodily injury.

33.02 Counterclaim

This Order, with the necessary changes, applies to a counterclaim by which the defendant makes a claim of the kind referred to in rule 33.10.

33.03 Definitions

In this Order, unless the contrary intention appears:

dentist means a person registered as a dentist under the *Dental Act* or a corresponding enactment of a State or another Territory of the Commonwealth.

examination means an examination for medical, dental or psychological purposes.

hospital report means a statement in writing concerning the plaintiff made by or on behalf of a hospital, rehabilitation centre or other like institution.

medical expert means a medical practitioner, dentist or psychologist, as the case requires.

medical matters includes dental matters and psychological matters.

medical practitioner means a person registered as a medical practitioner under the *Medical Practitioners Registration Act* or a corresponding enactment of a State or another Territory of the Commonwealth.

medical report:

- (a) means a statement in writing by a medical expert concerning the plaintiff; and
- (b) includes a document which the medical expert intends should be read with the statement whether the document was in existence at the time the statement was made or was a document which he obtained or caused to be brought into existence subsequently.

psychologist means a person registered as a psychologist under the *Health Practitioners and Allied Professionals Registration Act* or a relevant law of a State or another Territory of the Commonwealth.

33.04 Notice for examination

- (1) The defendant may, in writing, request the plaintiff to submit to an appropriate examination by a medical expert at a specified time and place.
- (2) Where a plaintiff refuses or neglects without reasonable cause to comply with a request under subrule (1), the Court may, if the request was on reasonable terms, stay the proceeding.

33.05 Expenses

- (1) The costs of and incidental to the examination shall be costs in the proceeding.
- (2) Without limiting subrule (1), the defendant shall, on request by the plaintiff whether before or after the plaintiff is examined, pay to the plaintiff a reasonable sum to meet his travelling and other expenses of and incidental to the examination.

33.06 Report of examination

A defendant for whom a plaintiff is examined under rule 33.04 shall, as soon as practicable after the examination, obtain from the medical expert a medical report.

33.07 Service of reports

- (1) For the purpose of rule 33.08:
 - (a) a plaintiff shall serve a copy of a medical report in his possession, custody or power which he intends to tender or the substance of which he intends to adduce in evidence at the trial; and
 - (b) a defendant shall serve a copy of a medical report in his possession, custody or power (other than a medical report served on or supplied to him by the plaintiff).
- (2) Where a plaintiff obtains possession, custody or power of a hospital report which he intends to tender or the maker of which he intends to call at the trial, this rule with the necessary changes, applies as if the report were a medical report.

33.08 Time for service

- (1) Unless the Court otherwise orders:
 - (a) where a party gives notice of trial under Order 48, he shall serve with the notice a copy of all medical reports copies of which he is required to serve in accordance with rule 33.07 and shall, on the same day, serve a copy of the report on each other party who has an address for service in the proceeding; and
 - (b) each party on whom a medical report is served under paragraph (a) shall, within 7 days, serve on each other party who has an address for service a copy of any medical report a copy of which he is required to serve in accordance with rule 33.07.
- (2) Where a proceeding is set down for trial by order of the Court made under rule 48.06, a party shall, within 14 days after the order or within such other time as the Court directs, serve on each other party who has an address for service a copy of a medical report a copy of which he is required to serve in accordance with rule 33.07.
- (3) Unless the Court otherwise orders, a party who, after the day on which he served medical reports under subrule (1) or (2), obtains possession, custody or power of a medical report a copy of which he is required to serve in accordance with rule 33.07 shall serve a copy of the report on each other party who has an address for service within 14 days after obtaining the report and not later than 42 days before the day fixed for trial or, where the place of trial is a place other than Darwin, not later than 42 days before the commencement of the sittings at that place during which the

proceeding has been set down for trial.

- (4) Where a defendant who has served on the plaintiff a copy of a medical report of an examination of the plaintiff made under rule 33.04 obtains from the medical expert who made the examination a further report of the examination, the defendant shall without delay:
 - (a) if the further report was in writing – serve a copy on the plaintiff; and
 - (b) if the further report was oral – give the plaintiff notice in writing of its substance.
- (5) Except with the leave of the Court or by consent of the parties, a party shall not except in cross-examination adduce evidence from a medical expert on medical matters unless the evidence is disclosed by a copy of a medical report served in accordance with this Order.

33.09 Proceeding against medical expert

- (1) This rule applies to a proceeding in which the plaintiff claims damages for bodily injury sustained as a result of medical or the like treatment or advice given in respect of a physical or mental condition of the plaintiff.
- (2) Unless the Court otherwise orders, a party who is required to serve a copy of a hospital report or medical report under rule 33.08 may exclude from the copy served an expression of opinion in the original report on the question of liability.

33.10 Material for Court

- (1) This rule applies only to a proceeding which is to be tried by a Judge without a jury.
- (2) If for the purpose of evidence at the trial a party intends to:
 - (a) use; or
 - (b) call the maker of,

a medical report or a hospital report a copy of which was served under rule 33.08, the party shall deliver a copy of the report for the use of the Court.

(3) Copies of reports shall be delivered by delivering them in a sealed envelope bearing the title of the proceeding and stating "Reports delivered by [identify party] pursuant to rule 33.10":

- (a) where Darwin is the place of trial – to the Master; and
- (b) where the place of trial is other than Darwin – to a Proper Officer,

not later than 14 days before the date set down for the trial.

33.11 Medical report admissible

(1) This rule does not apply in the case of the trial of a proceeding before a Judge with a jury.

(2) A medical report a copy of which was served under this Order is admissible as evidence of the opinion of the medical expert who gave the report and, where the medical expert's oral evidence of a fact upon which the opinion was based would be admissible, as evidence of that fact.

(3) Subject to subrules (4), (5) and (6), a medical report may be used in evidence by the party who served a copy of the report or by a party on whom the copy was served.

(4) If a medical report is tendered by the party who served a copy of the report pursuant to rule 33.08(1) or (2), that party shall cause the medical expert who gave the report to attend at the trial of the proceeding to be cross-examined if notice that such attendance is required is served on the party by any other party not later than 42 days before the commencement of the trial, and if the medical expert does not attend for cross-examination the Court may order that the medical report be not received in evidence.

(5) Where a medical report is served later than 42 days before:

- (a) where the place of trial is Darwin – the commencement of the trial; or
- (b) where the place of trial is a place other than Darwin – the commencement of the sittings at that place during which the proceeding has been set down for trial,

the medical expert who gave the report shall, unless the Court otherwise orders, attend for cross-examination at the trial, and if the medical expert does not attend for cross-examination the Court may order that the medical report be not received in evidence.

- (6) If a medical report is tendered by a party on whom a copy of the report was served:
- (a) that party shall cause the medical expert who gave the report to attend at the trial of the proceeding to be cross-examined, and if the medical expert does not attend the Court may order that the medical report be not received in evidence;
 - (b) if the report is received in evidence and the medical expert is cross-examined by a party against whom the report is received, at the conclusion of the cross-examination the party who tendered the report may examine the expert as if by re-examination.

33.12 No evidence unless disclosed in report

Except with the leave of the Court or by consent of the parties, a party shall not, except in cross-examination, adduce evidence from a medical expert on medical matters concerning the plaintiff unless that evidence is disclosed by a medical report served in accordance with this Order.

Order 34 Directions

34.01 Powers of Court

- (1) At any stage of a proceeding, the Court may give directions for the conduct of the proceeding which it thinks conducive to its effective, complete, prompt and economical determination.
- (2) A party may apply for directions on the hearing either of a summons filed for the purpose or of a summons for other relief.

34.02 Nature of directions

Without limiting rule 34.01(1), the Court may give directions relating to:

- (a) the amendment of a document, under rule 36.01; and
- (b) evidence under section 26D(2) of the *Evidence Act* or under Order 40.

34.03 Admissions and agreements

- (1) On an application for directions the Court may take steps with a view to securing that the parties make all admissions and all agreements as to the conduct of the proceeding which ought reasonably to be made by them and may, by order, record an

admission or agreement so made.

- (2) The Court may, by order, record a refusal to make an admission or an agreement as to the conduct of the proceeding so that the refusal may later, if the Court thinks fit, be taken into account on a question of costs.

34.04 Duty to obtain directions

Where a party applies for directions, any other party who attends on the application may apply at the same time for directions which he requires and which may be given before trial.

Order 35 Admissions

35.01 Definition

In this Order ***authenticity of a document*** means that a document:

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

35.02 Voluntary admission of facts

- (1) A party may, by notice served on another party, admit, in favour of the other party, for the purpose of the proceeding only, the facts specified in the notice.
- (2) A party may, by leave of the Court, withdraw an admission made in accordance with subrule (1).

35.03 Notice for admission of facts

- (1) A party may serve on another party a notice stating that unless that party, within a time to be expressed in the notice (which shall not be earlier than 14 days after service), disputes a fact specified in the notice, he shall, for the purpose of the proceeding only, be taken to admit the fact.
- (2) If the party served with the notice does not dispute a fact specified by serving notice that he disputes the fact within the time allowed for that purpose, he shall, for the purpose of the proceeding only, be taken to admit the fact.

- (3) A party may, by leave of the Court, withdraw an admission which is taken to have been made under subrule (2).
- (4) A notice under subrule (1) shall be in Form 35A, and a notice under subrule (2) shall be in Form 35B.

35.04 Judgment on admissions

- (1) Where a party makes admissions of fact in a proceeding, whether by his pleading or otherwise, the Court may, on the application of another party, give the judgment or make the order to which the applicant is entitled on those admissions.
- (2) The Court may exercise its powers under subrule (1) without waiting for the determination of any other question in the proceeding.

35.05 Notice for admission of documents

- (1) A party may serve on another party a notice stating that unless that party, within a time to be expressed in the notice (which shall not be earlier than 14 days after service), disputes the authenticity of a document mentioned in the notice, he shall, for the purpose of the proceeding only, be taken to admit the authenticity of the document.
- (2) If the party served with the notice does not dispute the authenticity of a document mentioned by serving notice that he disputes its authenticity within the time allowed for that purpose, he shall, for the purpose of the proceeding only, be taken to admit its authenticity.
- (3) A party may, by leave of the Court, withdraw an admission which is taken to have been made under subrule (2).
- (4) A notice under subrule (1) shall be in Form 35A, and a notice under subrule (2) shall be in Form 35B.

35.06 Cost of non-admission of fact or document

Where a party serves a notice under rule 35.03(2) or 35.05(2) disputing a fact or the authenticity of a document and afterwards that fact or document is proved in the proceeding, liability for costs shall be determined in accordance with rule 18 of Order 63 of the Rules of the Supreme Court in force immediately before the commencement of this Chapter or that rule as amended from time to time.

35.07 Restrictive effect of admission

An admission made by a party under this Order is for the purpose of the pending proceeding only and shall not be used against him as an admission in another proceeding.

35.08 Notice to produce documents

- (1) A party to a proceeding may serve on another party a notice requiring him to produce the documents mentioned in the notice on an application in or at the trial of the proceeding.
- (2) Unless the Court otherwise orders, the party on whom the notice is served shall produce on the application or at the trial such of the documents mentioned in the notice as are in his possession, custody or power and which he does not object to produce on the ground of privilege.
- (3) Where the party on whom the notice is served fails to comply with the notice, the Court may order that the party produce the document or give such directions for the proof of a matter in relation to the document, including the contents of the document and its making, delivery or receipt, as it thinks fit.

Order 36 Amendment

36.01 General

- (1) For the purpose of determining the real question in controversy between the parties to a proceeding or of correcting a defect or error in a proceeding or of avoiding multiplicity of proceedings, the Court may at any stage order that a document in the proceeding be amended or that a party have leave to amend a document in the proceeding.
- (2) In this Order **document** includes originating process, an endorsement of claim on originating process and a pleading.
- (3) An endorsement of claim or pleading may be amended under subrule (1) notwithstanding that the effect is to add or substitute a cause of action arising after the commencement of the proceeding.
- (4) A mistake in the name of a party may be corrected under subrule (1) whether or not the effect is to substitute another person as a party.

- (5) Where an order to correct a mistake in the name of a party has the effect of substituting another person as a party, the proceeding shall be taken to have commenced with respect to that person on the day the proceeding commenced.
- (6) The Court may, notwithstanding the expiration of a relevant limitation period after the day a proceeding is commenced, make an order under subrule (1) where it is satisfied that any other party to the proceeding would not by reason of the order be prejudiced in the conduct of his claim or defence in a way that could not be fairly met by an adjournment, an award of costs or otherwise.
- (7) For the purpose of subrule (6) **any other party to the proceeding** includes a person who is substituted as a party by virtue of an order made to correct a mistake in the name of a party.
- (8) Subrule (6), with the necessary changes, also applies to an application under rule 14.03(2).
- (9) Subrule (1) does not apply to the amendment of a judgment or order.

36.02 Failure to amend within time limited

An order giving a party leave to amend a document ceases to have effect if the party has not amended the document in accordance with the order at the expiration of the time limited by the order making the amendment or, if no time was limited, of 14 days after the date of the order.

36.03 Amendment of pleading

A party may amend a pleading served by him:

- (a) once before the close of pleadings; or
- (b) at any time, by leave of the Court or with the consent of all other parties.

36.04 Disallowance of pleading amendment

Where a party amends a pleading in accordance with rule 36.03(a), the Court may, on application by another party made within 14 days after service of the amended pleading on that party, disallow the amendment or allow it either wholly or in part.

36.05 How pleading amendment made

- (1) Unless the Court otherwise orders, an amendment to a pleading shall be made by:
 - (a) amending the copy of the pleading filed in the Court or filing a copy of the pleading as amended; and
 - (b) serving a copy of the amended pleading on all parties.
- (2) A party who files an amended copy of a pleading in accordance with subrule (1) shall endorse the copy pleading previously filed with a statement to the effect that the amended copy has been substituted.
- (3) Where either of the requirements of subrule (1)(a) is complied with, a Registrar shall, as the case requires, endorse the copy of the pleading filed in the Court with the date it is amended or the copy of the pleading as amended with the date it is filed.
- (4) Each amendment to a pleading shall be made in such a way as to distinguish the amendment from the original pleading and from a previous amendment to the original.

36.06 Pleading to an amended pleading

- (1) A party shall plead to an amended pleading within 14 days after it is served on him.
- (2) Where a party has pleaded to a pleading which is subsequently amended, he shall be taken to rely on his original pleading in answer to the amended pleading, unless he pleads to it within the time limited for so doing.

36.07 Amendment of judgment or order

The Court may at any time correct a clerical mistake in a judgment or order or an error arising in a judgment or order from an accidental slip or omission.

Order 37 Inspection, detention and preservation of property

37.01 Inspection, detention, etc., of property

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

- (2) An order under subrule (1) may authorize a person to:
 - (a) enter land or do any other thing for the purpose of obtaining access to the property;
 - (b) take samples of the property;
 - (c) make observations (including the photographing) of the property;
 - (d) conduct an experiment on or with the property; or
 - (e) observe a process.
- (3) On an application under subrule (1) the Court may make an order for the costs and expenses of a person not being a party where:
 - (a) the person attends on the hearing of the application pursuant to a summons served under rule 37.03(1); or
 - (b) it makes an order under subrule (1) which will affect the person.
- (4) The Court may make an order under this rule on condition that the party applying for the order give security for the costs and expenses of a person, whether or not a party, who will be affected by the order.

37.02 Inspection from prospective defendant

- (1) This rule applies to property not being a document.
- (2) In this rule ***applicant*** means an applicant for an order under the rule.
- (3) Where:
 - (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from an identified person;
 - (b) after making all reasonable enquiries, the applicant has not sufficient information to enable him to decide whether to commence a proceeding in the Court to obtain that relief; and
 - (c) there is reasonable cause to believe that the person has or is likely to have in his possession, custody or power property relating to the question whether the applicant has the right to obtain the relief and that inspection of the property by the applicant would assist him to make the decision,

the Court may make an order for the inspection, detention, custody or preservation of the property.

- (4) An order under subrule (3) may authorize a person to do any of the things referred to in rule 37.01(2).
- (5) On an application under this rule the Court may make an order for the costs and expenses of the applicant and the person against whom the order is sought.
- (6) The Court may make an order under this rule on condition that the applicant give security for the costs and expenses of the person against whom the order is made.

37.03 Procedure

- (1) An application for an order under rule 37.01 shall be made by summons served on all parties to the proceeding and served personally on each person who would be affected by the order if made.
- (2) The Court may make an order under rule 37.01 notwithstanding that a person, not being a party, who will be affected by the order has not been served with the summons personally or at all.
- (3) An application under rule 37.02 shall be made by originating motion to which the person against whom the order is sought shall be made respondent.
- (4) An order shall not be made under rule 37.02 except by a Judge.
- (5) A summons under subrule (1) or an originating motion under subrule (3) shall be supported by an affidavit:
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the property in respect of which the order is sought.
- (6) A copy of the supporting affidavit shall be served on every person on whom the summons or originating motion is served.

37.04 Disposal of perishable property

Where in a proceeding concerning property (other than land) or in a proceeding in which a question may arise as to property (other than land) the property is of a perishable nature or is likely to deteriorate or diminish in value if kept, the Court may make an order for the sale or other disposal of the whole or a part of the property.

37.05 Payment into Court in discharge of lien

- (1) Where in a proceeding the plaintiff claims the recovery of specific property (other than land) and it appears from the pleadings or otherwise that the defendant does not dispute the title of the plaintiff but claims to be entitled to retain the property by virtue of a lien or otherwise as security for an amount of money, the Court may order that the plaintiff be at liberty to pay into court, to abide the event of the proceeding, the amount of money in respect of which the security is claimed and such further amount, if any, for interest and costs as the Court directs and that, on the making of those payments, the property claimed be given up to the plaintiff.
- (2) This rule, with the necessary changes, also applies to a counterclaim.

37.06 Interim distribution of property or income

Where in a proceeding concerning property the property will be more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court may, by order, allow the whole or part of the annual income of the property or of a part of the property to be paid, during such period as it determines, to all or any of the persons having an interest in the income, or may direct that a part of the property be conveyed, transferred or delivered to a person having an interest in the property.

37.07 Jurisdiction of Court not affected

This Order does not affect the exercise by the Court of a power to make orders with respect to the inspection, detention, custody or preservation of property which is exercisable apart from those provisions.

Order 38 Injunctions

38.01 When Court may grant

The Court may grant an injunction at any stage of a proceeding or, in the circumstances referred to in rule 4.08, before the commencement of a proceeding.

38.02 Application before trial

- (1) In an urgent case, the Court may grant an injunction on application made without notice.

- (2) Where a plaintiff applies for an injunction against a defendant, service of notice of the application on that defendant may be made at the time of service of the originating process in the proceeding.

38.03 Costs and expenses of non-party

- (1) This rule applies where an application for an injunction is made before the trial of a proceeding.
- (2) The Court may grant an injunction on condition that the party applying for the injunction give security for the costs and expenses of a person who might be affected.
- (3) The Court may make such order as it thinks fit for the payment, either in the first instance or finally, of the costs and expenses of a person, not being a party, who might be affected by the grant of an injunction.

38.04 Ouster of office

- (1) Informations in the nature of quo warranto are abolished.
- (2) Where a person acts in an office in which he is not entitled to act and an information in the nature of quo warranto would, but for subrule (1), lie against him, the Court may grant an injunction restraining him from so acting and may, if the case so requires, declare the office to be vacant.

Order 39 Receivers

39.01 Application and definitions

- (1) This Order applies to and in relation to the appointment of a receiver by the Court.
- (2) In this Order:

bank has the meaning as it has in the *Banking Act 1959* of the Commonwealth.

insurer means a body corporate authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business or an underwriting member of Lloyd's so authorized.

Lloyd's means the society of that name incorporated by the Imperial Act known as *Lloyd's Act 1871*.

receiver means a receiver or receiver and manager.

39.02 Appointment of receiver

- (1) The Court may appoint a receiver at any stage of a proceeding or, in the circumstances referred to in rule 4.08, before the commencement of a proceeding.
- (2) In an urgent case, the Court may appoint a receiver on application made without notice.

39.03 Service of order

The party obtaining the appointment of a receiver, or such other party as the Court directs, shall serve a copy of the order on the receiver.

39.04 Consent of receiver

Before a person is appointed a receiver his written consent to the appointment shall, unless the Court otherwise orders, be filed.

39.05 Security by receiver

Unless the Court otherwise orders:

- (a) a receiver shall give security approved by the Court that he will account for what he receives as receiver and deal with it as the Court directs;
- (b) the security shall be given by guarantee in Form 39A and filed; and
- (c) the guarantee shall be given by a bank or an insurer.

39.06 Remuneration of receiver

The Court may provide for the remuneration of a receiver.

39.07 Receiver's accounts

- (1) Unless the Court otherwise orders, a receiver shall submit accounts in accordance with this rule.
- (2) A receiver shall submit accounts to such parties and at such intervals or on such dates as the Court directs.
- (3) A party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the documents or things on which the accounts are based.

- (4) A party who objects to the accounts may serve notice in writing on the receiver specifying the items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and on such service the party shall file a copy of the notice.
- (5) The Court may examine the items to which objection is taken.
- (6) The Court shall by order declare what is the result of an examination under subrule (5) and may make an order for the costs and expenses of a party or the receiver.

39.08 Default by receiver

- (1) Where a receiver fails to submit an account, provide access to any books or papers or do any other thing which as receiver he ought to do, or fails to attend for the examination of an account of his, he and a party to the proceeding in which he was appointed may be required to attend before the Court to show cause for the failure and the Court may give such directions as it thinks fit, including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
- (2) Without limiting subrule (1), where a receiver fails to submit an account or fails to attend for the examination of an account of his, or fails to pay into court on the date fixed by the Court an amount required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay that amount into court, charge him with interest at the rate currently payable in respect of judgment debts in the Court on that amount while in his possession as receiver.

39.09 Directions to receivers

- (1) A receiver may apply to the Court for directions by summons stating the matters on which directions are required.
- (2) Unless the Court otherwise orders, the receiver shall serve a copy of the summons and of any affidavit in support on all persons who may be affected.

Order 40 Evidence generally

40.01 Definition

In this Order, unless the contrary intention appears a ***proceeding commenced by writ*** includes:

- (a) a proceeding in respect to which an order has been made under rule 4.07(1);
- (b) a trial or inquiry under Order 50; and
- (c) an assessment of damages or value under Order 51.

40.02 Evidence of witness

Except where otherwise provided by an Act or this Chapter, and subject to an agreement between the parties, evidence shall be given:

- (a) on an interlocutory or other application in a proceeding, by affidavit;
- (b) at the trial of a proceeding commenced by writ, orally; or
- (c) at the trial of a proceeding commenced by originating motion, by affidavit.

40.03 Contrary direction as to evidence

- (1) Notwithstanding rule 40.02, the Court may order that evidence be given:
 - (a) orally on the hearing of an interlocutory or other application in a proceeding or at the trial of a proceeding commenced by originating motion;
 - (b) by affidavit at the trial of a proceeding commenced by writ.
- (2) Where the Court makes an order under subrule (1)(a), it may direct that the party on whose application the order is made give such notice as it thinks fit to the other parties of the oral evidence the party proposes to adduce.

40.04 Examination on affidavit

- (1) Where an affidavit is filed in a proceeding, the Court may order that the deponent be examined before the Court and may order that he attend for that purpose at such time and place as it directs.

- (2) Unless the Court otherwise orders, a party to a proceeding commenced by originating motion on whose behalf an affidavit is filed in the proceeding shall have the deponent attend at the trial of the proceeding to be examined, if notice that the attendance is required is served on the party by another party a reasonable time before the commencement of the trial.
- (3) Where a deponent in respect of whom an order is made under subrule (1) or a notice is served under subrule (2) does not attend for examination, the Court may order that the affidavit be not received in evidence.

40.05 Evidence of particular facts

- (1) The Court may order that evidence of a particular fact be given at the trial or at any stage of a proceeding, in such manner as it directs.
- (2) Without limiting subrule (1), the Court may order that evidence of a particular fact be given:
 - (a) by statement on oath of information and belief;
 - (b) by the production of documents or entries in books; or
 - (c) by the production of copies of documents or entries in books.

40.06 Revocation or variation of order

The Court may, at or before the trial of a proceeding, revoke or vary an order made under rules 40.03 to 40.05 inclusive.

40.07 Deposition as evidence

- (1) No deposition taken in a proceeding is admissible as evidence at the trial of the proceeding unless:
 - (a) the deposition was taken pursuant to an order under rule 41.01(1)(a) or (b);
 - (b) either the person against whom the evidence is offered consents or the deponent:
 - (i) is dead or is unfit by reason of his bodily or mental condition to attend the trial and testify as a witness;
 - (ii) is out of the Territory and it is not reasonably practicable to secure his attendance; or
 - (iii) cannot with reasonable diligence be found; and

- (c) the party who applies to have the deposition received in evidence has given reasonable notice of the application to the other party.
- (2) A deposition purporting to be signed by the person before whom it was taken is receivable in evidence without proof of the signature of the person.
- (3) Unless the Court otherwise orders:
 - (a) evidence of facts within subrule (1)(b) may be given by affidavit; and
 - (b) the affidavit may be made from belief as to those facts, if the grounds for the belief are given.

40.08 Proof of Court documents

- (1) A document purporting to be sealed with the seal of the Court is admissible in evidence without further proof.
- (2) An office copy of a document filed in or issued out of the Court is admissible in evidence in a proceeding between all parties to the same extent as the original would be admissible.
- (3) A document purporting to be sealed with the seal of the Court and to be a copy of a document filed in or issued out of the Court is admissible as an office copy of the latter document without further proof.

40.09 Evidence of consent

The consent of a person to act in a particular capacity, whether as trustee, receiver or otherwise, or to be added as a plaintiff is sufficiently evidenced by a written consent signed by him, dated and verified by the endorsed certificate of a solicitor.

40.10 Defamation

A defendant in a proceeding for defamation who has not by his defence alleged the truth of the statement complained of shall not, except by leave of the Court at the trial, give evidence in chief at the trial with respect to mitigation of damages, the circumstances of publication or the character of the plaintiff unless he gives particulars of the evidence to the plaintiff by notice served not later than 7 days before the trial.

40.11 Subsequent use of evidence at trial

The Court may order that evidence that has been taken at the trial of a proceeding may be used at a subsequent stage of the proceeding.

40.12 Attendance and production

- (1) The Court may in a proceeding make an order for:
 - (a) the attendance of a person for the purpose of being examined;
 - (b) the attendance of a person and production by him of a document or thing specified or described in the order; or
 - (c) the production by a corporation of a document or thing specified or described in the order.
- (2) An order under subrule (1) may be made for attendance before or production to the Court or an officer of the Court, examiner, special referee, arbitrator or other person authorized to take evidence.
- (3) An order under subrule (1) shall not operate to require the person against whom the order is made to produce a document which he could properly object to produce on the ground of privilege.

40.13 View

The Court may inspect or, on a trial with a jury, may authorize the jury to inspect, a place, process or thing.

Order 41 Evidence by deposition

41.01 Order for witness examination

- (1) The Court may, for the purposes of a proceeding, make an order for:
 - (a) the examination of a person before a Judge or the Master, or such other person as the Court appoints as examiner, at any place whether within or out of the Territory; or
 - (b) the sending of a letter of request to the judicial authorities of another country to take, or have the evidence of a person taken.
- (2) An order under subrule (1)(a) shall be in Form 41A or 41B, as the case requires.
- (3) An order under subrule (1)(b) shall be in Form 41C.

41.02 Documents for examiner

The party obtaining an order for examination under rule 41.01(1)(a) shall furnish the examiner with copies of such of the documents in the proceeding as are necessary to inform the examiner of the question in the proceeding to which the examination is to relate.

41.03 Appointment for examination

- (1) The examiner shall appoint a place and time for the examination.
- (2) The time appointed shall be as soon as practicable after the making of the order.
- (3) The examiner shall give notice of an appointment under this rule to the party obtaining the order not later than 7 days before the time of the appointment and that party shall without delay serve notice of the appointment on each other party.

41.04 Conduct of examination

- (1) The examiner shall permit each party and his legal practitioner to attend the examination.
- (2) Unless the Court otherwise orders, the person examined shall be examined, cross-examined and re-examined in like manner as at trial.
- (3) The examiner may put a question to the person examined as to the meaning of an answer given by that person or as to a matter arising in the course of the examination.
- (4) The examiner may adjourn the examination from time to time and from place to place.

41.05 Examination of additional persons

- (1) Where the examiner is a Judge or the Master, the examiner may, on the application of a party to the proceeding, take the examination of a person not named or described in the order for examination.
- (2) Where the examiner is not a Judge or the Master, the examiner may, with the consent in writing of each party to the proceeding, take the examination of a person not named or described in the order for examination and, if he does so, he shall annex to the deposition of that person the consent of each of the parties.

41.06 Objection

Where a person being examined before an examiner, not being a Judge or the Master, objects to answer a question put to him or to produce a document or thing, or objection is taken to any such question or production, the following provisions apply:

- (a) where the objection is taken to a question:
 - (i) unless the question is objected to on the ground of privilege, the person being examined shall answer the question; and
 - (ii) the question, the ground for the objection and the answer, if any, shall be set out in the deposition;
- (b) where the objection is taken to the production of a document or thing, the ground for the objection shall be set out in the deposition and, where the objection is to the production of a document, unless production is objected to on the ground of privilege, the document or a copy shall be attached to the deposition;
- (c) the validity of the objection shall be decided by the Court; and
- (d) if the Court disallows the objection, it may order that the costs occasioned by the objection be paid by the person being examined or the party taking the objection, or by both of them, as the case requires.

41.07 Taking of depositions

- (1) The deposition of a person examined before an examiner shall be:
 - (a) taken down by the examiner;
 - (b) taken down by a shorthand writer or some other person in the presence of the examiner; or
 - (c) recorded by mechanical means in the presence of the examiner, if the place for the examination is equipped with sound recording apparatus that is operative at the commencement of the examination, and the examiner ensures that a transcript of the record of depositions is prepared.
- (2) Subject to subrule (3) and rule 41.06(a), the deposition need not set out every question and answer if it contains as nearly as may be the statement of the person examined.

- (3) The examiner may direct that the words of a question and the answer to the question be set out in the deposition.

41.08 Authentication and filing

- (1) Except where the deposition is taken down by a shorthand writer or is recorded by mechanical means, the examiner shall, if a party so requests, ask the person examined to sign his deposition.
- (2) The examiner shall authenticate and sign the deposition.
- (3) The examiner shall endorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received by him in respect of the examination.
- (4) The examiner shall send the deposition to a Registrar and the Registrar shall file it in the proceeding.
- (5) The examiner shall, unless the Court otherwise orders, send all exhibits to the Registrar and the Registrar shall deal with them as the Court directs.
- (6) Subrule (3), (4) and (5) do not apply where the examiner is a Judge or the Master.

41.09 Report of examiner

- (1) The examiner may make to the Court a report on the examination before him or with regard to the absence of a person from the examination.
- (2) The Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

41.10 Default of witness

- (1) Where a person has been required by subpoena to attend before an examiner not being a Judge or a Master and he fails or refuses to attend or he refuses to be sworn for the purposes of the examination or to answer a lawful question or to produce a document or thing or to sign his deposition if requested under rule 48.08(1), the examiner shall, at the request of a party, give to the party a certificate, signed by the examiner, of the failure or refusal.
- (2) On the filing of the certificate the Court may order the person:
 - (a) to attend before the examiner or to be sworn or to answer the question or to produce the document or thing, as the case may be; and

(b) to pay the costs occasioned by his failure or refusal.

- (3) An application for an order under subrule (2) shall be made with notice to the person against whom the order is sought, unless the Court otherwise orders.

41.11 Witness allowance

A person required to attend before an examiner shall be entitled to payment for expenses and loss of time as on attendance at trial.

41.12 Perpetuation of testimony

- (1) A witness shall not be examined to perpetuate testimony unless a proceeding has been commenced for that purpose.
- (2) A person who would, in the circumstances alleged by him to exist, become entitled, on the happening of a future event, to a property the right or claim to which cannot be brought to trial by him before the happening of the future event, may commence a proceeding to perpetuate a testimony which may be material for establishing the right or claim.
- (3) A proceeding to perpetuate the testimony of a witness shall not be set down for trial.

41.13 Letter of request

- (1) Where an order is made under rule 41.01(1)(b) for the sending of a letter of request, the party obtaining the order (in this Order called ***the applicant***) shall, when the letter of request has been signed:
- (a) lodge with a Registrar:
- (i) the letter of request;
 - (ii) all interrogatories and cross-interrogatories to accompany the letter of request; and
 - (iii) a translation of each of the documents mentioned in this paragraph in accordance with rule 41.14, unless the Master has given a general direction in relation to the place to whose judicial authorities the letter of request is to be sent that no translation need be provided or the official language or one of the official languages of that place is English;

- (b) file:
 - (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) an undertaking in accordance with rule 41.15; and
- (c) unless the Court otherwise orders, serve a copy of each of the documents mentioned in paragraph (a) on all other parties.

(2) A letter of request shall be in Form 41D.

41.14 Translation

A translation of a document lodged under rule 41.13 shall:

- (a) be a translation into an official language of the country to whose judicial authorities the letter of request is to be sent; and
- (b) bear a certificate of the translator, in that language, stating that it is an accurate translation of the document.

41.15 Undertaking

- (1) An undertaking filed under rule 41.13 shall consist of an undertaking by the solicitor for the applicant or, where there is no solicitor, by the applicant, to pay to a Registrar an amount equal to the expenses incurred in consequence of the letter of request.
- (2) A Registrar may require the applicant or his solicitor to give security to the Registrar's satisfaction for the expenses referred to in subrule (1).

41.16 Order for payment of expenses

Where a person has given an undertaking in accordance with rule 41.13 and 41.15 and does not, within 14 days after service on him of an account of expenses incurred in consequence of the letter of request, pay to the Registrar the amount of the expenses, the Court may, on application by a Registrar:

- (a) order the applicant or his solicitor (where the undertaking was given by the solicitor), or both of them, to pay the amount of the expenses to the Registrar; and

- (b) where:
- (i) the applicant is a plaintiff, stay the proceeding until payment so far as concerns the whole or a part of a claim for relief by the applicant; and
 - (ii) the applicant is defendant, make such order as it thinks fit, including an order that, until payment, the defendant be taken not to have filed an appearance or be not permitted to use in evidence a deposition of a witness obtained pursuant to the letter of request.

Order 42 Subpoenas

42.01 Definitions

In this Order, unless the contrary intention appears:

conduct money means an amount of money or its equivalent sufficient to meet the reasonable expenses of a person named of complying with a subpoena in relation to the day on which he is required by the subpoena to attend.

person named means a person to whom a subpoena or a sealed copy is addressed.

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

subpoena to give evidence means an order in writing requiring a person named to attend as directed by the order for the purpose of giving evidence.

42.02 Attendance by subpoena

- (1) In a proceeding the Court may, by subpoena, order that a person named attend at the trial or any other stage of the proceeding for the purpose of giving evidence or of producing a document or thing for evidence, or for both purposes.
- (2) A subpoena shall be in Form 42A, 42B, 42C or 42D, whichever is appropriate.

42.03 Filing subpoena

- (1) An order by subpoena for the attendance of a person in a proceeding shall be taken to be made on the filing of the subpoena by a party.

- (2) On the filing of a subpoena a Proper Officer, on the request of the party filing it, shall seal with the seal of the Court a sufficient number of copies for service and proof of service.
- (3) A subpoena to give evidence may be addressed to any number of persons.
- (4) Where a subpoena to give evidence is addressed to a person or to a number of persons "and others", the name of an additional person to whom it is to be addressed may be inserted in a sealed copy without resealing.

42.04 Service

Service of a subpoena:

- (a) where the person named is a natural person – shall be by personal service of a sealed copy on the person named in accordance with rule 6.03; and
- (b) where the person named is a corporation – shall be by service of a sealed copy on the corporation in accordance with rule 6.04(a) or, where provision is made by or under a Act for service of a document on a corporation, in accordance with that provision.

42.05 Conduct money

A person named shall be excused from complying with a subpoena requiring him to attend on a day on which attendance is required unless conduct money is given or tendered to him at the time of service of the subpoena or a reasonable time before that day.

42.06 Production before date for attendance

- (1) A subpoena for production requiring production before the Court or an officer of the Court shall, unless the Court otherwise orders, permit the person named, instead of producing the document or thing before the Court, to produce it to a Registrar by hand or by post, in either case so that a Registrar receives it not later than 2 days before the first day on which production is required by the subpoena to be made.
- (2) Where a document or thing is produced under subrule (1) to a Registrar, the Registrar shall:
 - (a) if requested to do so, give a receipt to the person producing the document or thing; and

- (b) produce the document or thing as the nature of the case requires or the Court directs.
- (3) This rule does not apply to so much of a subpoena as requires a person to attend for the purpose of giving evidence.

42.07 Setting aside

The Court may set aside a subpoena either wholly or in part.

42.08 Expenses and loss

Where a person named, not being a party, reasonably incurs expense or loss in complying with a subpoena for production exceeding by not less than \$100.00 the conduct money given under rule 42.05, the Court may order that the party who filed the subpoena pay to that person an amount in respect of the expense or loss.

42.09 Production of wages records

- (1) This rule applies to a proceeding for damages in respect of death or bodily injury where it is alleged that the deceased or the plaintiff was employed during a specified period.
- (2) A party may file a subpoena for production addressed to an employer or former employer of the deceased or of the plaintiff requiring the person named or some person on his behalf to attend before a Registrar to produce all documents in the possession, custody or power of the person named relating to the earnings of the deceased or the plaintiff during the specified period.
- (3) A party who files a subpoena under this rule shall, without delay after service, serve a copy on each other party to the proceeding.
- (4) To comply with subrule (3) it is not necessary that the copy served be sealed or be served personally.
- (5) A party may inspect and take copies of a document produced to a Registrar in accordance with the subpoena.

42.10 Subpoena for attendance before another Court, etc.

This Order, except rules 42.06 and 42.09, with the necessary changes, applies where by or under an Act the Court has authority to compel by subpoena the attendance of a person for the purpose of giving evidence or producing a document or thing for evidence in a court or before a person having by law or by consent of parties authority to hear, receive and examine evidence.

Order 43 Affidavits

43.01 Form of affidavit

- (1) An affidavit shall be made in the first person.
- (2) Unless the Court otherwise orders, an affidavit shall state the place of residence of the deponent and his occupation or, if he has none, his description, and that he is a party to the proceeding or employed by a party, if that be the case.
- (3) Notwithstanding subrule (2), where a deponent makes an affidavit in a professional or other occupational capacity, the affidavit may, instead of stating the deponent's place of residence, state the address of his place of business, the position he holds and the name of his firm or employer, if any.
- (4) An affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.
- (5) An affidavit shall be signed by the deponent, except as provided by rule 43.02(1), and the jurat shall be signed by the person before whom it is sworn.
- (6) Each page of an affidavit shall be signed by the deponent and the person before whom it is sworn.
- (7) The first page of an affidavit shall be headed immediately beneath the title of the proceeding with the name of the deponent and the date of swearing.
- (8) An affidavit shall on the outside identify the party on whose behalf it is filed and state the name of the deponent and the date of swearing.

43.02 Affidavit by illiterate or blind person

- (1) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, he shall certify in or below the jurat that:
 - (a) the affidavit was read in his presence to the deponent;
 - (b) the deponent seemed to him perfectly to understand it; and
 - (c) the deponent made his signature or mark in the person's presence.

- (2) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with subrule (1) does not appear on the affidavit, it may not be used in evidence unless the Court is satisfied that the affidavit was read to the deponent and that he seemed perfectly to understand it.

43.03 Content of affidavit

- (1) Except where otherwise provided by or under this Chapter, an affidavit shall be confined to facts which the deponent is able to state of his own knowledge.
- (2) On an interlocutory application an affidavit may contain a statement of fact based on information and belief if the grounds are set out.

43.04 Affidavit by 2 or more deponents

Where an affidavit is made by 2 or more deponents, the names of the persons making the affidavit shall be inserted in the jurat, except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by "each of the abovenamed" deponents.

43.05 Alterations

- (1) Notwithstanding an interlineation, erasure or other alteration in the jurat or body, an affidavit:
 - (a) may be filed, unless the Court otherwise orders; but
 - (b) may not be used without the leave of the Court unless the person before whom it is sworn has initialled the alteration.
- (2) Subrule (1) also applies to an account verified by affidavit as if the account were part of the affidavit.

43.06 Annexures and exhibits

- (1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.
- (2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.
- (3) Instead of making a document an annexure or an exhibit to an affidavit, the relevant portion of the document may be included in the body of the affidavit and the party filing the affidavit shall in that case produce the document whenever the affidavit is used.

- (4) An exhibit to an affidavit shall be identified by a separate certificate annexed to it bearing the same title as the affidavit and signed by the person before whom the affidavit is sworn.

43.07 Time for swearing

By leave of the Court an affidavit may be used in a proceeding notwithstanding that it was sworn before the commencement of the proceeding.

43.08 Irregularity

Notwithstanding an irregularity in form, an affidavit may be used in evidence.

43.09 Filing

- (1) Unless the Court otherwise orders, an affidavit which has not been:
- (a) filed; or
 - (b) served or filed in compliance with an order in respect of its service or filing,
- shall not be used by the party by or on whose behalf it was made.
- (2) An affidavit may be filed with the Registry or with the proper officer in court.

43.10 Affidavit sworn before party

- (1) An affidavit sworn before the party on whose behalf it is to be used, his solicitor or his solicitor's agent or before an employee of that party or of his solicitor or of his solicitor's agent shall not be used in evidence without the leave of the Court.
- (2) Subrule (1) does not apply where the Crown is the party on whose behalf the affidavit is to be used and the affidavit is sworn before an employee of the Crown.
- (3) Except as provided in subrule (1), an affidavit may be sworn before an authorized person.

Order 44 Expert evidence

44.01 Definition

- (1) In this Order, unless the contrary intention appears, **a proceeding commenced by writ** includes:
 - (a) a proceeding in respect of which an order has been made under rule 4.07;
 - (b) a trial or inquiry under Order 50; and
 - (c) an assessment of damages or value under Order 51.
- (2) In this Order **evidence** means the substance of all of the material evidence to be given by the expert witness in evidence in chief if called as a witness for a party, including, where applicable, the facts, assumptions and reasoning on which the evidence to be given is based and any reports, works, learned writings or other information on which the expert witness has relied or intends to rely for the expression of his opinion.

44.02 Application

- (1) Subject to subrule (2), this Order applies to a proceeding commenced by writ.
- (2) In a proceeding in which the plaintiff claims damages for bodily injury, the evidence of a person as an expert witness, if not subject to Order 33, is subject to this Order.

44.03 Service of statement of expert evidence

- (1) A party who intends at a trial to adduce the evidence of a person as an expert witness shall:
 - (a) not later than the time fixed by a Judge, the Master or a Registrar at a listing hearing or directions hearing held under Order 48; or
 - (b) where no such time is fixed:
 - (i) 6 weeks before the day fixed for the trial; or
 - (ii) before a directions hearing under rule 48.34 to ensure that a proceeding is ready to proceed to trial,

whichever is the earlier,

serve on every other party a statement in accordance with subrule (2).

- (2) The statement shall:
 - (a) give the name and address of the witness;
 - (b) describe his qualifications to give evidence as an expert; and
 - (c) be a statement of such of the evidence as it is proposed to adduce from him as an expert.
- (2A) In a proceeding in which the plaintiff claims damages in respect of death resulting from medical or the like treatment or advice given in respect of a physical or mental condition of the deceased, then, unless the Court otherwise orders, a party who is required to serve a statement under subrule (1) may exclude from the statement:
 - (a) any expression of opinion on the question of liability; and
 - (b) any statement in respect of a fact on which the opinion is based and which relates only to the question of liability.
- (3) Except with the leave of the Court or by consent of the parties, a party shall not, except in cross-examination, adduce at the trial of a proceeding evidence from a witness as an expert unless the evidence of the witness is contained in a statement served under this Order by the party.

44.04 Making statement of other party evidence

A party may put in evidence a statement served on him by another party in accordance with rule 44.03.

Order 45 Originating motion

45.01 Definition

In this Order ***proceeding*** means proceeding commenced by originating motion.

45.02 Evidence by affidavit

- (1) Except where otherwise provided by an Act or this Chapter, and subject to subrule (2), evidence at the trial of a proceeding shall be given by affidavit.
- (2) By agreement of the parties or by order of the Court, evidence at the trial of the proceeding may be given orally.

45.03 Judgment where no appearance

- (1) Where a defendant fails to file an appearance within the time limited, the Court may, on application made by the plaintiff without notice to the defendant, and on proof of service of the originating motion and of the failure, give judgment against the defendant for the relief or remedy sought in the originating motion.
- (2) For the purpose of this Chapter, the hearing of the application is the trial of the proceeding.
- (3) Except for the purpose of proof of service of the originating motion and where the defendant has failed to appear, the plaintiff shall not, unless the Court otherwise orders, use in evidence on the application an affidavit made by him or on his behalf and not served on the defendant with the originating motion.

45.04 Proceedings after appearance

- (1) Where a defendant has filed an appearance, no judgment shall be given for the relief or remedy sought except on application by the plaintiff in accordance with this rule.
- (2) Except as provided in subrule (3), an application shall be made to the Court by summons in Form 45A served on the defendant.
- (3) In a proceeding commenced by originating motion under Order 53 the plaintiff may apply for judgment on the day specified in the originating motion for application to the Court.
- (4) On an application under subrule (2) or (3) the Master may, as appropriate:
 - (a) hear and determine the application if it lies within his authority under Order 77;
 - (b) by consent of the defendant, give the judgment;
 - (c) refer the application to a Judge for hearing and determination;
or
 - (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.

45.05 Special procedure

- (1) In this rule *plaintiff* includes a person who proposes to commence a proceeding by originating motion.

- (2) The Court may, by order:
 - (a) dispense with the requirements of rules 5.03(1) and 8.02; and
 - (b) authorize the plaintiff to commence a proceeding by originating motion in Form 5C.
- (3) Without limiting subrule (2), an order may be made:
 - (a) in an urgent case;
 - (b) to save time and expense for the parties; or
 - (c) where the defendant consents.
- (4) An order may be made on application by the plaintiff before or after the proceeding is commenced and, except where the originating motion has been served on the defendant, application may be made without notice to the defendant.
- (5) An application made before the proceeding is commenced shall not constitute a proceeding for the purpose of this Chapter with respect to originating process.
- (6) Where an order has been made under subrule (2), judgment shall not be given for the plaintiff for the relief or remedy sought in the originating motion or otherwise, except on application made to the Court in accordance with Form 45A.
- (7) On application to the Court under subrule (6), if the application is heard before the Master, the Master may, as appropriate:
 - (a) where he has authority to give the judgment sought by the plaintiff, hear and determine the application;
 - (b) by consent of the defendant, give the judgment;
 - (c) refer the application to a Judge for hearing and determination;
or
 - (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.

Order 46 Applications

46.01 Application

This Order applies to an interlocutory or other application in a proceeding.

46.02 Application by summons

- (1) An application made on notice to a person shall be by summons, unless the Court otherwise orders.
- (2) An application made before the proceeding is commenced does not constitute a proceeding for the purpose of a requirement of this Chapter with respect to an originating process.
- (3) An application not by summons is made when it comes on for hearing.

46.03 Notice of application

On the hearing of an application the Court may order that the person making it give notice of it to a person having a sufficient interest.

46.04 Form and filing of summons

- (1) A summons shall be in Form 46A.
- (2) A summons shall state:
 - (a) the Order and rule; or
 - (b) such other legislative enactment,
by virtue of which the application is made.
- (3) A summons shall be filed in the Registry in which the originating process was filed whether the application is made to a Judge, the Master or a Taxing Master for costs to be taxed.
- (4) On the filing of a summons, or at a later time on the request of the applicant, a sufficient number of copies of the summons for service and proof of service shall be sealed with the seal of the Court.
- (5) The copies shall be sealed by a Registrar or other proper officer in the Registry.

46.05 Service

- (1) The applicant shall serve a sealed copy of a summons and, except where these Rules otherwise provide, a copy of an affidavit in support on every person to whom notice of the application is to be given.
- (2) Service under subrule (1) shall be made within a reasonable time before the day for hearing named in the summons and in no case later than 2.00 p.m. on the previous day or, where the Registry was

closed on the day before the day for hearing, not later than 2.00 p.m. on the day the office was last open.

- (3) A plaintiff may serve a summons on a defendant personally before appearance.
- (4) The Court may dispense with compliance with this rule.

46.05.1 Day for hearing

- (1) A summons which has not been served may, at the request of the party who filed it, be amended on or before the day for hearing named in the summons to name another day.
- (2) The summons may be amended:
 - (a) if the summons is to be heard by the Court constituted by a Judge:
 - (i) by the Master; or
 - (ii) by a Judge's Associate; or
 - (b) if the summons is to be heard by the Court constituted by the Master:
 - (i) by a Registrar; or
 - (ii) by the Master's Secretary.
- (3) A summons shall not be amended under this rule more than once.
- (4) This rule does not limit the power of the Court under rule 36.01.

46.06 Adjournment

- (1) The Court may adjourn the hearing of an application on such terms as it thinks fit.
- (2) The Associate of the Judge or, where an application is to be heard by the Master, a Registrar or the Master's secretary, may by consent adjourn the hearing of an application to a particular date or for a particular time or generally, and shall record the adjournment by endorsement on the court file.
- (3) An adjournment in pursuance of subrule (2) shall be granted no later than 3pm on the day before the day for hearing named in the summons or, where the Registry was closed on the day before the day for hearing, no later than 3 pm on the day on which the office was last open.

- (4) On a hearing adjourned under subrule (2) the Court may make such order for the costs of or occasioned by the adjournment as it thinks fit.

46.07 Absence of party to summons

- (1) Where a person to whom a summons is addressed fails to attend, the Court may hear the application if satisfied that the summons was duly served.
- (2) Where on an application by summons the applicant fails to attend, the Court may dismiss the application or make such other order as it thinks fit.

46.08 Setting aside

The Court may set aside or vary an order which affects a person where the application for the order:

- (a) was made on notice to the person, but he did not attend the hearing of the application; or
- (b) was not made on notice to the person.

Order 47 Place and mode of trial

47.01 Place of trial

Unless the Court otherwise orders, the place of trial of a proceeding shall be determined in accordance with rule 5.08.

47.02 Mode of trial

- (1) All proceedings shall be tried without a jury, unless the Court orders otherwise in accordance with section 7 of the *Juries Act*.
- (2) Trial with a jury shall be with a jury of 4.

47.03 Jury procedure

The Court may, if it thinks fit, order that a proceeding or a question of fact in a proceeding be tried by the Court with a jury pursuant to the *Juries Act*.

47.04 Separate trial of question

The Court may order that:

- (a) a question in a proceeding be tried before, at or after the trial of the proceeding and may state the question or give directions as to the manner in which it shall be stated; and
- (b) different questions be tried at different times or places or by different modes of trial.

47.05 Judgment after determination of preliminary question

If the determination of a question in a proceeding and tried separately from the proceeding substantially disposes of the proceeding or renders the trial of the proceeding unnecessary, the Court may dismiss the proceeding or make such other order, or give such judgment, as it thinks fit.

Order 48 Setting down for trial and case flow management

Part 1 Preliminary

48.01 Interpretation

- (1) In this Order, unless the contrary intention appears:

hearing time, in relation to a proceeding, means the time taken for the trial of the proceeding.

listing hearing means a listing hearing convened under rule 48.19.

Master includes a Registrar.

settlement means:

- (a) a final disposition, by agreement between the parties to a proceeding, of all the issues in the proceeding; or
- (b) a resolution by agreement between the parties of such of the issues in a proceeding as will or is likely to reduce the hearing time of the proceeding,

whether or not the agreement is subject to a contingency, and settled has a corresponding meaning.

settlement conference means a settlement conference convened under rule 48.14.

- (2) Where a directions hearing is conducted before a Registrar, **Judge** in rules 48.10(b) and 48.13(b)(ii) includes the Master where the Master has the power to make the relevant order or give the relevant direction.
- (3) The times referred to in this Part are not inflexible and, in fixing or assessing times, a Judge or the Master shall give consideration to prevailing circumstances.

48.02 Application

- (1) This order applies to all proceedings in the court commenced by writ and to all proceedings in respect of which an order has been made under rule 4.07.
- (2) Where in a proceeding commenced by originating motion it is proposed to call oral evidence pursuant to rule 45.02 or for any other reason it appears desirable that the provisions of this Order should apply to that proceeding the Master or Judge may so order.

48.03 Power of Registrar

- (1) In this rule, **Master** does not include a Registrar.
- (2) Nothing in this Order empowers a Registrar to dismiss a proceeding for want of prosecution or to strike out a defendant's appearance, defence or counterclaim.
- (3) Where a directions hearing is convened by or held before a Registrar, the Registrar may give such directions for the conduct of the proceeding as he thinks fit and Order 34 with the necessary changes, applies to a direction so given.
- (4) A Registrar may, where a party fails to attend a directions hearing convened or held before the Registrar, furnish to the Master a report signed by the Registrar as to the party's failure to so attend.
- (5) On receiving a report under subrule (4), the Master may give to the party failing to attend the directions hearing referred to in the report notice of a date, time and place when and at which the party is to attend before the Master to show cause why:
 - (a) if the party is a plaintiff – the party's claim should not be dismissed for want of prosecution; or
 - (b) if the party is a defendant – the party's appearance, defence and/or counterclaim should not be struck out.

- (6) If the Master gives notice under subrule (5), he shall also give a copy of the notice to all other interested parties and those parties may attend and be heard at the meeting.
- (7) At the date, time and place fixed by notice in accordance with subrule (5), or at any adjourned date thereafter, the Master may proceed in accordance with rule 48.07(2).

Part 2 Case flow management

48.04 Fixing of directions hearing

At a time not later than 2 months after an originating process has been filed, the Master shall fix a time, date and place for the holding of an initial directions hearing.

48.05 Notice of meeting

- (1) The Master shall give to each party not less than 14 days notice of the initial directions hearing.
- (2) A notice under subrule (1) may be given:
 - (a) by sending it by prepaid post to the party's address for service; or
 - (b) where a party appears by a solicitor, in accordance with rule 6.06(1)(d).
- (3) The Master shall file a copy of the notice.
- (4) A copy of the notice filed in accordance with subrule (3) shall be endorsed with the date of the giving of the notice and shall be signed by the Master.
- (5) A copy of a notice duly filed, endorsed and signed in accordance with this rule is evidence of the giving of the notice as required by this Part.

48.06 Party to attend directions hearing

A party shall attend a directions hearing fixed in accordance with rule 48.05.

48.07 Consequence of failure to attend

- (1) If a party fails to attend a directions hearing of which notice has been duly given, the Master may give to the party failing to attend notice of a date, time and place when and at which the party is to attend before the Master to show cause why:
 - (a) if the party is a plaintiff – the party's claim should not be dismissed for want of prosecution; or
 - (b) if the party is a defendant – the party's appearance, defence and/or counterclaim should not be struck out.
- (2) At the date, time and place fixed by notice in accordance with subrule (1), or at any adjourned date after that date, the Master may:
 - (a) where the party failing to attend was the plaintiff – dismiss the plaintiff's claim for want of prosecution;
 - (b) where the party failing to attend was the defendant, strike out the defendant's appearance, defence and/or counterclaim; or
 - (c) proceed in accordance with rule 48.08.
- (3) In acting under subrule (2), the Master may order costs against the party failing to attend or against the party's solicitor.
- (4) Rules 48.38(5), (6) and (7), with any necessary changes, apply to a proceeding, appearance or pleading dismissed or struck out under this rule.

48.08 Categorising proceedings

- (1) The purpose of the initial directions hearing is to determine which of the categories specified in subrule (2) it is appropriate to designate the proceeding.
- (2) At the initial directions hearing the Master shall designate each proceeding as one of the following categories of proceedings:
 - (a) if the hearing time is likely to be 1 to 2 days – Category A;
 - (b) other ordinary matters requiring the supervision of the Master – Category B;
 - (c) complex matters requiring the supervision of a Judge – Category C;

- (d) urgent matters requiring the supervision of a Judge – Category D;
 - (e) if the proceeding involves only local witnesses or no witnesses and is likely to be capable of being brought on for trial when ready for trial on not less than 2 days' notice – Category E.
- (3) The category of a proceeding may, for good reason, be altered from time to time.

48.09 Adjourning of directions hearing

A directions hearing may be adjourned from time to time.

48.10 Action of Master at directions hearing

At a directions hearing the Master may:

- (a) make such orders or give such directions as he has power to make or give under these Rules as he thinks fit; or
- (b) refer the making of an order or the giving of a direction to a Judge.

48.11 Fixing time for Category C and D proceedings

- (1) If, at a directions hearing, a proceeding is designated as a Category C or D proceeding, the Master shall fix a date, time and place for the proceeding to be listed before a Judge.
- (2) A person attending a hearing at which a proceeding is referred under subrule (1) to a Judge shall be taken to have notice of the date, time and place fixed by the Master.
- (3) Where this rule applies and a person is not present at the hearing the Master shall give notice to the person, in accordance with rule 48.05, of the date, time and place fixed by him.
- (4) A Judge before whom a proceeding is listed in accordance with subrule (1) shall have charge of the proceeding and shall make such orders and give such directions as the Judge from time to time thinks fit in order to have the proceeding effectively, completely, promptly and economically determined.

48.12 Time for hearing of Category A, B, and E proceedings

- (1) The Master shall have charge of all Category A, B, and E proceedings and shall make such orders and give such directions as he from time to time thinks fit in order to have the proceedings effectively, completely, promptly and economically determined.

- (2) Notwithstanding subrule (1), a Judge may at any time, if he thinks fit, exercise the powers of the Master conferred by subrule (1).

48.13 Procedure in relation to directions hearings

For the purpose of achieving the objectives under:

- (a) rule 48.11(4), a Judge may adjourn a directions hearing from time to time; and
- (b) rule 48.12, the Master may:
- (i) as he thinks fit, make such orders or give such directions as he has power to make or give under these Rules;
 - (ii) refer the proceeding to a Judge to make such orders or directions as the Judge thinks fit;
 - (iii) convene such further hearings as he thinks fit; or
 - (iv) adjourn a directions hearing from time to time.

48.14 Settlement conference

- (1) If at any time a Judge or the Master is of the opinion that a proceeding is capable of settlement or ought to be settled, the Judge or Master may direct that it be set down for a settlement conference for the purpose of exploring the possibility of settlement.
- (2) A settlement conference shall be held before the Master as mediator or before a mediator appointed by the Judge or the Master from the list of mediators kept in accordance with subrule (9).
- (3) A notice of the proposed holding of a settlement conference fixing the time, date and place of the conference shall be given by a Judge or the Master in accordance with rule 48.05.
- (4) A Judge or the Master may direct that the parties personally attend a settlement conference convened under this rule, and if a party is a corporation, that party may be ordered to attend by an agent familiar with the substance of the issues in the proceeding and with unqualified authority either to settle the proceeding or to make recommendations to the corporation which are likely to result in the settlement of the proceeding.
- (5) A direction under subrule (4) may be given:
- (a) orally to a party or to that party's solicitor;

- (b) in writing to a party by prepaid post addressed to the party at the address shown in the originating process; or
- (c) where the solicitor for a party has facilities for the reception of documents in a document exchange – by delivering it into those facilities,

by a Judge or the Master or an officer authorised by a Judge or the Master.

- (6) Where the Master is the mediator, rules 48.05(3), (4) and (5), 48.06, 48.07 and 48.13(b), with the necessary changes, apply to a settlement conference.
- (7) The attendance by a party in person at a settlement conference does not prevent the party being represented at the conference by the party's solicitor or counsel, or both.
- (8) Except in order to prove that a binding settlement was reached between the parties and the terms of that settlement, evidence of things said or admissions made to a person at a settlement conference is not admissible in the proceeding or in a court, except by consent of the parties.
- (9) The Master shall keep a list of all persons who, in the opinion of a Judge or the Master, are suitably qualified and willing to act as mediators.
- (10) The costs and expenses of a mediator, other than the Master, may be fixed by a Judge or the Master, and subject to subrule (12) shall be met equally by all parties to the mediation.
- (11) A Judge or the Master may make an order necessary to secure or enforce the payment of the mediator's costs and expenses.
- (12) If a party fails to attend a settlement conference notice of which has been duly given in accordance with subrule (3) or any adjourned settlement conference, or if, having attended a settlement conference or adjourned settlement conference a party refuses to participate in the settlement conference or applies, (except by consent of all other parties), to adjourn or further adjourn the settlement conference and the adjournment is granted by the mediator, the party at fault shall pay the costs of the mediator and of the other parties thrown away as a result, which costs may be immediately taxed by the Taxing Master notwithstanding rule 63.04(3).
- (13) Subject to subrule (8), a mediator to whom a proceeding or part of a proceeding is referred under the Rules shall not disclose or be required to disclose any information of which the mediator becomes

aware in the course of and for the purposes of the mediation notwithstanding any law of the Territory to the contrary.

- (14) A settlement conference may be adjourned by the mediator from time to time if the parties consider that further negotiations may lead to a settlement.

48.15 Costs

Subject to this Order, the costs of and incidental to attending a settlement conference or directions hearing convened in accordance with this Part shall be costs in the proceeding, unless the Judge or Master otherwise orders.

48.16 Alice Springs listing hearings and direction hearings may be by videoconference or teleconference

- (1) Where a proceeding has been filed in the Alice Springs Registry, a Judge or the Master may conduct a listing hearing or directions hearing by means of:
- (a) a videoconference; or
 - (b) a teleconference.
- (2) Where a listing hearing or directions hearing is to be held in accordance with subrule (1):
- (a) the Court shall provide and meet the expenses of the equipment necessary to enable the videoconference or teleconference to be held;
 - (b) the Court shall notify the parties or their solicitors of the place where they may attend the meeting or hearing by the use of the equipment;
 - (c) the Court file shall be sent to the Darwin registry by the Alice Springs registry in time for the meeting;
 - (d) a party seeking to rely on an affidavit or other document sought to be filed after the file has been sent to the Darwin registry may:
 - (i) file the document in the Alice Springs registry; and
 - (ii) request a copy of the document filed to be faxed by the Alice Springs registry to the Darwin registry and the Alice Springs registry shall fax the document to the Darwin registry as soon as possible on payment by the person to it of a fee of 50 cents per page or such other fee as

the Chief Justice from time to time fixes by practice direction,

and a document faxed in accordance with subparagraph (ii) shall be treated as if it were the original document duly filed; and

- (e) a Judge or the Master may, if he thinks fit, take evidence from any witness who is duly sworn at such a meeting or hearing, and may exercise all or any of the powers or discretions available, whether under these Rules or otherwise, during the meeting or hearing as if the parties and the witness were physically in the presence of the Judge or Master.

48.17 Other attendances at listing hearings or directions hearings by videoconference or teleconference

- (1) A party may attend a listing hearing or directions hearing, wherever it is to be heard, with the permission of a Judge or the Master, by videoconference or teleconference.
- (2) A Judge or the Master may, if he thinks fit, take evidence from any witness who is duly sworn at such a hearing, and may exercise all or any of the powers or discretions available, whether under these Rules or otherwise, during the hearing as if the parties and the witnesses were physically in the presence of the Judge or Master.
- (3) A party intending to attend a listing hearing or a directions hearing by videoconference or teleconference shall, at least 24 hours before the time set for the hearing, seek the permission of the Judge or the Master to attend in accordance with subrule (1) .
- (4) Permission under this rule may be granted informally by telephone and without notice to any other party.
- (5) A party who has been granted permission to attend a hearing in accordance with subrule (1) shall:
- (a) give such notice to the other parties of his intention to attend the hearing as a Judge or the Master may direct; and
- (b) unless a Judge or the Master directs otherwise, provide and meet the expenses of any equipment necessary to enable the videoconference or teleconference to take place.

Part 3 Setting down for trial

48.18 Papers for Judge

When pleadings have been closed in accordance with rule 14.08, the plaintiff or applicant, as the case may be, shall, within 14 days, file a copy of all pleadings, which shall include particulars of all such pleadings given and the request for such particulars, but not the writ or the notice of appearance.

48.19 Listing hearing

Subject to these Rules, a proceeding shall not, unless the Court otherwise orders, be listed for trial until a listing hearing in accordance with the following rules in this Order has taken place.

48.20 Certificate of Readiness

- (1) Unless a Judge or the Master otherwise orders, a listing hearing shall not take place until a duly completed Certificate of Readiness for trial is filed.
- (2) A Certificate of Readiness shall be in Form 48B and shall be completed by all parties to the proceeding in the manner indicated in the form.
- (3) A Certificate of Readiness shall state the place at which the proceeding is to be listed for trial.

48.21 Service of the Certificate of Readiness

A party to a proceeding may, in a manner provided by rule 6.06, serve on another party a form of Certificate of Readiness bearing an endorsement in Form 48C, for completion by that other party and return to the party serving it.

48.22 Determining if proceeding ready for trial

- (1) On a Certificate of Readiness being filed:
 - (a) if the proceeding is designated as a Category A, B, or E proceeding – the Master shall fix a time and date for the parties or their solicitors to attend before him on a listing hearing; or
 - (b) if the proceeding is designated as a Category C or D proceeding – the Master shall fix a time and date for the parties or their solicitors to attend before a Judge on a listing hearing.

- (2) The Master shall give notice to the parties or their solicitors of the time and date fixed under subrule (1).
- (3) At the listing hearing, consideration shall be given to:
 - (a) the possibility of the claim being settled by compromise and the desirability of a settlement conference;
 - (b) further simplification of the issues;
 - (c) the necessity or desirability of amendments to the pleadings;
 - (d) obtaining further admissions of facts and of documents that will avoid unnecessary proof, including questions of medical examination and reports under Order 33;
 - (e) the limitation of the number of witnesses or the issues covered by their evidence;
 - (f) the submissions by the parties to the trial Judge of written arguments on issues of law or on issues of mixed law and facts;
 - (g) the necessity to refer a proceeding to a Judge to secure appropriate directions or other orders to ensure that the proceeding is ready for and will proceed to trial;
 - (h) the estimated duration of the trial;
 - (j) whether a witness' evidence will be heard by means of a videoconference in accordance with these rules;
 - (k) whether it is desirable to order exchange of witness' statements; and
 - (m) any other matter that might facilitate the disposal of the proceeding.
- (4) If a Judge or the Master is satisfied as to the matters referred to in subrule (3) and that the proceeding is in fact ready for trial, he shall order that the proceeding be placed in a list of proceedings ready for trial.

- (5) If a Judge or the Master is not satisfied following a listing hearing that a proceeding is in fact ready for trial:
- (a) if the listing hearing is heard by a Master:
 - (i) the Master shall certify in writing that he is not so satisfied and state the reason for his not being satisfied; and
 - (ii) the listing hearing may be adjourned generally or to a specified date and may continue to be adjourned for listing hearing until the Master is satisfied that the proceeding is ready for trial; and
 - (b) if the listing hearing is heard by a Judge – it may be adjourned generally or to a specified date and may continue to be adjourned for listing hearing until the Judge is satisfied that the proceeding is ready for trial.
- (6) Subject to rule 48.24(1), the Master shall not place a proceeding in a list of proceedings ready for trial until satisfied that:
- (a) advice on evidence has been prepared by each party's solicitors;
 - (b) such advice has been obtained from counsel; or
 - (c) advice on evidence is not necessary.

48.23 Listing hearing on failure to sign Certificate of Readiness

- (1) If the parties in a proceeding cannot agree to sign a Certificate of Readiness, a party who has served a Certificate of Readiness, with an endorsement in Form 48C, under rule 48.21 may, after the expiration of 21 days, apply for a listing hearing under this rule.
- (2) A listing hearing shall be heard by a Master if the proceeding is designated a Category A, B or E proceeding, but otherwise it shall be heard by a Judge.
- (3) An application under this rule shall:
- (a) be filed and served on the other party;
 - (b) set out the reason for there being no agreement; and
 - (c) be in Form 48D.

- (4) On application being made under this rule, the Master shall fix a time and date for the parties or their solicitors to attend before a Judge or the Master, as the case may be.
- (5) The Master shall give notice to the parties or their solicitors of the time and date fixed under subrule (4).
- (6) At a listing hearing the Judge or Master shall determine whether the proceeding is in fact ready for trial.
- (7) If the Master, following a listing hearing under this rule, is not satisfied that a proceeding is ready for trial, he may so certify in writing stating the reasons for his not being so satisfied.
- (8) If a Judge or the Master, following a listing hearing under this rule is satisfied that a proceeding is ready for trial, he shall order that the proceeding be placed in a list of proceedings ready for trial.
- (9) At a listing hearing the Master may, before certifying in accordance with subrule (7):
 - (a) refer, or direct a party to refer, a matter in the proceeding to a Judge for directions or other orders; or
 - (b) take, or direct the parties to take, such other action as the Master thinks fit to have the proceeding made ready for trial.
- (10) A listing hearing may be adjourned generally or to a specified date and from time to time.
- (11) In considering whether a proceeding is ready for trial, the Master shall have regard to the matters referred to in rule 48.22(3) and (6).

48.24 When proceeding not ready for trial

- (1) Where the Master has certified in accordance with rule 48.22(5) or 48.23(7), he shall order that the proceeding be placed in a list of proceedings ready for trial unless, in the interests of justice, it would be inappropriate to do so.
- (2) If the Master declines to order a proceeding to be listed for trial and has certified in accordance with rule 48.23(7), the listing hearing is concluded.
- (3) Unless the Master otherwise orders, when a listing hearing is concluded pursuant to subrule (2), no step to have a date fixed for a trial of the proceeding shall be taken except:
 - (a) after compliance with rule 48.22; or

- (b) pursuant to a fresh application filed in pursuance of rule 48.23(3).

48.25 Reference to Judge

The power of the Master to refer under rule 48.22(3)(g) or 48.23(9)(a) may be exercised when:

- (a) there is a need for an order or direction that he does not have the power to make or give;
- (b) he is of the opinion that the dispute between the parties as to whether a date for trial should be given may be better resolved by a Judge;
- (c) he is of the opinion that the proceeding could have been commenced in a Local Court; or
- (d) for any other reason the Master considers it appropriate so to do.

48.26 Master's certificate as evidence

A document purporting to be a certificate referred to in rule 48.22(5) or 48.23(7) is, on being produced to a Court, evidence of the facts stated in the document as to a matter arising at or from a listing hearing under this Order.

48.27 Application to dismiss or for judgment

- (1) A party may rely on matters arising at or from a listing hearing and stated in a certificate referred to in rule 48.26 to support an application for:
 - (a) a stay or dismissal of a proceeding for want of prosecution; or
 - (b) judgment or otherwise against a defendant.
- (2) Failure of a party in a proceeding:
 - (a) to appear at a listing hearing under this Order after having had notice of the hearing; or
 - (b) to act on a direction of the Master under this Order,is evidence:
 - (c) if the failure is on the part of the plaintiff – of the plaintiff's failure to prosecute the proceeding with due diligence; or

- (d) if the failure is on the part of the defendant – of the defendant's failure to defend the proceeding with due diligence.
- (3) On an application of a kind referred to in subrule (1)(a) and (b), the Court may make such orders in the proceeding, and may give such directions, as it thinks fit.

48.28 Master may make or recommend order

The Master may, at a listing hearing:

- (a) make such interlocutory orders as are within the Master's power to make and, in particular, may make an order as to costs; or
- (b) recommend orders to a Judge, including orders as to costs.

48.29 Costs

The costs of and incidental to a listing hearing shall, unless a Judge or the Master otherwise orders, be costs in the proceeding.

48.30 Copies of Master's certificates to be given to parties

The Master shall serve a copy of a certificate under rule 48.22(5) or rule 48.23(7) on the parties to a proceeding.

48.31 Listing for trial at directions hearing

At a directions hearing, a Judge or the Master may, having regard to the matters referred to in rule 48.22(3) and (6), if satisfied that a proceeding is ready for trial, or should, in the interests of justice, proceed to trial, order that the proceeding be placed in a list of proceedings ready for trial notwithstanding that no Certificate of Readiness has been filed.

48.32 Trial lists

There shall be kept in each registry:

- (a) a list (called the A list) of all Category A and B proceedings;
- (b) a list (called the B list) of all Category C and D proceedings; and
- (c) a list (called the C list) of all Category E proceedings, ready for trial.

48.33 Fixing hearing dates

- (1) There shall, from time to time, be a callover before a Judge of all proceedings in the A and C lists.
- (2) At the callover, the Judge shall allocate hearing dates to such proceedings in the A and C lists as the Judge thinks fit, to be heard during the next days allocated by the Chief Justice for the hearing by the Court of civil actions.
- (3) Unless counsel briefed in the proceeding attends personally, the parties shall, not later than the time of the callover, file a certificate by each counsel briefed in each proceeding likely to be given a trial date, stating:
 - (a) that the proceeding is ready for trial;
 - (b) that no amendment to the pleadings is required;
 - (c) the anticipated length of the case of the party counsel is representing, including opening and closing addresses;
 - (d) any dates during the proposed sittings when counsel or a witness will not be available;
 - (e) whether or not counsel has discussed the proceeding with each of the other counsel involved;
 - (f) whether or not there are outstanding proceedings to be resolved; and
 - (g) the prospects of the proceeding being settled before the hearing.
- (4) A Judge shall, subject to compliance with subrule (3), allocate hearing dates in order of priority on each list.
- (5) A Judge may, if he thinks it expedient to do so, allocate a hearing date to a proceeding notwithstanding that subrule (3) has not been complied with or that there are other proceedings with priority over that proceeding in a list.
- (6) The Registrar shall provide a copy of the list to all parties or their solicitors not later than 7 days before the proposed callover date and at the same time shall give notice of the time and place of each callover.
- (7) A callover of the proceedings in the Alice Springs registry may be conducted by videoconference or teleconference.

- (8) Notwithstanding anything in this rule:
- (a) a Judge or the Master may list a proceeding in the A or the C list, or which would otherwise be placed in the A or C list, for trial before a Judge if there are suitable dates in any period already allocated by the Chief Justice pursuant to subrule (2);
 - (b) a Judge or the Master may list a proceeding placed in the C list for trial before a Judge at any time on not less than 2 day's notice to the parties; and
 - (c) a Judge may list any proceeding for hearing before a Judge at any time whether or not dates have already been allocated by the Chief Justice pursuant to subrule (2) and whether or not the proceeding is in a list of proceedings ready for trial.
- (9) Each proceeding in the B list shall be given a hearing date by a Judge at a directions hearing called for that purpose by a Judge or by a party.
- (10) A certificate by each counsel in accordance with subrule (3) shall be filed before the date of a directions hearing called pursuant to subrule (9), unless counsel briefed in the proceeding attends personally.

48.34 Pre-trial directions hearing

- (1) A directions hearing to ensure that a proceeding is ready to proceed to trial may be held before the allocated trial Judge at a time and place determined by the Judge, in relation to any proceeding that has been given a date for trial.
- (2) Where a trial is listed to be held in Alice Springs, a directions hearing referred to in subrule (1) may be held by means of a videoconference or teleconference.
- (3) The trial Judge may make such orders as he thinks necessary at the hearing, including an order that no further amendments to the pleadings will be permitted.

Part 4 General

48.35 Exchange of witness statements

- (1) In this rule, **witness statement** means a written statement of such of the evidence in chief as it is proposed to adduce from a witness at trial.
- (2) A judge or the Master may, at a listing hearing or a directions hearing called for the purposes of this Order, order that the parties

exchange or that a party deliver witness statements and may give such directions as he thinks necessary to give effect to the order and the use to which the statement may be put.

- (3) A witness statement shall be signed by the witness before it is exchanged or delivered in pursuance of an order under subrule (2) and shall be filed.
- (4) When witness statements are ordered under subrule (2) to be exchanged or delivered, the witness shall, unless the Court otherwise orders, confine his evidence in chief at the trial to the matters dealt with in the statement.
- (5) At a hearing referred to in subrule (1) a party shall be represented by his counsel or the solicitor who has actual charge of the proceeding for the party.

48.37 Videoconferencing

- (1) If a party intends to adduce evidence by means of a videoconference he shall, not later than 4 weeks before the date fixed for the trial of the proceeding, give notice:
 - (a) to the other party to the proceeding of his intention;
 - (b) file a copy of the notice; and
 - (c) deliver a copy of the notice to the trial Judge's associate.
- (2) A notice under subrule (1) shall state the name of the witness proposed to be called and the proposed time of the videoconference and be accompanied by a signed copy of the witness' evidence in chief.
- (3) A party to whom notice has been given under subrule (1) may, within 7 days after receiving the notice, object to the proposal contained in the notice.
- (4) An objection under subrule (3) shall be dealt with by the trial Judge.
- (5) At a videoconference referred to in this rule the evidence in chief of the witness shall be confined to that in the witness' statement.
- (6) The party proposing to adduce evidence by videoconference shall arrange and pay for the booking of the necessary facilities at both ends and all other associated costs and expenses.

- (7) If within the period referred to in subrule (3) no notice of objection to the proposed adducing of evidence by videoconference has been given, all parties to the proceeding shall be taken to have consented to it being so given.
- (8) If an objection is upheld by the Judge, the party objecting may be ordered to pay as costs an amount equal to the difference between what would have been the cost of adducing the evidence by videoconference and the costs of bringing the witness to Court, regardless of the outcome of the trial.

48.38 Self-executing orders

- (1) A Judge or the Master may, at any time in relation to a proceeding, make a self-executing order:
 - (a) dismissing the proceeding; or
 - (b) striking out a pleading,for a party's non-compliance with a rule or failure to comply with an order of the Court.
- (2) An order under subrule (1) may be made notwithstanding that the default is that of the solicitor of the party or that the fault of the party or his solicitor is not shown to be contumelious.
- (3) An order under subrule (1) is of no effect unless:
 - (a) it is made in the presence of the parties;
 - (b) within the time fixed by the Judge or Master for the service of the order, it is served personally on the party at fault; or
 - (c) it is otherwise served in accordance with an order for substituted service made by the Court.
- (4) For the purposes of enabling an order under subrule (1) to be served, the solicitor for the party at fault shall provide the party in whose favour the order is obtained with the address of the party against whom it is made last known to the solicitor.
- (5) A proceeding or pleading struck out under this rule may be reinstated by and in the discretion of a Judge on application by interlocutory summons in the action made within one month after the proceeding or pleading was struck out, notwithstanding that judgment may have been entered.

- (6) Notwithstanding subrule (5), a proceeding or pleading struck out under this rule may, by special leave, be reinstated at any time by and in the discretion of a Judge by an order obtained by motion.
- (7) A proceeding or pleading may be reinstated in pursuance of subrule (5) or (6) subject to such terms as to costs as the Judge thinks fit (including a term that the costs thrown away be paid before the proceeding is reinstated) and the Judge may require the party at fault to lodge with the Court security for future costs in the proceeding.

Order 49 Trial

49.01 Order of evidence and addresses

- (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the trial.
- (2) Subject to a direction given under subrule (1), where the burden of proof:
 - (a) on a question lies on the plaintiff, the plaintiff shall begin;
 - (b) on all the questions lies on the defendant, the defendant shall begin.
- (3) Subject to a direction given under subrule (1):
 - (a) where the only parties are one plaintiff and one defendant and there is no counterclaim, the order of evidence and addresses shall be as provided by the following subrules; and
 - (b) in any other case, the order of evidence and addresses shall be as provided by those subrules with such changes as the nature of the case requires.
- (4) The party who begins may make an address opening his case and may then adduce his evidence.
- (5) Where in the course of the case for the party who begins no document or thing is admitted in evidence on tender by the opposite party and at the conclusion of that case:
 - (a) the opposite party adduces evidence, he may first make an opening address and after adducing his evidence he may make a closing address and thereafter the party who began may make a closing address; or

- (b) the opposite party does not adduce evidence, the party who began may make a closing address and then the opposite party may make an address.
- (6) Where in the course of the case for the party who begins a document or thing is admitted in evidence on tender by the opposite party and at the conclusion of the case:
 - (a) the opposite party adduces evidence, the order of proceedings shall be as provided by subrule (5)(a); or
 - (b) the opposite party does not adduce evidence, he may make an address and then the party who began may make a closing address.

49.02 Absence of party

- (1) If when the trial of a proceeding is called on a party is absent, the Court may:
 - (a) order that the trial be not had unless the proceeding is again set down for trial or unless such other steps are taken as the Court directs;
 - (b) proceed with the trial generally or so far as concerns a claim for relief in the proceeding;
 - (c) adjourn the trial; or
 - (d) where the party absent:
 - (i) is the plaintiff – dismiss the plaintiff's claim; or
 - (ii) is the defendant:
 - (A) and the claim is one for which default judgment may be entered under these Rules – strike out the defendant's defence and enter judgment accordingly; or
 - (B) give summary relief where, in the Court's opinion, such relief may be or ought to be given.
- (1A) In exercising a power under subrule (1)(b) or (1)(d), the Court may direct that the proceeding continue before the Master and may make such orders as shall be necessary to give effect to that direction.
- (2) The Court may set aside or vary a judgment, order or verdict obtained where a party is absent at the trial.

- (3) An application under subrule (2) shall be made within 14 days after the trial.

49.03 Adjourment of trial

The Court may adjourn a trial on such terms as it thinks fit.

49.04 Death before judgment

- (1) Where a party to a proceeding dies after the verdict or finding on the questions of fact, the Court may give judgment notwithstanding the death.
- (2) Subrule (1) does not affect the power of the Court under rules 9.08 and 9.09.

49.05 Certificate of Associate

At the conclusion of the trial of a proceeding the Associate at the trial shall by certificate certify:

- (a) the times at which the trial commenced and concluded on each day;
- (b) every finding of fact by the jury, where the trial was with a jury;
- (c) the judgment of the Court; and
- (d) the order, if any, as to costs.

Order 50 Special referee

50.01 Reference to referee

Where an order referring a question is made under section 26(1) of the Act, the Court:

- (a) shall state the question referred;
- (b) shall direct that the Master or referee make a report in writing to the Court on the question referred to him stating, with reasons, his decision or opinion; and
- (c) may direct that the Master or referee give such further information in his report as it thinks fit.

50.02 Directions as to procedure

- (1) Where an order referring a question is made under section 26(1) of the Act, the Master or Court may order that the referee hold a trial

or make an inquiry that may be necessary to enable him to decide the question referred or give his opinion, as the case may be, and may give directions for the conduct of the trial or inquiry.

- (2) Where an order is made under subrule (1) that the referee hold a trial, without limiting the power of the Court to give directions for the conduct of the trial, the Court may direct that:
- (a) the referee have the same authority with respect to discovery of documents and interrogatories as the Court;
 - (b) the referee may adjourn the trial on such terms as he thinks fit; or
 - (c) evidence be taken at the trial, and the attendance of witnesses and the production of documents compelled by subpoena, and the trial conducted in the same manner as nearly as circumstances will permit, as a trial is conducted before the Court.

50.03 Report on reference

- (1) The referee may in his report submit a question arising on the reference for the decision of the Court or make a statement of facts found by him from which the Court may draw such inferences as it thinks fit.
- (2) On the receipt of the referee's report the Court:
- (a) shall give notice thereof to the parties; and
 - (b) may by order:
 - (i) require the referee to provide a further report explaining a matter mentioned or not mentioned in the report;
 - (ii) remit the whole or a part of the question originally referred to the referee for further consideration by him or another referee; or
 - (iii) vary the report.
- (3) An application by a party for an order under subrule (2)(b) shall be made on not less than 3 days' notice to the other party or parties.

50.04 Master

The Court may make an order under rule 50.01 that a question of fact be referred to the Master instead of a special referee and in such case this Order applies with the necessary changes.

50.05 Committal

Nothing in this Order authorizes a referee or the Master to make an order of committal.

50.06 Remuneration of referee

- (1) The Court may determine the remuneration of a referee and by what party or parties and in what proportion the remuneration is to be paid either in the first instance or finally.
- (2) The Court may order a party to give security for the remuneration of a referee.
- (3) The Court may order that the proceeding be stayed until an order made under subrule (2) is complied with.
- (4) This rule, with the necessary changes, also applies to a reference under an Act.

Order 51 Assessment of damages or value

51.01 Mode of assessment

Subject to rule 51.05, damages under a judgment or order for damages to be assessed shall, unless the Court otherwise orders, be assessed by the Master.

51.02 Notice to other party

- (1) The party against whom the damages are to be assessed may take part in the assessment.
- (2) The party for whom the damages are to be assessed shall, not later than 14 days before the assessment is due, serve notice of the day, time and place of the assessment on the other party to the assessment.
- (3) Notice under subrule (2) may be served at the address for service but, if there is no address for service, it shall be served personally, unless the Court otherwise orders.

51.03 Procedure on assessment

The attendance of witnesses and production of documents may be compelled by subpoena in accordance with Order 42, and Order 49, with the necessary changes, applies as if the assessment were a trial of the proceeding.

51.04 Order for damages

Where damages are assessed by the Master, he shall, by order, state the amount at which they are assessed.

51.05 Default judgment against some defendants

Where judgment for damages to be assessed is entered or given in default of appearance or pleading and the proceeding is continued against other defendants, the damages shall be assessed at the trial, unless the Court otherwise orders.

51.06 Continuing cause of action

Where damages are assessed, whether under this Order or otherwise, in respect of a continuing cause of action, they shall be assessed down to the time of assessment.

51.07 Value of goods

This Order, with the necessary changes, also applies to a judgment or order for the value of goods to be assessed, with or without damages to be assessed.

Order 52 Accounts and inquiries

52.01 Account or inquiry at any stage

- (1) Except as provided in subrule (3), the Court may at any stage of a proceeding make an order for the taking of an account or the making of an inquiry.
- (2) Where the Court makes an order for the taking of an account, it may order payment of an amount found to be due on taking the account.
- (3) The Court shall not order that an account be taken:
 - (a) as against a defendant who has not filed an appearance, unless he is in default of appearance; or
 - (b) if it appears that there is a preliminary question to be tried.

52.02 Directions for account

Where the Court makes an order for the taking of an account, it may, by the same or later order:

- (a) give directions concerning the manner of taking or verifying the account; and

- (b) without limiting paragraph (a), direct that in taking the account the relevant books of account are evidence of the matters contained in them with liberty to the parties interested to take objections to those matters.

52.03 Form and verification of account

- (1) The items on each side of an account shall be numbered consecutively.
- (2) Unless the Court otherwise orders, an accounting party shall verify his account by affidavit and the account shall be made an exhibit to the affidavit.

52.04 Filing and service of account

An accounting party shall, unless the Court otherwise orders:

- (a) file his account and verifying affidavit; and
- (b) without delay, serve a copy of the account and affidavit on each other party.

52.05 Notice of charge, error in account

- (1) A party who seeks to charge an accounting party with an amount beyond what the accounting party by his account admits receiving shall give to the accounting party notice of the charge, with brief particulars, stating, so far as he is able, the amount which he seeks to charge.
- (2) A party who alleges that an item in the account of an accounting party is erroneous in amount or otherwise shall give to the accounting party notice of the allegation, stating the grounds.

52.06 Allowances

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

52.07 Delay

Where there is delay in the prosecution of an account, inquiry or other matter under a judgment or order, the Court may make orders for staying or expediting the proceeding, or for the conduct of the proceeding, as it thinks fit.

52.08 Fund distribution before all entitled ascertained

Where some of the persons entitled to share in a fund are ascertained and the ascertainment of the other persons so entitled may be delayed, the Court may, by order, allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

Order 53 Summary proceeding for recovery of land

53.01 Application

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

53.02 Originating process

- (1) The plaintiff may make the claim in a proceeding in accordance with this Order.
- (2) The proceeding shall be commenced by originating motion.
- (3) The originating motion shall be in Form 5E.

53.03 Who to be defendant

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

53.04 Affidavit in support

At the time the proceeding is commenced an affidavit shall be filed stating:

- (a) the interest of the plaintiff in the land and that the land does not include premises to which the *Tenancy Act* applies;

- (b) the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and
- (c) that the plaintiff does not know the name of any person occupying the land who is not a defendant.

53.05 Service

- (1) The originating motion and a copy of the affidavit and of an exhibit referred to in the affidavit shall be served on each defendant, if any, and on any person occupying the land who is not a defendant.
- (2) Service on a defendant shall be personal.
- (3) Service on a person occupying the land who is not a defendant shall be effected:
 - (a) by:
 - (i) affixing a copy of the originating motion and a copy of the affidavit to some conspicuous part of the land; and
 - (ii) if practicable, leaving in the letter-box or other receptacle for mail on the land a copy of the originating motion and a copy of the affidavit enclosed in a sealed envelope addressed to "The Occupiers"; or
 - (b) in such other manner as the Court directs.

53.06 Occupier made a party

The Court may order that a person occupying the land who is not a defendant be made defendant or added as a defendant, as the case requires, and that he file an appearance.

53.07 Judgment for possession

- (1) In a proceeding under this Order no judgment for possession shall be given except by a Judge.
- (2) The judgment shall be in Form 53A.

53.08 Warrant of possession

- (1) Where 3 months have elapsed since the judgment for possession in a proceeding under this Order took effect, a warrant of possession to enforce the judgment shall not be issued without the leave of a Judge.

- (2) An application for leave under subrule (1) may be made without notice to any person, unless the Court otherwise orders.
- (3) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall be in Form 53B.

Order 54 Administration of estates and execution of trusts

54.01 Definitions

In this Order:

administration proceeding means a proceeding for the administration of an estate or the execution of a trust under the direction of the Court.

estate means the estate of a deceased person.

54.02 Relief without general administration

- (1) A proceeding may be brought for any relief which could be granted in an administration proceeding and a claim need not be made for the administration or execution under the direction of the Court of the estate or trust in respect of which the relief is sought.
- (2) Without limiting subrule (1), a proceeding may be brought for:
 - (a) the determination of a question which could be determined in an administration proceeding, including a question:
 - (i) arising in the administration of an estate or in the execution of a trust;
 - (ii) as to the composition of a class of persons having a claim against an estate or a beneficial interest in an estate or in property subject to a trust; or
 - (iii) as to the rights or interests of a person claiming to be a creditor of an estate or to be entitled under the will or on the intestacy of a deceased person or to be beneficially entitled under a trust;
 - (b) an order directing an executor, administrator or trustee to:
 - (i) furnish and, if necessary, verify accounts;
 - (ii) pay funds of the estate or trust into court; or

- (iii) do or abstain from doing an act; or
- (c) an order:
 - (i) approving a sale, purchase, compromise or other transaction by an executor, administrator or trustee; or
 - (ii) directing an act to be done in the administration of an estate or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed under the direction of the Court.

54.03 Parties

In an administration proceeding or a proceeding within rule 54.02:

- (a) all the executors of the will of the deceased or administrators of the estate or trustees of the trust, as the case may be, are parties;
- (b) where the proceeding is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff shall be made a defendant;
- (c) notwithstanding anything in rule 9.03(1), and without limiting the powers of the Court under Order 9, all persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, need not be parties and the plaintiff may make such of those persons parties as he thinks fit; and
- (d) where in the taking of an account of debts or liabilities under a judgment or order in the proceeding a person not a party makes a claim:
 - (i) a party other than the executors or administrators or trustees shall not be entitled to attend before the Court in relation to that claim, except by leave of the Court; and
 - (ii) the Court may direct or allow a party to attend before the Court either in addition to or in substitution for the executors, administrators or trustees.

54.04 Notice of proceeding and judgment

- (1) In an administration proceeding or a proceeding within rule 54.02, notwithstanding anything in rule 54.03, the Court may order that a person not a party be given notice of the proceeding and of a judgment in the proceeding.

- (2) On the application of a person given notice under subrule (1), the Court may, in accordance with rule 9.06(b), order that the person be added as a party.

54.05 Relief in proceeding by originating motion

- (1) In an administration proceeding or a proceeding within rule 54.02, the Court may make an order and grant a relief to which the plaintiff is entitled by reason of breach of trust, wilful default or other misconduct of the defendant, notwithstanding that the proceeding was commenced by originating motion.
- (2) Subrule (1) does not limit the powers of the Court under rule 4.07.

54.06 Judgment in administration proceeding

- (1) The Court need not give judgment or make an order for the administration of an estate or the execution of a trust under the direction of the Court unless the judgment or order is necessary for the determination of the questions arising between the parties.
- (2) Where an administration proceeding is brought by a creditor of the estate or by a person claiming to be entitled under the will or on the intestacy of the deceased or to be beneficially entitled under the trust, the Court may:
- (a) if it is alleged that no or no sufficient accounts have been furnished by the executors, administrators or trustees, order that the proceeding be stayed for a period specified in the order and that the executors, administrators or trustees shall, within that period, furnish the plaintiff with proper accounts; and
 - (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled, give judgment or make an order for the administration of the estate or the execution of the trust under the direction of the Court and order that no steps be taken under the judgment or order, or under an account or inquiry directed, without the leave of the Court.

54.07 Conduct of sale

Where the Court makes an order for the sale of property comprised in an estate, or trust property, the executors or administrators, or the trustees, as the case requires, shall, unless the Court otherwise orders, have the conduct of the sale.

Order 55 Sale of land by order of Court

55.01 Definition

In this Order **land** includes an interest in or right over land.

55.02 Power to order sale

In a proceeding relating to land, where it is necessary or expedient for the purposes of the proceeding, the Court at any stage of the proceeding may order that the whole or a part of the land be sold and may further order that a party in receipt of the rents or profits of the land or otherwise in possession of the land deliver possession to such person as the Court directs.

55.03 Notice of application

- (1) Except for special reason, an order under rule 55.02 for the sale of land shall not be made unless notice in writing has been given to every person interested in the land, whether or not a party.
- (2) An order for sale shall state whether notice has been given to every person interested in the land and, if it has not, shall state what special reason exists for making the order notwithstanding.

55.04 Manner of sale

- (1) This rule applies where the Court makes an order under rule 55.02 that land be sold.
- (2) The Court may appoint a party or other person to have the conduct of the sale.
- (3) The Court may permit the person having the conduct of the sale to sell the land in such manner as he thinks fit.
- (4) The Court may direct a party to join in the sale and conveyance or transfer or in any other matter relating to the sale.
- (5) The Court may give further directions for the purpose of the sale, including directions:
 - (a) fixing the manner of sale, whether by contract conditional on approval of the Court, private treaty, public auction or tender or otherwise;
 - (b) fixing a reserve or minimum price;
 - (c) requiring payment of the purchase money into court or to a trustee or other person;

- (d) for settling the particulars and conditions of sale;
- (e) for obtaining evidence of value; or
- (f) fixing the remuneration to be allowed to an auctioneer, estate agent or other person.

55.05 Certifying result of sale

- (1) Where the Court has directed payment of the purchase money into court or the Court so orders, the result of a sale by order of the Court shall be certified:
 - (a) in the case of a sale by public auction – by the auctioneer who conducted the sale; and
 - (b) in any other case – by the person having the conduct of the sale or his solicitor,and the Court may require that the certificate be verified by affidavit.
- (2) The person having the conduct of the sale shall file the certificate and affidavit.
- (3) Unless the Court otherwise orders, the certificate and affidavit shall be filed within 21 days after the sale.

55.06 Mortgage, exchange or partition

This Order, with the necessary changes, also applies to the mortgage, exchange or partition of land under an order of the Court.

Order 56 Judicial review

56.01 Judgment or order instead of writ

- (1) Subject to any Act, the jurisdiction of the Court to grant relief or a remedy in the nature of certiorari, mandamus, prohibition or quo warranto shall be exercised only by way of judgment or order (including interlocutory order) and in a proceeding commenced in accordance with this Chapter.
- (2) The proceeding shall be commenced by originating motion.

56.02 Time for commencement of proceeding

- (1) A proceeding under this Order shall be commenced within 60 days after the date when grounds for the grant of the relief or remedy claimed first arose.

- (2) Where the relief or remedy claimed is in respect of a judgment, order, conviction, determination or proceeding, the date when the grounds for the grant of the relief or remedy first arose shall be taken to be the date of the judgment, order, conviction, determination or proceeding.
- (3) The Court shall not extend the time fixed by subrule (1) except in special circumstances.

Order 57 Habeas corpus

57.01 Definition

In this Order *writ* means a writ of habeas corpus.

57.02 Application for writ

- (1) A writ shall not issue except by order of the Court.
- (2) An application for a writ shall be made to a Judge.
- (3) The person making the application, whether or not he is the person restrained, shall be the plaintiff and the person against whom the issue of the writ is sought shall be the defendant in the proceeding.
- (4) The application shall be made on notice to the defendant.
- (5) Notice shall be by summons and, subject to rule 57.05, service of the summons shall be personal.
- (6) The application shall be supported by an affidavit by the person restrained showing that it is made at his instance and stating the nature of the restraint.
- (7) Where the person restrained is unable for any reason to make the affidavit referred to in subrule (6), the affidavit may be made by another person and it shall show that the person restrained is unable to make the affidavit.
- (8) In an urgent case, the Court may dispense with compliance with a requirement of subrules (4) to (7) inclusive.
- (9) Order 46, with the necessary changes, applies to an application under this rule.

57.03 Order on application

- (1) On an application under rule 57.02 the Court may:
 - (a) order that a writ shall issue; or

- (b) order that the person restrained be released.
- (2) Where an order is made under subrule (1) (a), the Court shall give directions as to the Judge before whom, and the date on which, the writ is returnable.
- (3) A writ shall be in Form 57A.
- (4) Subject to rule 57.05, a writ shall be served personally on each defendant.
- (5) An order that the person restrained be released shall be a sufficient warrant to the Director of Correctional Services, a Prison Officer in charge of a prison, a member of the Police Force or other person for the release of the person from restraint.
- (6) The Court may make an order under subrule (1) notwithstanding that the application is not made on notice to the defendant.

57.04 Further application for writ

Where an order for a writ is refused, an application for a writ shall not be made again in respect of the same person on the same grounds, whether to the same Judge or to another Judge, unless fresh evidence is adduced.

57.05 Service

Where the Director of Correctional Services, a member of the Police Force or other public official is a defendant, in an urgent case, the summons or writ may be served on that defendant by leaving it for him at his office or other place of employment with a person apparently employed there and who apparently has attained the age of 18 years.

57.06 Disobedience

- (1) A writ may be enforced by:
 - (a) committal of the defendant;
 - (b) sequestration of the property of the defendant;
 - (c) where the defendant is a corporation, without limiting paragraph (b):
 - (i) committal of an officer of the corporation;
 - (ii) sequestration of the property of an officer of the corporation,

or by any combination of those means.

- (2) Nothing in subrule (1) affects the power of the Court to punish for contempt.

57.07 Return to the writ

- (1) The defendant shall make a return to the writ by filing a notice stating the grounds of detention of the person restrained and serving a copy on the plaintiff at or before the time the writ is returnable.
- (2) By leave of the Court the defendant may amend the notice or file and serve another notice in substitution for the notice.

57.08 Person detained before Court

Where a person detained is brought before the Court pursuant to a writ, the Court shall make such order concerning his custody as it thinks fit.

57.09 Production of person in confinement, to testify

- (1) An application for the issue of a writ of habeas corpus for an order for the production of a person in confinement to give evidence in a proceeding, civil or criminal, before a court or tribunal shall be made to a Judge by summons.
- (2) Order 46, with the necessary changes, applies to an application under this rule.
- (3) Nothing in subrule (1) limits the power of the Court under any Act to make an order otherwise than on application by summons that an accused person committed to prison be brought before the Court.

Order 59 Judgments and orders

59.01 General relief

The Court may, at any stage of a proceeding, on the application of a party, give such judgment or make such order as the case requires, notwithstanding that the judgment or order had not been sought in the originating process or other document of the party in the proceeding.

59.02 Date of effect

- (1) A judgment given or order made by the Court shall bear the date of and take effect on and from the day it is given or made, unless the Court otherwise orders.
- (2) Any other judgment shall bear the date of and shall take effect on and from the day it is authenticated in accordance with Order 60.
- (3) Subject to subrule (4), a judgment debt carries interest from the date of judgment at the rate per annum in a financial year equal to the rate of interest applying to Ten Year Commonwealth Bonds on 1 July of that financial year.
- (4) Where immediately before 1 September 1987 a judgment debt carried interest, the rate of interest per annum payable on that judgment debt on and from that date until 1 July 1988 is the rate of interest applying to Ten Year Commonwealth Bonds on 1 July 1987.
- (5) For the purposes of this rule, the rate of interest applying to Ten Year Commonwealth Bonds on a particular date is the rate advised by the Northern Territory Treasury as applying on that date.

59.03 Time for compliance

- (1) Subject to subrule (3), a judgment or order which requires a person to do an act shall provide, unless the Court otherwise orders, that the act be done within 7 days after service of a copy of the judgment or order on him.
- (2) Where a judgment or order requires a person to do an act within a fixed time, the Court may, by order, fix another time.
- (3) Subrule (1) does not apply to:
 - (a) so much of a judgment as requires a person to pay money otherwise than into court;
 - (b) a judgment for possession of land; or
 - (c) a judgment for the delivery of goods.
- (4) Where a judgment or order requires a person to do an act but does not fix a time within which it is required to be done, the Court may, by order, fix a time.
- (5) Where the Court fixes a time under subrule (4), it may, by subsequent order, fix another time.

59.04 Statement of reasons for judgment

Where the Court gives a judgment or makes an order the reasons for which have been reduced to writing, it shall be sufficient to state the result orally without reasons, but the written reasons shall then be published by delivery to the Associate or, where the Master gives the judgment or makes the order, to his secretary.

59.05 Notice of judgment to non-party

- (1) This rule applies where the Court gives judgment or makes an order for:
 - (a) the administration of the estate of a deceased person;
 - (b) the execution of a trust; or
 - (c) the sale of property.
- (2) Where the judgment or order:
 - (a) affects the rights of a person not a party; or
 - (b) directs the taking of an account or the making of an inquiry,the Court may by the judgment or order, or by subsequent order, direct that notice of the judgment be served on a person interested.
- (3) The Court may direct that notice under subrule (2) be served personally or in some other manner and, where it appears that service is impracticable, may dispense with service.
- (4) A notice of judgment served under subrule (2) shall be endorsed in accordance with Form 59A.
- (5) Where under this Rule notice of a judgment is served on a person, or the Court dispenses with service of notice of judgment on a person:
 - (a) subject to subrule (6), the person shall be bound by the judgment to the same extent as if he were a party at the time the judgment or order was given or made, except where the judgment or order has been obtained by fraud or non-disclosure of material facts; and
 - (b) he may, after filing an appearance, attend on the taking of the account or the making of the inquiry under the judgment or order.

- (6) The Court may set aside or vary the judgment or order on the application of a person referred to in subrule (2).
- (7) An application under subrule (6) shall be made by summons, which shall be filed:
 - (a) if notice of the judgment or order has been served on the applicant – within 14 days after service; or
 - (b) if the Court has dispensed with service of notice – within 14 days after the day the order dispensing with service was made.

Order 60 Authentication and filing of judgments and orders

60.01 When authentication required

- (1) Unless the Court otherwise orders, a judgment or an order shall not be enforced under this Chapter and an appeal which has been instituted from a judgment or an order shall not be heard until the judgment or order has been authenticated in accordance with this Order and filed.
- (2) Except where the Court otherwise orders, no judgment:
 - (a) shall be entered or step taken; or
 - (b) shall be given,

pursuant to an order or in consequence of the failure of a party to comply with an order unless, before being so entered, taken or given, the order is authenticated in accordance with this Order and filed.

60.02 Mode of authentication

- (1) A judgment is authenticated when a form of the judgment, drawn up and settled in accordance with this Order, is sealed by a Registrar with the seal of the Court.
- (2) An order is authenticated when a form of the order, drawn up and settled in accordance with this Order is sealed by a Registrar with the seal of the Court or, in the case of an order to which rule 60.04 applies, is signed by a Judge or the Master.

60.03 Drawing up of judgment or order

- (1) The form of a judgment or order shall be drawn up by the party requiring it to be authenticated and lodged by him with a Registrar to be settled.
- (2) Notwithstanding subrule (1), a party may lodge with the Court a minute of a judgment or order in a particular form and when the minute is initialled by a Judge or the Master, as the case may be, it has the effect of a settled draft and it is not necessary for the party to lodge a form of a draft of judgment or order for settlement by a Registrar.
- (3) A Registrar may, on the request of a party, draw up and settle the form of a judgment or order.

60.04 Order signed by Judge or Master

- (1) Notwithstanding anything in this Order, where the Judge or the Master by whom the order was made so directs, an order may be drawn up by a party and signed by the Judge or the Master.
- (2) Where that Judge or Master is unable for sufficient cause to sign the order, it may be signed by another Judge.

60.05 Recitals in judgments and orders

- (1) A judgment or order shall not include by way of recital a matter not provided for in subrule (2).
- (2) A judgment or order shall, by way of recital, specify:
 - (a) the originating or other process on which it was obtained;
 - (b) whether a party who was entitled to appear on the hearing of the application to which the judgment or order relates did or did not appear and, if he did, whether in person or by legal practitioner;
 - (c) a finding by the Court of fact essential to ground jurisdiction;
 - (e) the terms of an undertaking given by a party; and
 - (f) such other matters as the Court directs.
- (3) Where the Court so orders or a party so requires, a judgment or order shall, by way of annexure, identify the evidence before the Court.

60.06 Drawing up and settling

- (1) Where a Registrar is requested to draw up or settle the form of a judgment or order, he may appoint a time and place for the attendance of a party to settle the draft.
- (2) Where a draft form of a judgment or order is lodged by a party with a Registrar to be settled, the Registrar may:
 - (a) settle the draft without an appointment for the attendance of a party; or
 - (b) appoint a time and place for the attendance of a party to settle the draft.
- (3) Where a Registrar makes an appointment to settle the draft of a judgment or order, he shall give notice of the appointment to the party requesting that the form of the judgment or order be drawn up or settled or to the party lodging a draft form of the judgment or order to be settled, as the case may be.
- (4) That party shall serve notice of the appointment on the other party, unless the Registrar otherwise directs.
- (5) The notice shall be served not later than 2 days before the appointed day.
- (6) On the appointment to settle, the Registrar may proceed in the absence of a party.
- (7) The Registrar shall, on or after the appointment, settle the draft.

60.07 Copy of judgment or order

A Registrar shall, on the request of a party, seal a reasonable number of copies of a judgment or order.

60.08 Form of judgment or order

The forms of judgments and orders in Forms 60A to 60L shall, where appropriate, be used.

Order 62 Security for costs

62.01 Definitions

In this Order, unless the contrary intention appears:

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

defence includes a defence to a counterclaim and defence to a statement of a third party claim.

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

62.02 When to give security

(1) Where:

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

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

(2) The Court shall not require a plaintiff to give security by reason only of subrule (1)(d) if in failing to state his address or to state his correct address the plaintiff acted innocently and without intention to deceive.

62.03 Manner of giving security

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

62.04 Failure to give security

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

62.05 Variation or setting aside

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

Order 63 Costs

Part 1 Preliminary

63.01 Interpretation

- (1) In this Order, unless the contrary intention appears:

Appendix means the appendix to this Order.

bill means a bill of costs, an account, or a statement of charges.

costs includes disbursements.

indemnity basis, in relation to the taxing of costs, is the basis on which costs are taxed in accordance with rule 63.27.

party includes:

- (a) a person, not a party to the proceeding, by or to whom costs in respect of a proceeding are payable by or under an Act, these Rules or an order of the Court; or
- (b) in the case of a proceeding in another court or before a tribunal or an arbitration, a person, whether or not a party to the proceeding or arbitration, by or to whom costs in respect of the proceeding or arbitration are payable where by or under an Act, these Rules or an order of the Court the costs are to be taxed in the Court.

standard basis, in relation to the taxing of costs, is the basis on which costs are taxed in accordance with rule 63.26.

taxed costs means costs taxed in accordance with this Order.

Taxing Master means the Master or the Registrar, or another officer of the Court so directed under subrule (3) by the Master, conducting a taxation of costs under this Order.

trustee includes an executor of a will and an administrator of the estate of a deceased person.

- (2) In this Order, unless the contrary intention appears:
- (a) a reference to a fund, being a fund out of which costs are to be paid, or being a fund held by a trustee, includes a reference to property held for the benefit of a person or class of persons (including the assets of a company in liquidation) or held on trust for any purpose; and
 - (b) a reference to a fund held by a trustee includes a reference to other property to which the trustee is entitled as trustee, whether alone or together with another person and whether or not the property is for the time being in the possession of the trustee.
- (3) The Master may direct an officer of the Court to conduct a taxation of costs under this Order but an officer so directed shall not conduct such a taxation if a party to the taxation, or a party's solicitor, objects to the officer conducting the taxation.

63.02 Application

- (1) This Order applies to costs payable or to be taxed under these Rules or an order of the Court and to costs to be taxed by the Taxing Master under any Act.
- (2) When used in an order for costs, but subject to rule 63.03, the following words have the following effect indicated opposite to them:

Costs Where this order is made in an application in a proceeding, the party in whose favour it is made:

- (a) is entitled to his costs in respect of that application whatever the outcome of the proceeding; and
- (b) is entitled to have his costs taxed.

Costs here and below The party in whose favour this order is made is entitled not only to his costs in respect of the proceeding in which it is made, but also to his costs of the same proceeding in a lower court or tribunal.

Costs in any event This order has the same effect as an order for costs made in an application in a proceeding.

Costs in the proceeding or Costs in the application The party in whose favour an order for costs is made in a proceeding or, in an application in a proceeding, is entitled to his costs of the proceeding or application (as the case may be) in respect of which the order is made.

Costs reserved Subject to Rule 63.20, the party in whose favour an order for costs is made at the conclusion of a proceeding is entitled to the costs of any application in that proceeding in respect of which the order is made.

Costs of the day Includes all costs thrown away, including an allowance for work actually done by counsel on the day but not the fee payable to counsel on brief.

Costs thrown away Where an application or a proceeding, or part of it, has been ineffective or has been subsequently set aside, the party in whose favour this order is made is entitled to his costs of that proceeding or part (as the case may be) in respect of which it is made.

No order as to costs This order means that each party pays his own costs.

Plaintiff's costs in the proceeding or Defendant's costs in the proceeding The plaintiff or defendant (as the case may be) is entitled to his costs of the application in a proceeding in respect of which such an order is made, if judgment is given in his favour in the proceeding, but he is not liable to pay the costs of a party in respect of that application if judgment is given in favour of another party in the proceeding.

63.03 General rule

- (1) Subject to these Rules and any other law in force in the Territory, the costs of a proceeding are in the discretion of the Court.
- (2) Where in the opinion of the Taxing Master or the Court the strict application of this Order (other than this subrule) would result in an anomaly, the Taxing Master or the Court may tax costs, or make such order in relation to costs, as he or it thinks equitable in the circumstances and the costs so taxed or ordered are payable and may be enforced under this Order accordingly.

63.04 Time for order for costs, taxation and payment

- (1) The Court may exercise its power and discretion as to costs at any stage of a proceeding or after the conclusion of the proceeding.
- (2) Subject to this rule, the costs a party is required to pay under these Rules or an order of the Court shall be paid immediately.
- (3) Subject to subrule (4), where:
 - (a) the Court makes an interlocutory order for costs; or

- (b) costs are payable by virtue of these Rules without an order for costs,

those costs shall not be taxed until the conclusion of the proceeding to which they relate.

- (4) If it appears to the Court when making an interlocutory order for costs or at a later time that all or a part of the costs ought to be taxed at an earlier stage, it may order accordingly.
- (5) In the case of an appeal, the costs of the proceeding giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.

63.05 Costs of question or part of proceeding

The Court may make an order for costs in relation to a particular question in, or a particular part of, a proceeding.

63.06 By whom costs to be taxed

Unless the Court otherwise orders, costs taxed in accordance with this Order shall be taxed by the Taxing Master.

63.07 Other orders for payment of costs

Where the Court orders that costs be paid to a party, it may then or at a later time order that, as to the whole or a part of the costs specified in the order, that party is entitled to:

- (a) a portion (specified in the order) of taxed costs;
- (b) taxed costs from or up to a stage of the proceeding specified in the order; or
- (c) a gross amount specified in the order instead of taxed costs.

63.08 Cost on writ and on default judgment

- (1) For the purpose of rule 5.09, a plaintiff may claim for costs in a writ an amount in accordance with item 1 in the scale in Part 4 of the Appendix and, if the plaintiff so claims, rule 5.09(3) does not apply.
- (2) Where judgment is entered for costs under rule 21.03(2), unless the Court otherwise orders, the costs shall not be taxed but shall be in accordance with the appropriate item in the scale in Part 4 of the Appendix.

63.09 Costs in Local Court, &c.

Where proceedings in the Local Court or before a tribunal are remitted or transferred to or removed into the Court, or an appeal to the Court is brought from another court or a tribunal, and the Court makes an order as to the costs of proceedings in that court or before that tribunal, the Court may:

- (a) specify the amount of the costs to be allowed;
- (b) order that the costs be taxed in the Court in accordance with this Order; or
- (c) order that the amount of the costs be determined in the court or tribunal in such manner as that court or tribunal directs.

63.10 No order for taxation required in certain cases

Where:

- (a) the Court makes an order for the payment of costs;
- (b) a proceeding is dismissed with costs;
- (c) an application in a proceeding is refused with costs;
- (d) a party is otherwise liable under these Rules to pay the costs of another party;
- (e) a party may tax costs under these Rules; or
- (f) the parties have agreed in writing that costs payable by one party to another may be taxed and the agreement is filed,

the costs may be taxed without an order for taxation.

63.11 No order for costs required in certain cases

- (1) Where an application is made to set aside a pleading on the ground of irregularity and that application is dismissed, the party who made the application shall pay the costs of every other party to the application.
- (2) Where a plaintiff, by notice in writing in accordance with these Rules, accepts money paid into court in satisfaction of his claim or accepts money paid in satisfaction of one or more of his claims and gives notice that he abandons the others, he is entitled to his costs of the action incurred up to the time of giving notice of acceptance and the costs of obtaining payment out of court of the money.

- (3) Where, in a proceeding for defamation against several defendants sued jointly, a plaintiff, by notice in writing, accepts money paid into court by one of the defendants, the plaintiff is entitled to his costs of the proceeding against that defendant incurred up to the time of giving notice of acceptance and the costs of obtaining payment out of court of the money.
- (4) A defendant who has counterclaimed is entitled to the costs of the counterclaim if:
 - (a) he pays money into Court and his notice of payment in states that he has taken into account and satisfied the claims in respect of which he counterclaims; and
 - (b) the plaintiff accepts the money paid in,but the costs of that counterclaim are limited to those incurred up to the time when the defendant received notice of acceptance by the plaintiff of the money paid into court.
- (5) Where a party applies for an extension or abridgement of a time fixed by these Rules or by an order fixing, extending or abridging time, he shall pay the costs of and occasioned by the application.
- (6) A party who discontinues a proceeding or withdraws part of a proceeding, counterclaim or claim by third party notice shall pay the costs of the party to whom the discontinuance or withdrawal relates to the time of the discontinuance or withdrawal.
- (7) A party who amends:
 - (a) a pleading without leave of the Court; or
 - (b) a pleading or other document by leave,shall pay the costs of and occasioned by the amendment and the costs thrown away because of the amendment.
- (8) The costs of and occasioned by an adjournment made necessary by the default of a party shall be borne by that party.
- (9) This rule is subject to such other order as the Court makes.

63.12 Enforcement of order of Taxing Master

- (1) Where costs are taxed otherwise than under a judgment or order for costs, an order of the Taxing Master for payment of an amount found to be due may be enforced in the same manner as a judgment for the payment of money.

- (2) Subrule (1) extends to an interim order for payment of an item in a bill of costs made under rule 63.54(3).

63.13 Costs in account

Where the Court orders that an account be taken and the account consists in part of costs, the Court may, then or at a later date, direct that those costs be fixed or be taxed in accordance with this Order.

Part 2 Entitlement to costs

63.14 Order for payment

Subject to these Rules, a party to a proceeding is not entitled to recover any costs of the proceeding from another party except by order of the Court.

63.15 Offer of compromise

Where an offer of compromise is served and the offer has not been accepted at the time of verdict or judgment, liability for costs shall be determined in accordance with rule 26.08.

63.16 Non-admission of fact or document

Where a party serves a notice:

- (a) under rule 35.03(2) disputing a fact and afterwards the fact is proved in the proceeding; or
- (b) under rule 35.05(2) disputing the authenticity of a document and afterwards the authenticity of the document is proved in the proceeding,

that party shall pay the costs of proof, unless the Court otherwise orders.

63.17 Interlocutory injunction

Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification, an order as to the costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

63.18 Interlocutory application

Each party shall bear his own costs of an interlocutory or other application in a proceeding, whether made on or without notice, unless the Court otherwise orders.

63.19 Inquiry as to ownership of property

The costs of an inquiry to ascertain the person entitled to a legacy, money, share or other property shall be paid out of the property, unless the Court otherwise orders.

63.20 Costs reserved

- (1) Where, by order of the Court, the costs of an interlocutory or other application or of a step in a proceeding are reserved, the Court may direct by and to whom those costs are to be paid.
- (2) Where the Court makes no direction under subrule (1), a party may, within 21 days after the conclusion of the proceeding, apply to the Court for a direction as to the payment of costs reserved.

63.21 Costs liability of legal practitioner

- (1) Where a solicitor for a party, whether personally or through a servant or agent, has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by other misconduct or default, the Court may order that:
 - (a) all or any of the costs between the solicitor and the client be disallowed;
 - (b) the solicitor repay to the client the whole or part of money paid on account of costs;
 - (c) the solicitor pay to the client all or any of the costs which the client has been ordered to pay to a party; or
 - (d) the solicitor pay all or any of the costs payable by a party other than his client.
- (2) Without limiting subrule (1), a solicitor is in default for the purpose of this rule where an application in or trial of a proceeding cannot conveniently be heard or proceed, or fails or is adjourned without useful progress being made, by reason of the failure of the solicitor to:
 - (a) attend in person or by a proper representative;

- (b) file a document which ought to have been filed;
 - (c) lodge or deliver a document for the use of the Court which ought to have been lodged or delivered;
 - (d) be prepared with proper evidence or account; or
 - (e) otherwise proceed.
- (3) The Court shall not make an order under subrule (1) without giving the solicitor a reasonable opportunity to be heard.
- (4) The Court may, before making an order under subrule (1), refer the matter to the Master for inquiry and report.
- (5) Order 50, with the necessary changes, applies to a reference to the Master for inquiry and report made under subrule (4).
- (6) The Court may order that notice of a proceeding or order against a solicitor under this rule be given to his client in such manner as it directs.
- (7) This rule, with the necessary changes, applies to a barrister as it applies to a solicitor.

63.22 Money claim in wrong Court, &c.

- (1) Subject to subrule (2), where in a proceeding:
- (a) a plaintiff recovers (or but for a set off under rule 13.14 against his claim would be entitled to recover) an amount which is an amount within the jurisdiction of the Local Court; and
 - (b) the Court makes an order that the defendant pay the plaintiff's costs of the proceeding,

the plaintiff is not entitled to recover from the defendant an amount for costs which exceeds that which he would have recovered in the Local Court, unless the Court is satisfied that he had good reason to commence the proceeding in the Court.

- (2) Where in a proceeding a plaintiff recovers (or but for a set off under rule 13.14 against his claim would be entitled to recover) no more than \$2,000, he is not entitled to costs.

63.23 Trustee or mortgagee

A party who sues as trustee or mortgagee, unless the Court otherwise orders, is entitled to the costs of the proceeding out of the fund held by the trustee, or out of the mortgaged property, to the extent that the costs are not paid by any other person.

Part 3 Costs of party in a proceeding

63.24 Application

This Part applies to costs in a proceeding which by or under an Act, these Rules or an order of the Court are to be paid to a party to the proceeding either by another party or out of a fund.

63.25 Bases of taxation

Subject to this Part, costs in a proceeding which are to be taxed shall be taxed on:

- (a) the standard basis; or
- (b) the indemnity basis.

63.26 Standard basis

On a taxation of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts which the Taxing Master has as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

63.27 Indemnity basis

On a taxation of costs on the indemnity basis, all costs shall be allowed except to the extent that they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the Taxing Master has as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

63.28 General basis

- (1) Except as provided by these Rules or an order of the Court, costs shall be taxed on the standard basis.
- (2) Where the Court makes an order for costs:
 - (a) without indicating the basis of taxation; or

- (b) to be taxed on a basis other than the standard basis or the indemnity basis;

the costs shall be taxed on the standard basis.

63.29 Where indemnity basis applicable

- (1) Subject to this Order, the Court may order that costs be taxed on the indemnity basis.
- (2) Where the Court makes an order for:
 - (a) the payment to a party of costs out of a fund; or
 - (b) the payment of costs to a party who sues or is sued as trustee,

subject to rule 63.30, the costs shall be taxed on the indemnity basis.

63.30 Party as trustee

Where a party who sues or is sued as trustee is entitled to be paid costs out of a fund which he holds in that capacity, the costs shall, unless the Court otherwise orders, be taxed on the indemnity basis.

63.31 Costs payable to solicitor where money claimed by or on behalf of person under disability

- (1) This rule applies to a proceeding (including a proceeding in the Court of Appeal) in which:
 - (a) money is claimed or recovered by or on behalf of, or adjudged, ordered, or agreed to be paid to or for the benefit of, a person under a disability; or
 - (b) money paid into court is accepted on behalf of a person under a disability.
- (2) The costs of a proceeding to which this rule applies which are payable by a plaintiff to his solicitor shall, unless the Court otherwise orders, be taxed on the indemnity basis.
- (3) On a taxation under subrule (2), the Taxing Master shall also tax the costs payable to that plaintiff in those proceedings and shall certify:
 - (a) the amount allowed on the taxation of the solicitor's bill to his own client;

- (b) the amount allowed on the taxation of costs payable to that plaintiff in that proceeding;
 - (c) the amount (if any) by which the amount referred to in paragraph (a) exceeds the amount referred to in paragraph (b); and
 - (d) where necessary, the proportion of the amount of that excess payable by, or out of money belonging to, respectively, any claimant who is a person under a disability and any other party.
- (4) Subrules (2) and (3) apply to and in relation to a proceeding in the Court of Appeal as if for a reference to the plaintiff there were substituted a reference to the party, whether appellant or respondent, who was the plaintiff in the proceeding which gave rise to the appeal proceeding.
- (5) Nothing in this rule prejudices a solicitor's lien for costs.
- (6) This rule also applies to and in relation to a counterclaim by or on behalf of a person under a disability as if for a reference to a plaintiff there were substituted a reference to a defendant.

63.32 Ascertaining costs on a taxation

- (1) Subject to these Rules, the scales of costs contained in Parts 2 and 3 of the Appendix, together with the notes and provisions contained in Parts 1 and 3 of the Appendix, apply in relation to the taxation of all costs for work done after the commencement of this Order.
- (2) On the taxation of costs payable to a solicitor by his own client or of costs payable by a person who is or has been a party to a proceeding in the capacity of trustee who is entitled to be paid out of the fund which he holds in that capacity, and in other cases which, in the opinion of the Taxing Master, warrant his so allowing, costs may, in the discretion of the Taxing Master, be allowed:
- (a) in relation to items not mentioned in the scales in the Appendix; or
 - (b) of an amount higher than that prescribed in the scales in the Appendix.

- (3) There shall be allowed to a witness attending at Court to give evidence such fees as are reasonable having regard to the occupation of the witness and those fees shall include:
 - (a) the actual expenses reasonably incurred by the witness for travel to and from the place of trial or hearing;
 - (b) the actual expense reasonably incurred by the witness for accommodation and sustenance;
 - (c) loss of salary, wages or other remuneration of any kind reasonably caused by the attendance; and
 - (d) any other necessary expense reasonably incurred by the witness because of the attendance.
- (4) Subrule (3) applies to a person required to attend at Court to act as an interpreter as if that person were a witness.

Part 4 Taxing Master

63.33 Powers of Taxing Master

On a taxation of costs under this Order, the Taxing Master, in addition to powers conferred by the Act, has all the power which under the Act or these Rules a Master has on a hearing of an application in a proceeding.

63.34 Costs of taxation

- (1) Costs to be taxed under these Rules include the costs of the taxation.
- (2) Costs to be taxed under a judgment, unless the judgment otherwise provides, include the costs of the taxation.
- (3) After service of a summons under rule 63.36 for the taxation of costs, the party entitled to costs and the party liable for them may serve on each other an offer of compromise in respect of the amount of the costs to be taxed.
- (4) Subject to this rule and to an order of the Court, the Taxing Master may make orders for the costs of a taxation.
- (5) If on the taxation of a bill of costs payable out of a fund or out of the assets of a company liquidation, the amount of professional charges contained in the bill is reduced by 20% or more, no costs shall be allowed to the solicitor filing the bill for any amount claimed in the bill in respect of the taxation of the bill.

- (6) If on the taxation of a bill, other than the taxation of a bill referred to in subrule (5), the amount of professional charges contained in the bill is reduced by 20% or more, the Taxing Master may refuse to allow to the solicitor filing the bill the amount or any part of the amount claimed in the bill in respect of the taxation of the bill and, if the Taxing Master so directs, the solicitor shall personally pay the costs of attending the taxation incurred by a party who, in the opinion of the Taxing Master, had a right to appear on the taxation and who did so appear.
- (7) In making a direction under subrule (6), the Taxing Master may have regard to an offer of compromise under this rule made by a party who had a right to appear on the taxation and may take into consideration a failure by the party liable for costs to make such an offer.

Part 5 Procedure on taxation on standard basis

63.35 Application

- (1) This Part applies to:
- (a) the costs of a proceeding in the Court, including:
- (i) the costs of an application to or proceeding before the Full Court under Division 3 of Part II of the Act;
 - (ii) the costs of a proceeding in pursuance of Division 4 of Part II of the Act;
 - (iii) the costs of an appeal, or application for leave to appeal, under Part III of the Act;
 - (iv) in the case of an appeal to the Court from another court or from a tribunal below, as defined in Order 83.01, the costs of proceedings in that court or before that tribunal; and
 - (v) in the case of proceedings in another court or before a tribunal below, as defined in Order 83.01, which are remitted or transferred to or removed into the Court, the costs of the whole of the proceeding, both before and after the remission, transfer or removal which by or under these Rules or an order of the Court are to be paid to a party by another party or out of a fund; and
- (b) the costs of an arbitration or other proceedings which by or under an Act are to be taxed in the Court.

- (2) Subject to Part 6, this Part extends to the taxation of costs payable to a solicitor by his client.

63.36 Summons for taxation

- (1) An application to the Taxing Master for costs to be taxed shall be made by summons filed in the office of the Taxing Master.
- (2) Where the taxation is pursuant to a judgment, the judgment shall be authenticated before the summons is filed.
- (3) A summons under this rule shall be in accordance with Form 63A.
- (4) Unless the Taxing Master otherwise directs, the summons shall be served not later than 21 days before the day for hearing named in the summons.
- (5) Except as provided in subrules (1) to (4) inclusive, Order 46, with the necessary changes, applies to an application under this rule.

63.37 Filing of bill

- (1) A party who applies for costs to be taxed shall file a bill in respect of the costs with the Taxing Master at the time the summons under rule 63.36 is filed.
- (2) The bill of costs shall be prepared in accordance with rule 63.40.
- (3) The Taxing Master may direct the party entitled to costs to lodge, before the day for hearing named in the summons, any documents in his possession, custody or power that will be required for the purpose of evidence on the taxation.

63.38 Service of bill

Subject to rule 63.39, the Taxing Master shall not tax costs unless the party entitled to costs serves a copy of the bill of costs on the party liable for the costs before or at the time of service of the summons under rule 63.36.

63.39 Defendant not appearing

Service of a summons and copy bill of costs on a defendant who has not filed an appearance in the proceeding the subject of the application for costs is not necessary.

63.40 Content of bill

(1) In this rule:

attendance at trial includes all work reasonably done in and in relation to attending at the trial or hearing of a proceeding or an appeal and to hear a deferred judgment.

conference includes all work reasonably done in and in relation to the appointment of a conference with, or consultation with or between, counsel and attending to appoint, and attending at that conference or consultation.

interlocutory applications comprises all work reasonably done in and in relation to an application in a proceeding for:

- (a) particulars, discovery, inspection or interrogatories; or
- (b) any other interlocutory order,

and includes:

- (c) all attendances in court or elsewhere at the hearing of the application; and
- (d) the authentication and service of the order made.

originating process in relation to:

- (a) a plaintiff's bill, comprises all work reasonably done in a proceeding from and including the originating process to and including setting the proceeding down for trial in accordance with Order 48 and includes the consideration, preparation, filing and service of:
 - (i) the originating process itself;
 - (ii) all relevant affidavits, pleadings and other documents; and
 - (iii) all documents necessary to set the proceedings down for trial,

and correspondence with the defendant and the consideration of relevant documents and pleadings received from the defendant before the proceeding is set down for trial; and

- (b) a defendant's bill, comprises all work reasonably done in a proceeding from and including the filing of an appearance to and including the time the proceeding is set down for trial in accordance with Order 48 and includes:
- (i) the receipt and consideration of the originating process;
 - (ii) the preparation, filing and service of the appearance itself;
 - (iii) the consideration of pleadings and other relevant correspondence and documents, including the documents setting the proceeding down for trial;
 - (iv) relevant correspondence; and
 - (v) the preparation, filing and service of pleadings or other relevant documents,

other than the work done in relation to matters referred to in Order 10, 11 or 12.

preparation includes the doing of all reasonable work, other than that referred to in the previous definitions in this subparagraph, which was reasonably done arising out of or incidental to a proceeding, including work done in respect of:

- (a) the client – taking instructions to sue, defend, counterclaim, or appeal and attending on and corresponding with the client and taking and preparing proofs of evidence;
- (b) witnesses – interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including the issuing of a subpoena;
- (c) expert evidence – obtaining and considering reports or advice from experts and plans, photographs and models and, where appropriate, arranging their attendance at Court, including the issuing of a subpoena;
- (d) inspections – inspecting a property or place material to the proceeding;
- (e) searches and enquiries – making searches at offices of public records and elsewhere for relevant documents and similar matters;
- (f) special damages – obtaining details of special damages and making or obtaining relevant calculations;

- (g) other parties – attending on and corresponding with other parties or their solicitors;
- (h) discovery – perusing, considering or collating documents for a list of documents, attending to inspect or producing for inspection a document required to be produced or inspected under an order or by virtue of Order 29;
- (j) interrogatories – administering interrogatories and considering replies to or answering interrogatories under an order or by virtue of Order 30;
- (k) documents – consideration of instructions to and advice from counsel, any law involved and any other relevant documents, including collating and service;
- (m) negotiations – work done in connection with negotiations with a view to settlement;
- (n) agency – correspondence and attendances on agents and work done by them;
- (p) interest – where relevant, the calculation of interest; and
- (q) notices – preparation, consideration and service of miscellaneous notices, including notices to witnesses to attend court.

taxation includes all work done in preparing a bill (where allowable) and includes preparing for and attending on the taxation.

- (2) A bill shall commence with a short narrative succinctly indicating the issues involved in the proceeding.
- (3) A bill shall consist of parts dealing with the matters referred to in subrule (5) or such of those parts as are appropriate, which parts:
 - (a) shall appear in chronological order (except for matters referred to in subrule (5)(e)) and in the order set out in that subrule; and
 - (b) may, subject to subrule (4), include an allowance for care and conduct applicable in the relevant parts.
- (4) Subrule (3)(b) applies only to the extent that item 4 or 5 of Part 2 of the Appendix allows but does not apply in relation to a taxation of costs.

- (5) The parts of a bill to which subrule (3) refers shall deal with:
- (a) originating process;
 - (b) interlocutory applications;
 - (c) conferences;
 - (d) attendance at trial;
 - (e) preparation; and
 - (f) taxation.
- (6) A bill shall be divided into 7 columns:
- (a) the first column of which shall be for numbering consecutively each item in the bill;
 - (b) the second column of which shall be for setting out chronologically the relevant dates on which the work was done in respect of each item in the bill;
 - (c) the third column of which shall contain succinct details of each item and any claim in respect of that item for professional costs and, where claimable, for care and conduct and waiting time;
 - (d) the fourth column of which shall contain the amount of such disbursements as are claimed in connection with an item in the bill;
 - (e) the fifth column of which shall contain the total amount claimed for professional costs, care and conduct and waiting time for all the items that make up each relevant part of the bill; and
 - (f) the last 2 columns of which shall be respectively for amounts disallowed as disbursements and professional costs claimed in the bill and shall be respectively headed "Disbursements taxed off" and "Costs taxed off".
- (7) A bill filed under rule 63.37 shall comply with the requirements of rule 13.01(1) as though it were a pleading.
- (8) Where relevant, an item in a bill:
- (a) in which care and conduct is claimed, shall disclose first the time taken to prepare the work and then the percentage claimed for care and conduct relevant to that item; and

- (b) in which travelling time is claimed, shall state the actual time in respect of which the claim is made.

63.41 Disbursement or fee not paid

- (1) A disbursement may be included in a bill, notwithstanding that it has not been paid, if the bill states that fact.
- (2) On the taxation the disbursement may be allowed if it is paid before the taxation of that disbursement takes place.

63.42 Charge of lawyer out of Territory

- (1) Where a bill includes a charge for work done by a lawyer practising in a place out of the Territory:
- (a) the charge shall be shown as a disbursement; and
- (b) so far as practicable, the charge shall, if allowed, be allowed in an amount appropriate to the place where the lawyer practices.
- (2) Where subrule (1) applies, a bill in taxable form of that lawyer's fees shall be attached to the bill of the party claiming the disbursement.

63.43 Amendment of bill

The Court or the Taxing Master may, at any stage:

- (a) give leave to a party to amend or withdraw a bill; or
- (b) order that a party file another bill.

63.44 Agreement as to part of bill

Where the parties agree in writing that part of the costs to be taxed may be allowed at a specified amount and the agreement is subscribed to the bill or filed with it:

- (a) rule 63.40 does not apply to what is agreed, unless the Taxing Master otherwise directs; and
- (b) rules 63.42 and 63.43 apply to the agreement as they apply to a bill.

63.45 Objection to bill

- (1) A party on whom a summons under rule 63.36 and a bill is served may, by notice, object to an item in the bill.

- (2) A notice to which subrule (1) refers shall:
 - (a) be filed within 14 days after the service of the summons and bill;
 - (b) identify by a list each item in the bill to which the party objects; and
 - (c) state specifically and concisely the grounds of objection to each item.
- (3) The notice under subrule (1), shall, on the same day as it is filed, be served on the party filing the bill and on all other parties to whom the summons for the taxation is addressed.
- (4) A party entitled to object to an item in accordance with this rule who fails to do so within the time limited in subrule (2)(a) or such other time as the Taxing Master allows, shall be taken to have admitted that item.
- (5) Notwithstanding subrule (4), the Taxing Master may, on taxation, for good and proper reasons, deal with an item to which no objection was raised in accordance with this rule and may exercise all his powers under this Order in relation to that item.
- (6) An application for an extension of time may be made informally before or after the expiration of the time referred to in subrule (2)(a).
- (7) A taxation shall not proceed unless the party filing the bill proves by affidavit service of a copy of the bill on all relevant parties.
- (8) Where, in the opinion of the Taxing Master, a solicitor indiscriminately objects to an item in a bill and by so doing increases the costs of the taxation of the bill, the Taxing Master may order the solicitor to pay the increased costs which, in the opinion of the Taxing Master, are attributable to the solicitor's action.
- (9) For the purposes of subrule (8), and without limiting the discretion of the Taxing Master under that subrule, an objection is indiscriminate if it constitutes no more than a blanket objection to items in the bill or if it forms part of such an objection.

63.46 Discretionary costs

- (1) Except where these Rules or an order of the Court otherwise provides:
 - (a) the fees; and

(b) the allowances,

which are referred to in the Appendix, and are there expressed to be discretionary, shall be allowed at the discretion of the Taxing Master.

(2) In exercising a discretion under subrule (1), the Taxing Master shall have regard to:

- (a) the complexity of the item or of the proceeding in which it arose and the difficulty or novelty of the questions involved;
- (b) the nature and importance of the proceeding;
- (c) the skill, specialized knowledge and responsibility involved;
- (d) the number and importance of the documents prepared or perused, without regard to length;
- (e) the place where and the circumstances in which the business involved was transacted;
- (f) the labour involved and the time spent by the solicitor or counsel;
- (g) the amount or value of money or property involved;
- (h) other fees and allowances payable to the solicitor or counsel in respect of other items in the bill; and
- (j) any other relevant circumstances.

63.47 Taxation where no objection

Where no objection to a bill is made in accordance with rule 63.45, the Taxing Master may tax the bill and allow or disallow the amount of the costs in it in whole or in part.

63.48 Attendance of parties

- (1) The Taxing Master may give directions relating to the parties:
 - (a) to whom a summons under rule 63.36 shall be addressed; and
 - (b) who should attend or be represented on a taxation.
- (2) The Taxing Master may disallow the costs of attendance on a taxation of a party whose attendance is unnecessary.
- (3) Notwithstanding subrules (1) and (2), a party interested may attend a taxation before the Taxing Master.

63.49 Reference to Judge

The Taxing Master may refer to a Judge for directions a question arising on a taxation.

63.50 Notice to person interested in fund

- (1) Where costs are payable out of a fund, the Taxing Master may:
 - (a) adjourn the taxation to a specified day; and
 - (b) order that the party to whom the costs are payable serve on a person interested in the fund, without charge to that person, a copy of the whole or a part of the bill and a notice in accordance with subrule (2).
- (2) A notice under subrule (1)(b) shall state:
 - (a) that the costs are payable out of the fund, identifying it, and that the bill is being taxed;
 - (b) the day to which the taxation is adjourned; and
 - (c) such other information as the Taxing Master directs.
- (3) Unless the Taxing Master otherwise orders, service referred to in paragraph (1)(b) shall be personal.

63.51 Application by person liable to pay

- (1) Where a party who is entitled to costs and to have the costs taxed under this Part does not apply to have them taxed within 30 days after service on him of a request in writing to do so by a party liable for the costs, the Taxing Master may order that the party entitled file and serve a summons under rule 63.36 and the Taxing Master may fix a time for compliance.
- (2) Where a party in respect of whom an order is made under subrule (1) fails to comply with the order, the Taxing Master may:
 - (a) disallow the costs of the party or allow a nominal or other amount for costs; or
 - (b) order him to pay the costs of any other party occasioned by the failure to comply with the order.

63.52 Solicitor at fault

- (1) This rule applies where:
 - (a) a party fails to apply to have costs taxed within a time fixed under rule 63.51(1) and the failure is occasioned by the neglect or delay of his solicitor; or
 - (b) in a proceeding before the taxing Master the solicitor for a party:
 - (i) is guilty of neglect or delay; or
 - (ii) causes any other party unnecessary expense.
- (2) In a case to which this rule applies the Taxing Master may:
 - (a) order the solicitor to pay costs to a party in respect of the proceeding before the Taxing Master; or
 - (b) refuse to allow the fees to which the solicitor would otherwise be entitled for or incidental to taxing the bill.

63.53 Cross costs

- (1) Where a party entitled to be paid costs is also liable to pay costs, the Taxing Master may:
 - (a) tax the costs which the party is liable to pay and set off the amount allowed against the amount the party is entitled to be paid and, by order, state the amount of the balance and the parties by whom and to whom the balance is payable; or
 - (b) decline to make an order as to the costs which the party is entitled to be paid until the party has paid or tendered the amount he is liable to pay.
- (2) Costs may be set off under paragraph (1)(a) notwithstanding that a solicitor for a party has a lien for costs in the proceeding.

63.54 Order on taxation

- (1) Where the Taxing Master taxes a bill, otherwise fixes or assesses an amount for costs, or makes an order under or in pursuance of rules 63.51(2) or 63.52(2), he shall state the result in the form of an order.
- (2) The Taxing Master may, after the conclusion of the taxation of a bill, make a final order in respect of the amount at which he allows the costs or of his disallowance of the costs.

- (3) In the course of the taxation, the Taxing Master may make separate and interim orders in respect of any item in a bill.
- (4) Where, after an application has been made under rule 63.36 and a bill filed, the parties agree to the amount of costs payable under the bill, the Taxing Master may make an order for payment of those costs by consent.
- (5) An order under this rule shall be authenticated and filed in accordance with Order 60.
- (6) The Taxing Master may at any time correct a clerical mistake in an order made under this rule.
- (7) In subrules (5) and (6) **order** means a final or interim order.

63.55 Objection, reconsideration and review

- (1) Where a Taxing Master decides to allow or disallow, wholly or in part, an item in a bill or to allow some amount in respect of an item, a party to the taxation proceeding who objects to the decision may apply to have the Taxing Master reconsider the decision.
- (2) An application under subrule (1) shall be made by written notice to the Taxing Master.
- (3) A notice under subrule (2) shall be filed within 14 days after the date of the decision to which it relates.
- (4) The applicant shall file with or subscribe to a notice under subrule (2) a statement of his objections.
- (5) A statement of objections referred to in subrule (4) shall specify, by a list, the items as to which the applicant objects to the decision of the Taxing Master and shall state briefly but specifically the nature and grounds of each objection.
- (6) An applicant under subrule (1) shall, on the date of filing the notice and statement of objections, serve a copy of the notice and statement on each party interested.
- (7) A party on whom a copy of the notice and statement is served under subrule (6) may, within 14 days after the service of the copy on him or such longer period as is fixed by the Taxing Master, deliver to the Taxing Master answers in writing to the objections stating concisely the grounds on which the party will oppose the objections and shall, at the same time serve a copy of the answers on the party applying for reconsideration and on each other interested party.

- (8) On a notice and statement of objections being filed under this rule, the Taxing Master shall reconsider the decision to which objection is made and, subject to subrule (14), give to the parties his written reasons for his decision on reconsideration.
- (9) On a reconsideration under subrule (8), a party shall not, unless the Taxing Master otherwise directs, raise a ground of objection not stated in a statement of objections.
- (10) On the Taxing Master giving written reasons in accordance with subrule (8), he shall be deemed to have made an order under rule 63.54.
- (11) Where a party interested objects to an order of the Taxing Master made following a reconsideration allowing or disallowing, wholly or in part, an item in a bill or allowing an amount in respect of an item, the Court may, on the application of that party, review the order of the Taxing Master.
- (12) An application under subrule (11) shall be made by Notice to Review.
- (13) An application under subrule (11), shall be made to a Judge.
- (14) A Judge may at any time, by order, dispense with the need for a Taxing Master to give reasons under subrule (8) and may give directions as to the conduct of the review.
- (15) A Notice to Review referred to in subrule (12) shall state, by a list, each item in the bill in respect of which the party objects to the order of the Taxing Master and shall also state specifically and concisely the grounds of objection to that order and the order sought in its place.
- (16) A Notice to Review referred to in subrule (12) shall be filed, a copy lodged with the Taxing Master and a copy served on each party interested, within 14 days after the order of the Taxing Master is made following the relevant reconsideration.
- (17) On a review under subrule (11), the Court may:
 - (a) exercise all the powers and discretions of the Taxing Master in respect of the subject-matter of the review;
 - (b) set aside or vary the order of the Taxing Master;
 - (c) remit an item in the bill to the Taxing Master; or
 - (d) make such other order as it thinks fit.

- (18) Except so far as a Judge or the Taxing Master otherwise orders, a review under this rule does not operate as a stay of execution or of proceedings under the order of the Taxing Master to which the review relates.

Part 6 Costs of solicitor

63.56 Application

This Part applies where:

- (a) costs are payable to a solicitor by his client, whether or not in respect of a proceeding in the Court, and by or under an Act, these Rules or an order of the Court or an agreement between the solicitor and the client the costs are required or permitted to be taxed in the Court; or
- (b) a person not the client of a solicitor is liable to pay or, having been so liable, has paid costs which are or were chargeable by the solicitor to the client, whether or not in respect of a proceeding in the Court, and by or under an Act, these Rules or an order of the Court or an agreement between the person and the client the costs are required or permitted to be taxed in the Court,

but applies to the extent only that it does not conflict with Part X of the Legal Practitioners Act or any other law in force in the Territory.

63.57 Basis of taxation of costs payable by client

- (1) Costs to which this Part applies payable to a solicitor by his client shall, subject to any Act, an order of the Court or an agreement between the solicitor and the client, be taxed on a solicitor and client basis.
- (2) The solicitor and client basis of taxation is as provided by rule 63.59.

63.58 Basis of taxation of costs payable otherwise than by client

Costs to which this Part applies payable to a solicitor by a person other than the client shall, subject to any Act, an order of the Court or an agreement between that person and the client, be taxed on the standard basis.

63.59 Costs payable to solicitor by his own client

- (1) This rule applies to a taxation of a solicitor's bill to his client.

- (2) On a taxation to which this rule applies costs shall be taxed on the indemnity basis but shall be presumed:
 - (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
 - (b) to have been reasonable in amount if the amount was expressly or impliedly approved by the client; and
 - (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature, unless the solicitor satisfies the Taxing Master that before the costs were incurred, the solicitor informed his client that they might not be allowed on a taxation on the standard basis.
- (3) A taxation to which this rule applies shall be carried out only by the Master.

63.60 Contentious business

- (1) This rule applies to the taxation of the costs payable to a solicitor by his client for work done in a contentious matter where at the time the work was completed no proceeding had been commenced by or against the client in respect of the matter in a court or before a tribunal.
- (2) Costs for work in a matter to which this rule applies shall be allowed in accordance with the scale of costs of the court or tribunal in or before which, in the opinion of the Taxing Master, it would be appropriate to commence a proceeding in respect of the matter or, if that court or tribunal has no scale of costs, in accordance with the Appendix.

63.60.1 Costs in grant of probate or administration

- (1) Costs allowable to a solicitor for professional services rendered in connection with obtaining a grant of probate or administration of an estate of a deceased person shall be calculated in accordance with the relevant scale in these Rules.
- (2) In addition to the costs a solicitor is entitled to receive under subrule (1), the solicitor may recover such reasonable disbursements as are incurred by him in obtaining the grant.
- (3) Where an executor or administrator seeks the payment of commission to him in respect of the administration of the estate, such costs and disbursements as have been paid or are payable by him to his solicitor in relation to obtaining the grant, or to any matter in connection with the estate, shall be taxed by the Taxing Master in accordance with rule 63.59 or 63.60, as the case requires.

- (4) All costs and fees allowable in accordance with these Rules shall be paid out of the estate.
- (5) Where a bill of costs is taxed under these rules and the amount of the bill (exclusive of the costs of submitting it to taxation) and all amounts referred to in subrule (2) do not, after taxation, equal or exceed the amount which would otherwise have been allowed under subrule (1), the costs of submitting the bill for taxation shall be paid by the solicitor.

63.61 Procedure on taxation

- (1) Subject to rules 63.62 to 63.72 inclusive and to any Act or an order of the Court, costs under this Part shall be taxed as provided by Part 5 and that Part, with the necessary changes, applies to the taxation accordingly.
- (2) A reference in subrule (1) to the application of Part 5 to the taxation of costs under this Part includes a reference to a review of an order of the Taxing Master on the taxation under rule 63.55.

63.62 Appointment to tax

- (1) This rule applies where by an Act a bill in respect of costs to which this Part applies may be taxed by the Taxing Master on an appointment obtained as of course and without an order of the Court on application by the client or other person liable to pay the costs.
- (2) An application to the Taxing Master to tax a bill to which this rule applies shall be made by summons in accordance with rule 63.36.

63.63 Reference for taxation

- (1) This rule applies where the Court, by order, whether or not made by or under an Act, refers a bill of costs to the Taxing Master for taxation or directs that a bill of costs be taxed.
- (2) A taxation to which this rule applies shall be brought before the Taxing Master on application by summons in accordance with rule 63.36.
- (3) Unless the Court otherwise orders, the summons referred to in subrule (2) shall be filed within 14 days after the day the order is made.

63.64 Failure to serve bill or tax

- (1) Where a solicitor who is entitled to be paid costs fails or refuses to serve on his client a bill for the costs, the Taxing Master may:
 - (a) disallow the costs of the solicitor or allow a nominal or other amount for costs; or
 - (b) order him to pay any costs of the client occasioned by the failure or refusal.

- (2) Where a person who is entitled to have a bill of costs taxed fails or refuses to do so and a person interested in the taxation is prejudiced by the failure or refusal, the Taxing Master may:
 - (a) disallow any costs which might otherwise be payable to the person entitled to have the bill taxed or allow a nominal or other amount for costs; or
 - (b) order him to pay any costs of the person interested occasioned by the failure or refusal.

- (3) For the purpose of this rule:
 - (a) a solicitor shall be taken to have failed or refused to serve a bill of costs if, within 60 days after service on him of a request in writing by the client that he serve a bill, the solicitor does not do so; or
 - (b) a person shall be taken to have failed or refused to have a bill of costs taxed if, within 60 days after service on him of a request in writing by a person interested that the bill be taxed, he does not apply in accordance with rule 63.36 for the taxation of the bill.

Part 7 Allowances or disallowances on taxation generally

63.65 Application

This Part applies to all taxation of costs in the Court.

63.66 Increased allowance

The Taxing Master may, in relation to a particular taxation of costs, increase the amount or value of an allowance or expense in the Appendix as he thinks fit.

63.67 Service of several documents

Two or more documents in the same proceeding, which can be served together, shall be so served and a fee for the service of one only shall be allowed.

63.68 Inclusion in bill of disbursement not made

Where a solicitor acts as agent for a lawyer practising in a place out of the Territory, the professional fees of that lawyer shall not constitute a disbursement of the solicitor for the purpose of rule 63.41 so as to require payment of those fees before the commencement of the taxation.

63.69 Defendants with same solicitor

Where 2 or more defendants are represented by the same solicitor and the solicitor does work for one or some of them separately which could have been done for some or all of them together, on taxation of the solicitor's bill, whether between party and party or between solicitor and client, the Taxing Master may disallow costs for the unnecessary work.

63.70 Certain cost to be included in witnesses allowance

In a taxation of costs the attendance of a witness includes an attendance at a conference with counsel before trial and, in the case of an expert witness, includes qualifying to give evidence as an expert.

63.71 Negotiations

Costs reasonably incurred in respect of negotiations for compromise shall be allowed, whether or not the negotiations were successful.

63.72 Counsel's fees

- (1) A retaining fee to counsel shall not be allowed on taxation on the standard basis.
- (2) The allowance of counsel's fees is in the discretion of the Taxing Master.
- (3) In assessing fees on brief and other fees for counsel the Taxing Master shall have regard to:
 - (a) the complexity of the question of law or of fact involved;
 - (b) the amount involved;

- (c) any interlocutory application or other work which has reduced the work otherwise necessary in relation to the brief;
 - (d) the possibility that counsel might be called on to argue on behalf of a party not represented at the hearing;
 - (e) the fees reasonably charged by counsel in matters of a similar kind; and
 - (f) the standing of counsel.
- (4) Costs reasonably incurred in respect of:
- (a) the advice of counsel on the pleadings, evidence or other matter in a proceeding; or
 - (b) counsel drawing or settling a pleading or other document in a proceeding which is reasonable to be drawn or settled by counsel,
- shall be allowed.
- (5) Where affidavits or interrogatories which are reasonable to be drawn or settled by counsel are or could have been drawn or settled at the same time, only one fee shall be allowed.
- (6) Where a hearing or trial occupies, either on the first day only or partly on the first day and partly on a subsequent day or days, more than 5 working hours (not including a luncheon adjournment) without being concluded, the Taxing Master may allow a refresher fee for every 5 working hours (not including a luncheon adjournment) subsequent to the expiration of the first 5 hours.
- (7) The final refresher may be allowed for a period of less than 5 hours that the hearing or trial occupies.
- (8) Costs in respect of the preparation and delivery of a brief to counsel for a hearing or trial which did not take place shall not be allowed if the costs were incurred prematurely.
- (9) No fee shall be allowed:
- (a) for counsel attending on an interlocutory application, unless the Court otherwise certifies; and
 - (b) for more than one counsel, unless the Court certifies that the retainer of more than one counsel was warranted.

- (10) A solicitor may charge and be allowed a fee for an attendance on counsel to obtain or give some information in respect of which counsel does not charge a fee.

63.73 Barrister and solicitor

- (1) This rule applies where a legal practitioner acts in both capacities as a barrister and solicitor, or appears as a barrister instructed by a partner, employee, fellow employee or employer.
- (2) An allowance in accordance with rule 63.40(5)(e) shall be allowed to a legal practitioner to whom subrule (1) of this rule refers and who appears as counsel.
- (3) The allowance for counsel's fees in a case to which subrule (2) refers shall, subject to subrule (4):
- (a) in the case of a legal practitioner who briefs himself as counsel – be three-quarters; and
 - (b) in the case where a partner, employee, fellow employee or employer is briefed – be five-sixths,
- of what would otherwise be allowed to counsel.
- (4) The Master may allow a legal practitioner who appears as counsel and to whom subrule (3) applies a larger fee for so appearing and, in doing so, shall have regard to the matters referred to in section 63.72(3) as far as they are applicable.
- (5) A legal practitioner to whom subrule (3) refers is entitled, for each refresher in a trial, to a fee equal to what would have been allowed to an independent counsel in the same circumstances.

63.74 Interest on costs

- (1) At the conclusion of the taxing of a bill, the Taxing Master may, in his discretion, but subject to subrule (2), fix a rate of interest payable in respect of the taxed costs and the date, not earlier than the date of commencement of this Order, from which that interest shall run.
- (2) A rate of interest fixed under subrule (1) shall not exceed the rate from time to time fixed in accordance with rule 59.02 as interest payable on a judgment debt.

APPENDIX

PART 1

1. Subject to this Part, solicitors are entitled to charge and be allowed the fees set out in Parts 2 and 3 of this Appendix.
2. For the purposes of Parts 2 and 3 of this Appendix, a unit is one-tenth of an hour.
3. The rate per unit, until varied in accordance with paragraph 4 of this Part, is:
 - (a) for a solicitor \$11.00; and
 - (b) for his clerk \$6.00.
4. The rate per unit shall be that from time to time declared by the Chief Justice by practice directions after considering the recommendation of the Master who shall, not later than 1 January in each year, calculate and recommend any adjustment to the rate for that year on the following basis:
 - (a) as to 37% of the rate – calculated by multiplying the existing rate by the Consumer Price Index for Darwin; and
 - (b) as to 50% of the rate – calculated by multiplying the existing rate by the Average Weekly Earnings (ordinary time) for Darwin,

where the Consumer Price Index and Average Weekly Earnings are the latest available yearly percentage variations published by the Australian Bureau of Statistics with the resulting rates (rounded off to 2 decimal places for the purposes of recalculating the rate for the following year) rounded off to the nearest dollar.
5. Except for disbursements, all claims made or allowed in a bill shall be made and if allowed calculated to the nearest dollar.
6. Letters include making necessary copies and also perusing and considering incoming letters, and no separate charge shall be allowed for the perusal of incoming letters.
7. The cost of postage, out-going telephone calls, telex messages and other similar outgoings shall not be allowed by the Taxing Master except where incurred in unusual circumstances or where the cost is unusually heavy.
8. The preparation of a document includes all necessary copies.

9. The fees recoverable under Parts 3 and 4 of this Appendix, when the rate per unit is adjusted in accordance with paragraph 4, shall be increased by the same proportion as the difference between the adjusted rate per unit under this Part and the previous rate per unit bears to the previous rate per unit, rounded off to the nearest dollar.

PART 2 – BASIC SCALE

1. Time spent by a solicitor on work requiring the application of legal skill, other than where otherwise provided. Minimum 1 unit
2. Time spent by a solicitor or clerk on work not requiring the application of legal skill, other than where otherwise provided. Minimum 1 unit
3. Travelling and waiting time to apply to charges under item 1 where waiting or travelling time is reasonably incurred. Minimum 1 unit
4. There may be allowed, in addition to a charge under item 1, a charge being a percentage of the amount allowed under that item which, in the opinion of the Taxing Master, ought to be allowed for specific care and conduct having regard to all the relevant circumstances.
5. The Taxing Master may allow for preparation, within the meaning of 63.40(1), in addition to other allowances (including any allowances for specific care and conduct), a charge, being a percentage of the amount allowed for that preparation, which, in his opinion, ought to be allowed for general care and conduct, having regard to all the relevant circumstances.
6. In items 4 and 5:
- specific care and conduct*** means the care and consideration needed to be given, and the conduct and skill needed to be applied, by a solicitor directly in respect of a specific item of work performed by him.
- general care and conduct*** means the care and consideration given and the conduct and skill applied, by a solicitor in the proceeding as a whole for which no direct time can be substantiated, and includes:
- (a) the general supervision of and indirect responsibility for the conduct of the proceeding; and

- (b) such other relevant factors which in the opinion of the Taxing Master warrant additional reward.

PART 3 – NOTES

1. In this Part:

clerk's time, in relation to work, means the time a clerk reasonably spent, or would reasonably be expected to spend, in carrying out that work.

circular letter means a letter other than an ordinary letter or a special letter that, in the opinion of the Taxing Master, is capable of being composed and prepared by a clerk, and includes clerk's time.

composition includes signing and the perusal of relevant incoming letters.

drawing and engrossing means drawing and engrossing a document of 1 or 2 pages in length and includes:

- (a) where item (2)(a)(i) of the composite scale applies:
- (i) the time (up to 4 units) spent by a solicitor in drawing the document;
 - (ii) as an allowance for care and conduct an additional amount equal to 15% of the sum allowed for under subparagraph (i); and
 - (iii) clerk's time (up to 2 units) in engrossing it;
- (b) where item (2)(a)(ii) of the composite scale applies:
- (i) the time (up to 2 units) spent by a solicitor in drawing the document; and
 - (ii) clerk's time (up to 2 units) in engrossing it;
- (c) where item (2)(b)(i) of the composite scale applies:
- (i) the time (up to 1 unit) spent by a solicitor in drawing the document; and
 - (ii) clerk's time (up to 1 unit) in engrossing it; and
- (d) where item (2)(b)(ii) of the composite scale applies – clerk's time (up to 2 units) in drawing and engrossing the document.

item means an item in the Composite Scale in this Part.

letter includes telexes, telegrams and the like.

ordinary letter means a letter that does not exceed one page in the composition of which, in the opinion of the Taxing Master, little or no exercise of the skill of a solicitor is required and includes:

- (a) the time (up to 2 units) spent by a solicitor or clerk in the composition of the letter; and
- (b) clerk's time (up to 3 units) in preparing it.

page means a page of not less than international paper size A4, with wording reasonably spaced.

preparation includes typing, making copies and dispatching.

special letter means a letter that is between 1 and 2 pages in length and, in the opinion of the Taxing Master, the composition of which requires the exercise of the skill of a solicitor, and includes:

- (a) the time (up to 3 units) spent by the solicitor in composition of the letter;
- (b) as an allowance for care and conduct, an additional amount equal to 15% of the amount allowed under paragraph (a); and
- (c) clerk's time (up to 3 units) in preparing it.

- 2. Where work actually done by a solicitor is, in the opinion of the Taxing Master, adequately compensated for by an appropriate composite fee of a kind referred to in items 1 to 6 (inclusive) of the composite scale, the Taxing Master shall allow for that work a fee equal to that composite fee.
- 3. Subject to paragraph 4A, a Taxing Master may, in his discretion, and if satisfied that the amount of work reasonably done and time reasonably spent in doing that work warrants it, allow a fee (calculated in accordance with Part 2 of this Appendix) larger than that recoverable under paragraph 2.
- 4. Subject to paragraph 4A, where a solicitor actually does work of a kind covered in the aggregate by a composite fee referred to in items 7 to 13 (inclusive) of the composite scale, he may, instead of charging in accordance with Part 2 of this Appendix, charge and be allowed for that work the appropriate composite fee.
- 4A. Where a solicitor elects to charge a fee in accordance with paragraph 3 or a fee which is more than a composite fee to which paragraph 4 refers and that charge does not exceed by 20% or more the appropriate composite fee as set out in the composite

scale, the Taxing Master shall allow only the amount of the appropriate composite fee.

5. A composite fee to which items 7 to 13 (inclusive) relates means a lump sum fee in respect of all allowances for time spent in carrying out work that, in the Taxing Master's opinion, is or should be included in that composite fee.
6. Without limiting the meaning of paragraph 5:
 - (1) items 7 and 8 include all time taken in carrying out work in respect of all aspects of a proceeding from and including the dispatch or receipt of a letter of demand and the filing of originating process to and including the setting down of a proceeding for trial in accordance with rule 48.02 and time taken in carrying out work with respect to a request for particulars of a pleading, but does not include work in respect of an application to the Court in the proceeding;
 - (2) item 9 includes all time taken in carrying out work in and incidental to an application to the Court in a proceeding and in particular an application under Order 46.
 - (3) items 10 and 11 include all time taken in carrying out work in respect of the giving or obtaining of discovery and the inspection of documents in accordance with Order 29, but do not include work done in or incidental to an application to the Court in which discovery or inspection is sought; and
 - (4) items 12 and 13 include all time taken in carrying out work in respect of the seeking of answers to interrogatories and the providing of answers to interrogatories under Order 30, but does not include work done in or incidental to an application to the Court in respect of interrogatories.
7. A composite fee to which this Part refers does not include a reasonable disbursement which a solicitor is obliged to pay in the course of carrying out a part of the work included, or which ought to be included, in that fee and such a disbursement, including counsel's fees, where reasonable and reasonably incurred, may be claimed in the bill and shall be allowed by the Taxing Master.
8. Items 5 and 6, where appropriate, shall be allowed as a part of a unit but, if so allowed, the charge shall be rounded off to the nearest dollar.

Composite Scale

Item	Matter in respect of which charge is made	Charge (\$)
1	Letters:	
	(a) special	56
	(b) ordinary	34
	(c) circular	6
2	Drawing and engrossing:	
	(a) court document	
	(i) requiring skill	62
	(ii) using form or standard document or in case of a standard form of judgment, order, or the like	34
	(b) other	
	(i) requiring skill	17
	(ii) not requiring skill	12
3	Engrossing a document drawn by someone other than solicitor making the charge – per unit	6
4	Telephone calls:	
	(a) requiring skill – per unit	11
	(b) not requiring skill – per unit	6
5	Marking annexures, exhibits, enclosing notices of appointment and the like per unit	6
6	Copying – per unit	6
7	Instructions to sue to notice of trial	780
8	Instructions to defend to notice of trial	565
9	Application in a proceeding:	
	(a) contested	500
	(b) uncontested	400
10	Requiring discovery and inspection	300
11	Providing discovery and inspection	225
12	Seeking answers to Interrogatories	345

Item	Matter in respect of which charge is made	Charge (\$)
13	Furnishing answers to interrogatories	365

PART 4 – FIXED COSTS

Basic Costs

		\$
1	Costs to be claimed on writ In addition, stamp duty paid on filing the writ and on relevant copies or fees payable under Item 1 of that part of the Schedule to the Supreme Court Regulations referring to fees payable "IN RESPECT OF ALL OTHER PROCEEDINGS IN THE SUPREME COURT".	300
2	Costs on judgment in default of appearance:	
	(a) where writ served by post	400
	(b) where writ served by solicitor's clerk	450
	(c) where writ served by person other than solicitor's clerk	400
	In addition:	
	(d) where more than one defendant – for each	10
	(e) the cost of stamp duty paid on filing the writ and on relevant copies or fees payable under Item 1 of that part of the Schedule to the Supreme Court Regulations referring to fees payable "IN RESPECT OF ALL OTHER PROCEEDINGS IN THE SUPREME COURT";	
	(f) where (c) applies, a reasonable amount paid for service.	

Additional costs

Item	Matter in respect of which charge is made	Charge (\$)
3	In addition to costs payable under item 2:	
	(a) costs in default of defence	50

Item	Matter in respect of which charge is made	Charge (\$)
(b)	where service out of the jurisdiction is ordered and effected:	
	(i) in the case of service in the Commonwealth	150
	(ii) in the case of service overseas	200
(c)	where substituted service is ordered and effected:	
	(i) on only defendant	400
	(ii) where more than one defendant so served – in respect of each defendant served	50
	and in addition:	
	(iii) the reasonable fees incurred for any advertising required under an order for substituted service; and	
(d)	where a judgment is registered under the <i>Service and Execution of Process Act</i> of the Commonwealth – for costs of registration	100
(e)	where leave to proceed is given under the <i>Service and Execution of Process Act</i> or under Rule 7.04 – on entry of judgment	300

Order 64 Stated case, reference to Full Court

64.01 Definitions

In this Order:

authority means a Magistrate, Justice of the Peace, Mining Warden, court, tribunal or other person or body empowered under an Act to reserve a question of law for the consideration, opinion or decision of the Court.

stated case means the case or special case stated by an authority in which the question of law is reserved.

64.02 Application

- (1) This Order applies where, under an Act, an authority reserves a question of law for the consideration, opinion or decision of the Court, but does not apply to a reference to the Full Court.
- (2) A Judge may give directions as to the procedure to apply under this Part.

64.03 Party having carriage of proceeding

- (1) For the purposes of this Part, the party having the carriage of the proceeding shall be:
 - (a) where the question of law is reserved by the authority at the request of a party – that party; or
 - (b) where the question of law is reserved by the authority of its own motion – such party as the authority appoints for that purpose.
- (2) The party having the carriage of the proceeding shall be called the applicant and the other party concerned shall be called the respondent.

64.04 Draft of the case

- (1) Within 28 days after an authority reserves a question of law, the applicant, after consultation with the respondent shall serve a draft of the stated case on the authority and on the other party.
- (2) A copy of a record of evidence need not be annexed to the draft case.

64.05 Form and contents

A stated case shall:

- (a) be divided into paragraphs numbered consecutively;
- (b) state concisely the facts and documents necessary to enable the Court to hear and determine the proceeding on the stated case;
- (c) state the questions and matters to be decided or determined;
- (d) contain an address for service of each of the parties concerned; and
- (e) be in accordance with Form 64A.

64.06 Settling the case

The authority shall, in writing, appoint a time and place at which it will settle the draft case.

64.07 Objections

A respondent who wishes to object to the draft case shall, no later than 7 days before the date appointed to settle it, give notice of his objection to the applicant, the authority and all other respondents, if any.

64.08 Signing the case

Within 14 days after being notified in writing by the authority that the draft case has been settled, the applicant shall obtain it from the authority, engross it and shall serve the settled case as engrossed, together with sufficient copies for each of the parties, on the authority for signing by the authority.

64.09 Stating the case

Within 7 days after signing the settled case, the authority shall transmit the case to the Registry and copies to each of the parties.

64.10 Extension of time

At any time before the stated case is transmitted to the Registry, the authority may, on such terms and conditions (if any) as it thinks fit, extend or abridge the time fixed by or under rules 64.04, 64.06, 64.07, 64.08 or 64.09, whether before or after the time expires and whether or not an application for the extension is made before the time expires.

64.11 Filing the case

When a stated case is received in the Registry, it shall be filed and shall constitute an originating process.

64.12 Setting down for hearing

Within 7 days after the filing of a stated case, a Registrar shall:

- (a) set the stated case down for hearing; and
- (b) notify the parties in writing of the date and place of the hearing.

64.13 Documents

The Court and the parties may refer to the whole contents of a document stated in a stated case.

64.14 Inferences

The Court may draw inferences from the facts and documents stated in a stated case.

64.15 Insufficient case

- (1) Where it appears to the Court that a stated case does not state the facts and documents sufficiently to enable it to hear and determine the proceeding on the stated case, it may:
 - (a) with the consent of all interested parties, add to or otherwise alter the stated case;
 - (b) send the stated case back to the authority by which it was stated for the purpose of addition or other alterations; or
 - (c) receive evidence, make findings of fact and add to or otherwise alter the stated case in accordance with the findings of fact of the Court.
- (2) The Court shall not exercise its powers under subrule (1)(c) in respect of a stated case in a criminal proceeding.

64.16 Disputed facts

Where, in a proceeding on a stated case, a party is entitled to dispute a fact or document stated in the case, the Court may receive evidence, make findings of fact and add to or alter the stated case in accordance with the findings of fact of the Court.

Order 65 Applications to Full Court

65.01 Definition

In this Order **application** means an application in respect of a matter to which sections 21 or 22 of the Act refers.

65.02 Mode of application

- (1) An application to the Full Court shall be made:
 - (a) where the application is a reference under section 21 of the Act – in such manner as the Judge who is referring the matter directs; or

- (b) where the application is under section 22 of the Act – by originating motion.
- (2) The party who makes an application under subrule (1)(b) shall be called the applicant and the other parties interested shall be called the respondents.
- (3) An originating motion under subrule (2) shall be served on all parties interested.
- (4) Where it is satisfied that a delay would be caused by proceeding in accordance with subrule (1)(b) and would or might entail irreparable or serious injustice, the Full Court may make an order without notice to a party on such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.
- (5) The Full Court may set aside an order made under subrule (4) on the application of a party affected by the order.

65.03 Service of document

Service of a document under rule 65.02 shall be made not later than 3 days before the day for hearing named in the document, unless:

- (a) in an application to which rule 65.02(1)(a) refers – the Judge referring the matter otherwise directs; or
- (b) in any other case – the Full Court otherwise orders.

65.04 Documents for application

- (1) Before the hearing of an application to the Full Court to which section 22 of the Act refers:
 - (a) the applicant shall deliver to a Registrar for the use of the members of the Full Court 4 copies and to each respondent to the application 3 copies of the originating motion of all affidavits and, unless the Registrar otherwise directs, all exhibits in support of the application; and
 - (b) each respondent shall deliver to a Registrar for the use of the members of the Full Court 4 copies and to the applicant 3 copies of all affidavits and, unless the Registrar otherwise directs, all exhibits to be used by him on the hearing of the application.
- (2) The applicant shall deliver the documents referred to in subrule (1)(a) to a Registrar not later than 3 days before the day named in the originating motion for the hearing of the application.

- (3) In the preparation of a copy of documents for the purpose of subrule (1), regard shall be had, so far as practicable, to any Practice Notes published by the Master from time to time.

65.05 Procedure on application

Order 45, with the necessary changes, applies to an application to the Full Court under this Order.

Order 66 Enforcement of judgments and orders

66.01 Definitions

In this Order, unless the contrary intention appears:

judgment for the payment of money into court includes a judgment for the payment of money to the Master or to a Registrar.

person bound means a person against whom a judgment is entered or given or an order is made.

66.02 Payment of money

- (1) A judgment for the payment of money not within subrule (2) may be enforced by:
- (a) warrant of seizure and sale;
 - (b) attachment of debts under Order 71;
 - (c) attachment of earnings under Order 72;
 - (d) charging order under Order 73;
 - (e) appointment of a receiver under Order 74; or
 - (f) where rule 66.05 applies, and subject to rule 66.10:
 - (i) committal; or
 - (ii) sequestration,or any combination of those means.
- (2) A judgment for the payment of money into court may be enforced by:
- (a) appointment of a receiver; or

- (b) where rule 66.05 applies, and subject to rule 66.10:
 - (i) committal; or
 - (ii) sequestration,
or both those means.
- (3) Subrules (1) and (2) do not affect any other means of enforcement of a judgment for the payment of money.
- (4) The Court may authorize or direct the Master or a Registrar, or a party, to enforce a judgment for the payment of money into court by one or more of the means referred to in subrule (1).

66.03 Possession of land

A judgment for possession of land may be enforced by:

- (a) warrant of possession; or
- (b) where rule 66.05 applies, and subject to rule 66.10:
 - (i) committal; or
 - (ii) sequestration,
or both those means.

66.04 Delivery of goods

- (1) A judgment for the delivery of goods and a judgment for the delivery of goods or the payment of their assessed value may be enforced by:
 - (a) warrant of delivery; or
 - (b) where rule 66.05 applies, and subject to rule 66.10:
 - (i) committal; or
 - (ii) sequestration,
or both those means.
- (2) The warrant of delivery shall, as the judgment requires, be for:
 - (a) the delivery of the goods; or
 - (b) the delivery of the goods or recovery of their assessed value.

- (3) A warrant of delivery may include provision for enforcing the payment of money required to be paid by the judgment.
- (4) A judgment for the payment of the assessed value of goods may be enforced by the same means as any other judgment for the payment of money except a judgment for the payment of money into court.

66.05 Doing or abstaining from doing an act

- (1) This rule applies where:
 - (a) a judgment requires a person to do an act and the act is to be done within a time fixed in the judgment or by subsequent order and he refuses or neglects to do the act within that time; or
 - (b) a judgment requires a person to abstain from doing an act and he disobeys the judgment.
 - (2) Where this rule applies, a judgment may, subject to rule 66.10, be enforced by:
 - (a) the committal of the person bound;
 - (b) sequestration of the property of the person bound; or
 - (c) where the person bound is a corporation, without limiting subrule (2)(b):
 - (i) the committal of an officer of the corporation; or
 - (ii) sequestration of the property of an officer of the corporation,
- or any combination of those means.

66.06 Attendance of natural person

- (1) This rule applies where the Court by subpoena or otherwise makes an order in a proceeding for the attendance of a natural person:
 - (a) for the purpose of giving evidence;
 - (b) for the production of a document or thing;
 - (c) to answer a charge of contempt; or
 - (d) for any other purpose,

and after service of the order the person defaults in attendance in accordance with the order.

- (2) In the circumstances referred to in subrule (1), the Court may:
 - (a) make an order for the issue of a warrant to the Sheriff or such other person as the Court appoints for the arrest of the person in default and for his production before the Court or before an examiner or other person for the purpose of the proceeding and for his detention in custody in the meantime; and
 - (b) order the person in default to pay the costs and expenses occasioned by the default.

66.07 Attendance of corporation

- (1) This rule applies where the Court, by subpoena or otherwise, makes an order in a proceeding for the production by a corporation of a document or thing and after service of the order the corporation defaults in producing the document or thing in accordance with the order.
- (2) In the circumstances referred to in subrule (1), the Court may:
 - (a) make an order for the issue of a warrant to the Sheriff or such other person as the Court appoints for the arrest of an officer of the corporation and for his production before the Court or before an examiner or other person for the purpose of the proceeding and for his detention in custody in the meantime; and
 - (b) order the corporation to pay the costs and expenses occasioned by the default.

66.08 Attendance before another court, etc.

Rules 66.06 and 66.07, with the necessary changes, apply where by or under an Act the Court has authority to compel by subpoena the attendance of a person for the purpose of giving evidence or producing a document or thing for evidence in a court or before a person having by law or by consent of parties authority to hear, receive and examine evidence.

66.09 Contempt

Nothing in rules 66.06 or 66.07 affects the power of the Court to punish for contempt.

66.10 Service before committal or sequestration

- (1) A judgment shall not be enforced by committal or sequestration unless:
 - (a) a copy of it is served personally on the person bound; and
 - (b) if the judgment requires the person bound to do an act within a fixed time, the copy is so served a reasonable time before that time expires.
- (2) Where the person bound is a corporation, the judgment shall not be enforced by committal of an officer of the corporation or by sequestration of the property of an officer of the corporation unless, in addition to service under subrule (1) on the corporation:
 - (a) a copy of the judgment is served personally on the officer; and
 - (b) if the judgment requires the corporation to do an act within a fixed time, the copy is so served a reasonable time before that time expires.
- (3) A copy of a judgment served under this rule shall be endorsed with a notice, naming the person served, that the person served is liable to imprisonment or to sequestration of property if:
 - (a) where the judgment requires the person bound to do an act within a fixed time, the person bound refuses or neglects to do the act within that time; or
 - (b) where the judgment requires the person bound to abstain from doing an act, the person disobeys the judgment.
- (4) Where a judgment requires the person bound to do an act and an order is made under rule 59.03 fixing a time within which the act is to be done, a copy of the judgment, endorsed as required by subrule (3)(a), and a copy of the order, shall be served on that person a reasonable time before the expiration of that time.
- (5) A judgment requiring a person to do an act within a fixed time or a judgment requiring a person to abstain from doing an act, may be enforced under rule 66.05 notwithstanding that service has not been effected under this rule if the person against whom the judgment is to be enforced has notice of the judgment:
 - (a) by being present when the judgment was given; or
 - (b) by being notified of the terms of the judgment whether by telephone, telegram or otherwise.

- (6) The Court may dispense with service under this rule.

66.11 Substituted performance

- (1) Where a judgment requires the person bound to do an act and the person bound does not do the act, the Court may:
- (a) direct that the act be done by a person appointed by the Court; and
 - (b) order the person bound to pay the costs and expenses occasioned by the default.
- (2) Subrule (1) does not affect:
- (a) the power of the Court under section 36 of the Trustee Act or any other Act; or
 - (b) the power of the Court to punish for contempt.

66.12 Enforcement by or against non-party

- (1) A person, not being a party, who obtains a judgment or in whose favour a judgment is made may enforce the judgment by the same means as if he were a party.
- (2) Where obedience to a judgment may be enforced against a person not a party, the judgment may be enforced against him by the same means as if he were a party.
- (3) Where obedience to a judgment may be enforced against a corporation not a party, an officer of the corporation shall be liable to the same processes of enforcement as if the corporation were a party.

66.13 Non-performance of condition

A person entitled to a judgment subject to the fulfilment of a condition who fails to fulfil the condition shall be taken to have abandoned the benefit of the judgment and, unless the Court otherwise orders, another person interested may take the steps which are warranted by the judgment or which might have been taken if the judgment or order had not been given or made.

66.14 Matters occurring after judgment

The Court may stay execution of a judgment, or make such order as the nature of the case requires, on the ground of matters occurring after judgment.

66.15 Order in aid of enforcement

- (1) The Court may make such order as it thinks fit in aid of the enforcement of a warrant of execution and for that purpose may make an order that a person, whether or not a party:
 - (a) attend before the Court to be examined; or
 - (b) do or abstain from doing an act.
- (2) An application for an order under subrule (1) may be made by the Sheriff or other person to whom a warrant of execution is directed.

66.16 Stay of execution

The Court may stay execution of a judgment.

Order 67 Discovery in aid of enforcement

67.01 Definitions

In this Order, unless the contrary intention appears:

material questions are:

- (a) whether any and, if so, what debts are owing to the person bound;
- (b) whether the person bound has any and, if so, what other property or means of satisfying the judgment; and
- (c) questions concerning or in aid of the enforcement or satisfaction of the judgment specified in the order for examination or production.

person bound means a person against whom a judgment is entered or given or an order is made.

67.02 Order for examination or production

- (1) The Court may, on application by a person entitled to enforce a judgment, order a person bound by the judgment to:
 - (a) attend before the Court and be orally examined on; and
 - (b) produce a document or thing in the possession, custody or power of the person bound relating to,the material questions.

- (2) Where the Court makes an order under subrule (1), it may order that the person attend to be examined before or produce the document or thing to the Master.

67.03 Corporation

- (1) Where the person bound is a corporation, the Court may make an order that:
- (a) an officer or former officer of the corporation attend before the Court and be orally examined on the material questions; and
 - (b) an officer of the corporation produce a document or thing in the possession, custody or power of the corporation relating to the material questions.
- (2) Where the Court makes an order under subrule (1), it may order that the officer or former officer attend to be examined before or produce the document or thing to the Master.

67.04 Procedure

- (1) An application for an order under rule 67.02 or 67.03 may be made without notice to the person bound by the judgment.
- (2) An order under rule 67.02 or 67.03 shall be served personally on the person bound and on all other persons ordered to attend or to produce a document or thing.

67.05 Record of examination

The Judge or the Master before whom an examination is conducted under rule 67.02 or 67.03 shall take down, or cause to be taken down, in writing the statement made by the person examined at the examination.

Order 68 Warrants of execution generally

68.01 Definitions

In this Order, unless the contrary intention appears:

Sheriff includes a person to whom a warrant of execution is directed.

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

68.02 Leave to issue warrant

- (1) Notwithstanding Order 66, a warrant of execution to enforce a judgment shall not be issued without the leave of the Court where:
 - (a) 6 years have elapsed since the judgment took effect;
 - (b) a change has taken place, whether by assignment or death or otherwise, in the identity of the person entitled or liable to execution under the judgment;
 - (c) the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of the judgment and it is sought to issue execution against assets of that description;
 - (d) under the judgment a person is entitled to enforce it subject to the fulfilment of a condition; or
 - (e) the warrant is against property in the hands of a receiver appointed by the Court or of a sequestrator.
- (2) Subrule (1) does not affect a provision of or under an Act requiring the leave of the Court before a judgment may be enforced.
- (3) An application for leave under subrule (1) may be made without notice to any person, unless the Court otherwise orders.
- (4) The application shall be supported by evidence on affidavit showing:
 - (a) where the judgment is for the payment of money – the amount, including interest, due on the date of the application;
 - (b) where subrule (1)(a) applies – the reasons for the delay;
 - (c) where subrule (1)(b) applies – the change which has taken place;
 - (d) where subrule (1)(b), (1)(c) or (1)(d) applies – that a demand to satisfy the judgment has been made on the person liable to satisfy it and that he has not satisfied it;
 - (e) that the applicant is entitled to proceed to execution on the judgment; and
 - (f) that the person against whom execution is sought is liable to execution on the judgment.

68.03 Separate execution for costs

A person entitled to enforce a judgment entered or given with costs may have execution to enforce the judgment and, when the costs become payable, have execution separately to enforce payment of the costs.

68.04 Issue of warrant of execution

- (1) A warrant of execution is issued when the warrant is sealed with the seal of the Court.
- (2) A warrant of execution shall bear the date of its issue.
- (3) A warrant of execution shall not be issued unless the person requesting it to be issued:
 - (a) produces to a Registrar a form of the warrant;
 - (b) files a copy; and
 - (c) where the warrant is to enforce a judgment for the payment of money, files an affidavit, sworn within 14 days before the request, stating:
 - (i) the date of the judgment;
 - (ii) the amount for which judgment was entered or given;
 - (iii) the amount, including interest accrued and costs, due and payable in respect of the judgment at the date of swearing of the affidavit with particulars showing how that amount is calculated or made up; and
 - (iv) the daily amount of interest, if any, which, subject to any future payment under the judgment, will accrue after the date of swearing of the affidavit in respect of the judgment amount and costs.
- (4) In the case of a warrant of execution to enforce a judgment for the payment of money, the person to whom the warrant is directed shall, when executing the warrant, serve a copy of the affidavit required to be filed under subrule (3)(c) on the person against whom the warrant is executed or leave it at the place where the warrant is executed.

68.05 Duration

- (1) A warrant of execution is valid for the purpose of execution for one year after the day it is issued.

- (2) Notwithstanding subrule (1), the Court may from time to time, by order, extend the period of the validity of the warrant for the purpose of execution for not more than one year at any one time from the day on which it would otherwise expire.
- (3) An order under subrule (2) shall not be made after the day of expiry of the warrant.
- (4) An application for an order under subrule (2) may be made without notice to any person.
- (5) A copy of an order under subrule (2) shall be delivered to the Sheriff by the party obtaining the order.
- (6) The priority of a warrant of execution in respect of which an order under subrule (2) has been made shall be determined by reference to the date on which the warrant was originally delivered to the Sheriff.

68.06 Costs of prior execution

The amount for which a warrant of execution may be issued shall, unless the Court otherwise orders, include the costs, fees and expenses incurred in respect of a prior warrant of execution on the same judgment, whether the prior warrant was or was not satisfied in full.

68.07 Provision for enforcing payment of money

Order 69, with the necessary changes, applies to a warrant of execution which includes a provision for enforcing the payment of money required to be paid by the judgment which is to be enforced by the warrant.

68.08 Form of warrant of execution

A warrant of execution shall be in Form 53B, 68A, 68B or 68C, whichever is appropriate.

Order 69 Warrant of seizure and sale

69.01 Definitions

In this Order, unless the contrary intention appears:

creditor means a person for whom a warrant is issued.

debtor means a person against whose property a warrant is to be executed.

judgment includes an order.

Sheriff includes a person to whom a warrant is directed.

warrant means a warrant of seizure and sale.

69.02 Application

This Order applies subject to the *Sheriff Act* and the Regulations made under that Act.

69.03 New enforcement process

The process of enforcement under this Order shall be used instead of the process of enforcement by writ of fieri facias.

69.04 Two or more warrants

Unless the Court otherwise orders, a warrant shall not be issued while another warrant issued in respect of the same judgment is in force, except for the purposes of rule 68.03.

69.05 Order of sale

- (1) Subject to subrules (2) and (3), where it appears to the Sheriff that property subject to levy under a warrant is more than sufficient to satisfy the amount to be levied, he shall take or sell so much of the property as appears to him to be sufficient.
- (2) Subject to subrule (3), the Sheriff shall take or sell property:
 - (a) in such order as seems to him best for the prompt execution of the warrant without undue expense;
 - (b) subject to paragraph (a), in such order as the debtor directs; and
 - (c) subject to paragraphs (a) and (b), in such order as seems to the Sheriff best for minimizing hardship to the debtor and other persons.
- (3) Unless the debtor so requests, land shall not be put for sale under the warrant until all other property liable to sale under the warrant has been sold.
- (4) The Court may order that property subject to levy under the warrant be taken or sold otherwise than in accordance with this rule.

69.06 Time and place of sale

The Sheriff shall put up for sale all property liable to sale under a warrant:

- (a) as early as may be having regard to the interests of the parties; and
- (b) at the place which seems to him best for a beneficial sale of the property.

69.07 Advertisement of sale

- (1) Before putting property up for sale under a warrant, the Sheriff shall advertise the sale by giving notice of the time and place of sale, and of particulars of the property, in the manner which seems to him best to give publicity to the sale.
- (2) The Sheriff shall not advertise the sale of land until the creditor has satisfied him, by such means as he may reasonably require, that a copy of the warrant has been served on the Registrar-General and that a memorial of the warrant has been entered on the original Certificate of Title under the *Real Property Act*.
- (3) An advertisement relating to the intended sale of land by the Sheriff shall be in Form 69A and include:
 - (a) a concise description of the land, including its location, stated in terms calculated to enable interested persons to identify it;
 - (b) a statement in general terms of the improvements, if any, believed by the Sheriff to be on the land;
 - (c) a statement of the last known address of the debtor; and
 - (d) a statement of the interest, if any, of the debtor according to the Register Book under the *Real Property Act* and of the entries in the Register Book which affect or may affect the land as at the date of service on the Registrar-General of the warrant.
- (4) The creditor shall serve personally on the debtor a copy of the advertisement not later than 14 days before the date of the intended sale.
- (5) The Court may dispense with service under subrule (4).

- (6) Not later than 3 days, or such lesser period as the Sheriff allows, before the date advertised for the sale, the creditor shall:
- (a) file an affidavit of service of a copy of the advertisement or, where the Court makes an order for substituted service of the advertisement, an affidavit showing due compliance with the order; and
 - (b) deliver to the Sheriff:
 - (i) where a copy of the advertisement is served on the debtor – a copy of the affidavit of service;
 - (ii) where the Court makes an order dispensing with service of a copy of the advertisement – a copy of the order; and
 - (iii) where the Court makes an order for substituted service of the advertisement – a copy of the order and of the affidavit showing due compliance.

69.08 Notional possession of goods

Notwithstanding that the Sheriff leaves land on which goods have been seized under a warrant, he shall be taken to remain in possession of the goods if he leaves in a prominent position on or about the land on which the goods were seized or on the goods seized a notice of the seizure listing the items seized.

Order 70 Warrant of possession

70.01 Payment of money

A warrant of possession to enforce a judgment for the possession of land may include provision for enforcing the payment of money required to be paid by the judgment.

70.02 Removal of goods on warrant of possession

On the execution of a warrant of possession the Sheriff need not remove any of the goods found on the land.

Order 71 Attachment of debts

71.01 Definitions and application

- (1) In this Order, unless the contrary intention appears:

Credit Union means a credit union registered under the *Credit Unions Act*.

garnishee means a person from whom a judgment creditor claims that a debt:

- (a) is due or accruing to the judgment debtor on the day an order for the filing and service of a garnishee summons is made; or
- (b) will or is likely to become due or accrue to the judgment debtor between the day an order for the filing and service of a garnishee summons is made and the day for hearing named in the summons.

judgment creditor means a person entitled to enforce a judgment for the payment of money, other than a judgment for the payment of money into court.

judgment debtor means a person required by a judgment to pay money otherwise than into court.

society means a Building Society within the meaning of the *Building Societies Act* or a society registered under the *Co-operative Societies Act*.

- (2) This Order does not apply to debts, being earnings within the meaning of Order 72, due or accruing to the judgment debtor.

71.02 What debts attachable

A debt may be attached under this Order if the debt:

- (a) is due or accruing to the judgment debtor from the garnishee on the day an order for the filing and service of a garnishee summons is made; or
- (b) becomes due or accrues to the judgment debtor from the garnishee between the day an order for the filing and service of a garnishee summons is made and the day for hearing named in the summons.

71.03 Bank account

- (1) An amount standing to the credit of a judgment debtor in an account in a bank, in a credit union or in a society shall, for the purpose of this Order, be a debt due or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied:
 - (a) that a demand or notice is required before money is withdrawn;
 - (b) that a personal application must be made before money is withdrawn;
 - (c) that a deposit book must be produced before money is withdrawn; or
 - (d) that a receipt for money deposited in the account must be produced before money is withdrawn.
- (2) Subrule (1), with the necessary changes, applies to an amount which is placed to the credit of a judgment debtor in an account in a bank or a credit union or in a credit society between the day an order for the filing and service of a garnishee summons is made and the day for hearing named in the summons.

71.04 Filing and service of garnishee summons

- (1) Subject to an Act, the Court may, on the application of a judgment creditor, order that a garnishee summons be filed and served on the garnishee.
- (2) A judgment creditor may apply for an order under subrule (1) without notice to any person.
- (3) The Court shall, in making an order under subrule (1), fix an amount to be specified in the garnishee summons for the purpose of rule 71.06 having regard to:
 - (a) the amount due under the judgment on the date of the order;
 - (b) the amount of interest accrued and accruing on the judgment debt; and
 - (c) the costs of the garnishee proceedings.
- (4) Where an order is made under subrule (1) in respect of a debt not yet due or accruing to the judgment debtor from the garnishee, the day for hearing named in the summons shall be not later than 30 days after the date of the order.

71.05 Evidence on application for garnishee summons

- (1) An order shall not be made under rule 71.04 unless it is shown by affidavit:
 - (a) that the judgment is unsatisfied, either wholly or to a stated extent; and
 - (b) that:
 - (i) a debt is due or accruing to the judgment debtor from the garnishee; or
 - (ii) a debt will or is likely to become due or accrue to the judgment debtor from the garnishee,as the case requires.
- (2) Where an application is made for an order under rule 71.04 in respect of a debt within subrule (1)(b)(ii), the affidavit shall give particulars identifying the transaction between the judgment debtor and the garnishee under which the debt will or is likely to become due or accrue and state the date or likely date it will become due or accrue.
- (3) An affidavit under this rule may contain statements of fact based on information and belief if the grounds are set out.

71.06 Garnishee summons

- (1) A garnishee summons shall identify each debt in respect of which it is filed and state:
 - (a) where the debt is due or accruing to the judgment debtor from the garnishee:
 - (i) that on service of the summons the debt shall be attached and bound in the hands of the garnishee to the extent of the amount specified in the summons; and
 - (ii) that in the event that the debt becomes due or accrued before the day for hearing named in the summons the debt shall be attached and bound in the hands of the garnishee to the extent of the amount specified in the summons when it becomes due or accrues,as the case requires; and

(b) that on the day for hearing named in the summons the judgment creditor will apply for an order that the garnishee pay to the judgment creditor the debt attached to the extent of the amount specified in the summons.

(2) A garnishee summons shall be in Form 71A.

71.07 Service of summons

(1) Subject to subrule (2), the judgment creditor shall, not later than 7 days before the day for hearing named in the garnishee summons, serve the summons and a copy of each affidavit used on the application for an order under rule 71.04 on the garnishee personally and on the judgment debtor.

(2) A garnishee summons shall not be served on a garnishee out of the Territory.

(3) The Court may dispense with service on the judgment debtor under subrule (1).

71.08 What debts attached, when and to what extent

(1) A debt due or accruing to the judgment debtor from the garnishee in respect of which an order for the filing and service of a garnishee summons is made is, on service of the summons on the garnishee, attached and bound in the hands of the garnishee to the extent of the amount specified in the summons.

(2) A debt not yet due or accruing to the judgment debtor from the garnishee in respect of which an order for the filing and service of a garnishee summons is made is in the event that the debt becomes due or accrues before the day for hearing named in the summons, attached and bound in the hands of the garnishee to the extent of the amount specified in the summons when it becomes due or accrues.

(3) Notwithstanding subrules (1) and (2), where, after service of a garnishee summons on the garnishee, the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or a part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or a part of the debt attached, the Court may order that for the purpose of the garnishee application the debt attached be reduced to the extent of the payment or satisfaction.

71.09 Payment to judgment creditor

- (1) Subject to rules 71.10 and 71.11, the Court may, on the hearing of a garnishee summons, order the garnishee to pay to the judgment creditor:
 - (a) the debt attached to the extent specified in the garnishee summons; or
 - (b) so much of the debt attached to the extent so specified as is required to satisfy the judgment in respect of which the summons is filed and served together with interest and such costs of the application as are specified in the order.
- (2) Where on the hearing of a garnishee summons the garnishee does not dispute the debt, or where he does not attend on the hearing, the Court may make an order under subrule (1) on the evidence in support of the application under rule 71.04 for an order that the garnishee summons be filed and served on the garnishee.
- (3) An order under subrule (1) may be enforced in the same manner as any other order for the payment of money.
- (4) An order under subrule (1) shall be in Form 71B or 71C, as the case requires.

71.10 Dispute of liability by garnishee

If on the hearing of the garnishee summons the garnishee disputes liability to pay the debt attached, the Court may determine the question of liability or give directions for the trial of the question.

71.11 Claim by other person

Where it appears to the Court that a person other than the judgment debtor may be entitled to the debt attached or to a charge or lien on it, it may order that notice of the application be given to that person and then determine the entitlement or give directions for its determination.

71.12 Discharge of garnishee

A payment made by a garnishee in compliance with, and any execution levied against him under, an order made under rule 71.09 is a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that subsequently the garnishee proceedings are set aside or the judgment from which they arose is reversed or varied.

71.13 Money in Court

- (1) Subject to rule 15.09, where money is standing to the credit of the judgment debtor in court, the Court may, on the application of the judgment creditor made by summons, order that the money or so much of it as is sufficient to satisfy the judgment sought to be enforced, together with interest accrued on the judgment debt and the costs of the application, be paid to the judgment creditor.
- (2) The summons and a copy of any affidavit in support shall be served on the judgment debtor not later than 7 days before the day for hearing named in the summons.

71.14 Costs

The costs of the judgment creditor of a garnishee application under this Order shall, unless the Court otherwise orders, be retained by the judgment creditor out of the money recovered by him from the garnishee in priority to the debt under the judgment in respect of which the application arose and interest accrued on the debt.

Order 72 Attachment of earnings

72.01 Definitions

In this Order, unless the contrary intention appears:

attachment of earnings order means an order under rule 72.03 or such an order as varied from time to time.

earnings, in relation to a judgment debtor, means an amounts payable to the judgment debtor:

- (a) by way of wages or salary, including fees, bonuses, commissions, overtime payments or other emoluments payable in addition to wages or salary; or
- (b) by way of pension, including:
 - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or a diminution in the emoluments, of an office or employment,

but does not include a pension payable to the judgment debtor under the *Social Security Act 1947*, the *Repatriation Act 1920* or the *Seamen's War Pensions and Allowances Act 1940* of the Commonwealth.

employer, in relation to a judgment debtor, means a person (including the Crown in right of the Territory, a Minister of the Crown in right of the Territory and a statutory authority representing the Crown in right of the Territory) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the judgment debtor.

judgment creditor means a person entitled to enforce a judgment for the payment of money, other than a judgment for the payment of money into court.

judgment debtor means a person required by a judgment to pay money otherwise than into court.

net earnings, in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer on that pay-day after the deduction from those earnings of:

- (a) an amount deducted under Division 2 of Part VI of the *Income Tax Assessment Act 1936* of the Commonwealth; and
- (b) an amount deducted that would be an allowable deduction:
 - (i) under section 82H of that Act other than life insurance premiums, not being life insurance premiums payable in respect of superannuation; or
 - (ii) under section 82A of that Act.

normal deduction, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer.

pay-day means an occasion on which earnings to which the attachment of earnings order relates become payable.

protected earnings, in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the

date on which the employer became, or last became, the judgment debtor's employer.

72.02 Application for attachment of earnings order

- (1) A judgment creditor may apply by summons to the Court for an attachment of earnings order.
- (2) The summons shall be supported by an affidavit, which may contain statements of fact based on information and belief if the grounds are set out.
- (3) The summons shall be in Form 72A and the affidavit shall be in Form 72B.
- (4) The summons, a copy of the affidavit and a notice in Form 72C as to the property and assets of the judgment debtor and the debts, liabilities and other financial obligations of the judgment debtor shall be served on the judgment debtor not later than 14 days before the day for hearing named in the summons.

72.03 Making of order

- (1) Where the Court is satisfied that the judgment debtor is a person to whom earnings are payable or are likely to become payable and that:
 - (a) at the time when the application was made there was due and unpaid in respect of the judgment which the judgment creditor is entitled to enforce an amount of not less than \$20; or
 - (b) the judgment debtor has persistently failed to comply with an order with respect to the judgment,

the Court may order a person who appears to it to be the judgment debtor's employer in respect of those earnings or part of those earnings to make out of those earnings or that part of those earnings payments in accordance with rule 72.07.

72.04 Attendance of or information about judgment debtor

- (1) In relation to an attachment of earnings order or an application for such an order, the Court may order that:
 - (a) the judgment debtor attend before it at a time specified in the order to be examined concerning his means and ability to comply with the judgment;

- (b) the judgment debtor state to it or furnish to it, within the time fixed by it, a statement signed by him setting forth:
 - (i) the name and address of his employer or, if he has more employers than one, of each of his employers; and
 - (ii) particulars as to the judgment debtor's earnings; and
 - (iii) such other particulars as the Court thinks necessary to enable the enforcement of the order; or
 - (c) a person who appears to it to be indebted to the judgment debtor or to be the employer of the judgment debtor give to it a statement signed by him or on his behalf containing such particulars as are specified in the direction of his indebtedness to the judgment debtor that became payable by that person during a specified period.
- (2) A document purporting to be a statement referred to in subrule (1) shall be received in evidence in a proceeding for the enforcement of the order.
- (3) Where on an application for an attachment of earnings order the Court is satisfied:
- (a) that the judgment debtor has been served with a copy of the summons;
 - (b) that the judgment debtor has had a reasonable opportunity of attending the hearing;
 - (c) that the judgment debtor is employed by an ascertained employer; and
 - (d) as to the earnings of the judgment debtor,
- it may make an attachment of earnings order in the absence of the judgment debtor.
- (4) For the purpose of this rule, the Court may act on evidence by or on behalf of the judgment debtor's employer or by the judgment debtor's spouse, or a statement or information furnished under subrule (1).
- (5) Where the Court considers an application in the absence of the judgment debtor or his or her spouse and it has before it sufficient evidence in its opinion on which to specify a protected earnings rate and a normal deduction rate, it shall so specify those rates but, where it does not have sufficient evidence, it may, without specifying those rates, make an order requiring the payment by the

judgment debtor's employer to the judgment creditor of such amount as the Court thinks reasonable having regard to the circumstances of the judgment debtor so far as they are known to the Court.

- (6) Nothing in subrule (1)(a) affects any other mode of enforcing the attendance of the judgment debtor before the Court.
- (7) An application for an order under subrule (1) (a) shall be made by summons in Form 72D and shall be supported by an affidavit in Form 72E.
- (8) An order under subrule (1) shall be in Form 72F or 72G, whichever is appropriate.

72.05 Contents of order

- (1) In this rule:

normal deduction rate means the rate at which the Court considers it to be reasonable that the earnings of a judgment debtor should be applied in satisfying the judgment to which the order relates, not exceeding a rate that appears to the Court to be necessary for the purpose of:

- (a) securing payment of the amount due and unpaid under the judgment; and
- (b) securing payment within a reasonable time of any costs ordered by the Court to be paid by the judgment debtor.

protected earnings rate means the rate below which, having regard to the resources and needs of a judgment debtor and of any other person for whom he must or reasonably may provide, the Court considers it to be reasonable that the earnings to which the order relates should not be reduced by a payment under an attachment of earnings order.

- (2) An attachment of earnings order shall specify, either generally or in relation to a particular pay-day or particular pay-days, the normal deduction rate.
- (3) An attachment of earnings order may specify a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to subsequent pay-days.
- (4) An attachment of earnings order shall also specify the protected earnings rate.

- (5) Unless the Court:
- (a) has received from the judgment debtor a completed form pursuant to the notice in Form 72C given under rule 72.02(4) as to the property and assets of the judgment debtor and has debts, liabilities and other financial obligations; or
 - (b) has examined the judgment debtor as to those matters,
- it shall not under subrule (3) specify as the protected earnings rate a rate that is less than 80% of the net earnings of the judgment debtor.
- (6) An attachment of earnings order shall:
- (a) provide that the payments under the order are to be made to the person specified in the order; and
 - (b) contain such particulars as the Court thinks necessary for enabling the person to whom the order is directed to identify the judgment debtor.
- (7) An attachment of earnings order shall be in Form 72H.

72.06 Service of orders

- (1) An attachment of earnings order shall be served on the judgment debtor and on the person to whom the order is directed.
- (2) There shall also be served on the person to whom an attachment of earnings order is directed:
- (a) a notice informing him of the effect of the order and of his obligations under the Order; and
 - (b) 2 forms of notice that the judgment debtor is not in his employ.
- (3) A notice under subrule (2)(a) shall be in Form 72J and a notice under subrule (2)(b) shall be in Form 72K.
- (4) The order shall not come into force until the expiration of 7 days after the day on which it is served on the person to whom it is directed.

72.07 Employer to make payments

- (1) An employer to whom an attachment of earnings order is directed shall, in respect of each pay-day whilst the order is in force, if the net earnings of the judgment debtor exceed the sum of:
- (a) the protected earnings of the judgment debtor; and

- (b) so much of an amount by which the net earnings that became payable on a previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any other previous pay-day,

pay, so far as that excess permits, to the person specified in the order the normal deduction in relation to that pay-day and so much of the normal deduction in relation to a previous pay-day as was not paid on that pay-day and has not been paid on a previous pay-day.

- (2) A payment made by an employer under subrule (1) is a valid discharge to him as against the judgment debtor to the extent of the amount paid.
- (3) An employer making payments in accordance with an attachment of earnings order may deduct from the earnings of the judgment debtor, in addition to any other amount, an allowance of \$3 in respect of each payment towards the clerical and administrative costs of making payments under the order and shall give to the judgment debtor notice of the amount deducted.

72.08 Attachment of earnings in place of other orders

Where an application is made to the Court to enforce a judgment for the payment of money otherwise than into court, the Court may, instead of making another order, make an attachment of earnings order.

72.09 Execution after attachment of earnings

Unless the Court otherwise orders, where an attachment of earnings order is in force, no warrant of execution shall issue and no order shall be made for the enforcement of the judgment to which the attachment of earnings order relates.

72.10 Discharge or variation of order

- (1) Where an attachment of earnings order is in force, the Court may, on the application of the judgment creditor or the judgment debtor, discharge, suspend or vary the order.
- (2) An order suspending or varying an attachment of earnings order shall be served on the respondent to the application and the person to whom the attachment of earnings order is directed.
- (3) An order suspending or varying an attachment of earnings order does not come into force until the expiration of 7 days after the day on which the order is served on the person to whom it is directed.

72.11 Cessation of attachment of earnings order

- (1) An attachment of earnings order ceases to have effect:
 - (a) on being discharged under rule 72.10; or
 - (b) unless the Court otherwise orders, on the making of another order for the recovery of the moneys owing under the judgment in relation to which the attachment of earnings order was made.
- (2) Where an attachment of earnings order ceases to have effect, a Registrar shall, without delay, give notice accordingly to the person to whom the order was directed.
- (3) A notice under subrule (2) shall be in Form 72L.
- (4) Where an attachment of earnings order ceases to have effect, the person to whom the order is directed shall not incur a liability in consequence of his treating the order as still in force at any time before the expiration of 7 days after the day on which the notice required by subrule (2) or a copy of the order discharging the attachment of earnings order, as the case may be, is served on him.

72.12 Two or more orders in force

Where earnings become payable to a judgment debtor and there are in force 2 or more attachment of earnings orders, whether made under this Chapter or otherwise, in relation to those earnings, the person to whom the orders are directed shall comply with:

- (a) those orders according to the respective dates on which they took effect and shall disregard an order until the earlier order has been complied with; and
- (b) an order as if the earnings to which the order relates were the residue of the earnings of the judgment debtor after the making of a payment under an earlier order.

72.13 When varied order taken to be made

For the purpose of rule 72.12, an attachment of earnings order which has been varied under rule 72.10 shall be taken to have been made as so varied on the day on which the attachment of earnings order was made.

72.14 Notice to judgment debtor of payments

- (1) A person who makes a payment in compliance with an attachment of earnings order shall give to the judgment debtor a notice specifying the particulars of the payment.
- (2) Where a person served with an attachment of earnings order directed to him is not the employer of the judgment debtor at the time of service of the order, he shall, without delay after service of the order, give notice in writing accordingly to a Registrar.
- (3) Where a person served with an attachment of earnings order directed to him is the employer of the judgment debtor at the time of service of the order but ceases to be his employer at any time thereafter, that person shall, as soon as he ceases to be the judgment debtor's employer, give notice in writing accordingly to the Registrar.

72.15 Determination of earnings

- (1) The Court shall, on the application of the person to whom an attachment of earnings order is directed, determine whether payments to the judgment debtor of earnings of a particular class or description specified in the application are earnings for the purpose of that order.
- (2) A person to whom an attachment of earnings order is directed who makes an application under subrule (1) shall not incur a liability for failing to comply with the order with respect to a payment of the class or description specified in the application that is made by him to the judgment debtor while the application, or an appeal from an order made on the application, is pending.
- (3) Subrule (2) does not apply in respect of a payment made after an application is withdrawn or an appeal from an order made on the application is abandoned.

72.16 Service

An order or document required or permitted to be served on a person under this Order may be served on him:

- (a) personally;
- (b) by delivering a copy at his usual or last known place of residence or business to a person who apparently resides or is employed there and has apparently attained the age of 16 years; or

- (c) by sending a copy to him at his usual or last known place of residence or business by registered post.

Order 73 Charging orders and stop orders and notices

73.01 Definitions

In this Order, unless the contrary intention appears:

corporation means a corporation formed under a general Act of the Commonwealth or under a general Act or Companies Code of a State or Territory of the Commonwealth, and includes a society within the meaning of the *Building Societies Act* the *Co-operative Societies Act* and a credit union registered under the *Credit Unions Act*.

funds or **funds in court** means money, stock issued by or funds of, or an annuity granted by, a government, or stock of a corporation standing or to be placed to the credit of an account in the books of the Court.

judgment means a judgment for the payment of an ascertained amount otherwise than into court.

judgment creditor means a person entitled to enforce a judgment.

judgment debt means the amount due under a judgment and includes interest on that amount.

judgment debtor means a person against whom a judgment may be enforced.

securities means:

- (a) (i) stock issued by or funds of, or an annuity granted by, the Commonwealth or by a State or Territory of the Commonwealth; and
- (ii) stock of a corporation; and
- (b) a dividend or interest payable on that stock.

stock includes shares and a debenture, debenture stock, bond, note or other security.

73.02 Order charging securities

For the purpose of securing the payment of a judgment debt, the Court may by order (in this Order called **a charging order**), impose a charge on the beneficial interest of the judgment debtor in a security.

73.03 Filing and service of charging summons

- (1) The Court may, on the application of a judgment creditor, order that a charging summons be filed and served.
- (2) A judgment creditor may apply for an order under subrule (1) without notice to any person.

73.04 Evidence on application for charging summons

- (1) An application for an order under rule 73.03(1) shall be supported by an affidavit:
 - (a) stating that the judgment is unsatisfied, either wholly or to a stated extent;
 - (b) identifying the securities in respect of which the order is sought and stating in whose name they stand; and
 - (c) stating that the judgment debtor has a beneficial interest in the securities and describing that interest.
- (2) An affidavit under this rule may contain statements of fact based on information and belief if the grounds are set out.

73.05 Charging summons

- (1) A charging summons shall identify the securities in respect of which it is filed and state that on service of the summons on:
 - (a) the government or corporation to which it is addressed, the government or corporation, as the case may be, shall not, except by order of the Court, cause or permit a transfer of any of the securities to be made or pay to a person a dividend or interest on any of them;
 - (b) the judgment debtor, unless the Court otherwise orders, no disposition by him of his interest in any of the securities made before the application for the charging order is heard by the Court is valid as against the judgment creditor.
- (2) A charging summons shall be in Form 73A.

73.06 Service of summons

- (1) The judgment creditor shall, not later than 7 days before the day for the hearing named in the charging summons, serve on the judgment debtor and personally on the government or corporation the summons and a copy of each affidavit used on the application for an order under rule 73.03(1).
- (2) The Court may dispense with service on the judgment debtor under subrule (1).

73.07 Effect of service of summons

- (1) Where, without the authority of the Court, a government or corporation on which a charging summons has been served causes or permits any of the securities to which the summons relates to be transferred or pays to a person a dividend or interest on any of them, the government or corporation, as the case may be, is liable to pay to the judgment creditor an amount equal to the value to the judgment debtor of the securities transferred or of the dividend or interest paid, as the case may be, or so much of that value as is sufficient to satisfy the judgment.
- (2) No disposition by the judgment debtor of his interest in any of the securities to which a charging summons relates made after the service of it on him and before the application for the charging order is heard is valid as against the judgment creditor, unless the Court otherwise orders.

73.08 Order on summons hearing

- (1) On the hearing of a charging summons the Court may make a charging order with respect to securities to which the summons relates.
- (2) If the judgment debtor does not attend on the hearing of the charging summons or, if attending, does not dispute the evidence in support of the application under rule 73.03(1), the Court may make a charging order on that evidence.

73.09 Effect and enforcement of charge

A charge imposed by a charging order shall have the same effect, and give the judgment creditor the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

73.10 Variation or discharge of order

The Court may by order, at any time:

- (a) vary the effect under rule 73.07 of the service of a charging summons; or
- (b) vary or discharge a charging order.

73.11 Order charging funds in Court

- (1) Subject to rule 15.09, for the purpose of securing the payment of a judgment debt, the Court may, by order, impose a charge on the beneficial interest of the judgment debtor in any funds in court.
- (2) Rules 73.03 to 73.08 inclusive and rule 73.10, with the necessary changes, apply to an application for an order under subrule (1).
- (3) The judgment creditor shall, without delay, on the making of an order that a summons for an order under subrule (1) be filed and served, lodge a copy of the summons and of each affidavit used on the application for the order with the Master, a Registrar or other proper officer of the Court by whom the funds in court are held.

73.12 Stop order for funds in Court

- (1) The Court may make an order that funds in court, or a part of them, or the income from them, shall not be transferred, sold, delivered out, paid or otherwise dealt with unless notice is first given to the person applying for the order.
- (2) An order may be made under subrule (1) on the application of a person:
 - (a) who has a mortgage or charge on the interest of a person in the funds in court;
 - (b) to whom the interest has been assigned; or
 - (c) who is a judgment creditor of the person entitled to the interest.
- (3) The application shall be made by summons in the proceeding in which the funds are in court or, if there is no proceeding, by originating motion.
- (4) The summons or originating motion, and a copy of any affidavit in support, shall be served on every person who has an interest in the funds in court which may be affected by the order sought.

- (5) On an application under this rule the Court may make such order as it thinks fit for the costs and expenses of the applicant and of a party to the application or other person against whom an order is sought.

73.13 Stop notice on corporation stock not in Court

- (1) A person (in this and rules 73.14 and 73.15 called ***the claimant***) claiming a beneficial interest in stock of a corporation, other than stock in court, who desires to be notified of a proposed transfer of the stock or payment of any dividend or interest on the stock may give notice of that desire to the corporation by filing:
- (a) an affidavit in Form 73B identifying the stock in question and describing his interest in it and identifying any document under which it arises; and
 - (b) serving a sealed copy of the affidavit and of the notice on the corporation.
- (2) The affidavit shall be endorsed with a note stating the address to which a notice under rule 73.14 is to be sent and, subject to subrule (3), that address shall for the purpose of that rule be the address for service of the claimant.
- (3) The claimant may change his address for service for the purpose of rule 73.14 by filing and serving on the corporation notice of the change.

73.14 Effect of stop notice

Where an affidavit and a notice are served on a corporation under rule 73.13 and, during the time the notice is in force, the corporation is requested to register a transfer of the stock to which the notice relates or the payment of a dividend or interest on the stock falls due, it:

- (a) shall serve on the claimant, at his address for service, a notice informing him of the request; and
- (b) except with the authority of the Court, shall not register the transfer or, as the case requires, pay the dividend or interest before the expiration of 10 days after the day the notice is served.

73.15 Withdrawal or discharge of stop notice

- (1) A claimant may by notice served on the corporation withdraw a notice served on it under rule 73.13.

- (2) The Court may by order discharge a notice under subrule (1).

73.16 Prohibition of transfer of or payment on stock

- (1) The Court may on the application of a person claiming a beneficial interest in stock of a corporation, other than stock in court, by order, prohibit or restrict the corporation from registering a transfer of the whole or a part of the stock or from paying a dividend or interest on it.
- (2) The Court may vary or discharge an order made under subrule (1).

Order 74 Enforcement by appointment of receiver

74.01 Procedure

An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 39 and that Order applies to such a receiver as it applies to a receiver appointed for any other purpose.

74.02 Appointment of receiver by way of equitable execution

Before determining an application for the appointment of a receiver by way of equitable execution, the Court shall have regard to the amount claimed by the judgment creditor, the amount likely to be obtained by the receiver and the probable costs of his appointment and may direct an inquiry on these or any other matters.

Order 75 Contempt

Part 1 Interpretation

75.01 Definition

In this Order, unless the contrary intention appears, *respondent* means a person guilty or alleged to be guilty of contempt of court.

Part 2 Summary proceeding for contempt

75.02 Contempt in face of the Court

Where it is alleged or appears to the Court that a person is guilty of contempt of court committed in the face of the Court, it may:

- (a) by oral order, direct that the respondent be arrested and brought before it; or

(b) issue a warrant for his arrest in Form 75A.

75.03 Procedure on hearing of charge

Where the respondent is brought before the Court, whether under oral order or warrant for arrest, the Court shall cause him to be informed of the contempt with which he is charged and after so doing shall adopt such procedures as in the circumstances it thinks fit.

75.04 Custody pending disposal of charge

The Court may order that, until the charge is disposed of, the respondent be kept in custody or be released on terms, including a condition that he give security for appearance in person to answer the charge.

Part 3 Other procedure for contempt

75.05 Application

- (1) This Part applies to:
 - (a) contempt of court committed in the face of the Court;
 - (b) any other contempt of the Court; and
 - (c) contempt of an inferior court.
- (2) In the case of contempt of court committed in the face of the Court, the procedure under this Part is alternative to that under Part 2.

75.06 Procedure

- (1) Application for punishment for the contempt shall be by summons or originating motion in accordance with this rule.
- (2) Where the contempt is committed by a party in relation to a proceeding in the Court, the application shall be made by summons in the proceeding.
- (3) Where subrule (2) does not apply, the application shall be made by originating motion which:
 - (a) shall be entitled "The Queen v." the respondent, "on the application of" the applicant; and
 - (b) shall require the respondent to attend before a Judge.

- (4) The summons or originating motion shall specify the contempt with which the respondent is charged.
- (5) The summons or originating motion and a copy of every affidavit shall be served personally on the respondent, unless the Court otherwise orders.

75.07 Application by Deputy Master

- (1) The Court may, by order, direct a Registrar to apply by summons or originating motion for punishment of a contempt.
- (2) Where a Registrar applies as so directed, the Court may order that costs be paid by the Registrar to the respondent or by the respondent to the Registrar, as it thinks fit.

75.08 Arrest of respondent

Where a summons or originating motion for punishment of a contempt has been filed and it appears to the Court that the respondent has absconded or is likely to abscond or has left or is likely to leave the Territory, the Court may issue a warrant for his arrest and detention in custody until he is brought before it to answer the charge, unless he gives security, as the Court directs, for his appearance in person to answer the charge and to submit to its judgment.

75.09 Warrant for arrest

- (1) A warrant for the arrest of a respondent shall be addressed to the Sheriff and may be issued:
 - (a) where the arrest is ordered by a Judge – under his hand;
 - (b) where the arrest is ordered by the Full Court – under the hand of the presiding Judge.
- (2) The warrant shall be in Form 75B.

Part 4 Committal and costs

75.10 Application

This Part applies where the Court finds that a respondent is guilty of contempt of court.

75.11 Punishment for contempt

- (1) Where the respondent is a natural person, the Court may punish for contempt by committal to prison or fine, or both.

- (2) Where the respondent is a corporation, the Court may punish for contempt by sequestration or fine, or both.
- (3) When the Court imposes a fine, it may commit, or further commit, the respondent to prison until the fine is paid.
- (4) The Court may make an order for punishment on terms, including a suspension of punishment.

75.12 Discharge

Where a respondent is committed to prison for a term, the Court may order his discharge before the expiry of the term.

75.13 Warrant for committal

A warrant for the committal of a person found guilty of contempt of court shall be in Form 75C.

75.14 Costs

The costs of an application for punishment for contempt shall be in the discretion of the Court, whether an order for committal is made or not.

Order 76 Sequestration

76.01 Definitions

In this Order, unless the contrary intention appears:

judgment includes order.

person bound means a person against whom a judgment is entered or given or an order is made.

76.02 Enforcement by sequestration

The process of enforcement under this Order shall be used instead of the process of enforcement by writ of sequestration.

76.03 Order for sequestration

- (1) An order for sequestration shall appoint one or more persons as sequestrators and provide that the sequestrator be authorized and directed to enter on and take possession of the real and personal estate of the person bound and to collect, receive and get into their hands the rents and profits of his real and personal estate and keep them under sequestration in their hands until the person bound complies with the judgment to be enforced by sequestration, or until

further order.

- (2) Where the person bound is a corporation and an order is made for the sequestration of the property of an officer of the corporation (whether or not an order for sequestration is also made against the corporation), the order shall give the same authority and direction to the sequestrators with respect to the real and personal estate of the officer as in the case of an order against a corporation and shall provide that the sequestrators shall keep the estate under sequestration in their hands until the corporation complies with the judgment to be enforced by sequestration or until further order.
- (3) The Court may discharge an order for sequestration.

76.04 Application

- (1) An application for an order for sequestration shall be by summons and the summons and a copy of each affidavit in support shall be served personally on the person bound.
- (2) Where the person bound is a corporation and sequestration of the property of an officer of the corporation is sought, a copy of the summons and of each affidavit in support shall also be served personally on him.
- (3) The Court may dispense with service under subrules (1) and (2).

Order 77 Authority of the Master

77.01 Authority

- (1) Subject to this Order, the Master, in addition to exercising the powers and authority imposed or conferred by any other provision of this Chapter or an Act, may:
 - (a) in a proceeding to which this Chapter applies, give a judgment or make an order, including a judgment or order, in the exercise of the inherent jurisdiction of the Court; and
 - (b) hear and determine an application and exercise powers and authorities under the following statutory provisions:
 - (i) the *Family Provision Act*, where an order is sought by consent;
 - (ii) the *Evidence Act*, section 46 (compelling production of Bankers Book), section 47 (inspection of Bankers Book) and section 48 (costs of application);

- (iv) the *Unit Titles Act*, section 95 (order for cancellation of Units plan), section 98 (approval of scheme for alteration of Units plan) and section 99 (order for alteration of Units plan);
 - (v) the *Births, Deaths and Marriages Registration Act*, section 21 (orders with regard to the surname of the child);
 - (vi) the *Service and Execution of Process Act 1901* of the Commonwealth, section 11 (proceedings where no appearance entered), section 16(1) (subpoenas or summons to witness may be served in any State or part of Commonwealth by leave of Court), section 21(3) (registration of judgments and proceedings thereunder) and section 22A (Costs of proceedings under this Act), in relation to the assessing of the amount of the plaintiff's costs;
 - (via) the *Supreme Court Act*, section 16 (transfer of proceedings to Local Court);
 - (vii) the *Trustee Act*, Part III (Appointment of new trustees and vesting orders); or
 - (viii) the *Administration and Probate Act*, sections 24 and 25 (order for assignment of Administration Bond), section 32 (appointment of Administrator pendente lite and receiver), section 33 (power to appoint Administrator), section 34(1) (order where executor neglects to prove will), section 35 (issue of special letters of administration) and section 45 (order nisi where caveat lodged); and
- (c) hear and determine:
- (i) an application under an Act for payment or transfer to a person of any money or securities in Court, including interest; or
 - (ii) an application for or relating to the sale of property by auction or private contract, and for payment into court and investment of the purchase money.
- (2) Subject to this Order, the Master may exercise power conferred on the Court or a Judge:
- (a) in respect of the approval of a compromise on behalf of person under a disability; or

- (b) to give judgment or make an order in a proceeding if all parties affected appear and consent or on written application by a party and written consent of all other parties affected, provided that the judgment or order states that it is given or made by consent of the parties.

77.02 Limitation on authority

- (1) Subject to rules 12.12, 22.06(1)(d), and 77.01(1)(b), the trial of a proceeding shall not be held before the Master and the Master shall not give a judgment or make an order at the trial of a proceeding.
- (2) Except where the trial was conducted by the Master, an order under rule 49.02 shall only be made by a Judge.
- (3) The Master does not have authority to extend or abridge a time fixed by an order of a Judge, unless the Judge directs.
- (4) The Master does not have authority to hear or determine:
 - (a) an application, proceeding or matter relating to criminal proceedings or to the liberty of the subject, including proceedings for attachment or committal;
 - (b) a proceeding on the Crown side of the Court;
 - (c) subject to paragraph (g), an application or proceeding for an injunction or other orders under section 69 of the Act, other than:
 - (i) the appointment of a receiver by way of equitable execution;
 - (ii) an injunction ancillary or incidental to equitable execution; or
 - (iii) an application made under rule 21.04(1) for judgment for an injunction;
 - (d) an application for the review of taxation of costs;
 - (e) a proceeding for a declaration of the rights of a person;
 - (f) a question of construction arising under an instrument;

- (g) an application relating to the guardianship or custody of an infant, other than an application by consent, for an order for:
 - (i) interim custody or interim access either under the *Guardianship of Infants Act* or under the inherent jurisdiction of the Court; or
 - (ii) an injunction in connection with an order referred to in subparagraph (i);
- (h) an application in a matter pending in the Federal Court or the High Court;
- (j) a proceeding in respect of which a Judge orders that rule 77.01 shall not apply, as long as the order is in force (a Judge at any time may make such an order and may rescind it);
- (k) a proceeding or class of proceeding which the Chief Justice directs to be excepted from rule 77.01; or
- (m) an application which by this Chapter or an Act is required to be heard only by a Judge.

77.03 Master to hear application

- (1) Subject to subrule (2), an application in a proceeding for a judgment or order which may, in accordance with this Order, be given or made by the Master shall be made to the Master, not a Judge.
- (2) A judgment or order to which subrule (1) applies may be given or made by a Judge:
 - (a) on a reference by the Master to a Judge under rule 77.04;
 - (b) with special leave of a Judge;
 - (c) on an appeal from the Master under rule 77.05;
 - (d) during the trial of the proceeding; or
 - (e) when the Master is absent or not available.

77.04 Reference by Master to Judge

- (1) Where on an application to the Master in accordance with rule 77.01 it appears to the Master that the application is proper for the determination of a Judge, the Master may refer the application to a Judge.

- (3) The Judge to whom the application is referred may hear and determine the application or refer it back to the Master with directions.
- (4) The Master may refer to a Judge for direction a question arising on an application to him.

77.05 Appeal

- (1) Subject to subrule (2), a person affected by a judgment given or order made by the Master under this Chapter or the Rules in force before the commencement of this Chapter may appeal to a Judge.
- (2) No judgment or order of the Master given or made by consent or order of the Master as to costs only shall be the subject of appeal under subrule (1), except by leave of a Judge or the Master.
- (3) Where the application on which the Master gave the judgment or made the order was not made on notice, the appeal shall be brought on for hearing within 7 days after the date of the judgment or of the order.
- (4) Where the application was made on notice, the appeal shall be by notice in writing to attend before a Judge on the day and at the time named in the notice and the notice shall be filed within 7 days after the date of the judgment or of the order.
- (5) The notice shall be served on every person interested not later than 2 days before the day named in the notice.
- (6) An order extending the time fixed by subrule (3) or (4) may be made by a Judge or the Master.
- (7) The appeal shall be by re-hearing de novo of the application to the Master but each party may, subject to proper objections to admissibility:
 - (a) rely on an affidavit used before the Master and on evidence given orally before him;
 - (b) by special leave of the Judge, rely on an affidavit or oral evidence not used or given before the Master.
- (8) Except so far as the Judge or Master otherwise orders, an appeal shall not operate as a stay of execution or of proceedings under the judgment or order.
- (9) In this rule **Master** includes a Registrar.

Order 78 Proceeding under judgment

78.01 Directions in judgment

- (1) Where by a judgment of the Court further proceedings are necessary, the Court may, when giving the judgment or at a later time, give directions for the conduct of those proceedings.
- (2) Without limiting subrule (1), the Court may give directions with respect to:
 - (a) the taking of an account or the making of an inquiry;
 - (b) the evidence to be adduced on the account or inquiry;
 - (c) the preparation of a draft instrument directed by the judgment to be settled and the making of objections to the draft;
 - (d) the parties required to attend the proceedings;
 - (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented;
 - (f) the time for taking each step in the proceedings, and the day or days for the further attendance of the parties; or
 - (g) the publication of advertisements for creditors or other claimants and the time for creditors and claimants to respond.
- (3) The Court may revoke or vary a direction given under this rule.

78.02 Claims

- (1) In this rule **administration proceeding** means a proceeding for the administration of the estate of a deceased person or the execution of a trust under the direction of the Court.
- (2) Where the judgment in an administration proceeding directs the taking of an account of debts or other liabilities of a deceased person, the Court may direct a party to:
 - (a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of the claims the estate is liable;
 - (b) determine, so far as he is able, what are the other debts or liabilities of the deceased; and
 - (c) file an affidavit stating his conclusions and reasons.

- (3) Where the judgment in an administration proceeding directs an inquiry for unascertained persons entitled, the Court may direct a party to:
 - (a) examine the claims of persons claiming to be entitled and determine, so far as he is able, which of them are valid;
 - (b) determine, so far as he is able, what other persons are entitled; and
 - (c) file an affidavit stating his conclusions and reasons.
- (4) Where the party directed by the Court under subrule (2) or (3) to examine claims is not the personal representative or trustee concerned, then, unless the Court otherwise orders, the personal representative or trustee shall join with the party so directed in making the affidavit.
- (5) A copy of the affidavit under subrule (2)(c) or (3)(c) shall be served on every other party not later than 7 days before the time appointed by the Court for adjudicating on claims.
- (6) For the purpose of adjudicating on claims, the Court may:
 - (a) direct a claim to be investigated in such manner it thinks fit;
 - (b) require a claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
 - (c) allow a claim with or without proof.
- (7) The Court may give directions for service on persons claiming to be creditors of notice of the result of the adjudication.
- (8) This rule, with the necessary changes, applies where the judgment in a proceeding other than an administration proceeding directs that an account of debts or other liabilities be taken or that an inquiry be made.

78.03 Interest on debts

- (1) Where a judgment directs an account of the debts of a deceased person, unless the estate of the deceased is insolvent or the Court otherwise orders, interest shall be allowed:
 - (a) on a debt which carries interest, at the rate it carries;
 - (b) on any other debt, from the date of the judgment at the rates payable on judgment debts from that date.

- (2) A creditor whose debt does not carry interest and who establishes the debt in proceedings under the judgment is, unless the Court otherwise orders, entitled to interest on the debt in accordance with subrule (1)(b) out of an asset which remain after satisfying the costs of the proceeding, the debts established and the interest on debts which by law carry interest.
- (3) For the purpose of this rule, the debts of a deceased person include funeral, testamentary and administration expenses and, in relation to expenses incurred after the judgment, for the reference in subrule (1)(b) to the date of the judgment substitute a reference to the date on which the expenses became payable.

78.04 Interest on legacies

Where a judgment directs an account of legacies, subject to a direction in the will or codicil or an order of the Court, interest shall be allowed on each legacy at the rate of 12% per annum from the end of one year after the testator's death.

78.05 Account or inquiry by Master

Unless the Court otherwise orders, the Master shall take an account or make an inquiry with respect to further proceedings under a judgment.

78.06 Master's order

- (1) The result of proceedings before the Master under a judgment shall be stated in the form of an order.
- (2) An order under this rule shall have immediate binding effect on the parties to the proceeding and a copy shall be served on such parties as the Master directs.
- (3) Subject to a direction of the Master under subrule (4) or otherwise, an order under this rule has effect as a final order disposing of the proceeding in which it is made.
- (4) The Master may give directions as to the further consideration of the proceeding.

78.07 Appeal from Master

Rules 77.05 and 77.06 apply to an order under rule 78.06.

Order 79 Moneys in Court

79.01 Application

Moneys or funds paid into Court are governed by this Order.

79.02 Litigants' fund

- (1) Subject to rule 79.04(1), moneys paid into Court shall, unless otherwise ordered, be paid into a bank account to the credit of an account entitled "Northern Territory Supreme Court Litigants' Fund" (in this order called *the Fund*).
- (2) An account referred to in subrule (1) shall be established with such bank as the Treasurer directs.
- (3) Until an account referred to in subrule (1) is established, moneys:
 - (a) on the commencement of this Order now held by the Master;
or
 - (b) after that commencement received by the Master,shall be held in or paid into the account known as the "Department of Law, Northern Territory Supreme Court Clearing Account" established at the Darwin Branch of Westpac Banking Corporation.
- (4) The signing officer and countersigning officer for the account shall be such persons as the Master designates from time to time.

79.03 Particulars of payment

An order which directs that moneys in Court be paid out or otherwise dealt with shall state the particulars of the payment out or other action to be taken by the Master.

79.04 Other application of moneys

- (1) The Court may, at any time, order that moneys paid into Court, or to be paid into Court, be credited or applied in a manner other than by payment into an account referred to in rule 79.02.
- (2) Where interest is earned on the moneys referred to in subrule (1), the Court may direct the disbursement of that interest.

79.05 Money in court or to be paid into Court for person under disability

- (1) Where an order is made that money in court or to be paid into Court be held for the benefit of a person under a disability and that order

does not direct by whom the money is to be held, the Master shall pay the money to the Public Trustee who shall hold it on trust for the benefit of the person under a disability.

- (2) A party to a proceeding in which an order is made for the payment of moneys for the benefit of a person under a disability shall, as soon as practicable, procure the authentication of that order.
- (3) As soon as practicable after authentication, the party obtaining the order shall serve a copy of it on the Public Trustee or on such other person as is under the order required to hold the money for the person under a disability.
- (4) The party ordered to pay moneys into court under an order to which this rule refers shall, unless the Court otherwise orders, within 14 days after the service on him of a copy of the authenticated order, pay those moneys into court.
- (5) Where moneys are received by the Master under an order of the Court, the Master shall give:
 - (a) to the party paying the moneys, a receipt for the moneys; and
 - (b) to the party obtaining the order, notice that the moneys have been received.

79.06 Delay

- (1) Where an order is made that a party pay moneys into court for the benefit of a person under a disability and it appears to the Master after due inquiry that loss has been occasioned to the person under a disability:
 - (a) through undue delay by a party or his solicitor in making the payment; or
 - (b) where the order was made on the approval of a compromise of a claim by the person under a disability, through undue delay by the solicitor for or the litigation guardian of the person under a disability in:
 - (i) obtaining the approval of the compromise;
 - (ii) procuring the authentication of the order; or
 - (iii) serving a copy of the order on the other party or as required by this Order,

the Master may order that the person responsible for the loss pay into court for the benefit of the person under a disability an amount by way of interest on the moneys received or to be received under the order.

- (2) The amount ordered to be paid under subrule (1) shall not exceed that derived by applying to the moneys for the period of the loss the rate fixed from time to time by the Chief Justice and the Chief Justice may fix a rate for the purposes of this rule accordingly.
- (3) The Master shall not make an order under subrule (1) without giving the person who appears to be responsible for the loss an opportunity to be heard.
- (4) A person affected by an order under subrule (1) may appeal to a Judge, and Rule 77.05, with the necessary changes, applies.
- (5) Where moneys are paid into court in accordance with an order under subrule (1), the Master shall deal with the amount as if it were paid into court under the original order.

79.07 Investment of moneys paid into court

Subject to this Order, the Master may, after consultation with the parties in a proceeding in which moneys are paid into court and pending the outcome of that proceeding, invest the money in such forms of investment as a trustee may invest trust funds under the *Trustee Act*.

79.07.1 Unclaimed money

- (1) All moneys which, before or after the commencement of this rule, have been paid into Court for the use of a party to a proceeding before the Court shall, if unclaimed for 3 years, be paid into the Consolidated Fund.
- (2) A person entitled to claim money paid under subrule (1) into the Consolidated Fund may apply to the Master for a certificate certifying the claimant's right to claim the money and the Master may issue such a certificate.
- (3) On receiving a certificate referred to in subsection (2), the Treasurer, if satisfied that the claimant is not precluded by the *Limitation Act* from claiming the amount, shall authorize payment of the money to the claimant or the claimant's agent.

79.08 Payment under order

Subject to rules 26.21(9) and 79.07, no moneys shall be paid out of the Fund otherwise than under an order of the Court.

79.09 Inquiry by bank unnecessary

Westpac Banking Corporation may, in respect of the account referred to in rule 79.02(3), receive moneys and make payment out without inquiry whether an order has been made.

Order 80 Service of foreign process

80.01 Application

This Order applies to the service in the Territory of a document in connection with civil or commercial proceedings pending before a court or other tribunal in a place outside the Territory where a letter of request from the court or tribunal requesting service on a person in the Territory is received by the Registry or a Deputy Master and:

- (a) the request is for service in accordance with a Convention; or
- (b) the Attorney-General certifies that effect ought to be given to the request.

80.02 Documents required

- (1) In order that service may be effected in accordance with this Order there shall be delivered to a Registrar, unless he otherwise directs:
 - (a) the document to be served and 2 copies of it;
 - (b) a copy of the letter of request; and
 - (c) if either the document to be served or the letter of request is not in English, a translation into English of the document or the letter and a copy of the translation.
- (2) Where subrule (1)(c) applies, the translation shall, unless a Registrar otherwise directs, bear a certificate of the translator, in English, stating that it is an accurate translation of the document or letter of request.

80.03 Service

- (1) A Registrar shall request the Sheriff to serve the document and a copy of the letter of request.
- (2) If either the document or the letter of request is not in English, a translation of the document or letter shall also be served.

- (3) The document, copy letter of request and a translation may be served in any manner in which originating process in the Court may be served, including substituted service in accordance with rule 6.09.
- (4) A proceeding for an order for substituted service shall be commenced by the Attorney-General by originating motion, which shall not name a defendant.

80.04 Affidavit of service

- (1) After the document, copy letter of request and any translation have been served or attempts to serve them have failed, the Sheriff shall file an affidavit made by the person who effected or attempted to effect service.
- (2) The affidavit shall:
 - (a) where the document, copy letter of request and any translation have been served – state the hour of the day, day of the week and date on which they were served, the place and mode of service and manner of identification of the person served; or
 - (b) where the document, copy letter of request and any translation have not been served – describe the attempts made to serve them.

80.05 Certificate

- (1) Where the request for service is made in accordance with a Convention, a Registrar shall give either:
 - (a) a certificate, sealed with the seal of the Court:
 - (i) certifying that the document, copy letter of request and any translation, were served on the person to be served, on the date and in the manner specified in the certificate or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and
 - (ii) certifying the amount of the costs incurred; or
 - (b) such other certificate as is appropriate to the terms of the relevant Convention.

- (2) Where the request for service is not made in accordance with a Convention, a Registrar shall give either:
 - (a) a certificate, sealed with the seal of the Court:
 - (i) annexing the letter of request, a copy of the document to be served and of any translation and a copy of the affidavit under rule 80.04;
 - (ii) identifying the annexures;
 - (iii) certifying that the manner of service of the documents and the proof of service are such as are required by the Rules of the Court regulating the service of originating process of the Court in the Territory or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and
 - (iv) certifying the amount of the costs incurred; or
 - (b) such other certificate as is appropriate to the terms of the letter of request.
- (3) A Registrar shall send the certificate to the Attorney-General or, if the letter of request or a relevant Convention so requires, to the appropriate consul or other authority.

Order 81 Obtaining evidence for external tribunal

81.01 Procedure

- (1) An application for an order for the examination of a witness in the Territory in relation to a matter pending before a court or tribunal in a place out of the Territory may be made by a person nominated for that purpose by the court or tribunal concerned or, if no person is so nominated, by the Solicitor for the Northern Territory with the consent of the Attorney-General.
- (2) The application shall be made by originating motion not joining a person as a defendant and shall be supported by affidavit to which shall be exhibited the letter of request, certificate or other document pursuant to which the application is made and, if that document is not in the English language, a translation in that language.

81.02 Examiner

The Court may make an order for the examination of the witness before a fit and proper person nominated by the person making the application or such other qualified person as it appoints (in this Order called *the examiner*).

81.03 Conduct of examination

- (1) An examination under this Order shall be conducted in accordance with this rule, unless the Court otherwise orders.
- (2) Subject to rules 81.04, 81.05 and 81.06, rules 41.02 to 41.10 inclusive apply to the examination as if:
 - (a) the matter pending before the court or tribunal concerned were a proceeding in the Court;
 - (b) the order for the examination were made under rule 41.01(1)(a) in that proceeding; and
 - (c) where the examiner is a Judge or the Master, an order were made under rule 41.01(1)(a) for the examination of a person before a Judge or the Master.

81.04 Attendance of non-party

Where the person on whose application an order is made under this Order is not a party to the matter pending before the court or tribunal concerned, the examiner may permit that person and his legal advisers to attend the examination.

81.05 Deposition and exhibits

- (1) Subrules (4) and (5) of rule 41.08 do not apply to an examination under this Order.
- (2) The examiner shall send the deposition to a Registrar.
- (3) Where the examiner receives an exhibit on the examination, he shall, on the conclusion of the examination, return the exhibit to the person producing it, unless the person consents to its retention by him.
- (4) Where the examiner retains an exhibit under subrule (3), he shall send it to a Registrar together with the deposition.

81.06 Certificate

On receipt of a deposition taken under this Order a Registrar shall:

- (a) give a certificate sealed with the seal of the Court annexing and identifying the letter of request, certificate or other document from the court or tribunal requesting the examination, the order of the Court for examination, the deposition and the exhibits (if any) received from the examiner; and
- (b) send the certificate and the annexures to the Attorney-General or, where the letter of request, certificate or other document was sent to the Registry or Registrar by some other person pursuant to a Convention, to that other person.

Chapter 2 Appeal rules

Order 82 Rules of general application

Part 1 Preliminary

82.01 Definitions

In this Chapter, unless the contrary intention appears:

Court, other than in Order 83 or 87, means the Court of Appeal or the Court of Criminal Appeal, as the case requires.

file means file in the Registry.

originating process means a notice of appeal, an application for leave to appeal or an application for an extension of time within which that notice shall be given or application made.

Registrar means:

- (a) in Orders 83 and 84 – the Registrar of the Supreme Court;
- (b) in Order 85 – the Registrar of the Supreme Court in his capacity as Registrar of the Court of Appeal; and
- (c) in Order 86 – the Registrar of the Court of Criminal Appeal constituted in accordance with section 407 of the Criminal Code,

and, in all cases, includes the Master.

Registry means the registry of the Supreme Court at Darwin.

summons means a summons under Chapter 1.

82.02 Relief from rules and non-compliance

Order 2 with the necessary changes, applies to this Chapter.

82.03 Proceedings wanting or in doubt

Where a person desires to commence, or take a step in, a proceeding, and the manner or form of procedure is not prescribed by the Act or the Criminal Code, as the case may be, or by this Chapter or any other Rules made under the Act or by or under any other Act, or the person is in doubt as to the manner or form of procedure, a Judge may, on application by the person, give

directions and the proceeding may be commenced or steps in a proceeding may be taken in accordance with those directions.

Part 2 General

82.04 Service

- (1) Subject to this Chapter, where service is required of a document referred to in this Chapter, it may be effected:
 - (a) in the case of an originating process:
 - (i) by serving in accordance with rule 6.03(1) a signed and sealed copy of the document; or
 - (ii) by delivering a signed and sealed copy to that party's address for service; and
 - (b) in any other case:
 - (i) by serving the document in the manner prescribed in paragraph (a); or
 - (ii) where personal service is not required, by serving it in accordance with rule 6.06.
- (2) A party's address for service is the address for service (if any) of that party in the proceeding from which this proceeding arises or, in case there is no such address, the address of his solicitor.

82.05 Signing of documents

- (1) An originating process shall be signed by the appellant himself or by his solicitor.
- (2) Any other notice required or authorized to be given for the purposes of this Order shall be in writing, and signed by the person giving the notice or by his solicitor.

Order 83 Appeals to the Supreme Court

Part 1 Preliminary

83.01 Definitions

In this Order, unless the contrary intention appears:

Acts means the *Justices Act, Local Court Act, Mining Act, Juvenile Justice Act, Community Welfare Act* and, subject to rule 83.03, any other Act of the Territory or of the Commonwealth which provides for a procedure in relation to appeals to the Court.

appeal means an appeal to the Court in pursuance of a law giving a right to appeal to the Court.

Court means the Supreme Court other than in its appellate jurisdiction.

decision includes a judgment, order, opinion, finding, direction or determination.

material date means:

- (a) where a decision is pronounced or given in or by a tribunal below – the date on which that decision is pronounced or given; or
- (b) where notice of a decision is given to the person who wishes to appeal by or on behalf of the tribunal below which made the decision – the date on which that notice is so given.

tribunal below means:

- (a) the court, tribunal or other body the decision of which; or
- (b) the person whose decision,
is under appeal.

83.02 Appeals generally

The procedure in relation to appeals under the Acts shall be in accordance with those Acts.

83.03 Application

This Order applies to an appeal to the Court to the extent that:

- (a) no other procedure is provided under the Acts; and
- (b) it does not conflict with any other law now in force, or in the future to be in force in the Territory,

but does not apply to a procedure under:

- (c) Part III of the Act; or
- (d) the Criminal Code.

Part 2 Appeals from decisions of tribunals

83.04 Time for appeal

An appeal shall be instituted within 28 days after the material date.

83.05 Institution of appeal

- (1) An appeal shall be instituted by filing a notice of appeal in accordance with Form 83A.
- (2) A notice of appeal and subsequent documents in an appeal shall be entitled:
 - (a) "In the matter of an appeal under" and shall name the Act or other law under which the appeal is commenced; and
 - (b) as between the party appellant and the party respondent.
- (3) On a notice of appeal being filed, the Registrar shall allocate a serial number to the proceeding and shall seal the original document and a sufficient number of copies for service and proof of service.
- (4) The serial number of a proceeding shall be endorsed on each document and each subsequent document filed in that proceeding.

83.06 Contents of notice of appeal

A notice of appeal shall state:

- (a) briefly but specifically the decision appealed against;
- (b) whether the appeal is from the whole or part only of the decision appealed against, and, if part only, what part;

- (c) the grounds of the appeal; and
- (d) what judgment, relief or decision the appellant seeks in lieu of that which is the subject of appeal.

83.07 Parties

- (1) A person who is directly affected by the relief sought in an appeal or is interested in maintaining the decision under appeal may be joined as a respondent.
- (2) The Court may order the addition or removal of a person as a party to an appeal.
- (3) A person shall not be made an appellant without his consent.

83.08 Filing with tribunal below

- (1) Where the tribunal below is a court, the appellant shall, on the date of instituting the appeal, file a copy of the notice of appeal instituting the appeal in the registry or office of that court.
- (2) Where the tribunal below is not a court, the appellant shall lodge a copy of the notice of appeal with an officer of the tribunal concerned with its records or process.

83.09 Stay

Subject to any law in force in the Territory, an appeal does not:

- (a) operate as a stay of execution or of proceedings under the decision appealed against; and
- (b) invalidate an intermediate act or proceeding,

except so far as the Court directs or, subject to a direction of the Court, as the tribunal below directs.

83.10 Service of notice of appeal

- (1) A notice of appeal shall be served:
 - (a) where the tribunal below is a party to the appeal – on the tribunal below; and
 - (b) on the respondent.
- (2) Service of a notice of appeal is effected:
 - (a) on a tribunal below – by compliance with rule 83.08; and

(b) on the respondent – by compliance with rule 82.04.

83.11 Security for costs

- (1) If a tribunal, a decision of which is the subject of an appeal, has power to award costs in respect of proceedings before it, the Court may, in special circumstances, order that such security as it thinks fit be given for the costs of the appeal.
- (2) Subject to subrule (1), no security for the costs of an appeal to the Court is required.

83.12 Notice of appearance

- (1) Where there is a respondent to an appeal, the notice of appeal shall be endorsed with a note that, before taking a step in the appeal and being heard in relation to it, the respondent shall file an appearance.
- (2) A respondent who has not filed an appearance in accordance with this rule shall not be heard except by leave of the Court.
- (3) An appearance to which subrule (1) refers shall be in accordance with Form 83B.

83.13 Directions

- (1) A notice of appeal under this Part shall state a date for a directions hearing.
- (2) The date to which subrule (1) refers shall be obtained from the Registry and shall be not earlier than 14 days after the date of institution of the appeal.
- (3) On a direction hearing, the Court shall make such orders as it thinks fit about the steps to be taken in the appeal and about the costs of the appeal (where relevant).
- (4) A proceeding under subrule (3) shall be before a Judge or the Master.

83.14 Date for hearing of appeal

Unless the Court otherwise orders, an appeal shall not be heard earlier than 28 days after service of the notice of appeal by which the appeal is instituted.

83.15 Amendment

- (1) A notice of appeal by which an appeal is instituted may be amended by the appellant without leave by filing a supplementary notice not later than 14 days before the day appointed under rule 83.13 for the directions hearing.
- (2) The appellant shall, on the day of filing the supplementary notice, serve it on the other parties and shall, where appropriate, file a copy of it in accordance with rule 83.08.

83.16 Cross-appeal

- (1) A respondent to an appeal who wishes to appeal from a decision or part of a decision or to seek a variation of a decision or part of the decision, need not institute a substantive appeal, but shall, within 7 days after the service on him of the notice of appeal, or within such further time as the Court allows:
 - (a) file a notice of cross-appeal; and
 - (b) serve a copy of that notice on the appellant and any other person affected by the relief which the respondent seeks.
- (2) In a notice of cross-appeal, a respondent shall:
 - (a) state the judgment, relief or decision which the respondent seeks in lieu of the decision of the tribunal below;
 - (b) set out a brief but specific statement of the grounds relied on in support of the cross-appeal; and
 - (c) state whether the appeal is from the whole or a part only of the decision appealed against and, if part only, what part.
- (3) Where a respondent proposes to contend that a matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of a part of the judgment pronounced, he need not give a notice of cross-appeal, but shall:
 - (a) give written notice of his contention to the appellant; and
 - (b) give written notice to the appellant of the record of evidence or documents before the tribunal below relevant to his contention.
- (4) The rules applicable to the form and service of a notice of appeal, with the necessary changes, apply to and in relation to a notice of cross-appeal as if it were a notice of appeal.

83.17 Setting down for hearing

An application under this Part shall be set down for hearing by the Registrar who shall notify the parties of the date appointed for the hearing.

83.18 Tribunal to produce records

- (1) On being served with, or on the filing of, a notice of appeal, the tribunal below shall, as soon as practicable, produce to the Registrar its records relevant to the appeal.
- (2) Without limiting the generality of subrule (1), the records relevant to an appeal shall include:
 - (a) the original of the transcript of evidence;
 - (b) the exhibits; and
 - (c) the reasons for the decision.

83.19 Want of prosecution

Rule 84.13, with the necessary changes, applies to and in relation to an appeal.

83.20 Procedure at hearing

- (1) Subject to rule 83.13(3), the appellant shall be the party who begins at the hearing.
- (2) Where an appeal is by way of rehearing, either party may call new evidence at the hearing.

Part 3 Leave to appeal

83.21 Application of Part

This Part applies where an appeal lies to the Court with leave only.

83.22 Procedure

- (1) An application under this Part for leave to appeal shall be made in accordance with Form 83C.
- (2) An application to which subrule (1) refers shall be accompanied by an affidavit showing:
 - (a) the nature of the case;
 - (b) the questions involved; and

(c) the reasons why leave should be given.

83.23 Time for filing application

- (1) An application under this Part shall be filed:
 - (a) within 28 days after the material date; or
 - (b) by such later date as is fixed for that purpose by the tribunal below.
- (2) Where an application under this Part is not filed within the time limited by subrule (1), an order shall be sought in the application that compliance with that subrule be dispensed with.

83.24 Time for service

An application under this Part and accompanying affidavit shall be served within 7 days after the filing of the application on each person who was a party to, or was given leave to intervene in, the proceeding in the tribunal below.

83.25 Appearance

A respondent to an application under this Part need not file an appearance but shall file a notice furnishing an address for service.

83.26 Time for filing and service of affidavits

A respondent who desires to adduce evidence in answer shall file and serve his affidavits within 14 days after the service of the application on him.

83.27 Directions

- (1) An application under this Order shall state a date for a directions hearing.
- (2) The date to which subrule (1) refers shall be obtained from the Registry and shall be a date not earlier than 14 days after the date of the making of the application.
- (3) On a directions hearing, the Court shall make such orders as it thinks fit about the steps to be taken in the application and about the costs of the application.

83.28 Application of other rules

Rules 83.17 to 83.20 inclusive, with the necessary changes, apply to leave to appeal under this Part.

the notice of appeal or the application shall bear a note that before taking a step in the proceeding, the respondent shall enter an appearance in the Registry, and he shall enter an appearance accordingly.

- (2) An appearance to which subrule (1) refers shall be in accordance with Form 83B.

84.05 Amendment by supplementary notice

- (1) A notice of appeal may, before the date of the appointment made under rule 84.03, be amended without leave by filing a supplementary notice.
- (2) A party who files a supplementary notice under subrule (1) shall serve and file it as if it were a notice of appeal.
- (3) A supplementary notice filed under subrule (1) shall, as far as possible, be in the form of a notice of appeal.

84.06 Cross-appeal

- (1) A respondent who desires to appeal from the whole or any part of a conviction, special finding, sentence, determination, declaration, order or judgment, or to seek a variation of the whole or any part of a conviction, special finding, sentence, determination, order or judgment, need not institute a substantive appeal, but shall, within 14 days after the service on him of the notice of appeal, or within such further time as the Court allows:
- (a) file a notice of cross-appeal; and
- (b) serve a copy of that notice on the appellant and any other person affected by the relief which he seeks.
- (2) A notice of cross-appeal shall state:
- (a) in the case of a cross-appeal in the civil jurisdiction – whether the whole or part only, and what part, of the judgment is the subject of the cross-appeal;
- (b) in the case of a cross-appeal in the criminal jurisdiction:
- (i) where the cross-appeal is by a person convicted – whether the cross-appeal is against conviction or a special finding as referred to in section 410(a) of the Criminal Code; or

- (ii) where the cross-appeal is under section 414 of the Criminal Code by the Attorney-General – what part of the sentence, determination, declaration or order is the subject of the cross-appeal; and
- (c) in any case:
 - (i) briefly, but specifically, the grounds relied on in support of the cross-appeal; and
 - (ii) what judgment or relief the respondent seeks in lieu of that which is the subject of the cross-appeal.
- (3) Where a respondent proposes to contend that a matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of a part of the judgment pronounced, he need not give a notice of cross-appeal but shall:
 - (a) give written notice of his contention to the appellant;
 - (b) give written notice to the appellant of the record of evidence or documents before the Court of trial relevant to his contention, for inclusion in the appellant's draft index to be prepared in accordance with rule 84.07; and
 - (c) at the appointment to settle the appeal papers, request the Registrar to include that record of evidence or documents in the appeal papers.
- (4) The rules applicable to the form and service of a notice of appeal, with the necessary changes, apply to and in relation to a notice of cross-appeal as if it were a notice of appeal.

84.07 Draft index of appeal papers

- (1) Before the date appointed under rule 84.08 for settling appeal papers, an appellant shall prepare and file a draft index of the appeal papers.
- (2) An appellant shall, within a reasonable time before the date appointed for settling appeal papers, serve on the respondent the draft index to which subrule (1) refers.
- (3) A draft index shall be prepared to conform as closely as possible to the example in Form 84A.

84.08 Settlement

At an appointment to settle the appeal papers, the Registrar shall:

- (a) determine what documents and matters shall be included in the appeal papers, the order of inclusion and such other matters as he thinks fit concerning the preparation of copies of the appeal papers;
- (b) in accordance with rule 84.10 settle the index prepared;
- (c) determine the number of copies of the appeal papers required and the time within which those copies are to be filed and served;
- (d) obtain an estimate of the duration of the hearing; and
- (e) if practicable, fix a date for hearing or list the appeal for hearing.

84.09 Collection of papers

- (1) Before the date appointed for settling appeal papers, an appellant shall obtain and file:
 - (a) the reasons for judgment or the summing up by the Judge of the court of trial certified by the Judge's Associate; and
 - (b) a copy of the transcript of the proceedings obtained from the Court Reporting Branch of the Supreme Court and corrected in accordance with subrules (2) and (3).
- (2) Where an appellant obtains a copy of the transcript referred to in subrule (1)(b), he shall:
 - (a) correct any errors that appear in it;
 - (b) submit a list of his corrections to the respondent; and
 - (c) afford the respondent a reasonable opportunity to examine the transcript and corrections.
- (3) Where parties disagree on the accuracy of a part of a transcript, or are unable to agree on a correction, the question shall be submitted to the Registrar for directions on that matter.

84.10 Preparation of appeal papers

- (1) The title page of appeal papers shall give the title of the proceedings and the names of the solicitors for each party and their addresses for service.

- (2) After the title page, there shall be an index of the documents comprising the appeal papers showing the date and page number of each document.
- (3) Appeal papers shall be paginated and the documents arranged as follows:
 - (a) in the case of an appeal in the civil jurisdiction:
 - (i) process and pleading;
 - (ii) evidence, oral or affidavit;
 - (iii) testimony taken on commission or before an examiner and put in or used as evidence;
 - (iv) exhibits, arranged in the order in which they have been lettered or numbered as exhibits in the Supreme Court or other documents before that Court;
 - (v) if the judgment was in respect of an appeal to the Supreme Court from a lower court:
 - (A) the reasons for the decision of the lower court;
 - (B) the formal decision of that court; and
 - (C) the notice of appeal or other document whereby the appeal came for hearing before the Supreme Court;
 - (vi) the reasons for the judgment of the Supreme Court;
 - (vii) the formal judgment or order of the Supreme Court; and
 - (viii) the notice of appeal and notice of cross-appeal where relevant; and
 - (b) in the case of an appeal in the criminal jurisdiction:
 - (i) indictment;
 - (ii) evidence, oral or affidavit;
 - (iii) exhibits and other documents produced to the court of trial, arranged in the order in which they have been lettered or numbered as exhibits in that court or produced to that court;
 - (iv) the trial Judge's instructions or summing up to the jury;

- (v) the trial Judge's remarks on sentence;
 - (vi) the notice of appeal and any supplementary notice of appeal or cross-appeal; and
 - (vii) the relevant certificate required by subrule (6).
- (4) The date and a short description of the nature of each document shall precede it, but formal headings shall not be printed or copied and jurats, formal identification of exhibits and the like shall be omitted.
- (5) Interrogatories and answers and affidavits shall not be copied except insofar as they were put in evidence.
- (6) A corrected copy of the appeal papers, as settled by the Registrar, shall be filed with a certificate by the parties or their solicitors that the transcript has been examined and is correct.
- (7) Appeal papers:
- (a) need not be in bound and printed form but shall be clear and legible and securely fastened; and
 - (b) shall be prepared to the satisfaction of the Registrar.
- (8) The requirements of this rule are subject to such direction as are given by the Court.
- (9) An appellant shall file and serve such number of copies of appeal papers, within such time, as determined under rule 84.08(c).
- (10) Where the text of an oral judgment or the instructions or summing up to the jury of a Judge of the court of trial is to be included in appeal papers, a copy shall first be submitted to that Judge for correction and shall, when included in the appeal papers, be accompanied by a certificate from that Judge's Associate that this has been done and that the copy is a correct copy.

84.11 Setting down appeal

- (1) Unless an appeal is set down or listed for hearing in accordance with rule 84.08(e), the appellant shall set the appeal down for hearing in accordance with this rule.
- (2) Subject to this Chapter and to an order of the Court, an appeal shall be set down for hearing at the first sittings of the Court of Appeal or Court of Criminal Appeal, as the case may be, appointed to be held at Darwin after the giving of a request under subrule (4).

- (3) Unless the Court otherwise allows, an appeal shall be set down not later than 14 days before the day appointed for the commencement of the sittings.
- (4) An appeal shall be set down in accordance with this rule by the appellant giving to the Registrar a request in accordance with Form 84B, as the case requires.
- (5) On the day on which an appeal is under this rule set down for hearing, notice of the setting down shall be given by the Registrar to the appellant and the respondent.
- (6) The Court may at any time, if satisfied that it is expedient to do so, order that an appeal be heard at a place or time other than that fixed in accordance with this rule.
- (7) An appeal shall not be set down for hearing unless an index has been settled in accordance with this Part.

84.12 Expediting appeals

- (1) The Court or a Judge may, at any time, make such orders as it or he thinks fit for the expediting of an appeal.
- (2) A party requiring leave to appeal may apply on summons to the Court or to a Judge for an order that the application for leave to appeal be heard concurrently with, or immediately before, the hearing of the appeal, and for such consequential orders as may be necessary.

84.13 Want of prosecution

- (1) Where an appellant has not done an act required to be done for the purpose of prosecuting his appeal or otherwise has not prosecuted his appeal with due diligence, the Court may:
 - (a) order that the appeal be dismissed for want of prosecution;
 - (b) fix a time peremptorily for the doing of the act or an act or thing and at the same time order that, on non-compliance, the appeal stand dismissed for want of prosecution or, subsequently and in the event of non-compliance, order that it be so dismissed; or
 - (c) make such other order as it thinks fit.
- (2) A respondent may apply on summons for an order under subrule (1) or the Court, after notice to the parties has been given by the Registrar, may make orders in accordance with subrule (1) of its own motion.

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

84.14 Stay

- (1) Subject to any other law in force in the Territory, an appeal shall not:
 - (a) operate as a stay of execution or of proceedings under the judgment from which it was made; or
 - (b) invalidate an intermediate act or proceeding,
except so far as the court below directs.
- (2) The Court may vary or vacate a direction given under subrule (1).

84.15 Discontinuance of appeal

- (1) An appellant may, at any time, file and serve a notice of discontinuance of the appeal and, on his so doing, the appeal shall be abandoned.
- (2) A notice of discontinuance referred to in subrule (1) shall be in accordance with Form 84C.
- (3) A notice of discontinuance filed under subrule (1) by an appellant does not affect any other appellant in the appeal.
- (4) An appellant filing a notice of discontinuance under subrule (1), other than in a criminal matter, is liable to pay the costs of the other party or parties occasioned by his appeal.

84.16 Competency of appeal

- (1) A respondent may apply on summons at any time for an order dismissing an appeal as incompetent.
- (2) On the hearing of a summons under subrule (1), the burden of establishing the competency of the appeal is on the appellant.
- (3) Where, in an appeal to the Court of Appeal, a respondent does not move under subrule (1) but the appeal nevertheless is dismissed by the Court as incompetent, the respondent shall not, unless the Court otherwise orders, receive any costs of the appeal and the Court of Appeal may order that he pay the appellant's costs of the appeal proving useless or unnecessary.

84.17 List of authorities and summary of submissions

Not later than 48 hours before the hearing of an appeal is scheduled to commence, each party shall file 5 copies of:

- (a) a list of authorities; and
- (b) a summary of submissions.

84.18 List of authorities

- (1) The list of authorities referred to in rule 84.17(a) shall be divided into 2 parts; the first part shall set out the authorities, legislation and legal writings which counsel definitely intends to cite to the Court (but only leading authorities, not cases in which they have been followed or applied at first instance); and the second part shall contain those authorities which might be called for during the course of the appeal but which counsel does not intend to cite unless called upon to do so.
- (2) If a party intends to refer the Court to first-instance decisions in which the leading authorities have been followed or applied, these too shall be contained in the second part of the list of authorities.

84.19 Summary of submissions

- (1) The summary of submissions referred to in rule 84.17(b) shall set out, in numbered paragraphs, an outline of each contention of law or fact on which counsel wishes to rely and all necessary references to the appeal book, to statutes and to the principal authorities relied on shall be included.
- (2) Unless the case is one of unusual complexity, the summary of submissions shall not exceed 3 pages.
- (3) Where a party fails to provide a summary of submissions in accordance with this rule, the Court may disallow such part of the fees of counsel as it thinks fit.

84.20 Costs

Except for the costs of copying, no additional costs shall be allowed for preparing lists of authorities and summaries of submissions referred to in rule 84.17.

84.21 Service of lists and summaries

Copies of the lists of authorities and summaries of submissions referred to in rule 84.17 which have been filed shall be served on every other party to the appeal.

84.22 Chronology

- (1) Subject to subrule (2), at the commencement of the hearing of an appeal, counsel for the appellant shall hand up to the Court 5 copies of a chronological summary of the events out of which the appeal arises.
- (2) Subrule (1) need not be complied with if the point to be argued does not require an understanding of the sequence of events leading to the judgment under appeal.

84.23 Further evidence on appeal

- (1) This rule applies, unless the Court otherwise directs, to an application to the Court to receive evidence in a proceeding on an appeal additional to evidence in the Supreme Court.
- (2) An application under this rule shall be made by motion on the hearing of the appeal without filing or serving any form of application.
- (3) The grounds of an application to which this rule applies shall be stated in an affidavit.
- (4) Evidence necessary to establish the grounds of an application to which this rule applies, and the evidence which the applicant wishes the Court to receive, shall be given by affidavit.
- (5) An applicant shall file the affidavit required under this rule not later than 21 days before the hearing of the appeal.
- (6) The evidence of a party to an appeal, other than the applicant, shall, unless the Court or a Judge otherwise orders, be given by affidavit filed not later than 14 days before the hearing of the appeal.
- (7) A party to an appeal shall, not later than the time limited for him to file an affidavit under this rule:
 - (a) lodge as many copies of the affidavit as the Registrar directs; and
 - (b) serve 2 copies of the affidavit on each other party to the appeal.

84.24 Directions by Master or Registrar

At any time after the filing of a notice of appeal, the Registrar may give directions in relation to any matter within his jurisdiction which appears to him to be a convenient matter on which to give directions.

84.25 Interlocutory applications

The rules in Chapter 1 relating to interlocutory applications or applications on summons apply to interlocutory applications and applications on summons in proceedings under this Chapter.

84.26 Form of orders

An order of the Court or the Registrar shall be in accordance with Form 84D.

Order 85 Civil appeals

Part 1 Preliminary

85.01 Definitions

In this Part, unless the contrary intention appears:

appeal means an appeal under Part III of the Act.

application means an application for leave to appeal referred to in section 53 of the Act.

Court of Appeal means the Court of Appeal of the Northern Territory of Australia within the meaning of section 51(2) of the Act.

judgment means the judgment appealed from or from which leave to appeal is sought.

material date, in relation to an appeal or an application for leave to appeal, means:

- (a) in the case of a judgment in a proceeding entered or to be entered pursuant to a direction or leave for entry – the date of direction or leave;
- (b) in the case of any other judgment in a proceeding – the date of entry;
- (c) in the case of an order in a proceeding – the date on which the order is made;

- (d) in the case of a verdict in a proceeding – the date on which the verdict is given; and
- (e) in the case of any other decision – the date on which the decision is pronounced or given.

presiding Judge means the Judge whose judgment, or part of whose judgment, is appealed from or from whose judgment leave to appeal is sought.

proceeding means the proceeding out of which an appeal arose or out of which leave to appeal is sought.

Supreme Court means the Supreme Court exercising its jurisdiction at first instance.

Part 2 Application for leave to appeal

85.02 How applications for leave to appeal made

Where an appeal from a judgment lies to the Court of Appeal only with leave, an application shall be determined by that Court after an oral hearing.

85.03 Time for filing

- (1) An application shall be filed within 28 days after:
 - (a) the material date; or
 - (b) a later date fixed for that purpose by the presiding Judge.
- (2) Where an application is not filed within the time limited by subrule (1), an order shall be sought in the application that the Court of Appeal dispense with compliance with that subrule.

85.04 Form of application

- (1) An application shall be made in accordance with Form 85A.
- (2) An application shall be accompanied by an affidavit showing:
 - (a) the nature of the case or the proceeding relating to the application;
 - (b) the questions involved; and

(c) the reasons why:

- (i) where rule 85.03(2) applies – a dispensation should be granted; and
- (ii) in any case – leave should be given.

85.05 Time for service

An application and accompanying affidavit or a notice of appeal shall, within 2 days after filing, be served on each person who was a party to, or given leave to intervene in, the proceedings.

85.06 Time for filing and service of affidavits by respondent

A respondent who desires to adduce evidence in an application shall, within 14 days after the service of the application on him, file and serve his affidavit.

85.07 Setting down for hearing

- (1) An application shall be set down by the Registrar for hearing.
- (2) The Registrar shall notify the parties of the date appointed under subrule (1) for a hearing or decision.

Part 3 Appeals

85.08 Interpretation

Where the Court of Appeal directs that a party other than the appellant shall have the carriage of an appeal or of a proceeding under this Order, this Part applies as if that party were included in the description "appellant".

85.09 Form and filing of notice of appeal

An appeal shall be instituted by filing a notice of appeal in accordance with Form 85B.

85.10 Title of proceeding

- (1) A notice of appeal and all subsequent documents filed in an appeal shall be entitled "In the Court of Appeal of the Northern Territory of Australia".
- (2) A notice of appeal shall state:
 - (a) whether the whole or part only, and what part, of the judgment is appealed from;

- (b) briefly, but specifically, the grounds relied on in support of the appeal; and
 - (c) what judgment or relief the appellant seeks in lieu of that which is appealed from.
- (3) Where an appeal is brought by leave of the presiding Judge or the Court of Appeal, the notice of appeal shall state that fact and the date on which that leave was granted.

85.11 Parties

- (1) Each party to a proceeding who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment appealed from shall be joined as a party appellant or respondent to the appeal.
- (2) The Court of Appeal or a Judge may order the addition or removal of a person as a party appellant or respondent to an appeal.
- (3) A person shall not be made an appellant without his consent.

85.12 Time for filing and service of notice of appeal

- (1) A notice of appeal shall be filed and served:
- (a) subject to paragraph (b), within 28 days after:
 - (i) the material date; or
 - (ii) the date on which leave to appeal was granted;
 - (b) before such date as is fixed for that purpose by the presiding Judge granting leave to appeal; or
 - (c) within such further time as is allowed by a Judge upon application filed within the period referred to in paragraph (a) or before the date, if any, fixed under paragraph (b).
- (2) Notwithstanding anything in subrule (1), a Judge, for special reasons, may at any time give leave to file and serve a notice of appeal.
- (3) Where leave is sought under subrule (2), the person seeking leave may present his case and argument to the Court of Appeal in writing in accordance with rule 85.14.
- (4) An application for leave referred to in subrule (2) shall be in accordance with Form 85C.

85.13 Security for costs

Unless the Court of Appeal or a Judge otherwise directs, no security for the costs of an appeal to the Court of Appeal is required.

85.14 Written submissions

- (1) Subject to subrule (3), where a party to an appeal intends to prepare and file written submissions he shall serve on each other party to the appeal a notice of that intention.
- (2) A notice to which subrule (1) refers may be subscribed to the notice of appeal.
- (3) Where a date for the hearing of an appeal has been fixed, a party shall not, unless the Court of Appeal or a Judge otherwise orders, serve a notice under subrule (1) later than 14 days before that date.
- (4) Where a notice under subrule (1) is served on a party, he may, by notice filed within 2 days after service of the notice under subrule (1), object to the use of written submissions.
- (5) A party filing a notice of objection under subrule (4) shall, on the day of filing it, serve the notice on each other party to the appeal.
- (6) On the filing of a notice of objection under subrule (4), the Registrar shall immediately obtain the direction of the Chief Justice or the senior Judge available and shall serve notice on the parties of the direction so given.

85.15 Directions on written submissions

- (1) The Court of Appeal may, of its own motion, direct the preparation of written submissions.
- (2) The Registrar shall serve notice on the parties of a direction under subrule (1).

85.16 Preparation of written submissions

- (1) Subject to a direction under rule 85.14(6), on service on him of a notice to which rule 85.14(1) refers, a party shall prepare written submissions.
- (2) On service on him of a notice of a direction under rule 85.15, a party shall prepare written submissions.

- (3) Written submissions:
- (a) shall be divided into paragraphs numbered consecutively;
 - (b) shall state concisely:
 - (i) the circumstances out of which the appeal arises;
 - (ii) the contentions to be urged by the party concerned; and
 - (iii) the reasons relied on; and
 - (c) shall, so far as practicable, refer to a matter in the copies of appeal papers by page number and shall not extract that matter.

85.17 Filing and lodgement of written submissions

- (1) Subject to a direction under rule 85.14(6) or 85.15 each party required to prepare written submissions shall, not later than 10 days after service on him of a notice under rule 85.14(1) or 85.15:
- (a) file his written submissions; and
 - (b) lodge with the Registrar such number of copies of the written submissions as the Registrar directs.
- (2) A party filing written submissions in accordance with subrule (1) shall, on the day of filing, serve a copy of the written submissions on each other party.

Order 86 Criminal appeals

Part 1 Preliminary

86.01 Definitions

In this Order, unless the contrary intention appears:

Court of Criminal Appeal means the Court of Criminal Appeal constituted in accordance with section 407 of the Criminal Code.

court of trial has the same meaning as it has in section 406(1) of the Criminal Code.

Director means the Director of Correctional Services appointed under section 6 of the *Prisons (Correctional Services) Act*.

proper officer, in relation to a court, means an officer of the court who is authorized to:

- (a) receive documents on behalf of the Court; or
- (b) do an act or thing for or on behalf of the Court, the doing of which is required for the purposes of, or is referred to in, this Chapter.

86.01.1. Application of this order to appeal under *Crimes (Forfeiture of Proceeds) Act*

For the purposes of section 60(6) of the *Crimes (Forfeiture of Proceeds) Act*, an appeal lies to the Court of Criminal Appeal and this Order, with the necessary changes, applies to such an appeal and to an appeal under the other provisions of that section.

86.02 Title of proceedings, &c.

- (1) A notice of appeal, application for leave to appeal, any other originating application and all subsequent documents filed in an appeal, shall be entitled "In the Court of Criminal Appeal of the Northern Territory of Australia".
- (2) A notice of appeal shall be entitled as between the party appellant and the party respondent.
- (3) An application shall be entitled as between the party applicant and the party respondent.

86.03 Signing of documents

Where, on the trial of a person entitled to appeal (in this rule called **the appellant**), it has been contended that he was not responsible according to law for his actions on the ground referred to in section 35(1) of the Criminal Code, a notice or other document required by this Order to be filed or given and signed by the appellant may be given and signed by his solicitor or by another person authorized to act on the appellant's behalf.

Part 2 General

86.04 Certificate of trial Judge

- (1) A certificate of the Judge of the court of trial given under section 410(b) of the Criminal Code shall be in accordance with Form 86A and shall be given to the Registrar.
- (2) The Judge of the court of trial, in a case in which he considers it desirable so to do, may, in accordance with section 410(b) of the

Criminal Code, inform the person convicted before him that the case is, in the Judge's opinion, one in which there are sufficient grounds for an appeal to the Court, and may give to that person a certificate in the form referred to in subrule (1).

- (3) A certificate referred to in subrule (1):
- (a) may be given at the trial or within 10 days after conviction; and
 - (b) shall be filed by the Registrar with the notice of appeal to which it relates.

86.05 Appeals where fine only imposed

- (1) Where a person has, on his conviction, been sentenced to payment of a fine and, in default of payment, to imprisonment, the person lawfully authorized to receive that fine shall, on receiving it, retain it until the determination of any appeal in relation to that conviction or sentence.
- (2) Where a person remains in custody in default of payment of a fine, he shall be deemed, for the purposes of this Order, to be a person sentenced to imprisonment.
- (3) Where:
- (a) a person has been convicted and is sentenced to the payment of a fine and, in default of payment, to imprisonment; and
 - (b) that person informs the Judge of the court of trial that he wishes to appeal against his conviction to the Court of Criminal Appeal on grounds of law alone or, with the certificate of the Judge of the court of trial, on a ground referred to in section 410(b) of the Criminal Code,

the Judge of the court of trial may, if he thinks fit, order that person to enter immediately into a recognizance, in such amount and with or without sureties in such amount as the Judge thinks fit, to prosecute his appeal.

- (4) The Judge of the court of trial making an order under subrule (3) may order that payment of the fine be made at the final determination of the appeal, if it be dismissed, to the Registrar or to such other person as the Judge thinks fit.
- (5) A surety becoming bound by recognizance under this rule shall have all the duties, responsibilities, liabilities and powers of a person, other than an accused person, who enters into an agreement under the *Bail Act*.

- (6) The recognizances of an appellant and of his surety entered into under this rule shall be held in the custody of the Registrar.
- (7) An appellant who has been sentenced to the payment of a fine and who has paid that fine or a part of it in accordance with that sentence shall, in the event of his appeal being successful, be entitled, subject to the order of the Court of Criminal Appeal, to the return of the amount or part of it that he has paid.
- (8) Where a person to whom subrule (3) applies does not, within 14 days after his conviction and sentence, file in the Registry and file and serve in accordance with this Order:
 - (a) where his appeal is on a ground of law – a notice of appeal on that ground; or
 - (b) where his appeal is with a certificate of the Judge of the court of trial on a ground referred to in section 410(b) of the Criminal Code – a notice of appeal on that ground,the Registrar shall report the omission to the Court of Criminal Appeal.
- (9) The Court of Criminal Appeal receiving a report of the Registrar under subrule (8) may, after notice in accordance with Forms 86B and 86C has been given by the Registrar to the convicted person and his surety (if any) respectively, order the recognizances of that person and his surety be forfeited.
- (10) Where the Court of Criminal Appeal has made an order in accordance with subrule (9), it may order that a warrant in accordance with Form 86D issue for the apprehension of the appellant and may, by warrant of committal in accordance with Form 86E, commit him to prison in default of payment of his fine, or may make such other order as it thinks fit.

86.06 Custody of exhibits used at trial

- (1) The Judge of the court of trial may make such order as he thinks fit for the custody, disposal or production of a document, exhibit or other thing produced or tendered at the trial.
- (2) A document, exhibit or other thing produced or tendered at a trial shall be retained by the Registrar unless the Judge of the court of trial orders otherwise.

86.07 Certificate of conviction

- (1) A proper officer shall not issue a certificate of conviction of a person convicted in the court of trial, except:
 - (a) after a period of 28 days after the day on which the conviction took place; or
 - (b) in the event of the proper officer being informed by the Registrar, within that period, that an appeal has been filed, until after the determination of the appeal.
- (2) Where, after the expiration of the period referred to in subrule (1), an application is made to the proper officer to issue a certificate of conviction, he shall not issue the certificate unless he is satisfied that there is no appeal then pending in the Court of Criminal Appeal against that conviction.
- (3) A person who wishes to obtain a certificate of conviction from a proper officer shall obtain from the Registrar a certificate, in such form as the Registrar thinks fit, that no appeal against the conviction is then pending.
- (4) A certificate of conviction referred to in this rule shall be in accordance with Form 86F.
- (5) In this Rule, ***appeal*** includes an application for leave to appeal.

86.08 Limitation on grounds of appeal

No direction, omission to direct or decision in relation to the admission or rejection of evidence of the Judge of the court of trial shall, without the leave of the Court of Criminal Appeal, be allowed as a ground for appeal, or for an application for leave to appeal, unless objection was taken at the trial to the direction, omission or decision by the party appealing or applying for leave to appeal.

86.09 Consequential orders

- (1) Where, on the conviction of a person, the Judge of the court of trial makes consequential orders, that Judge or the Court of Criminal Appeal may, on an appeal being instituted under this Chapter by the person convicted or under section 414 of the Criminal Code by the Attorney-General, make, on application on notice, such orders or give such directions in relation to:
 - (a) the suspension of those orders or the effect of them pending the final hearing of the appeal; or

- (b) the vesting preservation or disposition of property the subject matter of those orders,
- on such terms as the Judge or the Court of Criminal Appeal thinks fit.
- (2) Subject to subrule (1)(b), where, on a conviction, the Judge of the court of trial orders in pursuance of a law in force in the Northern Territory that any property, matter or thing be destroyed or forfeited, the order:
- (a) shall be suspended for 28 days from the date of its being made; and
- (b) in the event of an appeal to the Court of Criminal Appeal, shall be further suspended for 28 days from the date of determination of the appeal.
- (3) Where, on conviction of a person for an offence, a claim may be made or proceedings may be taken under a law against that person or another person in consequence of that conviction, those proceedings shall not be taken:
- (a) until after the period of 28 days, or after such further time as a Judge orders; and
- (b) in the event of an appeal to the Court of Criminal Appeal, until the expiration of 28 days from the date of determination of the appeal.
- (4) A person affected by an order to which this rule applies may, with the leave of the Court of Criminal Appeal, be heard on the final determination of an appeal, before an order to which this rule applies is varied or annulled by that Court.

Part 3 Application for leave to appeal

86.10 Form of application

- (1) An application under this Part shall be made in accordance with Form 86G.
- (2) An application shall be accompanied by an affidavit showing:
- (a) the nature of the appeal;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

86.11 Time for service

An application under this Part and the accompanying affidavit, within 2 days after filing, shall be served on each person who was a party to, or given leave to intervene in, the proceedings resulting in the decision in respect of which leave to appeal is sought.

86.12 Time for filing and service of affidavits by respondent

A respondent who desires to adduce evidence in an application under this Part shall, within 14 days after the service of the application on him, file and serve his affidavit.

86.13 Setting down for hearing

- (1) An application under this Part shall be set down by the Registrar for hearing or, if the application is to be determined on written submissions, for decision.
- (2) The Registrar shall, in writing, notify the parties interested of the date appointed for a hearing or decision under subrule (1).

86.14 Application for leave deemed notice of appeal

Where the Court of Criminal Appeal has given an appellant leave to appeal, it shall not be necessary for that appellant to give a notice of appeal under Part 4, but the application for leave to appeal shall, in that case, be deemed to be a notice of appeal.

Part 4 Appeals

86.15 Form of notice of appeal

- (1) An appeal shall be instituted by filing a notice of appeal which shall be in accordance with Form 86H.
- (2) A notice of appeal shall state:
 - (a) whether the appeal is against conviction or a special finding as referred to in section 410(a) of the Criminal Code;
 - (b) briefly, but specifically, the grounds relied on in support of the appeal; and
 - (c) what judgment or relief the appellant seeks in lieu of that which is the subject of the appeal.

- (3) Where an appeal is brought under section 410(b) of the Criminal Code on a certificate of the Judge of the court of trial, the notice of appeal shall state that fact and the date on which the certificate was granted.
- (4) Where the Attorney-General appeals under section 414 of the Criminal Code, the notice of appeal shall, in addition to such other matters as are required by subrule (1)(b) and (c), state whether the whole or part only, and what part, of the sentence, determination, declaration or order is the subject of the appeal.

Part 5 Other proceedings

86.16 Reservation of points of law

- (1) A case stating questions of law reserved under section 408 or 409 of the Criminal Code on the trial of a person indicted for an indictable offence shall set out such facts only as are relevant to raise the questions of law reserved.
- (2) Where a question turns on the form of the indictment, so much of the indictment shall be set out in the case as raises the question.
- (3) A case stating a question of law reserved under section 408 of the Criminal Code shall state whether judgment on the conviction was pronounced and respited, or was postponed, and whether the convicted person was committed to prison or admitted to bail to render himself in execution or receive judgment.
- (4) A case referred to in this rule shall be transmitted without delay by the Judge by whom it is signed to the Registrar, who shall:
 - (a) set the case down for hearing on the first day on which the Court of Criminal Appeal is next appointed to sit;
 - (b) cause a copy of the case to be left at the chambers of each of the Judges appointed to sit in that Court; and
 - (c) deliver a copy of the case to the Solicitor for the Northern Territory and to the appellant or his solicitor not later than 4 days before the day fixed for the hearing.
- (5) The Judge by whom a case referred to in this rule is stated may amend it at any time before argument.
- (6) The person on whose conviction a question of law has been reserved under section 408 of the Criminal Code shall, for the purpose of this Order, be taken to be an appellant who has appealed under section 410(a) of the Criminal Code but in all other

cases the Attorney-General shall be taken to be the appellant.

- (7) The duties, responsibilities, liabilities and benefits applicable to a person on bail under the *Bail Act* shall, as far as possible, apply to a person admitted to bail in pursuance of section 408(2) of the Criminal Code.

86.17 Applications

An application under this Order, except an application for leave to appeal or where this Part provides otherwise, shall be made by summons supported by affidavit and Order 46 of Chapter 1, with the necessary changes, applies to such an application.

86.18 References, &c.

- (1) A reference under section 414(2) of the Criminal Code shall be filed and shall be in accordance with Form 86J.
- (2) A notice of reference required by section 414(3) of the Criminal Code to be given shall be given by the Attorney-General's serving a copy of the reference on the person acquitted.
- (3) A reference under section 426(2) of the Criminal Code by the Registrar shall be in accordance with Form 86K.
- (4) The Registrar shall:
 - (a) set down for consideration by the Court of Criminal Appeal a reference referred to in subrule (1) or (3) at the first sittings of that Court to take place no earlier than 21 days after the reference is given;
 - (b) endorse on that reference the date for which it has been set down for consideration; and
 - (c) seal sufficient copies of the reference for each party to the proceeding to receive a copy and for proof of service.

86.19 Other applications

- (1) An application under section 417(2) of the Criminal Code for an extension of time shall be in accordance with Form 86L and shall be filed with copies sufficient for service and proof of service.
- (2) The Registrar shall, on receipt of an application to which subrule (1) applies, endorse on it and on the copies of it the date for which it has been set down to be heard.

- (3) An applicant shall serve a copy of an application referred to in subrule (1) on:
 - (a) the Solicitor for the Northern Territory; and
 - (b) each other party having an interest in the application.
- (4) An application under this rule shall be accompanied by an affidavit of the applicant explaining the reasons for delay and furnishing the reasons why there has been delay in giving notice of appeal or applying for leave to appeal.
- (5) An affidavit under subrule (4) shall be served with a copy of the application on the respondent no later than 14 days before the date endorsed under subrule (2).
- (6) Any affidavit in answer may be filed and served by the respondent no later than 7 days before the date endorsed under subrule (2).

Part 6 Miscellaneous

86.20 Report of Judge of Court of trial

- (1) The Registrar:
 - (a) when he has received a notice of appeal, application for leave to appeal or a notice of application for extension of time within which those notices may be given;
 - (b) when the Solicitor for the Northern Territory exercises power under section 431 of the Criminal Code; or
 - (c) when it appears to be necessary for the proper determination of an appeal or application, or for the due performance of the duties of the Court of Criminal Appeal,

may, and whenever in relation to an appeal that Court or a Judge directs him so to do, shall, in writing, request the Judge of the court of trial to furnish him with a report in writing, giving his opinion on the case generally or on a point arising on the case by the appellant.

- (2) A report to which subrule (1) refers shall be made by the Judge of the court of trial to the Court of Criminal Appeal and, except by leave of the Court of Criminal Appeal or a Judge, the Registrar shall not furnish any part of that report to any other person.
- (3) Where the Registrar requests a Judge of the court of trial to furnish a report under this rule, he shall send to that Judge a copy of the notice of appeal, application for leave to appeal or notice of

application for extension of time within which the notice may be given and any other document or information which he considers material or which the Court of Criminal Appeal at any time directs him to send or with which the Judge of the court of trial requests to be furnished by the Registrar.

86.21 Furnishing of depositions, indictment, &c.

(1) The Registrar:

(a) may, if it appears to him to be necessary for the proper determination of an appeal or application or for the due performance of the duties of the Court of Criminal Appeal; or

(b) shall, if he is directed by that Court so to do,

request the Solicitor for the Northern Territory or other person having the custody of:

(c) the original depositions of witnesses examined before a committing justice or coroner;

(d) an exhibit retained by that person;

(e) the indictment against an appellant or an abstract or copy of it or a part of it; or

(f) a plea made or filed in the court of trial,

to furnish him with those depositions, that exhibit, that indictment or the abstract or copy of it or that plea or part of it, as the case may be.

(2) A person of whom the Registrar makes a request under subrule (1) shall immediately comply with that request.

86.22 Procedure where Judge deals with application under section 429 of Criminal Code

(1) Where an application has been dealt with under section 429(1) of the Criminal Code by a Judge, the Registrar shall, in accordance with Form 86M, notify the result of the application to an applicant who was not personally present at the hearing of the application or did not then appear by counsel.

(2) In the event of a Judge refusing all or a part of an application referred to in subrule (1), the Registrar, on notifying the refusal to the applicant, shall also forward to him Form 86N.

- (3) An applicant, on receiving a form referred to in subrule (2), may:
 - (a) complete it, and return it to the Registrar within 7 days of its receipt by him, or within such further time as the Court of Criminal Appeal or a Judge allows;
 - (b) fail to return it within the time limited in paragraph (a); or
 - (c) inform the Registrar, within the time limited in paragraph (a), that he does not wish to have his application determined by the Court of Criminal Appeal.
- (4) For the purpose of calculating the time referred to in subrule (3), a form shall be taken to have been received by an applicant 48 hours after it has been posted by the Registrar.
- (5) In a case to which subrule (3)(b) or (c) refers, a refusal by a Judge to grant the application is final.
- (6) In the event of an applicant complying with subrule (3)(a), the form shall be taken to be:
 - (a) an application for a determination to which section 429(2) of the Criminal Code refers; and
 - (b) where relevant, an application for leave to be present at that determination.
- (7) The Registrar, on receipt of the form referred to in subrule (3)(a), shall take such action as is necessary to place the application before the Court of Criminal Appeal as soon as possible.
- (8) Where the Court of Criminal Appeal grants or refuses leave to an applicant to be present at a determination under this rule, the Registrar shall notify the applicant, in accordance with Form 86P, of that fact.
- (9) Subject to subrule (10), where an application to which subrule (6)(a) refers is:
 - (a) refused by the Court of Criminal Appeal, the Registrar shall, subject to subrule (10), notify the applicant of that refusal; or
 - (b) granted by that Court, the Registrar shall:
 - (i) subject to subrule (10), so notify the applicant, in writing; and

- (ii) if the applicant is in custody, also notify the Superintendent of the prison at which the applicant is in custody.
- (10) Where the Court of Criminal Appeal grants leave to an applicant to be present at a determination under this rule and the applicant is in fact present or where the applicant is represented by counsel at the determination, the Registrar need not comply with subrule (9)(a) or (b)(i).
- (11) For the purposes of this rule, a Judge who has, under this rule, refused an application which has been referred to the Court of Criminal Appeal may sit as a member of that Court.
- (12) A Judge exercising the powers referred to in section 429(1) of the Criminal Code may sit and act wherever convenient.

86.23 Written argument

- (1) An appellant or applicant who desires to present his argument in writing in pursuance of section 423 of the Criminal Code shall state in his notice of appeal, application for leave to appeal or other application that he proposes to present his case and argument in writing.
- (2) A respondent who desires to present his case and argument in writing shall, within 7 days after service on him of the notice of appeal, file and serve notice to that effect.
- (3) Where a respondent files a cross-appeal, the notice referred to in subrule (2) may be subscribed on the cross-appeal.
- (4) A party who wishes to proceed by written argument, the shall file 4 copies of the written argument within 21 days after having given notice in accordance with subrule (1) or (2).
- (5) A written argument shall:
 - (a) bear the title of the proceeding;
 - (b) identify the party whose argument it is;
 - (c) consist of paragraphs consecutively numbered; and
 - (d) state as concisely as possible:
 - (i) the circumstances out of which the matter arises;
 - (ii) the contentions to be urged by the party concerned; and

- (iii) the reasons on which the party concerned relies.
- (6) So far as practicable, in a written argument, references to the portions of the transcript relied on shall be given by page and line and the relevant portions of the transcript shall not be annexed to the written argument.
- (7) A written argument need not be printed and in bound form but shall be clear and legible and securely fastened.
- (8) Where a party has filed his written argument, he shall, on the day of filing, serve 2 copies of it on the other party.
- (9) Where a party is a person in custody, he shall be taken to have filed his written argument if he delivers to the Superintendent of the prison in which he is being held in custody the written argument and 2 additional copies of it.
- (10) The Superintendent receiving a written argument in accordance with subrule (9) shall immediately have it and the copies delivered to the Registrar.
- (11) The Registrar, on receipt of the written argument and copies under subrule (10) shall:
- (a) place the original on the Court file; and
 - (b) deliver the 2 copies to the other party to the appeal.

86.24 Time for retaining documents, exhibits, &c.

- (1) Subject to subrule (2), the time referred to in section 427 of the Criminal Code shall be 12 months.
- (2) The Registrar may, on such terms as he thinks fit, authorize at any time the release of a document, exhibit or thing to which section 427 of the Criminal Code relates.

86.25 Inspection of exhibits

The Registrar may appoint a time and place for the inspection of exhibits or other documents used at the trial by a party interested in an appeal.

86.26 Bail

An undertaking and an agreement or acknowledgement made, given or entered into in pursuance of the *Bail Act* in respect of an appeal shall be forwarded to the Registrar by the person to whom the undertaking is given.

86.27 Failure to appear

- (1) If an appellant fails, without reasonable cause (proof of which lies upon him), to appear at the hearing of his appeal or application in accordance with his bail undertaking, the Court may summarily dismiss or decline to hear the appeal or may, in addition to exercising its powers under Part VII of the *Bail Act*, consider the appeal in his absence.
- (2) A warrant issued in pursuance of section 39 of the *Bail Act* because an appellant has failed to appear at the hearing of his appeal may be issued under the hand of the Registrar.

86.28 Notifying results of appeal

- (1) Where a person:
 - (a) has been convicted of an offence and sentenced to imprisonment;
 - (b) has appealed to the Court of Criminal Appeal against that conviction or sentence, or both; and
 - (c) pending determination of that appeal, has been released on bail,

and the Court of Criminal Appeal has dismissed that appeal, the Registrar shall prepare, sign, seal and send to the Director a notice in accordance with Form 86R.

- (2) On the determination of an appeal, or of an application incidental to an appeal, the Registrar shall, in writing, notify the appellant of that determination if the appellant is in custody and was not present or represented by counsel when the matter was determined.
- (3) The Registrar shall file with the records of the court of trial a notice of the result of the determination of an appeal and of any order or direction made or given by the Court of Criminal Appeal in relation to an appeal.

86.29 Witnesses before Court of Criminal Appeal

- (1) A person appealing to the Court of Criminal Appeal and wishing to call a witness to give evidence at that appeal shall draw up and file a form in accordance with Form 86S.
- (2) The Registrar, on receipt of an application under subrule (1), shall as soon as possible place the application before the Chief Justice who may give such directions as to the matter and make such other orders in relation to it as he thinks fit.

- (3) The Registrar shall give written notice to all the parties as to the directions given or orders made under subrule (2).
- (4) An order under this rule for the attendance of a witness shall be sealed and in accordance with Form 86T.
- (5) A witness ordered by the Court of Criminal Appeal to attend and be examined before it, shall be personally served with a sealed copy of the order.
- (6) The person serving a witness with a copy of an order referred to in subrule (5) shall pay him a reasonable amount for the expenses of the witness and shall forward to the Registrar a certificate of the amount so paid.
- (7) A person served with a copy of an order referred to in subrule (5) who, without good and sufficient reason, fails to comply with the order is guilty of contempt.

86.30 Duties of Registrar, &c.

- (1) The Registrar shall from time to time direct the form in which documents, exhibits and other things shall be laid before the Court of Criminal Appeal in accordance with section 426(1) of the Criminal Code.
- (2) Unless the Registrar directs otherwise, appeal books shall be prepared by and at the expense of the appellant.
- (3) A notice to which section 426(4) of the Criminal Code refers shall be in accordance with Form 86U.
- (4) A notice to which section 426(5) of the Criminal Code refers shall be in accordance with Form 86V.
- (5) A notice for the purpose of section 426(4) or 426(5) of the Criminal Code shall be taken to be reasonably given if given within 48 hours after the Registrar's having, under rule 84.08, settled the index or fixed a date for hearing.
- (6) Where an appellant to whom section 426(4) of the Criminal Code applies or a respondent to whom section 426(5) of the Criminal Code applies is represented by a solicitor, oral notice given to that solicitor shall be taken to be sufficient notice given to the appellant or respondent, as the case may be.

86.31 Register

The Registrar shall enter in order of receipt all notices of appeals and applications to the Court of Criminal Appeal in a register and list them for hearing as early as this Order and the business of the Court will permit after all necessary documents are to hand.

86.32 Service of orders and notices

- (1) Orders for the production of documents, exhibits or other things connected with a proceeding under this Order or for the attendance of a witness shall, unless otherwise directed by the Court, be personally served.
- (2) Where personal service of an order or other document is required, the Sheriff shall, at the request of the Registrar, have the order or other document served.
- (3) A notice of other document, of which personal service is not required by this Order or by directions of the Court of Criminal Appeal or a Judge, may be served by post.
- (4) Subrule (3) applies to a notice required under this Chapter to be given by the Registrar.
- (5) A notice of appeal, or of an application to the Court of Criminal Appeal by an appellant in custody, shall be taken to have been given at the time when it is delivered for posting to the Superintendent of the prison where the appellant is imprisoned, and the time of that delivery shall be endorsed on the notice by the Superintendent and the document shall be signed by him.

Order 87 Cases stated and appeals from Work Health Court

Part 1 Preliminary

87.01 Definitions

In this Order, unless the contrary intention appears:

Act means the *Work Health Act*.

Magistrate, in relation to a stated case or appeal, means the magistrate who constituted the Work Health Court in the proceeding which gave rise to the stated case or appeal.

Part 2 Cases stated

87.02 Preparation of case

Where the Work Health Court proposes to reserve a question of law for the opinion of the Court pursuant to section 115(1) of the Act the following provisions shall apply:

- (a) the Work Health Court may direct by which party to the proceeding a draft of the special case to be stated is to be prepared and that party shall, within 21 days or such other time as the Work Health Court allows, deliver to all other parties to the proceeding a draft of the case to be stated setting out the question of law to be answered by the Court and such facts as are necessary to enable the Court to give proper consideration to that question;
- (b) a case to which this Part applies shall be divided into paragraphs numbered consecutively and shall concisely state the facts and documents necessary to enable the Court to decide the question of law raised;
- (c) each party to which a draft is delivered pursuant to paragraph (a) shall, within 14 days after its receipt or such other time as the Work Health Court allows, return the draft, either approved or altered as the party desires, to the party who prepared the draft;
- (d) if the draft is approved or the alterations are accepted, the party who prepared it shall engross it in the number that is 2 more than the number of parties;
- (e) one copy of the case stated as approved by the parties shall be signed by the parties or their solicitors before it is delivered to the Registrar of the Work Health Court;
- (f) if the draft is not returned as required by paragraph (c) or if, within 7 days after it is returned, the parties do not agree on the terms of the draft, it shall be forwarded by the party who prepared it to the Magistrate;
- (g) the Magistrate to whom a case is sent pursuant to paragraph (f), after hearing as he thinks fit the parties or any of them, or their legal representatives, shall settle the draft and return it to the party who forwarded it to him and it shall be engrossed by that party as settled in the number that is 2 more than the number of parties;
- (h) the party to whom a Magistrate sends a settled case under paragraph (g) shall engross it;

- (j) within 7 days after the draft has been agreed on or settled pursuant to the preceding provision of this Rule, the copies of the case stated shall be delivered to the Registrar of the Work Health Court who shall submit one of them to be signed by the Magistrate, and that copy shall, when so signed, be the case stated;
- (k) if the case is signed by the Magistrate pursuant to paragraph (j), the Registrar of the Work Health Court shall:
 - (i) make each of the other copies into a certified copy of the case stated and shall deliver one copy to each party; and
 - (ii) transmit or deliver the case signed by the Magistrate to the Registrar of the Supreme Court;
- (m) the Registrar of the Supreme Court shall, within 14 days after he receives from the Registrar of the Work Health Court a case stated, enter it in a list of cases under this Order to be kept by him and the case shall be heard at a time and place determined by the Court or the Registrar of the Supreme Court;
- (n) on the argument of the case, the Court and the parties shall be at liberty to refer to the whole contents of a document referred to in paragraph (b); and
- (p) Part I of Order 37 does not apply to a case stated to which this Order applies.

87.03 Institution of reference

- (1) A reservation of a question of law referred to in rule 87.02 shall be deemed to be made to the Court upon receipt by the Registrar of the Supreme Court of the special case.
- (2) On the receipt of a case under this Part the Registrar of the Supreme Court shall allocate a serial number to the proceeding.
- (3) The serial number of a proceeding and its title shall be endorsed on each document filed in the proceeding.

Part 3 Appeals

87.04 Notice of appeal

An appeal to the Court pursuant to section 116(1) of the Act shall be instituted by notice of appeal in accordance with Form 87A served on the Registrar of the Work Health Court and on all parties

to the proceeding before the Work Health Court and a copy of the notice shall be filed.

87.05 Grounds of appeal

The notice shall state specifically and concisely the grounds of the appeal and whether all or part only of the decision or determination is complained of.

87.06 Amendment

The Court may amend the grounds of appeal or make any other order on such terms as it thinks fit to ensure the proper determination according to law of the rights of the parties.

87.07 Service and filing of notice

Unless the Court or a Judge otherwise orders, the notice of appeal shall be served and filed not later than 28 days after the day on which the decision or determination appealed against was made.

87.08 Mode of service

A notice of appeal may be served on a party by:

- (a) leaving it at the usual or last known place of business of the solicitor who acted for the party in the proceeding before the Work Health Court; or
- (b) sending it by post addressed to the party at that party's address as specified in the documents that were before the Work Health Court in connection with the proceeding.

87.09 Appearance

A party desiring to appear on the hearing of an appeal shall, within 7 days after being served with the notice of appeal, file a memorandum stating a place as his address for service.

87.10 Stay of proceedings

The serving and filing of a notice of appeal shall not operate as a stay of proceedings unless the Work Health Court or the Court or a Judge so orders.

Division 4 Miscellaneous

87.11 Costs

In respect of the costs of an appeal or a special case to which this Order applies or a proceeding in relation thereto, the Court shall have the same power and discretion as to the party by whom the costs are to be paid and the amount of the costs and the taxation thereof as it has in a proceeding.

Chapter 3 Probate and Administration Rules

Part 1 Preliminary

88.01 Application

- (1) The Rules in this Chapter apply to all proceedings in the probate jurisdiction of the Court commenced on or after the commencement of this Chapter whether the matter is governed by the *Administration and Probate Act* or by the following Acts of the State of South Australia:

The Administration and Probate Act, 1891,

The Administration and Probate Amendment Act, 1903,

The Administration and Probate Amendment Act, 1904.

- (2) The rules in Chapter 1 of the *Supreme Court Rules* apply to the practice and mode of procedure in the Court in its probate jurisdiction to the extent to which:

- (a) they are applicable to;
- (b) they are not expressly excluded by; or
- (c) they do not conflict with,

the rules in this Chapter.

88.01.1 Validation of will

- (1) Subject to subrule (2), an application for the admission to probate of a document referred to in section 12(2) of the *Wills Act* shall be supported by an affidavit setting out the grounds of the application, together with the consents in writing to the application given by all persons who may be prejudiced by the admission of the document to proof.
- (2) Where a person who may be prejudiced by an application referred to in subrule (1) is not sui juris or cannot be ascertained or found, or the Court is satisfied that in the circumstances it is just and expedient to do so, it may nevertheless dispense with the consent.

88.02 Interpretation

In this Chapter, unless the contrary intention appears:

estate includes real estate and personal estate.

General Rules means the rules in Chapter 1.

Probate Act means the *Administration and Probate Act*.

re-sealing means sealing, under section 111 of the Probate Act, of a probate or letters of administration,

and expressions used have the same meaning as in the Probate Act and the General Rules.

88.03 Transition

- (1) A proceeding for a grant or for resealing to which Part 3 applies commenced before the commencement of this Chapter, may be continued in accordance with the practice, procedure, requirements and forms in force immediately before that commencement.
- (2) Where a proceeding is commenced as referred to in subrule (1), the notice of address filed in the proceeding shall have effect as if it were the applicant's address for service stated in a proceeding commenced in accordance with Part 3.

88.04 Heading and title

- (1) This rule applies to a document in a proceeding in which the powers of the Court may be exercised by the Registrar.
- (2) A document shall:
 - (a) be headed "In the Supreme Court of the Northern Territory of Australia" with a reference to the Probate jurisdiction of the Court;
 - (b) show the Registry and the serial number of the proceeding;
 - (c) be entitled "The estate of" with a reference to the name of the deceased, his place of residence and his occupation at the time of his death; and
 - (d) where a grant or reseal has been made in the estate, show the number given in the Registry to that grant or reseal.
- (3) Rule 27.02 does not apply to a proceeding under this Chapter.

Part 2 Registrar

88.05 Powers of Registrar

- (1) In addition to the powers vested in him by the Probate Act, the Registrar may exercise the powers of the Court in and about:
- (a) a proceeding to which Part 3 applies;
 - (b) settling and issuing citations;
 - (c) appointing a litigation guardian of a person under a disability;
 - (d) assigning a guardian to an infant under Part 4;
 - (e) granting leave under Part 5;
 - (f) granting an extension of a caveat or giving leave to withdraw a caveat under Part 12;
 - (g) making orders in pursuance of Rule 88.27;
 - (h) the withdrawal of caveats under section 49 of the Probate Act where the withdrawal is not contested;
 - (j) a proceeding under sections 88 and 91(2) and (3) of the Probate Act and under rules 88.75 and 88.79;
 - (k) ordering the production of an instrument under section 147 of the Probate Act;
 - (m) the revocation or rescission of grants of probate or administration where the revocation or rescission is not contested;
 - (n) the authorization of the sale, lease or mortgage of any of the real estate as to which a person dies intestate where the gross value of the real estate does not exceed \$50,000 and no objection is raised to the sale, lease or mortgage;
 - (p) passing the accounts of executors, administrators and trustees, including allowing commission and costs in relation to accounts;
 - (pa) an application referred to in section 12(2) of the *Wills Act* where the gross value of the estate, wherever situated, does not exceed \$15,000;
 - (q) a matter which the Court refers to the Registrar; and

- (r) such other powers as the Chief Justice directs that he have.
- (2) Where the Court refers a matter to the Registrar for the exercise in respect of that matter of a power of the Court, the Registrar may exercise that power in respect of that matter.
- (3) In respect of a matter referred to in subrule (1) or (2), the Registrar may exercise the power of the Court under rules 2.04 and 3.02.

Part 3 Non-contentious proceedings

88.06 Application of Part

This Part applies to a proceeding for a grant or for resealing where:

- (a) there is no respondent; and
- (b) no person is cited to see the proceeding.

88.07 Commencement of proceedings

- (1) A proceeding for a grant or resealing shall be commenced by application in accordance with Form 88A supported by affidavit.

88.08 Hearing

- (1) A proceeding under this Part:
 - (a) may be heard:
 - (i) in the absence of the public; and
 - (ii) without the appearance before the Court of a person; and
 - (b) shall be heard without an appointment being obtained for the hearing.
- (2) Order 46 does not apply to a proceeding under this Part.

88.09 Publication of notice of intended application

- (1) Notice, in accordance with Form 88B, 88C or 88D, of an intended application for a grant or for resealing shall be published in one Darwin daily newspaper and, if the deceased was resident at the date of his death in the Territory at a place more than 200 kilometres from the General Post Office, Darwin, also in a newspaper published and circulating in the district where the deceased resided.

- (2) A notice under subrule (1) shall state the date or dates of a will and each codicil (if any) sought to be proved or, where the document bears no date, a statement of that fact and of the approximate date, if known.
- (3) Where it is intended to apply to dispense with an administration bond, or with one or both of the sureties, or for reduction of the penalty of the bond, the notice under subrule (1) shall require creditors to send in their claims.
- (4) The Court may require further advertisement.

88.10 Delay

Where a proceeding for a grant:

- (a) is not commenced until 6 months or more after the death of the deceased; and
- (b) is the first proceeding for a grant,

the applicant shall file an affidavit explaining the delay.

88.11 Domicile out of the Territory

Where it appears, in a proceeding for a grant or for resealing, that the deceased was domiciled out of the Territory, the Court may require evidence of:

- (a) the domicile of the deceased;
- (b) the requirements of the law of the domicile as to the validity of a will made by the deceased; and
- (c) the law of the domicile as to the persons entitled on distribution of the estate.

88.12 Identity

The Court may, in a proceeding for a grant, require proof of the identity of the deceased or of the applicant.

88.13 Renunciation

- (1) Where a person has renounced probate or administration, he shall not be granted representation of the deceased in another capacity.
- (2) A renunciation by an executor of probate may be made in accordance with Form 88E.

88.14 Evidence of attestation

- (1) Where:
 - (a) a will does not contain an attestation clause; or
 - (b) the attestation clause in a will indicates that the will has not been executed in the manner required by the *Wills Act*,

an applicant for a grant of probate or letters of administration with the will annexed shall, with the application for a grant of probate, file an affidavit in accordance with Form 88F of one or more of the attesting witnesses as to due execution of the will.
- (2) Where an applicant is unable to comply with subrule (1), he shall file an affidavit explaining the reason for the inability and an affidavit by some person, other than an attesting witness, who was present when the will was executed.
- (3) Where an applicant is unable to comply with subrule (1) or (2), he shall furnish evidence, on affidavit, of the reason for the inability and of the identity of the signature of the testator and of the attesting witness respectively or of such other facts on which he relies as establishing that the will was duly executed.

88.15 Testator's knowledge and approval of contents

- (1) This rule applies where, in a proceeding for a grant, an applicant seeks to prove a will and:
 - (a) the will appears to have been signed by a blind testator;
 - (b) the will appears to have been signed by an illiterate testator;
 - (c) the will appears to have been signed by another person by direction of the testator; or
 - (d) there are circumstances which raise doubt whether the testator, at the time of execution of the will, knew and approved of the contents of it.
- (2) An applicant shall furnish evidence on affidavit to establish that the testator, at the time of execution of the will, knew and approved of its contents.
- (3) Where the evidence adduced pursuant to subrule (2) is that of an attesting witness or other person present at the time of execution, his affidavit shall state the manner in which the will was executed.

88.16 Further evidence as to execution

Where, in a proceeding for a grant, the applicant seeks to prove a will and, notwithstanding that the applicant has complied with rules 88.14 and 88.15, the Court considers that there is some doubt about the execution of the will or that a circumstance in connection with the execution requires explanation, the Court may require further evidence.

88.17 Date of execution

Where, in a proceeding for a grant, the applicant seeks to prove a will and the will is undated or there appears to be doubt as to the date on which it was executed, the Court may require evidence establishing the date of execution.

88.18 Interlineations, obliterations and alterations

Where, in a proceeding for a grant, an applicant seeks to prove a will and:

- (a) an interlineation, obliteration or alteration appears in the will; and
- (b) the interlineation, obliteration or alteration has not been duly authenticated or otherwise validated,

the Court may require evidence establishing whether the interlineation, obliteration or alteration was made before the execution of the will.

88.19 Documents referred to or attached

Where, in a proceeding for a grant, an applicant seeks to prove a will and:

- (a) the will contains a reference to a document that suggests that the document may be incorporated in the will; or
- (b) there are marks on the will from which it appears that a document has been attached to it,

the Court may require:

- (c) production of the document; and
- (d) evidence in regard to it.

88.20 Part of will paper torn off or cut off

Where, in a proceeding for a grant, an applicant seeks to prove a will and it appears that part of the paper on which the will was written has been torn off or cut off, the Court may require:

- (a) production of the part torn off or cut off; and
- (b) evidence in regard to it.

88.21 Burning, tearing or other sign of revocation

Where, in a proceeding for a grant, an applicant seeks to prove a will and:

- (a) the appearance of the will suggests that there may have been an attempted destruction of it by burning, tearing or otherwise; or
- (b) there are other circumstances which suggest that the testator may have revoked the will,

the circumstances shall be fully explained on affidavit.

88.22 Inoperative will

Where, in a proceeding for a grant, an applicant seeks to prove a will and it appears that the will is or may be inoperative or partly inoperative by reason of the executors and beneficiaries all predeceasing the testator or for another reason, the Court may require evidence:

- (a) as to matters relevant to whether the will is inoperative or partly inoperative; and
- (b) showing what persons would be entitled in distribution of the estate upon intestacy.

88.23 Evidence and documents in applications for probate

- (1) An application for probate shall be supported by affidavit:
 - (a) in accordance with Form 88G, of the death of the testator;
 - (b) in accordance with Form 88H:
 - (i) setting out the full residential address of the applicant;
 - (ii) stating that the testator has left a will, the date of the will, and whether it has been revoked;

- (iii) stating the date of death of the testator and his age at that date;
 - (iv) setting out the names and addresses of the subscribing witnesses to the will and of each executor named in the will;
 - (v) stating that the deceased did not marry (if that is the case) after making the will;
 - (vi) stating that the deceased left an estate within the Territory and setting out the value of that estate, distinguishing real and personal estate, and giving a short statement of what the estate consists;
 - (vii) stating that the applicant is a corporation or has attained the age of 18 years; and
 - (viii) where an executor has died or has renounced probate, furnishing details of the date of his death or renunciation; and
- (c) in accordance with Form 88I:
- (i) of publication of the notice of intention to apply for probate;
 - (ii) of the result of search for a will of the testator deposited under section 88A of the *Public Trustee Act*;
 - (iii) whether a caveat relating to the application has been lodged up to the morning of the application;
 - (iv) where 2 years or more have elapsed since the death of the deceased, whether a prior application for a grant or resealing has been made in connection with the estate; and
 - (v) stating that, before the making of the application, no election has been filed under Part VII of the *Public Trustee Act*, or, if an election has been filed, setting out the full particulars of that election.
- (2) Subject to subrule (3), where an executor has renounced probate, the application shall be supported by an affidavit furnishing evidence of the renunciation.

- (3) Where a renunciation has been signed by the executor, the renunciation shall be filed with the application for a grant and the filing of that document shall be taken as compliance with subrule (2) without the need for an affidavit.
- (4) Where an executor does not join in an application for a grant and leave is sought to be reserved to him to come in and apply for probate, evidence shall be furnished that he has been served, not later than 14 days before the proceeding for grant is commenced, with notice of the intended proceeding or that he is not in the Territory or that he is an infant.
- (5) The notice referred to in subrule (4) may be served personally or by sending the notice by registered post to the executor and obtaining from the postal authorities a written acknowledgement, purporting to be signed by the addressee, of receipt of the registered article.
- (6) An affidavit of an applicant stating his means of identifying the will as that of the testator shall be filed and the will shall be marked by him and by the person before whom the affidavit is sworn and annexed to that affidavit.
- (7) An oath in writing of the applicant, in accordance with Form 88J, administered by a person before whom an affidavit of the applicant might be sworn, shall be filed.
- (8) The Court may require further evidence (including evidence establishing the value of an asset of, and the amount of a liability of, the testator) to be furnished, and that further documents be filed, and notices be given.
- (9) Except where section 40 of the *Public Trustee Act* applies, an official record of the death of the testator shall be annexed to the affidavit referred to in subrule (1)(a).
- (10) If there is no official record of the death of the testator, an additional affidavit shall accompany the application setting out the facts relied on to establish his death or a presumption of his death.

88.24 Evidence and documents in applications for administration

- (1) An application for administration shall be supported by affidavits:
 - (a) in accordance with Form 88G, of the death of the deceased;
 - (b) in accordance with Form 88K:
 - (i) setting out the full residential address of the applicant;
 - (ii) stating that the deceased died intestate;

- (iii) furnishing details of the searches and enquiries which have been made to locate a will;
 - (iv) establishing the status of the deceased, that is, whether he died leaving a wife and issue or whether he died unmarried or whether the deceased was a widower or a divorced person;
 - (v) stating that the deceased left an estate in the Territory, and the value of that estate, distinguishing real and personal estate and giving a short statement of what the estate consists;
 - (vi) setting out the relationship (if any) of the applicant to the deceased;
 - (vii) furnishing the names and ages of the persons entitled in distribution of the estate and their relationship to the deceased;
 - (viii) stating that the applicant is a corporation or has attained the age of 18 years;
 - (ix) affirming that the applicant is not an undischarged bankrupt and has not assigned or encumbered his interest (if any) in the estate;
 - (x) furnishing details of the applicant's knowledge of claims against the estate;
 - (xi) stating the character in which the person making the application claims to be entitled to a grant and the truth of that statement; and
 - (xii) if the applicant is a creditor, stating that fact and to what amount, the particulars of his debt and the evidence in support of the claim; and
- (c) in accordance with Form 88I:
- (i) of publication of the notice of intention to apply for administration;
 - (ii) of the result of search for a will of the deceased deposited under section 88A of the *Public Trustee Act*;
 - (iii) whether a caveat relating to the application has been lodged up to the morning of the application;

- (iv) where 2 years or more have elapsed since the death of the deceased, whether a prior application for a grant or resealing has been made in connection with the estate;
 - (v) showing that Division 4A of Part III of the Probate Act does not apply to or in relation to the estate of the deceased; and
 - (vi) stating that, before the making of the application, no election has been filed under Part VII of the *Public Trustee Act*, or, if an election has been filed, setting out the full particulars of that election.
- (2) Where the grant is applied for by fewer than all the persons who are in the Territory and are entitled to a grant of administration, the application shall be supported by:
- (a) the consent, in accordance with Form 88L, of each person entitled to a grant but not applying for the grant, to the grant being made to the applicant, with an affidavit in accordance with Form 88M verifying the consent endorsed on the document containing the consent; or
 - (b) an affidavit as to service, not later than 14 days before the proceeding is commenced, on each of those persons whose consent to the grant is not filed, of notice of intention to make the application.
- (3) The notice referred to in subrule (2)(b) may be served personally or by sending the notice by registered post to the person to be served and obtaining from the postal authorities a written acknowledgement, purporting to be signed by the addressee, of receipt of the registered article.
- (4) Subject to subrule (5), in an application for a grant under this rule, an administration bond, in accordance with Form 88N, shall be filed and, except where the bond is given by an insurance company approved under section 23(2) of the Probate Act, there shall be 2 sureties to the bond.
- (5) The Court may:
- (a) dispense with a bond;
 - (b) dispense with one or both of the sureties; or
 - (c) reduce the penalty of the bond.

- (6) Where it is sought to dispense with the bond or with one or both of the sureties, or to reduce the penalty of the bond, an affidavit shall be filed in support of the application.
- (7) Where there is a surety to a bond, an affidavit of justification by the surety, in accordance with Form 88P, shall be filed.
- (8) An oath in writing of the applicant, in accordance with Form 88J, administered by a person before whom an affidavit of the applicant might be sworn, shall be filed.
- (9) The Court may require further evidence (including evidence establishing the value of an asset of, and the amount of a liability of, the deceased) to be furnished, and that further documents be filed, and notices be given.
- (10) An official record of the death of the deceased shall be annexed to the affidavit referred to in subrule (1)(a).
- (11) If there is no official record of the death of the deceased, an additional affidavit shall accompany the application setting out the facts relied on to establish his death or a presumption of his death.
- (12) Where a person entitled to apply for Letters of Administration in the estate of an intestate deceased person renounces Letters of Administration in favour of the Public Trustee, in accordance with Form 88R, Letters of Administration in that estate may be granted to the Public Trustee without the consent or citation of a person.

88.25 Evidence and documents in applications for administration with will annexed

- (1) An application for administration with the will annexed shall be supported by:
 - (a) the affidavits and documents, so far as appropriate, referred to in rule 88.24; and
 - (b) the affidavits and documents which, if the application were an application for probate of the will, would be required by:
 - (i) rule 88.23(1)(b)(ii), (iii), (iv) and (v); and
 - (ii) rule 88.23(2), (3) and (9).
- (2) An affidavit of the applicant under subrule (1) shall be in accordance with Form 88Q.
- (3) Where a renunciation has been signed by the executor, the renunciation shall be filed with the application for grant.

- (4) Where the executor named in the will renounces probate in favour of the Public Trustee, in accordance with Form 88R, administration with the will annexed may be granted to the Public Trustee without the consent or citation of a person.
- (5) The Court may require further evidence (including evidence establishing the value of an asset of, and the amount of a liability of, the deceased) to be furnished, and that further documents be filed, and notices be given.

88.26 Evidence and documents in applications for resealing

- (1) An application for resealing shall be supported by affidavit:
 - (a) in accordance with Form 88S;
 - (i) setting out the full residential address of the applicant;
 - (ii) stating that the deceased left an estate in the Territory;
 - (iii) furnishing particulars of the grant sought to be sealed;
 - (iv) furnishing particulars of the persons beneficially entitled under the grant sought to be sealed;
 - (v) annexing certified copies of any relevant power of attorney and other relevant documents;
 - (vi) where the application is for resealing of letters of administration, affirming that the applicant is not a bankrupt and has not assigned or encumbered his interest (if any) in the estate;
 - (vii) stating that the applicant is a corporation or has attained the age of 18 years; and
 - (viii) where the application is for resealing letters of administration, furnishing details of the applicant's knowledge of claims against the estate;
 - (b) in accordance with Form 88I:
 - (i) of publication of the notice of intention to apply for the resealing;
 - (ii) of the result of search for a will of the deceased deposited under section 88A of the *Public Trustee Act*;
 - (iii) whether a caveat relating to the resealing has been lodged up to the morning of the application; and

- (iv) where 2 years or more have elapsed since the death of the deceased, whether a prior application for a grant or resealing has been made in connection with the estate.
- (2) Rule 88.24(4), (5), (6) and (7) apply as if the application were an application for administration.
- (3) A copy of the document sought to be sealed, certified by the Court which made the grant, shall be filed.
- (4) All relevant original documents shall be produced.
- (5) The Court may require further evidence (including evidence establishing the value of an asset of, and the amount of a liability of, the deceased) to be furnished, and that further documents be filed, and notices be given.

88.27 Affidavit of assets and liabilities

- (1) An applicant for a grant under this Part shall file an affidavit of assets and liabilities in accordance with Form 88T.
- (2) The value of each item of property shall be stated in an affidavit filed in accordance with subrule (1) or, if the value is not known, an estimate of the value shall be stated.
- (3) For the purposes of subrule (2), evidence of value shall not be furnished unless the Court orders otherwise.
- (4) The amount of each liability shall be stated in an affidavit filed in accordance with subrule (1) or, if the amount is not known, an estimate of the amount shall be stated.
- (5) For the purposes of subrule (4), evidence of the amount of a liability shall not be furnished unless the Court orders otherwise.

Part 4 Administration during minority

88.28 Administration during minority

- (1) The Court may grant administration during minority, for the use and benefit of an infant, to:
 - (a) the legal or testamentary guardian of the infant;
 - (b) a guardian elected as provided by rule 88.29; or
 - (c) a guardian of the infant assigned, on his application, by the Court.

- (2) A grant of administration during minority shall be subject to such limitations and conditions as the Court thinks fit.

88.29 Elected guardians

- (1) An infant who has attained the age of 16 years may elect a guardian for the purpose of applying for a grant of administration.
- (2) The elected guardian may act also for an infant who has not attained the age of 16 years of age but who is in the same family as the infant who elected.
- (3) Notwithstanding the election of a guardian, the Court may grant administration to a person who is referred to in rule 88.28(1)(a) or (c) and who it considers is more appropriate or better fitted to act as guardian.
- (4) A grant shall not be made to an elected guardian unless evidence of his election and of his appropriateness and fitness to be guardian is furnished.

88.30 Assigned guardians

- (1) A proceeding by a person for an order assigning him as the guardian of an infant for the purpose of applying for administration shall be commenced by originating motion in accordance with Form 5D supported by affidavit.
- (2) There shall be no respondent in the proceeding.
- (3) The proceeding may be heard:
 - (a) in the absence of the public; and
 - (b) without the appearance before the Court of a person.
- (4) The proceeding shall be heard without an appointment being obtained for the hearing.
- (5) Order 46 does not apply to a proceeding under this rule.
- (6) An application under this rule shall be supported by evidence of the relationship, if any, of the proposed guardian to the infant and of his appropriateness and fitness to act as guardian.
- (7) A draft minute of the order sought shall be lodged with the Registrar.
- (8) The order shall be authenticated in accordance with the requirements of the General Rules after the minute of it is signed.

Part 5 Applications by creditors of administration

88.31 Leave to commence proceedings

- (1) A creditor shall not, without the leave of the Court, commence a proceeding for a grant of administration.
- (2) The Court may, if it thinks fit, refuse or withhold a grant to a creditor, notwithstanding that he has obtained leave to commence a proceeding for the grant.

88.32 Citations

- (1) Where a creditor desires to commence a proceeding for a grant of administration and the deceased has left a will, the creditor shall:
 - (a) where an executor is appointed by the will and has not renounced probate, serve on the executor a citation to take probate; and
 - (b) if the executor fails to comply with the citation, serve on the spouse of the deceased and on every beneficiary under the will and, where there is a partial intestacy, on every person entitled in administration of the estate on intestacy, a citation to pray for administration.
- (2) Where the executor has been served with a citation to take probate and has failed to comply with the citation, it is not necessary, unless the Court otherwise directs, to serve him with a citation to pray for administration.
- (3) Where an executor is appointed by the will and has not renounced probate, the creditor shall not serve a citation to pray for administration unless he has complied with subrule (1)(a) and the executor has failed to comply with the citation to take probate.
- (4) Where a creditor desires to commence a proceeding for a grant of administration and the deceased did not leave a will, he shall serve on the spouse of the deceased and on every person entitled in administration of the estate on intestacy, a citation to pray for administration.

88.33 Proceeding for leave

- (1) A proceeding for an order that a creditor have leave to commence a proceeding for a grant of administration shall be commenced by originating motion in accordance with Form 5D supported by affidavit.
- (2) There shall be no respondent in the proceeding.

- (3) The proceeding may be heard:
 - (a) in the absence of the public; and
 - (b) without the attendance before the Court of a person.
- (4) The proceeding shall be heard without an appointment being obtained for the hearing.
- (5) Order 46 does not apply to a proceeding under this rule.
- (6) A creditor applying for leave under this rule shall file:
 - (a) an affidavit in proof of the debt to him;
 - (b) an affidavit of compliance with rule 88.32 and that none of the persons cited has complied with the citation;
 - (c) an administration bond in accordance with Form 88N; and
 - (d) where necessary, an affidavit of justification, in accordance with Form 88P, of a surety to the bond.
- (8) A draft minute of the order sought shall be lodged with the Registrar.
- (9) The order shall be authenticated in accordance with the General Rules after the minute of it is signed.
- (10) The Court may require further evidence to be furnished, further documents to be filed, and that further citations be served and notices be given.

Part 6 Small estates

88.34 Applications in small estates

- (1) A person desiring to obtain a grant of representation in pursuance of Part IV of the Probate Act may apply, either in person or by letter, to the Registrar.
- (2) An application under subrule (1) shall not be received through an agent of the applicant.

88.35 Directions

When, in the opinion of the Registrar, it becomes necessary in the course of a personal application to obtain the directions of the Court, the application shall not further proceed as a personal one except by leave of the Court.

88.36 Record of death

In an application under this Part, the applicant shall produce an official record of the death of the deceased or give a reason, to the satisfaction of the Registrar, for the non-production of that record.

Part 7 Intestate Aboriginals

88.37 Form of application

- (1) Subject to subrule (2), an application under section 71B of the Probate Act shall be by originating motion in accordance with Form 5D supported by affidavit.
- (2) The Court may dispense with the need to file or serve an affidavit in support of an application under subrule (1).
- (3) Order 46 does not apply to a proceeding under this rule.
- (4) The proceeding shall be heard without an appointment being obtained for the hearing.

Part 8 Contentious proceedings

88.38 Application of Division

This Part applies to a proceeding for a grant or for resealing where:

- (a) there is a defendant; or
- (b) a person is cited to see the proceeding.

88.39 Commencement of proceeding

- (1) Where there is a defendant, the proceeding shall be commenced by a writ or originating motion.
- (2) Where there is no defendant, the proceeding shall be commenced by originating motion supported by affidavit.

88.40 Claims of interest

- (1) Where a defendant opposes a grant and the plaintiff disputes the standing of the defendant to do so, the plaintiff shall, in his statement of claim or affidavit, allege the absence of standing.

- (2) Where a party claims a grant of administration and another party alleges absence of title of the claimant to do so, the party alleging absence of title shall, in his pleadings, allege facts which, if proved, will show that he has title to claim the grant.

Part 9 Proceeding for revocation of grant

88.41 Deposit of grant

- (1) Where a proceeding has been commenced for revocation of a grant, the Court may order the executor or administrator to deposit the grant in the Registry.
- (2) In an urgent case, the Court may, on the application of a person who intends to commence a proceeding for revocation of a grant, order the executor or administrator to deposit the grant in the Registry to the same extent as if the applicant had commenced the proceeding and the application were made in the proceeding.

88.42 Commencement of non-contentious proceedings

- (1) Proceedings for revocation of a grant shall, where there is no defendant, be commenced by application in accordance with Form 88U.
- (2) Where there is no respondent, a proceeding may be heard:
 - (a) in the absence of the public; and
 - (b) without the appearance before the Court of a person.
- (3) The proceeding shall be heard without an appointment being obtained for the hearing.
- (4) Order 46 does not apply to a proceeding under this rule.
- (5) A draft minute of the order sought shall be lodged with the Registrar before an order is made on the application.
- (6) The order shall be authenticated in accordance with the General Rules after the minute of it is signed.

88.43 Commencement of contentious proceedings

In a proceeding for revocation of a grant in which proceeding there is a defendant, the statement of claim or affidavit shall allege facts which, if proved, shall show that the plaintiff has standing to claim revocation of the grant.

Part 10 Contentious proceedings generally

88.44 Cross-claim

- (1) A party in a proceeding may cross-claim for a grant or for resealing notwithstanding that notice of the intended application has not been published in compliance with this Chapter.
- (2) Where, in a case to which subrule (1) refers, a notice of the intended application has not been published, the party shall, within 30 days after filing the cross-claim, cause notice of the intended application to be published in the manner, and with such variations as the circumstances require, in the appropriate form required by rule 88.09.

88.45 Intervention

- (1) An application to intervene in a proceeding for a grant shall be by summons in the proceeding for an order that the person applying be added as a party.
- (2) Before filing the summons, the person applying shall file a notice of appearance in the proceeding.

Part 11 Citations

88.46 Request for issue

- (1) Application for issue of a citation shall be made by filing a request in accordance with Form 88V.
- (2) The person requesting issue of a citation shall:
 - (a) file an affidavit verifying the averments contained in the proposed citation; and
 - (b) lodge 2 copies of the proposed citation.

88.47 Citation to be settled

A citation shall be settled by the Registrar before it is issued.

88.48 Seal

A citation shall be sealed with the Seal.

88.49 Registrar to file copy

Where a citation is issued, the Registrar shall file a copy of it.

88.50 Citation to bring in abolished

- (1) A citation to bring in a grant, will or other document shall not be issued.
- (2) This rule does not limit the power of the Court to order a person to deposit in the Registry a grant, will or other document.

88.51 Citation to pray for administration

- (1) A requirement under section 22(2)(c) of the Probate Act of a person to pray for administration shall be by citation which may be in accordance with Form 88W.
- (2) An answer to a citation to which subrule (1) refers shall be in accordance with Form 88X.

88.52 Citation to take probate

- (1) A requirement under sections 28 or 29 of the Probate Act of an executor named in a will to take or apply for probate shall be by citation which may be in accordance with Form 88Y.
- (2) An answer to a citation to which subrule (1) refers shall be in accordance with Form 88Z.

88.53 Citation to see proceeding

- (1) On the application of a party to a proceeding to which Part 8 applies, a citation may be issued against a person who is not a party to the proceeding but who has an adverse interest to the applicant notifying him that, if he does not answer the citation by filing a notice of appearance in the proceeding, the proceeding may be heard and determined in his absence.
- (2) The citation under this rule may be in accordance with Form 88ZA.
- (3) Where a person cited to see a proceeding has filed a notice of appearance in the proceeding, he shall be entitled to such notice of the hearing or trial of the proceeding as if he were a defendant in the proceeding.

88.54 Proceeding where executor neglects to prove will

- (1) Subject to subrule (4), an application under section 34 of the Probate Act:
 - (a) shall be by originating motion supported by affidavit; and
 - (b) may be made in the absence of a respondent.

- (2) An order which the Court may make under section 34 of the Probate Act shall not be in the form of an order nisi, but shall be:
 - (a) in accordance with Form 88ZB; or
 - (b) in accordance with such other form as the Court directs.
- (3) In order to prove that an executor has neglected or refused to prove a will or to renounce probate of the will, a person intending to apply under subrule (1) may apply for issue of a citation under this Part in accordance with Form 88Y.
- (4) Where a citation has been issued in accordance with subrule (3), a proceeding for an order under section 34 of the Probate Act shall be by summons in the proceeding in which the citation was issued.

88.55 Time for answer to a citation

- (1) This rule applies to a citation other than a citation to see a proceeding.
- (2) In settling the citation, the Court shall fix the time limited by the citation for answer to it.
- (3) Subject to subrule (4), the time limited by the citation for answer to it shall be:
 - (a) in the case of service in the Territory – 14 days;
 - (b) in the case of service outside the Territory, but within the Commonwealth – 28 days;
 - (c) in any other case – 42 days.
- (4) The Court may, in settling the citation, fix a shorter or longer period for each of the periods referred to in subrule (3).
- (5) Where the applicant for issue of the citation wishes a shorter or longer period to be fixed, he shall include in his request for issue of the citation a statement of the period which he requests be fixed and file an affidavit in support of that request.

88.56 Service

- (1) A citation shall be served personally on the person cited.
- (2) A citation may be served outside the Territory.
- (3) Service of a citation on a person under a disability shall not be effected otherwise than in accordance with subrules (4) to (7) (inclusive).

- (4) Where the person to be served is an infant, the citation may be served:
 - (a) if he has attained the age of 16 years – on him;
 - (b) on a parent of his or a guardian of his person or of his estate;
or
 - (c) if he has no parent and has no guardian of his person or of his estate – on a person with whom he resides or in whose care he is.
- (5) Where the person to be served is a person otherwise under a disability, the citation may be served:
 - (a) if he has a guardian – on the guardian; or
 - (b) if a manager of his estate has been appointed under a protection order made under the *Aged and Infirm Persons Property Act* – on that manager;
 - (c) if no such manager has been appointed or the person under a disability has no guardian – on a person with whom he resides or in whose care he is.
- (6) The citation may be served on a person (including a person under a disability) whom the Court, before or after the service, approves.
- (7) A citation served in pursuance of subrules (4), (5) or (6) shall be served in the manner required by the General Rules with respect to personal service of a document.

88.57 Appearance by person cited to see

- (1) Subject to subrule (2), Order 8 applies to a person cited to see a proceeding as if the person cited were a defendant in the proceeding.
- (2) Rules 8.08 and 8.09 do not apply to a case to which this rule refers.

88.58 Election to be respondent

- (1) A person cited to see a proceeding may, except where he has lodged a caveat requiring proof in solemn form of a will to which the proceeding relates, include in his notice of appearance a statement that he elects to be a defendant in the proceeding.
- (2) Where the person cited elects under subrule (1) to be a defendant in a proceeding, he shall, on filing his notice under subrule (1), become a defendant in the proceeding and the proceeding shall

continue as if he were joined as a defendant by the originating process and as if he were served with the originating process on the day on which he was served with the citation to see the proceeding.

- (3) Where the person cited has lodged a caveat requiring proof in solemn form of a will to which the proceeding relates, he may, after filing a notice of appearance in the proceeding, apply for an order adding him as a party in the proceeding.

88.59 Person under disability

- (1) This rule applies where a citation is served on a person under a disability.
- (2) The proceeding in respect of a citation shall be stayed until the appointment of a litigation guardian for the person under a disability.
- (3) The person under a disability may answer a citation only by his litigation guardian.
- (4) Subject to rule 88.60, Order 15 does not apply to the appointment of a litigation guardian under this Part.
- (5) An application for the appointment of a litigation guardian shall be by summons in the proceeding relating to the citation.
- (6) There shall be no defendant to a summons for appointment of a litigation guardian.
- (7) The proceeding shall be heard without an appointment being obtained for a hearing.
- (8) The proceeding may be heard:
 - (a) in the absence of the public;
 - (b) without the appearance before the Court of a person.
- (9) A draft minute of the order sought shall be lodged with the Registrar before an order is made on the summons.
- (10) The order shall be authenticated in accordance with the General Rules after the minute of it is signed.
- (11) Where a person under a disability has a guardian who has or may be given authority under the *Mental Health Act* to answer the citation on his behalf, no person other than the guardian shall act as litigation guardian, unless the Court otherwise orders.

- (12) Where a person under a disability has a manager who has or may be given authority under the *Aged and Infirm Persons Property Act* to answer the citation on his behalf, no person other than the manager shall act as litigation guardian, unless the Court otherwise orders.
- (13) A litigation guardian shall not be appointed unless:
- (a) he is the person applying for appointment; or
 - (b) evidence of his consent to act as litigation guardian is furnished.
- (14) Where a citation to see a proceeding has been served on a person under a disability and a litigation guardian of that person is appointed to answer the citation, the appointment shall extend to the litigation guardian electing on behalf of the person under a disability to become a defendant in the proceeding in which the citation was served and defending that proceeding (including cross-claiming in it).

88.60 Person under disability elects to become defendant

Where a person under a disability elects by his litigation guardian to become a defendant in a proceeding in which a citation was served, Order 15 applies as if his litigation guardian had been appointed under that Order.

88.61 Proof of service of citation to see

A party at whose request a citation to see a proceeding has been issued shall not, without the leave of the Court, be entitled to be heard at the hearing or trial of the proceeding unless he has furnished evidence on affidavit:

- (a) that the person cited has not been served with the citation; or
- (b) where the person cited has not filed a notice of appearance in the proceeding – that the citation has been served on him.

Part 12 Caveats

88.62 Caveat in respect of grant

- (1) A person claiming to have an interest in an estate may lodge in the Registry a caveat, in accordance with Form 88ZC, in respect of a grant or reseal being made in the estate.

- (2) The caveat shall state fully the nature of the interest claimed by the caveator and shall provide an address for service.
- (3) Where a person, to the knowledge of the caveator, is making or is intending to make application for a grant or resealing in the estate, the caveator shall, within 7 days after the lodging of the caveat, serve a copy of the caveat on him.

88.63 Caveat for solemn form

- (1) A person having an interest in an estate may lodge in the Registry a caveat, in accordance with Form 88ZD, requiring proof in solemn form of a will.
- (2) The caveat shall state fully the nature of the interest of the caveator and shall provide an address for service.
- (3) Where a person, to the knowledge of the caveator, is making or intending to make application for a grant or resealing in the estate, the caveator shall, within 7 days after the lodging of the caveat, serve a copy of the caveat on him.

88.64 Duration

- (1) A caveat takes effect on the date of lodgment and, unless the Court otherwise orders, remains in force for 6 months.
- (2) The Court may extend the period of duration of a caveat.

88.65 Leave to withdraw caveat – no proceeding for grant

- (1) This rule applies to an application for leave to withdraw a caveat where there is no proceeding for a grant or resealing in the estate.
- (2) An application under this rule shall be made by summons supported by affidavit.
- (3) There shall be no defendant in a proceeding for leave under this rule.
- (4) Order 46 does not apply to a proceeding under this rule.
- (5) A draft minute of the order sought shall be lodged with the Registrar before an order is made on the summons.
- (6) The order shall be authenticated in accordance with the General Rules after the minute of it is signed.

88.66 Leave to withdraw caveat – proceeding for grant

- (1) This rule applies to an application for leave to withdraw a caveat where there is a proceeding for a grant or resealing in the estate.
- (2) A caveator shall file a notice of appearance in the proceeding for grant or resealing.
- (3) The application for leave to withdraw the caveat shall be made by summons.

88.67 Withdrawal

- (1) Where leave is given to withdraw a caveat, the caveator may withdraw it by himself or his solicitor and by writing in the margin of the caveat "I withdraw this caveat" and dating and signing the indorsement.
- (2) Where a caveator withdraws a caveat, he shall, within 7 days after the withdrawal, serve notice of the withdrawal on a person who, to the knowledge of the caveator, is making or intending to make application for a grant or for resealing in the estate.

88.68 Recoupment of costs

Where a caveat is withdrawn and the person on whose application a grant or resealing is made is unable to recover from the caveator costs which the caveator has been ordered to pay to him, that person shall be entitled to be paid by the estate the amount of the costs properly incurred by him in addition to other costs to which he is entitled out of the estate.

88.69 Citation of caveator to see

Where a caveat is in force requiring proof of a will in solemn form, the caveator shall, in a proceeding for a grant or for resealing in which the applicant seeks to prove a will to which the caveat relates, be cited to see the proceeding.

88.70 Order that caveat cease to be in force

- (1) Where a person intends to apply for a grant or for resealing and a caveat is in force in respect of a grant or resealing being made in the estate, that person may apply for an order that the caveat cease to be in force in respect of the intended application for grant or resealing.
- (2) A proceeding under this rule shall be commenced by originating motion supported by affidavit.

- (3) The caveator shall be the defendant in the proceeding.
- (4) Where in respect of the caveat the Court considers that the evidence does not show:
 - (a) that the caveator has an interest in the estate or has a reasonable prospect of establishing such an interest; and
 - (b) some matter occasioning doubt as to whether the grant ought to be made,

the Court may order that the caveat cease to be in force in respect of the intended application.

- (5) Where the Court does not, in pursuance of subrule (4), order that the caveat cease to be in force in respect of the intended application, the Court may give such directions as appear best adapted for the just, quick and inexpensive determination of what grant or resealing, if any, should be made in the estate and of related matters.
- (6) Directions which the Court may give in pursuance of subrule (5) include a direction to a caveator to commence a proceeding.
- (7) Where the Court, in pursuance of subrules (5) and (6), directs a caveator to commence a proceeding, it may order that, if the caveator does not commence the proceeding within such time as the Court fixes, the caveat shall cease to be in force in respect of the intended application referred to in subrule (1) or generally.
- (8) An order under subrule (7) may be made at the time the caveator is directed to commence a proceeding or at a subsequent time.

88.71 Proceeding by a writ or originating motion

- (1) Where a caveat is in force in respect of a grant or resealing being made in an estate, a proceeding for a grant or for resealing in the estate shall be commenced by a writ or an originating motion.
- (2) Unless the Court otherwise directs, the caveator shall be a party in the proceeding.

Part 13 Accounts and commission

88.72 Time for filing inventory

The inventory required to be filed by section 89(1) of the Probate Act shall be filed in the office of the Registrar within 3 months after the grant of probate or administration.

88.73 Time for filing accounts

The accounts of an executor or administrator of the estate of a deceased person shall, for the purpose of section 89(1) of the Probate Act be filed no later than 12 months after grant or resealing.

88.74 Service of notice or summons under section 91

- (1) A notice or summons under section 91 of the Probate Act may be served by sending it by pre-paid post to the executor, administrator or trustee at his address for service stated in the originating process for the grant or resealing.
- (2) A summons to which subrule (1) refers shall be in accordance with Form 88ZE.
- (3) The Registrar shall, before the hearing of a summons under this Rule, file:
 - (a) a statement:
 - (i) of the date and mode of service of the notice to which subrule (1) refers; and
 - (ii) indicating whether the executor or administrator to whom the notice is directed has, within the time prescribed in section 91(2) of the Probate Act, complied with section 89 of that Act; and
 - (b) a copy of the notice referred to in this rule.
- (4) The statement referred to in subrule (3)(a) is evidence of the matters stated in it.
- (5) The prescribed time for the purpose of section 91(3) of the Probate Act is one month from the making of an order by the Court.

88.75 Extension of time

- (1) An executor or administrator may, in a proceeding for a grant or for resealing, apply for an order extending the period referred to in rule 88.72 and 88.73, including an order extending the period until the further order of the Court, without the prior filing or service of a summons.
- (2) Where an executor or administrator has been summoned under section 91(2) of the Probate Act, and wishes to apply for an order extending the period referred to in rule 88.72 or 88.73, he shall apply on the day appointed for showing cause.

- (3) Except where subrule (2) applies, a draft minute of the order sought shall be lodged with the Registrar before an order is made.
- (4) An order for extension of time shall be authenticated in accordance with the General Rules after the minute of it is signed.

88.76 Order to file, &c., accounts

An application for an order that an executor, administrator or trustee of the estate of a deceased person:

- (a) file an inventory;
- (b) file accounts;
- (c) file and pass accounts; or
- (d) pass accounts filed,

shall be made by summons in the proceeding in which representation was applied for.

88.77 Commencement of proceeding for passing or commission

An application by an executor, administrator or trustee for:

- (a) an order passing his accounts; or
- (b) an order passing his accounts and for commission,

shall be made by summons.

88.78 Proceeding for passing accounts, &c.

- (1) Before making an order under rule 88.77, the Court may order that the applicant for the Order attend before the Registrar or a Deputy Registrar to vouch the applicant's accounts.
- (2) The Registrar or Deputy Registrar shall fix an appointment for the purpose of the vouching of the accounts.
- (3) Not later than 14 days before the appointment to vouch his accounts the applicant shall cause to be published a notice of the filing of his accounts, the order or orders claimed in the proceedings and the appointment to vouch the accounts.
- (4) The notice shall be published in a newspaper circulating in Darwin and, if the deceased was resident at the date of his death at a place more than 200 kilometres from the General Post Office at Darwin, also in a newspaper published and circulating in the district where the deceased resided.

- (5) Subject to subclause (7), not later than 14 days before the appointment to vouch his accounts the applicant shall serve on any surety to an administration bond in the estate a copy of the notice referred to in subrule (3).
- (6) The applicant shall file an affidavit of compliance with subrules (4) and (5).
- (7) Instead of or in addition to complying with subrules (3) and (4) in respect of a surety, the applicant may file the consent of that surety to an order passing the accounts and an affidavit verifying the consent.
- (8) While an application to which this rule applies is pending, a person:
 - (a) may, unless the Registrar otherwise directs, inspect the accounts without the leave of the Court; and
 - (b) may, at any time before completion of the hearing, file a notice of appearance in the proceeding.
- (9) A person filing a notice of appearance shall be a respondent in the proceeding.
- (10) On the day appointed under subrule (2) or at such later time as convenient, the Registrar or Deputy Registrar shall proceed with the vouching before him of the accounts where the applicant has complied with this Part.
- (11) The applicant may vouch his accounts in person, by his legal practitioner or by a person authorized by the legal practitioner.
- (12) A person, whether or not he is a party in the proceedings, may attend on the vouching of the accounts unless the Court, of its own motion, otherwise orders.
- (13) The Registrar or Deputy Registrar may permit a person to ask, through him, a question relevant to the vouching of the accounts.
- (14) Where the vouching of the accounts is not concluded on the day appointed, subject to any direction by the Registrar, he or the Deputy Registrar may decline to proceed with the vouching at any time reasonable notice of which has not been given to any person interested.
- (15) On the conclusion of the vouching, the Registrar or Deputy shall inform the applicant of matters necessary for preparation by the applicant of a draft minute of a certificate of the vouching of the accounts.

- (16) The certificate vouching the accounts shall certify as to:
- (a) the correctness of the accounts;
 - (b) the amount of capital realised during the period of the accounts;
 - (c) the amount of income collected during the period of the accounts;
 - (d) the value of assets transferred to beneficiaries during the period of the accounts;
 - (e) where a business was carried on, the gross receipts and net profit earned or loss incurred during the period of the accounts; and
 - (f) any other relevant information.
- (17) The applicant shall lodge the draft minute with the Registrar.
- (18) The Registrar or Deputy shall sign a correct minute of his certificate and shall file it.
- (19) Except where rule 88.79 applies, the applicant, on the filing of a minute under subrule (18), shall obtain from the Registry an appointment for the resumption of the hearing of the proceeding.

88.79 Uncontested proceeding for passing accounts

- (1) This rule applies where:
- (a) there is no respondent in a proceeding to pass accounts; and
 - (b) the applicant does not seek commission.
- (2) A proceeding may be heard:
- (a) in the absence of the public; and
 - (b) without the appearance before the Court of a person.
- (3) The proceeding shall be heard without an appointment being obtained for the hearing.
- (4) Rule 46 does not apply to a proceeding under this Rule.

88.80 Affidavits in support of commission

Where the applicant seeks commission he shall file:

- (a) an affidavit in support of the application; and
- (b) where the accounts are not filed within the time fixed by this Part or an order of the Court, an affidavit explaining the delay.

88.81 Renunciation

- (1) Where an executor, administrator or trustee renounces his right to commission in respect of a particular year, he shall be entitled to indemnity out of the assets in the estate for the amount of his legal practitioner's charges and disbursements, as moderated in accordance with the relevant professional scale, for non-professional work performed in that year, to an amount not exceeding that which the executor, administrator or trustee would have been, in the opinion of the Court, allowed by way of commission for that year had he applied for commission.
- (2) Where an applicant, in accordance with subrule (1), files a renunciation of commission, the accounts shall be allowed in accordance with the indemnity under subrule (1).
- (3) A renunciation shall be filed no later than a reasonable time before the hearing of the proceeding.

88.82 Notice

The Court may order an applicant under this Part to give notice of a proceeding to a person.

88.83 Review

- (1) Where a proceeding under this Part is heard by the Registrar, a party may apply to the Court for review of an order made by the Registrar on the hearing.
- (2) The Court may make such order by way of confirmation, variation, discharge or otherwise as it thinks fit.
- (3) An application for review shall be made within 14 days after the date of the order in respect of which the review is sought.

88.84 Accounting party

- (1) Where accounts have been filed with the Registrar in pursuance of this Part and:
 - (a) a doubt or difficulty arises; or
 - (b) a person interested desires the matter referred to a Judge,the Registrar shall serve the accounting party with a notice in writing stating that he will not pass the accounts and giving his reasons.
- (2) Where a notice has been served under subrule (1), the accounting party may, within 14 days after the service of the notice, apply to a Judge to pass the accounts.
- (3) An application shall be by summons and a copy of the summons shall be served on the Registrar 7 clear days before the return day of the motion.
- (4) If an accounting party has been served with a notice under subrule (1) and has failed within the time prescribed in subrule (2) to apply to the Court to pass the accounts, he shall, for the purposes of the Probate Act and these rules, be deemed to have failed to comply with the provisions of section 89 of that Act.

88.85 Public trustee

Subject to a law to the contrary, nothing in this Part requires the Public Trustee to pass his accounts.

Part 14 General

88.86 Applications under Probate Act and these Rules

- (1) An application for an order which, under the Probate Act or these rules, the Court has power to make shall:
 - (a) where the application is in relation to a proceeding already commenced – be made by summons; or
 - (b) where the application is in the nature of an originating proceeding – be made by a writ or an originating motion supported by affidavit,unless:
 - (c) this Part provides otherwise; or

(d) the Court otherwise orders.

- (2) Subrule (1) applies to a proceeding which may be commenced under this Chapter but in respect of which no procedure for commencement is prescribed.

88.87 Notice of appearance

A notice of appearance for the purposes of this Chapter shall be in accordance with Form 8A and Order 8 applies, with appropriate modifications, to a notice of appearance under this Chapter.

88.88 Notice of intended distribution

A notice under section 96 of the Probate Act may be in or to the effect of Form 88ZF.

88.89 Registrar not to deal with application for representation in certain cases

- (1) Where an application for a grant of representation or for resealing has been made to the Registrar and:
- (a) a caveat against the application is subsequently lodged with the Registrar before the representation applied for has been granted;
 - (b) there is no direct evidence of the death of the person in respect of whom the application is made but only evidence supporting a presumption of his death;
 - (c) it appears doubtful to the Registrar whether the application should be granted; or
 - (d) the application is made under Part IV of the Probate Act, and the Registrar thinks it proper to be dealt with by a Judge or it becomes necessary to obtain the directions of a Judge.

the Registrar shall serve on the applicant a notice in writing stating that he will not deal with the application, and giving his reasons.

- (2) When an applicant has been served with a notice under subrule (1), he may apply to the Court by summons for a grant of representation or resealing.

88.90 Solemn form

- (1) Notwithstanding anything contained in this Chapter, an executor or other person entitled to prove a will may prove it in solemn form of law.

- (2) An application for proof in solemn form of law shall be commenced by writ.
- (3) Immediately on the filing of a writ under this rule, the plaintiff shall apply to the Registrar by summons for directions.

Chapter 4 Cross-vesting of jurisdiction rules

Order 89 Cross-vesting

89.01 Application

- (1) This Chapter applies to a proceeding in the Court to which a cross-vesting law applies.
- (2) In the application of Chapter 1 to a proceeding to which this Chapter applies, a reference in rule 1.02 to a proceeding commenced includes a reference to a proceeding transferred under a cross-vesting law.

89.02 Definitions

In this Chapter, unless the contrary intention appears:

the Act means the *Jurisdiction of Courts (Cross-Vesting) Act*.

cross-vesting law means a law of the Commonwealth or of a State or Territory (including the Act) relating to the cross-vesting of jurisdiction.

special federal matter has the same meaning as in the *Jurisdiction of Courts (Cross-Vesting) Act 1987* of the Commonwealth.

89.03 Form of documents

- (1) Subject to subrule (2), an originating motion or summons by which application is made under a cross-vesting law shall be in writing and be prepared in accordance with rules 27.02 to 27.04 inclusive.
- (2) In addition to the requirements of Order 27 the heading of the originating motion or summons shall state "In the matter of the *Jurisdiction of Courts (Cross-Vesting) Act*".

89.04 Application by Attorney-General

If an application for the transfer of a proceeding is made by the Attorney-General of the Commonwealth or of a State or another Territory, the Attorney-General does not, by reason of the application, become a party to the proceeding in respect of which the application is made.

89.05 Removal of proceeding

If an order is made for the removal of a proceeding from a court or tribunal to the Court under section 8 of the Act, the Court may give any directions that could have been given by the court or tribunal in which the proceeding was pending.

89.06 Notice

- (1) A party to a proceeding proposing to invoke a jurisdiction arising under a provision of a cross-vesting law, or otherwise to rely on a provision of a cross-vesting law, shall:
 - (a) file and serve a notice:
 - (i) identifying the provision;
 - (ii) identifying the claim in relation to which reliance is placed on the provision; and
 - (iii) stating the grounds on which reliance is placed on the provision; and
 - (b) seek directions as soon as practicable as to whether the proceeding should be transferred.
- (2) Where a matter for determination in a proceeding is a special federal matter, the notice shall:
 - (a) identify the special federal matter; and
 - (b) state the grounds on which it is a special federal matter.

89.07 Service out of Territory

- (1) Notwithstanding rule 7.01, originating process shall be served out of the Territory only with leave of the Court where the proceeding includes a matter for determination in respect of which jurisdiction under a cross-vesting law is invoked.
- (2) Leave shall not be granted under subrule (1) unless the Court is satisfied that the Court may be, having regard to the relevant cross-vesting law, an appropriate court to hear and determine the proceeding.
- (3) A proceeding may be transferred to another court notwithstanding that leave to serve the originating process out of the Territory has been given.

89.08 Procedure after transfer

- (1) When a proceeding is transferred by the Court under a cross-vesting law, the Registrar of the Supreme Court shall send to the proper office of the court to which the proceeding is transferred all documents filed, and all orders made, in the proceeding.
- (2) When a proceeding is transferred to the Court under a cross-vesting law, the Registrar of the Supreme Court shall give it a number and title.
- (3) As soon as practicable after a proceeding is transferred to the Court under a cross-vesting law, the party by whom the proceeding was commenced shall apply for directions.

89.09 Conduct of proceeding

- (1) If a party seeks to have a written law of another State or Territory applied under section 11(1)(b) of the Act in determining a right of action arising under that written law, that party shall file and serve a notice identifying the right of action and the written law.
- (2) If a party seeks to have rules of evidence and procedure, other than those of the Court, applied under section 11(1)(c) of the Act in dealing with a matter for determination in the proceeding, that party shall file and serve a notice stating the relevant rules that the party seeks to have applied.
- (3) A party required by subrule (1) or (2) to file and serve a notice shall seek directions on the subject-matter of the notice before the proceeding is set down for trial.

89.10 Directions

The Court may give directions in relation to a proceeding to which a cross-vesting law applies and may set aside or vary any direction given.

89.11 Applications made to Judge

The powers of the Court under a cross-vesting law and this Chapter shall be exercised by a Judge.

Chapter 5 Admiralty (Supplementary) Rules

Order 90 Admiralty

90.01 Interpretation

- (1) In this Chapter:

Act means the *Admiralty Act 1988* of the Commonwealth.

Marshall means the Sheriff or other person authorized by or under rule 90.02.

Rules means the Admiralty Rules made under the Act.

- (2) A reference in the Rules to the Registrar otherwise than in relation to a proceeding in a court includes a reference to the Master.

90.02 Registrar and Marshall

- (1) For the purposes of section 4 of the Rules, but subject to subrule (2):
- (a) the Master is authorized to exercise the power and function, and perform the duty, of the Registrar; and
 - (b) the Sheriff appointed under the *Sheriff Act* is authorized to exercise the power and function, and perform the duty, of the Marshall.
- (2) The Court constituted by the Chief Justice may, either generally or in a particular case, authorize a person to exercise the power or function, or perform the duty, of the Registrar or the Marshall.

90.03 Operation of Chapters 1 and 2

Chapters 1 and 2 of the *Supreme Court Rules*, with the necessary changes, and to the extent that they are not inconsistent with the Rules, apply to and in relation to all matters to which the Rules apply.

90.04 Marshall may charge fees

The Marshall may, in respect of a function exercised or duty performed by the Marshall, charge fees in accordance with the following table:

TABLE OF FEES

1.	Receiving and entering a writ of summons, warrant release, decree, order, caveat, commission or other instrument under the seal of the Court	\$15.00
2.	For service of a writ of summons, but subject to item 5	\$15.00
3.	For execution of a warrant for the arrest of a ship or seizure of cargo or other goods, but subject to item 5	\$30.00
4.	For execution of a writ of attachment – for each person	\$30.00
5.	Where writ of summons is served at the same time as a warrant of arrest is executed – instead of fees under items 2 and 3	\$40.00
6.	For release of a ship, goods or person from seizure or arrest	\$15.00
7.	For execution of a commission of appraisement and sale or appraisement/sale, but subject to item 8	\$30.00
8.	Where execution of a commission of appraisement is ordered and the Court then orders that there be a commission for sale – instead of the fee under item 7	\$60.00
9.	For arranging the appointment of the commission of an auctioneer or agent for sale by public auction or private contract (to include an inventory, valuation, and compiling a certificate of appraisement and preparing for sale)	\$25.00
10.	For execution of a decree, order, commission or instrument other than one specified in this Schedule	\$30.00
11.	For delivery of a ship or goods to a purchaser	\$30.00
12.	For attending the discharge of cargo or removal of a ship or goods – per day	\$30.00
13.	Where process must be executed urgently resulting in office being open after hours – for each hour office is open after hours	\$50.00

14. On the gross proceeds of any ship or goods sold:
- | | |
|---|--------|
| for every \$200 or part of \$200 up to \$20,000 | \$6.00 |
| for each additional \$200 or part of \$200 | \$3.00 |
15. For retaining possession of a ship (with or without cargo) or of a ship's cargo – per day \$15.00

Note

- (1) *No fee is payable for the custody and possession of property seized if it consists of money in a bank, or goods stored in a bonded warehouse, or if it is in the custody of a customs house officer or other authorized person.*
- (2) *In addition to the fees specified in this Schedule, the Marshall may recover all expenses reasonably incurred in the execution of the duties referred to in this Schedule, including:*
- (a) *sums expended in attending the discharge of a ship or goods;*
 - (b) *sums paid to a shipkeeper;*
 - (c) *sums paid for the safe custody of property;*
 - (d) *travelling expenses;*
 - (e) *necessary meals;*
 - (f) *overtime penalties;*
 - (g) *sums paid to engage assistants, agents, etc.;*
 - (h) *postage, telephone calls, stationery;*
 - (j) *fees paid to auctioneers or appraisers (at the nominated prescribed fee);*
 - (k) *such fee (if any) as the Registrar may determine is payable for any procedure or service not specified in this Schedule.*
- (3) *A deposit on account of fees applicable to any proceeding may be required before the proceeding is commenced, or at any time during the course of the proceeding and a memorandum of the amount deposited must be delivered to the party making the deposit. An undertaking in writing to pay any further fees or expenses incurred by the Marshall which may become payable beyond the amount deposited may be required.*

Chapter 6 Commercial arbitration rules

Order 91 Commercial arbitration

91.01. Interpretation

In this Order:

the Act means the *Commercial Arbitration Act*.

91.02. Application of Order

This Order applies:

- (a) to an arbitration in respect of which the Court has jurisdiction under the Act; and
- (b) to a proceeding in the Court under the Act.

91.03. Application of Chapter 1

Chapter 1, with the necessary changes, applies to and in relation to an arbitration or proceeding referred to in rule 91.02.

91.04. Jurisdiction

- (1) A proceeding in the Court under the Act shall be commenced by originating motion.
- (2) The Master has jurisdiction under the Act except under Part V.

91.05. Enforcement of award

- (1) Unless the Court otherwise orders, an application for leave under section 33 of the Act to enforce an award as a judgment or order of the Court shall be supported by affidavit and may be made without notice to any person.
- (2) An affidavit referred to in subrule (1) shall:
 - (a) exhibit the arbitration agreement and the award or, in either case, a copy;
 - (b) state the extent to which the award has not been complied with at the date the application is made;

- (c) state the usual or last known place of residence or business of the person against whom it is sought to enforce the award or, when the person is a corporation, its last known registered office.
- (3) If leave is given, a party to the award may enter judgment in terms of the award.

91.06. Service of order and application for stay

- (1) An order of the Court giving leave to enforce an award and a copy of the affidavit in support referred to in subrule (1) shall be served on the person against whom it is sought to enforce the award.
- (2) A debtor may, within 7 days after service on the debtor of the order (or if the order is served out of the Territory, within such time as the Court orders), apply to the Court to set aside the order and the award cannot be enforced until the determination of the application.

91.07. Appeal under section 38

An appeal under section 38 of the Act shall be brought in accordance with Order 83.

91.08. Application under section 39(1)

In respect of an application under section 39(1) of the Act to determine a question of law arising in the course of an arbitration, the originating motion shall be filed and served within 14 days after the arbitrator or umpire has consented to the making of the application or the parties have so consented.

91.09. Application under section 42 or 43

In respect of an application:

- (a) to set aside an award under section 42 of the Act; or
- (b) to remit an award under section 43 of the Act,

the originating motion shall be filed and served within 28 days after the award is made.

91.10. Offer of compromise

A party to an arbitration may serve on any other party an offer of compromise of a claim the subject of the arbitration on the terms specified in the offer.

91.11. Form of offer

An offer of compromise shall be in writing and contain a statement to the effect that it is served for the purpose of section 34 of the Act.

91.12. Time for making, accepting, payment under, &c., offer

- (1) An offer of compromise may be served at any time before the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates have been determined.
- (2) A party may serve more than one offer of compromise.
- (3) An offer of compromise may be expressed to be limited as to the time the offer is open to be accepted after service on the party to whom it is made, but the time expressed shall be not less than 14 days after service.
- (4) A party on whom an offer of compromise is served shall, within 3 days after service, serve a written acknowledgment of service on the party serving the offer.
- (5) A party on whom an offer of compromise is served may accept the offer by serving notice of acceptance in writing on the party who made the offer before:
 - (a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified, the expiration of 14 days after service of the offer; or
 - (b) the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates,whichever event is the sooner.
- (6) An offer of compromise shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.
- (7) An offer of compromise is open to be accepted within the period referred to in subrule (5) notwithstanding that during the period the party on whom the offer is served makes an offer of compromise to the party who served the offer of compromise, whether or not the offer made by the party served is made in accordance with this Order.
- (8) An offer of compromise providing for payment of a sum of money to a plaintiff shall, unless it otherwise provides, be taken to be an offer providing for payment of the sum within 14 days after acceptance of the offer.

- (9) An application to the Court under subrule (6) for leave to withdraw an offer shall be made by originating motion in Form 5C.

91.13. Effect of offer

An offer of compromise made in accordance with this Order shall be taken to be an offer of compromise made without prejudice, unless the offer otherwise provides.

91.14. Disclosure of offer

- (1) No statement of the fact that an offer of compromise has been made shall be contained in a pleading, affidavit or other document in the arbitration.
- (2) Where an offer of compromise has not been accepted, no communication with respect to the offer shall be made to the arbitrator or umpire until after the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates.
- (3) Subrules (1) and (2) do not apply where an offer of compromise provides that the offer is not made without prejudice.

91.15. Failure to comply with accepted offer

- (1) Where a party to an accepted offer of compromise fails to comply with the terms of the offer then, unless for special cause the Court otherwise orders, the other party shall be entitled, as he or she elects:
- (a) judgment in the terms of the accepted offer; or
- (b) where the party in default is:
- (i) the claimant, an order that the arbitration be forever stayed; and
- (ii) the respondent to the claim, an order declaring the compromise constituted by the acceptance of the offer to be of no effect and that the claimant be at liberty to proceed with the arbitration.
- (2) An application for judgment or an order under subrule (1) shall be made to the Court by originating motion.

91.16. Costs where offer not accepted

In an exercise of discretion as to costs the arbitrator or umpire shall consider whether the party serving an offer of compromise was at all material times willing and able to carry out the party's part of what was proposed in the offer.

91.17 Hearing on costs

In arbitration proceedings the arbitrator shall not make a final award with respect to costs until the parties have had an opportunity to be heard on the question of the costs of the arbitration.

Chapter 7 Forfeiture of proceeds rules

Order 92 Forfeiture of proceeds

92.02 Interpretation

In this Order:

the Act means the *Crimes (Forfeiture of Proceeds) Act*.

92.03 Application

An application:

- (a) for a forfeiture order or a pecuniary penalty order shall be in Form 92A;
- (b) for a restraining order shall be in Form 92B, adapted as the circumstances of the case require; and
- (c) for an order declaring the nature, extent and value of a third person's interest in certain property shall be in Form 92C.

92.04 Notice

A notice required by the Act to be given shall be in writing.

92.05 Filing, service and directions

- (1) An application, an affidavit and a copy of a notice given in a proceeding under the Act shall be filed in the Court unless the Court otherwise orders.
- (2) A copy of an application, a copy of an affidavit, and a notice given in a proceeding under the Act shall be served personally or in such manner as the Court directs.
- (3) An application shall be taken to have been made when it is filed.
- (4) After an application is filed a Judge may give directions as to its hearing.

92.06 Notice of application for order under section 19

For the purposes of section 29 of the Act, notice of an application under section 19 of the Act shall be given by the applicant by serving a sealed copy of the application personally on the person to whom the notice is to be given and by filing an affidavit of service of the copy of the application.

92.07 Notice of discharge of order

When a pecuniary penalty order registered in accordance with section 31 of the Act is discharged, the person who procured the registration of the order shall promptly give to the Prothonotary, Registrar or other proper officer of the court in which the order was registered:

- (a) notice of the discharge of the pecuniary penalty order; and
- (b) a sealed copy of the order discharging the pecuniary penalty order.

92.08 Facsimile copy of interstate order

For the purposes of section 39(1) of the Act, a facsimile copy of an interstate order or of an amendment to an interstate order shall be taken to be certified if it contains:

- (a) a facsimile copy of the seal of the court that made the order;
or
- (b) a facsimile copy of a statement signed by an appropriate person to the effect that the copy is a true copy of the order of the court.

FORMS

FORM 5A

rule 5.02(1)

WRIT

IN THE SUPREME COURT
OF NORTHERN TERRITORY OF
AUSTRALIA AT [Darwin
or Alice Springs as the
case may be] BETWEEN

No. of 19

A.B. Plaintiff

and

C.D. Defendant

TO THE DEFENDANT

This proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Registry of the Supreme Court in the Supreme Court Building, Mitchell St., Darwin, or, where the writ has been filed in the Alice Springs Registry, in the Alice Springs Registry of the Supreme Court, Law Courts Building, Parsons Street, Alice Springs; and
- (b) on the day you file the Notice or on the next working day, serving, at the plaintiff's address for service which is set out at the end of this writ, a copy, sealed by the Court.

IF YOU DO NOT file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without giving you any further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is:

- (a) Within 7 days after service:
 - (i) where you have been served with the writ filed in the Darwin Registry and that service was within the Northern Territory and within 200 kilometres of Darwin; or
 - (ii) where you have been served with the writ filed in the Alice Springs Registry and that service was within the Northern Territory and within 200 kilometres of Alice Springs;
- (b) Within 14 days after service, where you are served within the Northern Territory with a writ filed in either Darwin or Alice Springs Registry but you are served at a place not within 200 kilometres of the Registry in which it was filed;
- (c) Within 21 days after service where you are served with the writ out of the Northern Territory but within the Commonwealth;
- (d) Within 28 days after service, where you are served with the writ in New Zealand or in Papua New Guinea;
- (e) Within 42 days after service, where you are served with the writ in any other place.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs, to the plaintiff or his solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment, you may have the costs taxed by the Court.

FILED (e.g. 15 June 19).

REGISTRAR

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

** Strike out this paragraph when order made fixing time for appearance and substitute: "The proper time for appearance is within ___ days after service on you of this writ".*

Part 2

[Plaintiff's indorsement of a statement of claim or of a statement sufficient to give with reasonable particularity notice of the nature of the claim and its cause and of the relief or remedy sought in the proceeding.]

Part 3*

1. Place of trial: DARWIN/ALICE SPRINGS
2. This writ was filed:
 - (a) by the plaintiff in person;
 - (b) for the plaintiff by *[name or firm of solicitor and, where the solicitor is a firm, the name of the member of the firm having responsibility for the conduct of the matter]*, solicitor; or *[business address of solicitor]*;
 - (c) for the plaintiff by *[name or firm of solicitor]*, solicitor, of *[business address of solicitor]* or agent for *[name of firm or principal solicitor and, where the principal solicitor is a firm, indicate the name of the member of the firm having responsibility for the conduct of the matter]*, solicitor, of *[business address of principal.]*
3. The address of the plaintiff is:
4. The address for service of the plaintiff is:

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is not within 15 kilometres of the Registry in which the Writ is filed the plaintiff must state an address for service which is within 15 kilometres of that Registry.]

5. The address of the defendant is:

* Complete or strike out as appropriate.

FORM 5B

rule 5.02(2)

ORIGINATING MOTION BETWEEN PARTIES

[heading as in Form 5A]

TO THE DEFENDANT

This proceeding by originating motion has been brought against you by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Registry of the Supreme Court in the Supreme Court Building, Mitchell Street, Darwin, or, where the originating motion has been filed in the Alice Springs Registry, in the Alice Springs Registry of the Supreme Court, Law Courts Building, Parsons Street, Alice Springs; and
- (b) on the day you file the Notice or on the next working day, serving, at the plaintiff's address for service which is set out at the end of this originating motion, a copy, sealed by the Court.

IF YOU DO NOT file an appearance within the proper time, the plaintiff MAY OBTAIN JUDGMENT AGAINST YOU without giving you any further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after notice to you by summons.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) Within 7 days after service:
 - (i) where you have been served with the writ filed in the Darwin Registry and that service was within the Northern Territory and within 200 kilometres of Darwin; or
 - (ii) where you have been served with the writ filed in the Alice Springs Registry and that service was within the Northern Territory and within 200 kilometres of Alice Springs;

- (b) Within 14 days after service, where you are served within the Northern Territory with a writ filed in either Darwin or Alice Springs Registry but you are served at a place not within 200 kilometres of the Registry in which it was filed;
- (c) Within 21 days after service where you are served with the writ out of the Northern Territory but within the Commonwealth;
- (d) Within 28 days after service, where you are served with the writ in New Zealand or in Papua New Guinea;
- (e) Within 42 days after service, where you are served with the writ in any other place.

FILED (e.g. 15 June 19).

REGISTRAR

THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

** Strike out this paragraph where order made fixing time for appearance and substitute "The proper time to file an appearance is within _____ days after service on you of this Originating summons".*

Part 2

[Specify the relief or remedy sought and the Act, if any, under which the claim is made, and, where the relief sought includes the answer to any question, state the question.]

Part 3*

1. Place of trial – DARWIN/ALICE SPRINGS
2. This originating motion was filed:
 - (a) by the plaintiff in person;
 - (b) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*];

(c) for the plaintiff by *[name or firm of solicitor]*, solicitor, of *[business address of solicitor]* as agent for *[name or firm of principal solicitor]*, solicitor, of *[business address of principal]*.

3. The address of the plaintiff is:

4. The address for service of the plaintiff is:

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is not within 15 kilometres of the Registry in which the originating motion is filed the plaintiff must state an address for service which is within 50 kilometres of that Registry.]

5. The address of the defendant is:

** Complete or strike out as appropriate.*

FORM 5C

rules 5.02(2),
45.05(2)(b)

ORIGINATING MOTION BETWEEN PARTIES

(where commenced under Rule 45.05)

[heading as in Form 5A]

TO THE DEFENDANT

This proceeding by originating motion has been brought against you by the plaintiff for the relief or remedy set out below.

The plaintiff cannot continue with the proceeding except by order of the Court. You will be given notice by summons of any application for the order and until the summons is served you are not required to take any step in the proceeding.

[or where a summons for an order under Rule 45.05 or for judgment will be served with the originating motion]

IF YOU INTEND TO DEFEND the proceeding you must attend before the Court at the time and place named in the summons served with this originating motion.

FILED [e.g. 15 June 19].

REGISTRAR

THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

Part 2

[complete as in Form 5B]

Part 3

[complete as in Form 5B]

FORM 5D

rule 5.02(2)

ORIGINATING MOTION

(where no defendant)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA AT [Darwin
or Alice Springs as the
case may be]

No. of 19

IN THE MATTER of an application by A.B. for [*describe nature of application and state the Act, if any, under which made*].

The plaintiff will apply to the Court on [e.g. 20 June, 19] at a.m.
[or p.m.] for [*specify the relief or remedy sought and the Act, if any, under which the claim is made, and where it includes any question to be answered, state the question*].

FILED [e.g. 15 June 19].

REGISTRAR

The address of the plaintiff is:

FORM 5E

rules 5.02(2),
53.02(3)

ORIGINATING MOTION FOR RECOVERY OF LAND UNDER ORDER 53

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA AT [Darwin
or Alice Springs as the
case may be]

No. of 19

BETWEEN

A.B. Plaintiff
and
C.D. Defendant

[or if the plaintiff does not know the name of any person in occupation]

BETWEEN

A.B. Plaintiff
and

(The plaintiff does not know the name of any person in occupation to make
defendant)

Defendant

TO THE DEFENDANT AND TO EVERY PERSON IN OCCUPATION
OF THE LAND AT [*description of land**]
[or where there is no defendant

TO EVERY PERSON IN OCCUPATION OF THE LAND AT
[description of land]]*

This proceeding by originating motion has been commenced by the plaintiff for the recovery of land at . Further particulars of the claim appear in the affidavit in support of the claim. A copy of the affidavit and of any exhibit referred to in it is served with this originating motion.

The plaintiff will apply to the Master in the Supreme Court, Supreme Court Building, Mitchell St., Darwin (*appropriate changes if to be heard in Alice Springs*) on [e.g. 20 June 19] at a.m. [or p.m.] or so soon afterwards as the business of the Court allows. At that time the Master may refer to a Judge for hearing an application by the plaintiff for judgment.

IF YOU ARE NAMED AS DEFENDANT AND INTEND TO DEFEND THIS PROCEEDING you must:

- (a) give notice of your intention by filing an appearance on or before the day specified above; and
- (b) attend before the Master as specified above.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Registry of the Supreme Court, in the Supreme Court Building, Mitchell St., Darwin, or, where the originating motion has been filed in the Registry at Alice Springs in the Alice Springs Registry of the Supreme Court; and
- (b) on the day you file the Notice or on the next working day, serving, at the plaintiff's address for service which is set out at the end of this originating motion a copy, sealed by the Court.

* *Note:* *The land should be so described as to be physically identifiable.*

IF YOU DO NOT file an appearance on or before the day specified above or to attend before the Master on that day, the plaintiff MAY OBTAIN JUDGMENT AGAINST YOU without giving you further notice.

IF YOU ARE IN OCCUPATION OF THE LAND AND ARE NOT NAMED AS DEFENDANT you may attend before the Master in person or by your counsel or solicitor on the day and at the time and place specified above and apply to be made a defendant.

FILED [e.g. 15 June 19].

REGISTRAR

Part 2*

- 1. Place of trial – Darwin/Alice Springs
- 2.* This originating motion was filed:
 - (a) by the plaintiff in person;
 - (b) for the plaintiff by [*name or firm of solicitor*], solicitor, or [*business address of solicitor*];

(c) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] as agent for [*name or firm of principal solicitor*], solicitor, of [*business address of principal*].

3. The address of the plaintiff is:

4. The address for service of the plaintiff is:

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is outside the Northern Territory, the plaintiff must state an address for service within the Northern Territory]

5. [*If there is a defendant*] The address of the defendant is:

* *Complete or strike out as appropriate.*

FORM 7A

rule 7.13(2)

LETTER OF REQUEST FOR SERVICE OF DOCUMENT

[heading as in originating process]

To

A civil proceeding is now pending in the Supreme Court of the Northern Territory of Australia in which _____ is plaintiff and _____ is defendant and in which the plaintiff claims (*here set out short concise details of claim*).

In order that the matters in dispute between the parties in the proceeding may be determined it is necessary that [*describe the document*] be served on _____ and it appears that _____ is a national of _____ and is domiciled or resident in at _____.

I _____, a Registrar of the Supreme Court of the Northern Territory of Australia, for these reasons and for the assistance of the Court, request that you have the _____ [*and a translation of it*], [*both of*] which I send to you with this request, served on _____ of _____.

Proper arrangements have been made by the Court and by the Commonwealth of Australia for the reimbursement of any expenses incurred in complying with this request.

Legal assistance with respect to the service of documents in the Northern Territory of Australia can be given by this Court at the request of a foreign court if that request is transmitted to the Attorney-General of the Northern Territory of Australia.

Dated [e.g. 15 June 19 ____].

Registrar of the
Supreme Court of the
Northern Territory
of Australia

FORM 8B

rule 8.08(2)

NOTICE OF CONDITIONAL APPEARANCE

[heading as in originating process]

[Full name of defendant], the defendant (or one of the defendants), of
[address] appears conditionally in this proceeding.

Dated [e.g. 15 June 19].

[Signed]

[continue as in Form 8A]

FORM 10A

rule 10.04(5)

HEADING AND NOTICE ON COUNTERCLAIM WHERE DEFENDANT NEW PARTY

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA AT [Darwin
or Alice Springs as the
case may be] BETWEEN

No. of 19

A.B.
and
C.D.

Plaintiff

Defendant

(by original proceeding)

AND BETWEEN

C.D.
and
A.B. and E.F.
(by counterclaim)

Plaintiff

Defendants

To E.F.
of [address]

This proceeding has been brought against you by the defendant for the claim set out in this counterclaim.

IF YOU INTEND TO DEFEND the claim YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Registry of the Supreme Court in the Supreme Court Building, Mitchell Street, Darwin, or, where the counterclaim has been filed in the Registry at Alice Springs, in the Alice Springs Registry of the Supreme Court; and
- (b) on the day you file the Notice or on the next working day serving, at the defendant's address for service which is set out at the end of this counterclaim, a copy, sealed by the Court.

IF YOU DO NOT file an appearance within the proper time, the defendant may OBTAIN JUDGMENT AGAINST YOU on the counterclaim without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) Within 7 days after service:
 - (i) where you have been served with the writ filed in the Darwin Registry and that service was within the Northern Territory and within 200 kilometres of Darwin; or
 - (ii) where you have been served with the writ filed in the Alice Springs Registry and that service was within the Northern Territory and within 200 kilometres of Alice Springs;
- (b) Within 14 days after service, where you are served within the Northern Territory with a writ filed in either Darwin or Alice Springs Registry but you are served at a place not within 200 kilometres of the Registry in which it was filed;
- (c) Within 21 days after service where you are served with the writ out of the Northern Territory but within the Commonwealth;
- (d) Within 28 days after service, where you are served with the writ in New Zealand or in Papua New Guinea;
- (e) Within 42 days after service, where you are served with the writ in any other place.

COUNTERCLAIM

[Set out in separate, consecutively numbered paragraphs all the material facts relied upon for the counterclaim and state precisely the relief claimed.]

The address of the defendant is:

The address for service of the defendant is:

** Strike out this paragraph when order made fixing time for appearance and substitute: "The proper time for appearance is within ___ days after service on you of this counterclaim".*

FORM 10B

rule 10.04(6)

NOTICE OF APPEARANCE TO COUNTERCLAIM

[heading as in Form 10A]

[Full name of defendant to counterclaim], the defendant (or one of the defendants), to the counterclaim appears to the counterclaim of the defendant.

Dated [e.g. 15 June 19].

[Signed]

[continue as in Form 8A]

FORM 11A

rule 11.02

THIRD PARTY NOTICE

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA AT [Darwin
or Alice Springs as the
case may be]

19 No.

BETWEEN

A.B.
and
C.D.
and
E.F.

Plaintiff

Defendant

Third Party

TO E.F.
of [address]

The plaintiff has brought this proceeding against the defendant for the claim set out in the writ and statement of claim [or originating motion and affidavit[s]] served with this notice.

The defendant disputes the plaintiff's claim on the grounds set out in his defence served with this notice and claims to be entitled to relief against you on the grounds set out in the statement of claim indorsed on this notice.

IF YOU INTEND TO DISPUTE the plaintiff's claim against the defendant, or the defendant's claim against you, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Registry of the Supreme Court in the Law Courts, Mitchell St., Darwin or where the writ has been filed in the Alice Springs Registry, in the Alice Springs Registry of the Supreme Court;
- (b) on the day you file the Notice or on the next working day, serving, at the defendant's address for service, which is set out at the end of this notice a copy, sealed by the Court.

IF YOU DO NOT file an appearance within the proper time you will be taken to admit the validity of any judgment against the defendant and your own liability to the defendant to the extent claimed in the statement of claim indorsed on this notice, and the defendant may OBTAIN JUDGMENT AGAINST YOU

without giving you further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is:

- (a) Within 7 days after service:
 - (i) where you have been served with the writ filed in the Darwin Registry and that service was within the Northern Territory and within 200 kilometres of Darwin; or
 - (ii) where you have been served with the writ filed in the Alice Springs Registry and that service was within the Northern Territory and within 200 kilometres of Alice Springs;
- (b) Within 14 days after service, where you are served within the Northern Territory with a writ filed in either Darwin or Alice Springs Registry but you are served at a place not within 200 kilometres of the Registry in which it was filed;
- (c) Within 21 days after service where you are served with the writ out of the Northern Territory but within the Commonwealth;
- (d) Within 28 days after service, where you are served with the writ in New Zealand or in Papua New Guinea;
- (e) Within 42 days after service, where you are served with the writ in any other place.

FILED [e.g. 15 June 19].

REGISTRAR

Part 2

STATEMENT OF CLAIM

[Set out in separate, consecutively numbered paragraphs all the material facts relied on for the claim against the third party and state precisely the relief claimed.]

Part 3

- 1.** This notice was filed:
 - (a) by the defendant in person;
 - (b) for the defendant by [name of firm of solicitor], solicitor, of [business address of solicitor];

-
- (c) for the defendant by [name or firm of solicitor], solicitor, of [business address of solicitor] as agent for [name or firm of principal solicitor], solicitor, of [business address of principal].
2. The address of the defendant is:
3. The address for service of the defendant is:
4. The address of the third party is:
-

* *Strike out this paragraph when order made fixing time for appearance and substitute: "The proper time for appearance is within ___ days after service on you of this notice".*

** *Complete or strike out as appropriate.*

FORM 11B

rule 11.15(5)

NOTICE BY ONE TORTFEASOR CLAIMING CONTRIBUTION AGAINST
ANOTHER

[heading as in originating process]

TO THE DEFENDANT (*name of defendant*)

The plaintiff has brought this proceeding against the defendants to recover damages for loss sustained [e.g. as the result of a collision between a motor car driven by you and a motor car driven by the defendant (*name*) , which is alleged to have been caused by the negligence of the defendants].

The defendant (*name*) claims to be entitled to contribution from you in respect of any sum which the plaintiff may recover in this proceeding against him [*where appropriate: to the extent of such amount as may be found by the Court to be just and equitable, having regard to your responsibility for the damages on the ground that your negligence contributed to the happening of the collision*].

FILED [e.g. 15 June 19].

REGISTRAR

FORM 12A

rule 12.05(1)

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION

[heading as in originating process]

To the *[judgment creditor]*
of *[address]*

A.B. has claimed the goods *[or certain goods]* *[where only certain goods are claimed; here enumerate them]* taken in execution by me as Sheriff under the warrant of execution issued in this proceeding.

IF within 7 days after service of this notice on you you serve notice on me stating that you admit the claim, you will not be liable for fees and expenses incurred by me after your notice is given. If, however, you dispute the claim, you may within 7 days after service of this notice on you serve notice in writing on me stating that you dispute the claim. In that case or if you do not give any notice within the time stipulated, I may apply to the Court by summons for relief by way of interpleader.

My address for service is:

Dated [e.g. 15 June 19].

Sheriff

FORM 15A

rule 15.08(6)

ORDER APPROVING COMPROMISE OF CLAIM OF MINOR

*[heading as in originating process]**[other particulars as in Form 60C]*JUDGE [*or* MASTER]:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

[State whether on application by summons before trial, with date of summons, or at trial, with date of commencement of trial]

APPEARANCES: (eg Mr Smith for plaintiff; Mr James for defendant.)

MATTERS TAKEN INTO CONSIDERATION:

1. The plaintiff was born on (e.g. 15 June 19).
2. By a compromise entered into on 19 the defendant proposes to pay and the plaintiff desires to accept \$ for the benefit of the plaintiff and the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.
3. The Court read the following material:
 - (a) [identify affidavits by date and name of deponent];
 - (b) the exhibits to the affidavits including the opinion of of Counsel dated 19 .
4. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. [*Where order is made by Judge*] There be special leave for the application to be made to a Judge.
2. The compromise be approved.
3. The defendant within days after service of a copy of this order on his solicitors pay [where appropriate: \$ to the solicitors for the plaintiff, being \$ for the plaintiff and the balance of \$ to be disbursed or retained by them in payment of the items referred to in the affidavit of dated 19 and] \$ to the Public Trustee for the benefit of the minors referred to above, being \$ for the benefit of and \$ for

the benefit of

4. The costs of the plaintiff, including the costs of the application for approval, be taxed, and when taxed, paid by the defendant.

5. Subject to any further order, the Public Trustee invest \$ for the plaintiff to be paid out with the interest accrued to the plaintiff upon his attaining the age of 18 years.

6. *[Here set out any other specific orders made.]*

7. Upon payment by the defendant of the sum[s] and costs referred to, the proceeding be forever stayed.

8. Each party have liberty to apply.

9. Copy of the order be served on the Public Trustee.

DATE AUTHENTICATED:

REGISTRAR

FORM 15B

rule 15.08(6)

ORDER APPROVING COMPROMISE OF CLAIM BY PERSON UNDER
DISABILITY OTHER THAN A MINOR

[heading as in originating process]

[other particulars as in Form 60C]

JUDGE *[or MASTER]*:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

[State whether on application by summons before trial with date of summons, or at trial with date of commencement of trial]

APPEARANCES: *(As in Form 15A)*

MATTERS TAKEN INTO CONSIDERATION

1. The date of birth of the Plaintiff on whose behalf the proceeding is brought is .

2. The date on which Plaintiff became a person under disability is .

2. By a compromise entered into on 19 the defendant proposes to pay and the plaintiff desires to accept \$ for and , respectively, the minors referred to above and the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.

3. The Court read the following material:

(a) *[identify affidavits by date and name of deponent]*;

(b) the exhibits to the affidavits including the opinion of of Counsel dated 19 .

4. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. *[Where order is made by Judge]* There be special leave for the application to be made to a Judge.

2. The compromise be approved.

3. The defendant within days after service of a copy of this order on his solicitors pay \$ to the Public Trustee for the benefit of the plaintiff [where appropriate: and \$ to the solicitors for the plaintiff, to be disbursed or retained by them in payment of the items totalling \$ referred to in the affidavit of sworn 19].

4. The costs of the plaintiff, including the costs of this application, be taxed and, when taxed, paid by the defendant.

5. Subject to any further order, the Public Trustee invest \$ and \$ for to be paid out with the interest accrued thereon to the person under disability when he ceases to be a person under disability.

[continue as in Form 15A]

FORM 19A

rule 19.02(3)

NOTICE OF A CONSTITUTIONAL MATTER

[heading as in originating process]

1. The *[party whose case raises the matter]* gives notice that this proceeding involves a matter under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903* (or as the case may be).

2. *[State specifically the nature of the matter].*

3. *[State the facts showing the matter is one to which section 78B of the Judiciary Act 1903 applies (or as the case may be)].*

Dated [e.g. 15 June 19].

[Signed]

To Registrar
And to

FORM 26A

rule 26.17(1)

NOTICE OF DEPOSIT

[heading as in originating process]

The defendant has paid into Court \$.

That sum is in answer to the plaintiff's claim for (*specify*) (*or* all the plaintiff's claims) (and after taking into account this defendant's claim for (*specify*) on his counterclaim).

or

That sum is in answer to the following claims of the plaintiff namely (*specify*) (and after taking into account *etc., as above*).

or

Of that sum, \$ is in answer to the plaintiff's claim for (*specify*) on which the plaintiff claims \$ (and after taking into account *etc., as above*) and \$ is in answer to the claim for (*specify*) on which the plaintiff claims \$ (and after taking into account *etc., as above*).

Dated [e.g. 15 June 19].

[Signed]

To the Plaintiff
(*or as the case may be*)

FORM 26B

rule 26.20(3)

NOTICE OF WITHDRAWAL OF DEPOSIT

[heading as in originating process]

Pursuant to leave granted by the Court on (date), the defendant withdraws the deposit of \$ paid into Court by him on (date).

Dated [e.g. 15 June 19].

[Signed]

To the Plaintiff
(or as the case may be)

FORM 26C

rule 26.21(2)

NOTICE OF ACCEPTANCE

[heading as in originating process]

The plaintiff accepts \$ paid into Court by the defendant (*name*), in satisfaction of the claims in answer to which it was so paid in, as against (*name of defendant*) (and abandons all his other claims as against (*name of defendant*) (*or* and abandons those claims as against the defendants (*names of other defendants*)).

Dated [e.g. 15 June 19].

[Signed]

To the Plaintiff
(*as the case may be*)

FORM 26D

rule 26.21(3)

NOTICE CONFIRMING DEPOSIT

[heading as in originating process]

The defendant confirms the notice dated _____, of deposit of
\$ _____ paid into Court before the beginning of the trial.

Dated [e.g. 15 June 19 ____].

[Signed]

To the Plaintiff
(as the case may be)

FORM 29A

rule 29.04

LIST OF DOCUMENTS

[heading as in originating process]

I, *(full name)* the abovenamed _____, say as follows:

1. I have in my possession, custody or power, the documents relating to the questions in this proceeding enumerated in Schedule 1.

2. The documents enumerated in Part 2 of Schedule 1 are privileged, and I object to produce them. The documents are privileged on the ground:

(a) as to documents numbered 4 to 6, that *[state the ground]*; and

(b) as to document numbered 7, that *[state the ground]*.

3. I have had, but no longer have, in my possession, custody or power, the document relating to the questions in the proceeding which are enumerated in Schedule 2.

4. Document numbered 8, referred to in Schedule 2, was last in my possession, custody or power on *[state when]* and I believe that *[state belief as to what has become of it]*.

5. To the best of my knowledge, information and belief neither I, my solicitor nor any other person on my behalf has now, or ever had, in my or his possession, custody or power, any document relating to a question in the proceeding, other than the documents enumerated in the said Schedules 1 and 2.

[Describe each document in the Schedules as original or copy.]

Schedule 1

Part 1

- 1.
- 2.
- 3.

Part 2

4.

5.

6.

7.

Schedule 2

8.

[Signed (by party or
party's solicitor)]

FORM 29B
NOTICE TO PRODUCE

rules 29.09(1)
and 29.10

[heading as in originating process]

To the *[identify party]*

The *[Plaintiff/Defendant]* requires you to produce for his inspection the following documents referred to in your *[writ, pleading, particulars, affidavit, (as the case may be) [describe documents required].*

Dated [e.g. 15 June 19].

[Signed]

FORM 35A

rules 35.03(4)
and 35.05(4)

NOTICE TO ADMIT

[heading as in originating process]

To the *[identify party]*

If you do not, within *[specify a number not less than 14]* days after service of this notice upon you, serve a notice upon the disputing any fact specified *[or the authenticity of any document mentioned]* below, that fact *[or the authenticity of that document]* shall, for the purpose of this proceeding only, be taken to be admitted by you in favour of the . If you do serve a notice disputing that fact *[or the authenticity of that document]*, and afterwards that fact *[or the authenticity of that document]* is proved, you shall pay the costs of proof, unless the Court otherwise orders.

1.

2.

[specify each fact]

[or]

[mention each document]

1.

2.

Dated [e.g. 15 June 19].

[Signed]

FORM 35B

rules 35.03(4)
and 35.05(4)

NOTICE OF DISPUTE

[heading as in originating process]

To the *[identify party]*

The disputes the following facts specified in the 's
notice dated (e.g. 15 June 19).

1.

[identify each fact]

2.

[or]

The disputes the authenticity of the following documents mentioned in
the 's notice dated (e.g. 15 June 19).

1.

[identify each document]

2.

Dated [e.g. 25 June 19].

[Signed]

FORM 41A

rule 41.01(2)

ORDER FOR EXAMINATION WITHIN THE NORTHERN TERRITORY OF
AUSTRALIA

[heading as in originating process]
[other particulars as in Form 60C]

THE COURT ORDERS THAT:

[name] of *[address within the Northern Territory]* be examined before
[name and address or description of examiner].

[continue as in Form 60C]

FORM 41B

rule 41.01(2)

ORDER FOR EXAMINATION OUT OF THE NORTHERN TERRITORY OF
AUSTRALIA

[heading as in originating process]
[other particulars as in Form 60C]

THE COURT ORDERS THAT:

1. *[name and address or description]* be appointed as examiner for the purpose of taking the examination, cross-examination and re-examination orally on oath or affirmation of a witness *[name]* of *[address out of the Northern Territory]*, a witness on the part of _____ at _____ in *[name of country]*.

2. The examiner be at liberty to invite the attendance of *the witness and the production of documents, but shall not exercise any compulsory powers, and that otherwise the examination be taken in accordance with the procedure of the Northern Territory.

3. The _____ solicitors give to the _____ solicitors _____ days' notice of the date on which they propose to send out this order to _____ for execution, and that _____ days after the service of that notice the solicitors for the plaintiff and defendant respectively exchange the names of their agents at _____ to whom notice relating to the examination of the said witness may be sent.

4. No later than _____ days before the examination of the witness notice of the examination be given by the agent of the party on whose behalf the witness is to be examined to the agent of the other party, unless that notice is dispensed with.

5. The depositions when taken, together with any documents referred to in them, or certified copies of in those documents, or of extracts from them, be sent by the examiner, under seal, to the Registrar of the Supreme Court of the Northern Territory, Law Courts, Mitchell St., Darwin, on or before _____ 19 _____ or such further day as may be ordered, there to be filed in the Registry of the Supreme Court.

6. The trial of the proceeding be stayed until the depositions are filed or until further order.

7. The costs of the application and the examination be costs in the proceeding.

[Continue as in Form 60C]

** If a Convention which applies requires that the invitation or notice to the witness should expressly state that no compulsory powers may be exercised, this shall be done.*

FORM 41C

rule 41.01(3)

ORDER FOR LETTER OF REQUEST TO JUDICIAL AUTHORITY OUT OF
THE NORTHERN TERRITORY

*[heading as in originating process]
other particulars as in Form 60C]*

THE COURT ORDERS THAT:

1. A letter of request issue directed to the proper judicial authority for the examination of the following witnesses, namely:

E.F. of *[address]*

G.H. of *[address]*

2. The depositions taken of the examination be filed in the Registry.

3. The trial of the proceeding be stayed until the depositions are filed or until further order.

4. The costs of this application and the letter of request and examination be costs in the proceeding.

[Continue as in Form 60C]

FORM 41D

rule 41.13(2)

LETTER OF REQUEST FOR EXAMINATION OF WITNESS

*[heading as in originating process]*TO *[the competent judicial authority]* of

A civil proceeding is now pending in the Supreme Court of the Northern Territory of Australia in which _____ is plaintiff and _____ is defendant and in which the plaintiff claims (set out short details of claim.)

It has been represented to the Court that it is necessary for the purposes of justice and for the due determination of the questions in dispute between the parties in the proceeding that the following persons should be examined as witnesses upon oath or affirmation touching those questions, namely, _____ of and _____ of _____ and it appears that those witnesses are resident within your jurisdiction.

I, _____, a Judge of the Supreme Court of the Northern Territory of Australia, hereby request that for the reasons mentioned and for the assistance of the Court you summon those witnesses *[and such other witnesses as the agents of the plaintiff and defendant request you in writing so to summon]* to attend at such time and place as you appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses. Please have those witnesses examined orally *[or upon the interrogatories which accompany this letter of request]* touching the questions in issue. That examination should take place in the presence of the agents of the plaintiff and defendant or such of them as attend the examination on due notice given.

I further request you to permit the agents of both the plaintiff and the defendant or such of them as are present to examine *[upon interrogatories and orally upon the subject-matter of those interrogatories or arising out of the answers to them]* such witnesses as are, after due notice in writing, produced on their behalf and the other party to cross-examine the witnesses *[upon cross-interrogatories and orally]* and the party producing the witness for examination to re-examine them orally.

And I further request you to have the evidence of the witnesses *[or the answers of the witnesses and all additional oral questions, whether on examination, cross-examination or re-examination]* reduced into writing and all books, documents and things produced on that examination to be duly marked for identification. Please authenticate the examination by the seal of your tribunal or in such other way as is in accordance with your procedure and return it, together with *[the interrogatories and cross-interrogatories and]* a note of the charges and expenses payable in respect of the execution of this request through the _____ from whom it was received for transmission to

the Supreme Court of the Northern Territory of Australia.

I also request that you have the agents of the parties if appointed informed of the date and place where the examination is to take place. If no agents are appointed, please let me know that date and place.

Dated [e.g. 15 June 19].

(Signed)

FORM 42A

rule 42.02(b)

SUBPOENA TO GIVE EVIDENCE

[heading as in originating process]

To *[name]*
of *[address]*:

THE COURT ORDERS that you attend for the purpose of giving evidence:

- (a) before the Court *[or as the case requires]*;
- (b) at *[address of Court or other place]*;
- **(c)* 10 a.m. on *[date]*, or, if notice of a later day is given to you by the *[identify party by whom subpoena filed]* or by the solicitor for that party, the later day and until you are excused from further attending.

or

- **(c)* at 10 a.m. on a day during the sittings beginning on *[date]*, notice of which date will be given to you by the *[identify party by whom subpoena filed]* or by the solicitor for that party and until you are excused from further attending, or on a day and at a time during any later sittings in which this proceeding is heard, notice of which day and time is so given, and until you are excused from further attending.

* *Strike out as appropriate.*

FILED [e.g. 15 June, 19].

REGISTRAR

Filed by the *[identify the party]*.

NOTE that:

- (1) if you do not comply with this subpoena you may be arrested;
and
- (2) any question concerning this subpoena should be addressed not to the Court but to the solicitor for the party who filed the subpoena.

FORM 42B

rule 42.02(2)

SUBPOENA FOR PRODUCTION

*(Subpoena to a natural person)**[heading as in originating process]*To *[name]*of *[address]*:

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule:

- (a) before the Court *[or as the case requires]*;
- (b) at *[address of Court or other place]*;
- * (c) at 10 a.m. on *[date]*, or, if notice of a later day is given to you by the *[identify party by whom subpoena filed]* or by the solicitor for that party, the later day and until you are excused from further attending.

or

- * (c) at 10 a.m. on a day during the Sittings beginning on *[date]*, notice of which date will be given to you by the *[identify party by whom subpoena filed]* or by the solicitor for that party and until you are excused from further attending, or on a day and at a time during any later Sittings in which this proceeding is heard, notice of which day and time is so given, and until you are excused from further attending.

* *(Strike out as appropriate).*

Instead of attending as required, you may produce this subpoena and the documents and things described in the schedule to the Registrar of the Supreme Court, Supreme Court Building, Mitchell Street, Darwin (or the Clerk of the Supreme Court, Law Courts, Parsons Street, Alice Springs), by hand or by post, in either case so that he receives them not later than 2 days (excluding Saturdays, Sundays or other holidays) before the first date on which you are required to attend. *[Delete this paragraph when production is required otherwise than to the Supreme Court or any officer of the Court.]*

Schedule

[description of documents and things]

FILED [e.g. 15 June 19].

REGISTRAR

Filed by the *[identify party]*.

Note that:

- (1) if you do not comply with this subpoena you may be arrested.
- (2) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you or that you be informed when they are available to be collected by you; and
- (3) any question concerning this subpoena should be directed not to the Court but to the solicitor for the party who filed the subpoena.

FORM 42C

rule 42.02(2)

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

*[heading as in originating process]*To *[name]*of *[address]*:

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule and attend for the purpose of giving evidence:

- (a) before the Court [or as the case requires];
- (b) at [address of Court or other place];
- *(c) at 10 a.m. on [date], or, if notice of a later day is given to you by the [identify party by whom subpoena filed] or by the solicitor for that party, the later day and until you are excused from further attending.

or

- *(c) at 10 a.m. on a day during the Sittings beginning on [date], notice of which date will be given to you by the [identify party by whom subpoena filed] or by the solicitor for that party and until you are excused from further attending, or on a day and at a time during any later Sittings in which this proceeding is heard, notice of which day and time is so given, and until you are excused from further attending.

* *Strike out as appropriate.*

Instead of attending to produce the documents and things described in the schedule, you may produce them and this subpoena to the Registrar of the Supreme Court, Supreme Court Building Mitchell Street, Darwin (or the Clerk of the Supreme Court, Parsons Street, Alice Springs), by hand or by post, in either case so that he receives them not later than 2 days (excluding Saturdays, Sundays or other holidays) before the first date on which you are required to attend. However, if you produce the documents and things to the Registrar or Clerk, as the case may be, you will still be required to attend to give evidence as directed above. *[Delete this paragraph when production is required otherwise than to the Supreme Court or any officer of the Court].*

Schedule

[description of documents and things]

FILED [e.g. 15 June 19].

Registrar

Filed by the *[identify party]*.

Note that:

- (1) if you do not comply with this subpoena you may be arrested;
- (2) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you or that you be informed when they are available to be collected by you; and
- (3) any question concerning this subpoena should be directed not to the Court but to the solicitor for the party who filed the subpoena.

FORM 42D

rule 42.02(2)

SUBPOENA FOR PRODUCTION

(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession, etc. of documents and things)

[heading as in originating process]

To *[name of corporation]*

of *[address]*:

THE COURT ORDERS that:

1. *[name of corporation]*, called *the corporation*, produce this subpoena and the documents and things described in the schedule by having its proper officer attend and produce them:

- (a) before the Court *[or as the case requires]*;
- (b) at *[address of Court or other place]*;
- * (c) at 10 a.m. on *[date]*, or, if notice of a later day is given to you by the *[identify party by whom subpoena filed]* or by the solicitor for that party, the later day and until you are excused from further attending.

or

- * (c) at 10 a.m. on a day during the Sittings beginning on *[date]*, notice of which date will be given to you by the *[identify party by whom subpoena filed]* or by the solicitor for that party and until you are excused from further attending, or on a day and at a time during any later Sittings in which this proceeding is heard, notice of which day and time is so given, and until you are excused from further attending.

* *(Strike out as appropriate).*

Instead of attending as required, the corporation may produce this subpoena and the documents and things described in the schedule to a Registrar of the Supreme Court, Supreme Court Building, Mitchell Street, Darwin (or the Clerk of the Supreme Court, Parsons Street, Alice Springs), by hand or by post, in either case so that he receives them not later than 2 days (excluding Saturdays, Sundays or other holidays) before the first date on which the officer is required to attend. *[Delete this paragraph when production is required otherwise than to the Supreme Court or any officer of the Court.]*

2. The officer who is to attend shall make enquiries for the purpose of answering, and, on attending, shall answer, such questions as the Court requires him to answer concerning the possession or custody of those documents and things.

Schedule

[description of documents and things]

FILED [e.g. 15 June 19].

REGISTRAR

Filed by the *[identify party]*.

Note that:

(1) if the corporation fails to comply with this subpoena, the subpoena may be enforced by arrest of an officer of the corporation;

(2) documents and things produced by the corporation in accordance with this subpoena may be returned by post to it at its address shown on this subpoena but it may in writing on or attached to this subpoena request that they be posted to it at another address given by it or that it be informed when they are available to be collected by it; and

(3) any questions concerning this subpoena should be directed not to the Court but to the solicitor for the party who filed the subpoena.

FORM 45A

rule 45.04(2)

SUMMONS ON ORIGINATING MOTION

[heading as in originating process]

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party.]*

You are summoned to attend before the Court on the hearing of an application by the plaintiff for judgment or an order in respect of the relief or remedy sought in the originating motion as follows:- *[describe the judgment or order sought]*.

The application will be heard before a Judge (*or* the Master) in the _____ Court, Supreme Court Building, Mitchell Street (*or* Parsons Street, Alice Springs), on [e.g. 20 June 19__] at _____ a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

(Where returnable before the Master) The _____ Master may, as appropriate:

- (a) where he has authority to give the judgment or make the order sought by the plaintiff, hear and determine the application;
- (b) by consent of the defendant, give the judgment or make the order;
- (c) refer the application to a Judge for hearing and determination;
- (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.

FILED [e.g. 15 June 19__].

This summons was filed by _____ of _____, solicitor for the plaintiff.

FORM 46A

rule 46.04(1)

SUMMONS

[heading as in originating process]

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party].*

You are summoned to attend before the Court on the hearing of an application by the _____ for *[describe the order sought]*.

The application will be heard before a Judge in the Court [or the Master in the Court] Supreme Court Building, Mitchell Street, Darwin (or Parsons St., Alice Springs) on [e.g. 20 June, 19 ____] at _____ a.m. [or p.m.] or so soon afterwards as the business of the Court allows.

FILED [e.g. 15 June 19 ____].

This application is made in pursuance of (e.g. Order _____ Rule or _____ as the case may be)

This summons was filed by _____ of _____, solicitor for the *[identify party]*.

FORM 48A

rule 48.02

NOTICE OF TRIAL

[heading as in originating process]

To the *[identify party]*

TAKE NOTICE of trial of this proceeding [or of trial of the question in this proceeding ordered to be tried] [or of the assessment of damages in this proceeding] by a Judge [or by the Master] at Darwin [or as the case may be]

Dated [e.g. 15 June 19].

*[Signed by solicitor or
party giving notice]*

FORM 48B

rule 48.07(2)

CERTIFICATE OF READINESS FOR TRIAL

*[heading as in originating process]**(comments to be as brief as possible)*

	<u>Plaintiff(s)</u> (Comments)	<u>Defendant(s)</u> (Comments)
1. The parties certify that this proceeding is ready for trial (Yes/No)		
2. All pleadings have been completed and delivered and pleadings are closed (Yes/No)		
3. All particulars requested have been furnished (Yes/No)		
4. Discovery of documents has been made by the parties (Yes/No)		
5. Inspection of documents has taken place (Yes/No)		
6. Interrogatories have been administered by the parties (Yes/No)		
7. All required answers to interrogatories have been obtained (Yes/No)		

	<u>Plaintiff(s)</u> (Comments)	<u>Defendant(s)</u> (Comments)
8.	All necessary medical examinations have taken place (Yes/No)	
9.	The parties require further medical examinations prior to trial (Yes/No)	
10.	The parties have complied with Rule 33.07 (Yes/No)	
11.	Counsel has been briefed (Yes/No)	
12.	Counsel's advice on evidence has been obtained (Yes/No)	
13.	All witnesses should be available at trial (Yes/No)	
14.	The length of hearing is estimated at (Yes/No)	
15.	(a) Offers of compromise made under Order 26 (Yes/No)	
	(b) The prospects of settlement are	
16.	The notice required of the date fixed for hearing is	
17.	Details of witnesses:	
	(a) Within the jurisdiction	
	(i) The number of experts:	

	<u>Plaintiff(s)</u> (Comments)	<u>Defendant(s)</u> (Comments)
(ii) The number of non-experts:		
(b) Outside the jurisdiction		
(i) The number of experts:		
(ii) The number of non-experts:		
18. The directions required are		
(a) For the Plaintiff		
(b) For the Defendant		
19. Other relevant facts regarding the fixing of a hearing date are		
(a) For the Plaintiff		
(b) For the Defendant		
20. The shortest notice on which each party would be ready to commence the hearing is		
21. The issues to be determined at trial are		
22. The proceeding shall be listed for trial at (e.g. Darwin/Alice Springs)		
Dated (e.g. 20 June 19)		
..... Solicitors for the Plaintiff(s)	 Solicitors for the Defendant(s)

FORM 48C

rule 48.08

INDORSEMENT ON CERTIFICATE OF READINESS FOR TRIAL

IF this certificate is not completed by you and returned to the within 21 days after it is served on you for completion, it will be assumed that you do not agree that the proceeding is ready for trial.

UNLESS you provide convincing reasons for not returning the certificate duly completed, an application will be made to the Master for a listing conference under Rule 48.10.

TO the [*identify party*] and to his solicitor:

FORM 48D

rule 48.10

[heading as in originating process]

APPLICATION TO MASTER

On (*date*), the applicant served on the (*other party*) a Certificate of readiness endorsed with form 48C.

The (*other party*) has failed to return the duly completed Certificate within the period of 21 days.

The applicant contends that the parties cannot agree to sign a certificate of readiness and applies to the Master to fix a time and date for a conference under Rule 48.10.

Date: (e.g. 15 June 19).

(Signed by party or
Solicitor)

FORM 53A

rule 53.07(2)

JUDGMENT IN SUMMARY PROCEEDING FOR RECOVERY OF LAND

[heading as in Form 5E]

[other particulars as in Form 60A]

THE JUDGMENT OF THE COURT IS THAT:

The plaintiff recover possession of the land described in the originating motion as *[description of land*]* *[where there is a defendant:* and that the defendant pay the plaintiff \$ costs] *[or pay the plaintiff's costs to be assessed].*

[other particulars as in Form 60D]

* Note: *The land should be so described as to be physically identifiable.*

FORM 53B

rule 53.08(3)

WARRANT OF POSSESSION IN SUMMARY PROCEEDING FOR
RECOVERY OF LAND

[heading as in Form 5E]

TO THE SHERIFF:

In respect of the judgment dated [e.g. 20 April 19] by which it was adjudged that the plaintiff recover possession of the land described in the schedule *[where there is a defendant: and that the defendant pay the plaintiff \$ costs or the plaintiff's costs, which have been taxed at \$]*, ENTER the land and cause the plaintiff to have possession of it *[where there is a defendant, and levy on the property of the defendant which is authorised by law to be taken in execution for] [continue as in Form 68A as for a levy for costs only]* AND INDORSE *[continue as in Form 68A]*.

SCHEDULE

[Describe land as in judgment]

Issued [e.g. 15 June 19].

BY THE COURT

REGISTRAR

Issued at the request of the plaintiff.

[Where there is a defendant] The last known address of the defendant *[continue as in Form 68A]*.

FORM 57A

rule 57.03(3)

WRIT OF HABEAS CORPUS

[*heading as in Form 5A*]

TO THE DEFENDANT

of [*address*]

HAVE the plaintiff [*or name of person restrained, if not the plaintiff*] before the Judge in the Court, Supreme Court Building, Mitchell Street, Darwin (*or Parsons Street, Alice Springs*) on [e.g. 20 June, 19] and thereafter submit to the further order of the Court as to his custody.

YOU ARE REQUIRED to make a return to this writ by filing a notice stating the grounds of detention of the plaintiff [*or as the case may be*] and serving a copy on the plaintiff at or before the time referred to above.

DISOBEDIENCE TO THIS WRIT is a contempt of court which may be punished by imprisonment or fine or both.

ISSUED [e.g. 15 June 19].

By the Court

FORM 59A

rule 59.05(4)

NOTICE OF JUDGMENT

[heading as in originating process]

To *[name]*
of *[address]*

TAKE NOTICE THAT:

1. A judgment *[or An order]* of the Court was given *[or made]* on *[e.g. 20 April 19]* by which it was *[state substance of judgment or order]*.
2. From the time of service of this notice you *[or some other person, naming him, as the case may be]* will be bound by the judgment *[or order]* to the same extent as you *[or he]* would have been if you *[or he]* were a party on the day the judgment *[or order]* was given *[or made]*.
3. Without filing an appearance, you *[or the other person]* may apply by summons filed within 14 days after service of this notice for an order that the judgment *[or order]* be set aside or varied.
4. After filing an appearance, you *[or the other person]* may attend on the taking of the account or the making of the inquiry under the judgment *[or order]*.

Dated *[e.g. 15 June 19]*.

[Signed]

FORM 60A

rule 60.08

GENERAL FORM OF JUDGMENT GIVEN

[heading as in originating process]

JUDGMENT

JUDGE [or MASTER]: [e.g. Smith J or Master Jones]

DATE GIVEN: [e.g. 20 June 19]

ORIGINATING PROCESS: [e.g. Writ] *[state whether by writ, by originating motion or otherwise]*

HOW OBTAINED: [e.g. By plaintiff's summons dated 15 June 19]
[state whether on application by or without summons before trial with date of summons or application, or at trial with date of commencement of trial]

APPEARANCE: *[set out appearance or non-appearance of any person entitled to attend and, if attending, whether by counsel or solicitor]*

OTHER MATTERS: *[state any finding of jurisdictional fact, undertaking of party or other matter as directed by Court]*

THE JUDGMENT OF THE COURT IS THAT:

- 1.
2. *[terms of judgment]*
- 3.

DATE AUTHENTICATED

REGISTRAR

FORM 60B

rule 60.08

GENERAL FORM OF JUDGMENT ENTERED

[heading as in originating process]

JUDGMENT

DATE ENTERED:

ORIGINATING PROCESS: *[state whether by writ, by originating motion or otherwise]*

HOW OBTAINED: *[state whether in default of appearance or defence or otherwise]*

THE JUDGMENT OF THE COURT IS THAT:

- 1.
2. *[terms of judgment]*
- 3.

REGISTRAR

FORM 60C

rule 60.08

GENERAL FORM OF ORDER

[heading as in originating process]

ORDER

JUDGE [*or* MASTER]:

DATE MADE:

ORIGINATING PROCESS: [*state whether by writ, by originating motion or otherwise*]

HOW OBTAINED: [*state whether on application by or without summons, identifying party filing summons or, if no summons, making application, and whether application made before trial with date of summons or application, or at trial with date of commencement of trial*]

APPEARANCE: [*set out appearance or non-appearance of any person entitled to attend and, if attending, whether by counsel or solicitor*]

OTHER MATTERS: [*state any finding of jurisdictional fact, undertaking of party or other matter as directed by Court*]

THE COURT ORDERS THAT:

- 1.
2. [*terms of order*]

DATE AUTHENTICATED:

REGISTRAR

FORM 60D

rule 60.08

JUDGMENT AT TRIAL BY JUDGE WITHOUT A JURY

[heading as in originating process]

JUDGE:

DATE GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Trial, commenced on [e.g. 15 June 19].

APPEARANCE:

OTHER MATTERS:

THE JUDGMENT OF THE COURT IS THAT:

[e.g.]

The defendant by himself his servants and agents be perpetually restrained from [as the case may be].

or

There be judgment for the defendant together with costs to be taxed.

DATE AUTHENTICATED:

REGISTRAR

FORM 60E

rule 60.08

JUDGMENT AT TRIAL BY JUDGE WITH A JURY

[heading as in originating process]

JUDGE:

DATE GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Trial with a jury of (number), commenced
on _____, 19__.

APPEARANCE:

OTHER MATTERS: [set out findings of jury]

THE JUDGMENT OF THE COURT IS THAT:

[e.g.]

The defendant pay the plaintiff \$ _____ and costs to be taxed.

or

There be judgment for the defendant together with costs to be taxed.

DATE AUTHENTICATED:

REGISTRAR

FORM 60F

rule 60.08

JUDGMENT OR ORDER AT TRIAL OF PRELIMINARY QUESTION

[heading as in originating process]

JUDGE:

DATE GIVEN *[or MADE]*:

ORIGINATING PROCESS:

HOW OBTAINED: Trial of question pursuant to order *[identify order]*,
commenced on

APPEARANCE:

OTHER MATTERS: The Court finds that:

[state findings of Court]

THE JUDGMENT OF THE COURT IS THAT:

[e.g.]

The defendant pay the plaintiff \$ and costs to be taxed.

There be judgment for the defendant together with costs to be taxed.

[or THE COURT ORDERS THAT:]

[e.g.]

The proceeding be set down for trial at *[or as the case may be]*

DATE AUTHENTICATED:

REGISTRAR

FORM 60G

rule 60.08

DEFAULT JUDGMENT FOR DEBT

[heading as in originating process]

DATE ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

[e.g.] The defendant pay the plaintiff \$ and \$ costs *[or costs to be taxed]*.

REGISTRAR

FORM 60H

rule 60.08

DEFAULT JUDGMENT FOR RECOVERY OF LAND

[heading as in originating process]

DATE ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

The plaintiff recover possession of the land described in the indorsement of claim on the writ as *[description of land*]* and that the defendant pay the plaintiff \$ costs *[or pay the plaintiff's costs to be taxed.]*

REGISTRAR

* *Note:* *The land should be so described as to be physically identifiable.*

FORM 60J

rule 60.08

INTERLOCUTORY OR INTERLOCUTORY AND FINAL JUDGMENT FOR
DAMAGES IN DEFAULT

[heading as in originating process]

DATE INTERLOCUTORY JUDGMENT ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff damages to be assessed and costs to be taxed.

JUDGE *[or MASTER]*

DATE FINAL JUDGMENT GIVEN:

HOW OBTAINED: Assessment of damages pursuant to interlocutory judgment.

APPEARANCE:

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff \$, the amount of the assessed damages and costs to be taxed *[or as the case may be]*

DATE AUTHENTICATED:

REGISTRAR

[Note: This form is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting the words below the line in the form and obtain the authentication of a separate final judgment in Form 60K.]

FORM 60K

rule 60.08

FINAL JUDGMENT FOR DAMAGES OR VALUE IN DEFAULT

[heading as in originating process]

JUDGE *[or MASTER]*

DATE FINAL JUDGMENT GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Assessment of damages *[or value]* pursuant to interlocutory judgment entered on in default of appearance *[or defence]*.

APPEARANCE:

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff \$, the amount of the assessed damages *[or the assessed value of \$]* and costs to be taxed *[or as the case may be]*.

DATE AUTHENTICATED:

REGISTRAR

FORM 60L

rule 60.08

INTERLOCUTORY OR INTERLOCUTORY AND FINAL JUDGMENT FOR
DETENTION OF GOODS IN DEFAULT

[heading as in originating process]

DATE INTERLOCUTORY JUDGMENT ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

The defendant deliver to the plaintiff the goods described in the indorsement of claim on the writ as *[description of goods]* or pay the plaintiff the value of the goods to be assessed *[and also damages for their detention to be assessed]* and costs to be taxed.

or

The defendant pay the plaintiff the value of the goods described in the indorsement of claim on the writ to be assessed *[and also damages for their detention to be assessed]* and costs to be taxed.

JUDGE *[or MASTER]*

DATE FINAL JUDGMENT GIVEN:

HOW OBTAINED: Assessment of *[complete appropriately]* pursuant to interlocutory judgment.

APPEARANCE:

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff \$, the amount of the assessed value of \$ *[and the assessed damages or the assessed damages]* and costs to be taxed *[or the case may be]*

DATE AUTHENTICATED:

REGISTRAR

[Note: This form is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting the words below the line in the form and obtain the authentication of a separate final judgment in Form 60K.]

FORM 63A

SUMMONS FOR TAXATION OF COSTS

(heading as in originating process)

rule 63.36(3)

To: [identify each party or other person to whom summons is addressed and state address of each person not a party.]

You are summoned to attend before the Taxing Master, Supreme Court Building, Mitchell Street, Darwin (or as the case may be) on the _____ day of _____ 19____ at _____ a.m. [or p.m.] on the hearing of an application by [identify party] for the costs which are payable to [that party] by [identify party liable for costs] under [identify the judgment, etc., by which payable] to be taxed in accordance with the bill of costs served on _____ 19____ [or with this summons].

Filed [e.g., 15 June, 19____].

This summons was filed by _____ of _____ solicitor for the _____

Whether or not you attend on the day for hearing referred to above, the costs claimed in the bill may be allowed unless within 14 days after service on you of this summons and the bill you file and serve on the [identify party] a notice identifying by list each item in the bill to which you object and stating specifically and concisely the grounds of objection to each item. Failure to file such a notice amounts to an admission of the items to which you have taken no objection.

FORM 64A

SPECIAL CASE

(or as the case may be)

rule 64.05(e)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

AT

NO.

IN THE MATTER of
*(set out relevant legislative
provision)* AND IN THE MATTER
of a Special Case *(or as the case
may be)* stated by *(specify court
or as the) case may be*, in
(identify proceedings) for the
opinion of the Court

BETWEEN

(full name)
Applicant

AND

(full name)
Respondent

SPECIAL CASE *(or as the case may be)* formulated for the opinion of the
Court in pursuance of *(state relevant provision)*.

1. ...

2. *(set out facts)* ...

3. ...

QUESTION OF LAW

The question for the opinion of the Court is

The address for service of the applicant is:

The address for service of the respondent is:

DATED (e.g. 20 June 19)

*(signature of Magistrate
or as the case may be.)*

FORM 68A

rule 68.08

WARRANT OF SEIZURE AND SALE

[heading as in originating process]

TO THE SHERIFF:

In respect of the judgment [*or order*] dated [e.g. 20 June 19] by which it was adjudged [*or ordered*] that [*judgment debtor*] pay \$ to [*judgment creditor*] together with costs, which have been taxed at \$, [*or by which it was ordered that*] [*judgment debtor*] pay certain costs to [*judgment creditor*], which have been taxed at \$, LEVY ON THE PROPERTY of [*judgment debtor*] which is authorised by law to be taken in execution for:

- (a) \$, being \$ now due and payable exclusive of taxed costs and \$ for taxed costs; [*or* \$ for taxed costs];
- (b) \$, being interest at per centum per annum, the rate for the time being fixed in accordance with law, on [*amount due and payable exclusive of taxed costs*] from the date of the judgment [*or order*];
- (c) \$, being interest at per centum per annum, the rate for the time being fixed in accordance with law, on [*amount of taxed costs*] from 19 [*date of taxation of costs*];
- (d) \$, being the costs of this [*and of any prior*] warrant; and
- (e) your fees and expenses for this [*and for any prior*] warrant,

AND PAY the amount so levied other than your fees and expenses to [*judgment creditor*] or otherwise as the law requires AND INDORSE on this warrant immediately after you have performed all your obligations under it a statement of the date, time and place at which you have executed or attempted to execute the warrant and the results of the execution and send a copy of the statement to [*judgment creditor*].

Issued , 19 .

BY THE COURT

REGISTRAR

Issued at the request of [*judgment creditor*].

The last known address of [*judgment debtor*] is [*add if address is different*] the address of the place where it is believed that property of [*judgment debtor*] may be found is].

FORM 68B

rule 68.08

WARRANT OF POSSESSION

[heading as in originating process]

TO THE SHERIFF:

In respect of the judgment dated [e.g. 20 June 19] by which it was adjudged that *[identify party or other person against whom judgment was entered or given]* recover possession of the land described in the schedule and that *[identify party or other person against whom judgment was ordered or given]* pay *[identify party or other person]* costs [or pay \$ to the *[identify party or other person]* together with costs], which have been taxed at \$, ENTER THE LAND and cause *[identify party or other person]* to have possession of it, AND LEVY on the property of *[identify party or other person]* which is authorized by law to be taken in execution for *[continue as in Form 68A according to whether the levy is for a judgment amount and costs or for costs only]* AND INDORSE *[continue as in Form 68A]*.

SCHEDULE

[Describe land as in judgment]

Issued , 19 .

BY THE COURT

REGISTRAR

Issued at the request of *[identify party or other person for whom judgment was entered or given]*.

The last known address of *[continue as in Form 68A]*.

FORM 68C

rule 68.08

WARRANT OF DELIVERY

[heading as in originating process]

TO THE SHERIFF:

In respect of the judgment *[or order]* dated [e.g. 20 June, 19] by which it was adjudged *[or ordered]* that *[identify party or other person against whom judgment was entered or given or order made]* deliver the goods described in the schedule to *[identify party or other person for whom judgment was entered or given or order made]* and pay [\$ damages for their detention and] costs, which have been taxed at \$, CAUSE THE GOODS TO BE DELIVERED to *[identify party or other person]* AND LEVY on the property of *[identify party or other person]* which is authorized by law to be taken in execution *[continue as in Form 68A according to whether the levy is for a judgment amount and costs or for costs only]* AND INDORSE *[continue as in Form 68A]*.

or

[where judgment or order is for delivery of goods or payment of their assessed value with or without an award of damages for their detention:]

In respect of the judgment *[or order]* dated [e.g. 20 June 19] by which it was adjudged *[or ordered]* that *[identify party or other person]* deliver the goods described in the schedule to *[identify party or other person]* or pay \$ their assessed value *[and \$ damages for their detention]* and costs, which have been taxed at \$, CAUSE THE GOODS TO BE DELIVERED to *[identify party or other person]* AND LEVY on the property of *[identify party or other person]*, which is authorized by law to be taken in execution -

- (a) if you cannot cause the goods to be so delivered, for \$ *[assessed value of the goods]*;
- (b) for \$, being \$ *[amount of damages]* due and payable exclusive of taxed costs and \$ for taxed costs; *[or*
- (c) for \$ for taxed costs;]

[continue as in Form 68A according to whether the levy is for interest on damages and costs or on costs only] AND INDORSE *[continue as in Form 68A]*.

SCHEDULE

[Describe goods as in judgment.]

Issued 19 .

BY THE COURT

REGISTRAR

Issued at the request of [*identify party or other person*].

The last known address of [*continue as in Form 68A*].

FORM 69A

rule 69.07(3)

ADVERTISEMENT OF SALE BY THE SHERIFF

On 19 at a.m. [or p.m.] at (unless process is stayed or satisfied) all the estate and interest (if any) of the [debtor] of (last known address) as [proprietor of an estate in fee simple in the land described in Certificate of Title Volume Folio upon which is erected (e.g. a brick factory known as No. Street)].

[Registered Mortgage No. affects the said estate and interest (or as the case may be)].

Terms: Cash only.

Sheriff

FORM 71A

rule 71.06(2)

GARNISHEE SUMMONS

In the Supreme Court of the
Northern Territory of Australia

No. of 19

Between

A.B.

Judgment creditor

and

C.D.

Judgment debtor

and

X.Y.

Garnishee

To [*name of garnishee*]
of [*address*].

You are summoned to attend before the Court on the hearing of an application by the judgment creditor for an order that you, the garnishee, pay to the judgment creditor the debt due from you to the judgment debtor [*or the debt which will become due from you to the judgment debtor on 19*] [*or pay to the judgment creditor in such amount or amounts and at such time or times as the Court may direct the debt accruing from you to the judgment debtor*] [*or the debt which will accrue from you to the judgment debtor on 19*] or so much of that debt as may be sufficient to satisfy a judgment recovered against the judgment debtor by the judgment creditor in the Court on [e.g. 20 June 19] for \$, interest accrued and accruing on the judgment and the costs of the judgment creditor of the garnishee proceedings. The sum required to satisfy the judgment, interest and costs is \$, and is made up as follows:

- (a) \$, the amount due and unpaid under the judgment;
- (b) \$, the amount of interest accrued and accruing;
- (c) \$, the costs of the garnishee proceeding.

The debt in respect of which this summons is filed and served is [*identify the debt in accordance with Rule 71.06(1)*].

This summons is filed and served by order of the Court made on 19, .

The application will be heard on [*continue as Form 46A*].

[*insert the following at end of summons*]

NOTE: [*Where the debt is due or accruing*] Upon service of this summons the debt is bound in your hands to the extent of the whole amount of the debt, namely, \$ [or to the extent of \$] to answer the sum of \$ required to satisfy the judgment, interest and costs.

[or where the debt is not yet due or accruing]

In the event that the debt becomes due or accrues before the day for hearing named in the summons, upon its becoming due or accruing the debt is bound in your hands to the extent of the whole amount of the debt, namely, \$ [or to the extent of \$] to answer the sum of \$ required to satisfy the judgment, interest and costs.

FORM 71B

rule 71.09(4)

GARNISHEE ORDER

(where garnishee debt less than judgment debt, interest and judgment creditor's costs)

*[heading as in Form 71A]
[other particulars as in Form 60L]*

THE COURT ORDERS THAT:

1. The garnishee *[where appropriate insert here: (after deducting \$ for his costs of the garnishee application)]* pay immediately to the judgment creditor \$, the debt due from him to the judgment debtor and that in default of payment execution may issue against the garnishee.

[or where the debt is not due but accruing]

pay to the judgment creditor \$, the debt accruing from him to the judgment debtor, as follows *[state the amount or amounts to be paid and the time or times of payment as directed by the Court]* and that in default of payment execution may issue against the garnishee.

2. The costs of the judgment creditor of the garnishee application, being on amount of \$, be added to the judgment debt and the interest accrued on that debt and be retained by the judgment creditor out of the money recovered by him under this order in priority to the judgment debt and interest.

DATE AUTHENTICATED:

REGISTRAR

FORM 71C

rule 71.09(4)

GARNISHEE ORDER

(where garnishee debt greater than judgment debt, interest and judgment creditor's costs)

*[heading as in Form 71A]
[other particulars as in Form 60C]*

THE COURT ORDERS THAT:

1. The garnishee pay immediately to the judgment creditor \$, being so much of the debt due from him to the judgment creditor as is sufficient to satisfy the judgment debt, the interest accrued on that debt and the costs of the judgment creditor of the garnishee proceedings and that in default of payment execution may issue against the garnishee.

[or where the debt is not due but accruing]

pay immediately to the judgment creditor \$, being so much of the debt accruing from him to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued on that debt and the costs of the judgment creditor of the garnishee proceedings as follows [state the amount or amounts to be paid and the time or times of payment as directed by the Court] and that in default of payment execution may issue against the garnishee.

[where appropriate add]

2. The garnishee be at liberty to retain \$ for his costs of the garnishee proceedings out of the balance of the debt due [or accruing] from him to the judgment debtor.

DATE AUTHENTICATED:

REGISTRAR

FORM 72A

rule 72.02(3)

ATTACHMENT OF EARNINGS SUMMONS

[heading as in originating process]

To the *[judgment debtor]*
of *[address]*

You are summoned to attend before the Court on the hearing of an application by *[judgment creditor]* for an order that the earnings of *[judgment debtor]* be attached to satisfy the judgment against *[judgment debtor]* in favour of *[judgment creditor]* in the Supreme Court dated [e.g. 20 June 19] for \$, in respect of which judgment \$ is due and unpaid, made up as follows:

- (a) \$, the amount due under the judgment;
- (b) \$, the amount of costs; and
- (c) \$, the amount of interest.

The application will be heard *[continue as in Form 46A]*.

FORM 72B

rule 72.02(3)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTACHMENT OF
EARNINGS ORDER

[heading as in originating process]

I, _____ of _____, the [judgment creditor], make oath and say that:

1. By a judgment dated [e.g. 20 June 19__] it was adjudged that [judgment debtor] pay to me the sum of \$ _____ together with costs.

2. In respect of that judgment, \$ _____ is due and unpaid, made up as follows:

(a) \$ _____, the amount due under the judgment;

(b) \$ _____, the amount of costs; and

(c) \$ _____, the amount of interest.

or

[*Judgment debtor*], the judgment debtor, has persistently failed to comply with an order with respect to the judgment made by the Supreme Court on _____ 19__ that [*judgment debtor*] [*insert terms of order not complied with*].

3. [*Judgment debtor*], the judgment debtor, is employed by _____ of _____ as a [*occupation*].

Sworn etc.

FORM 72C

rule 72.02(4)

JUDGMENT DEBTOR'S STATEMENT OF FINANCIAL SITUATION

*[heading as in originating process]*To *[judgment debtor]*:of *[address]*

You are required to complete this form by giving the information requested below. The completed form signed by you must be sent to *[judgment creditor]* at *[address for service]* before 19 *[day for hearing named in the summons]*. If you do not do this, the Court may make an order that you attend before the Court and give the information.

*Signature of judgment
creditor's solicitor.*

1. Amount and Source of Weekly Income

Occupation: _____
 If working for an employer:
 Name and address of employer: _____
 Gross wage: _____
 Current overtime (if any): _____
 Car and other allowances and
 commission _____
 If self-employed or in partnership:
 Average pre-tax earnings for last
 12 months: _____

If unemployed:
 State length of last employment,
 date when last employment ceased
 and gross weekly amount earned: _____
 Pension or other benefit received: _____
 Workers' compensation received: _____
 Maintenance received: _____
 Superannuation received: _____
 Board or rent received: _____

Average weekly interest on bank,
 Credit Union or building society
 deposit, 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: _____

Deposit in bank, Credit Union,
building society, 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):

Total Property and Assets:

3. Debts, Liabilities and Other Financial Obligations

(a) Weekly expenses

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 for 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: _____

(b) 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: _____

4. If any of the assets referred to in paragraph 2 above 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 such as the number and age of dependants, marital status and health:

..
..

Signature of judgment debtor:

Date:

FORM 72D

rule 72.04(7)

SUMMONS FOR AN ORDER TO ATTEND FOR EXAMINATION OR
FURNISH PARTICULARS

[heading as in originating process]

To: *[judgment debtor]*

or

[person indebted to or employer of judgment debtor]

of *[address]*.

You are summoned to attend before the Court on the hearing of an application by *[judgment creditor]* for an order that *[set out the order sought]*.

The application will be heard *[continue as in Form 46A]*.

FORM 72E

rule 72.04(7)

AFFIDAVIT IN SUPPORT OF SUMMONS FOR AN ORDER TO ATTEND
FOR EXAMINATION OR FURNISH PARTICULARS*[heading as in originating process]*

I, _____ of _____, the judgment creditor, make oath and say that:

1. By a judgment dated [e.g. 20 June 19 ____] it was adjudged that *[judgment debtor]* should pay to me \$ _____ together with costs.

2. In respect of the judgment, the sum of \$ _____ is due and unpaid, made up as follows:

- (a) \$ _____, the amount due under the judgment;
- (b) \$ _____, the amount of costs; and
- (c) \$ _____, the amount of interest.

or

[Judgment debtor] has persistently failed to comply with an order with respect to the judgment made by the Supreme Court on _____ 19 ____ that *[judgment debtor]* [insert terms of order not complied with].

3. I seek to obtain an order for the attachment of the earnings of *[judgment debtor]*.

4. The place of residence of *[judgment debtor]* is _____.

5. On _____ 19 ____, I was informed by _____ of _____ and verily believe that *[judgment debtor]* is employed by _____ of _____ as a *[occupation]* and is a person to whom earnings are payable or likely to become payable by the said employer.

or

On _____ 19 ____, I was informed by _____ of _____ and verily believe that *[judgment debtor]* is employed by _____ and is a person to whom earnings are payable or likely to become payable, but I do not know the name of whereabouts of the employer of *[judgment debtor]* or what the earnings of the *[judgment debtor]* are.

Sworn etc.

FORM 72F

rule 72.04(8)

ORDER THAT JUDGMENT DEBTOR ATTEND OR GIVE STATEMENT

[heading as in originating process]

[Follow Form 60C except as below.]

HOW OBTAINED:

Summons by *[judgment creditor]* dated _____, 19____ in aid of an application for an attachment of earnings orders against *[judgment debtor]* in respect of a judgment dated [e.g. 20 June 19__] for \$ _____ together with costs.

THE COURT ORDERS THAT:

[Judgment debtor], the judgment debtor, attend before the Judge (or the Master) in the Court, Supreme Court Building, Mitchell Street, Darwin (or Parsons Street, Alice Springs), on _____ 19__ at _____ a.m. (or p.m.) to be examined concerning the means and ability of *[judgment debtor]* comply with the judgment [*or to state to the Court the following particulars, namely:*

[complete appropriately].

or

[Judgment debtor], the judgment debtor, furnish to the Court on or before _____ 19__ a statement in writing signed by him, her or it (as the case may be) setting forth the following particulars, namely:

[complete appropriately].

FORM 72G

rule 72.04(8)

ORDER THAT PERSON INDEBTED TO OR EMPLOYER OF JUDGMENT
DEBTOR GIVE STATEMENT

[heading as in originating process]

[Follow Form 60C except as below.]

HOW OBTAINED:

Summons by *[judgment creditor]* dated 19 in aid of an application for an attachment of earnings order against *[judgment debtor]* in respect of a judgment dated [e.g. 20 June 19] for \$ together with costs.

OTHER MATTERS:

It was made to appear to the Court that (*person indebted*) is indebted to [*or is the employer of*] *[judgment debtor]*.

THE COURT ORDERS THAT:

(*Person indebted*) give to the Court on or before (*date*), 19 a statement in writing signed by him or on his behalf containing the following particulars of his indebtedness to the *[judgment debtor]* that became payable during the period 19 to 19 .

(complete appropriately)

FORM 72H

rule 72.05(7)

ATTACHMENT OF EARNINGS ORDER

[heading as in originating process]

[Follow Form 60C except as below.]

OTHER MATTERS:

The Court finds that:

1. By a judgment dated [e.g. 20 June 19] it was adjudged that [judgment debtor] pay to [judgment creditor] \$ together with costs.

2. \$ is due and unpaid in respect of the judgment.

or

2. [Judgment debtor] has persistently failed to comply with an order with respect to the judgment made by the Court on 19 that he, she or it (as the case may be) [insert terms of order not complied with].

3. [Judgment debtor] was served with a copy of the summons in this proceeding and has had a reasonable opportunity of attending the hearing.

4. [Judgment debtor] is employed by

at in the Northern Territory as a [occupation] and is a person to whom earnings are payable or are likely to become payable by that employer.

THE COURT ORDERS THAT:

1. (*The employer*), the abovenamed employer, on each pay-day whilst [judgment debtor] is employed by him or until this order ceases to have effect make payments out of the earnings of [judgment debtor] at the rate calculated in accordance with this order to [name and address of person to whom payments are to be made] for or towards securing payment of \$, being the amount of \$ due and unpaid in respect of the judgment and the amount of \$ for costs.

2. For the purpose of calculating the normal deduction for the purposes of paragraph 4 of this order the normal deduction rate shall be \$ each pay-day [or on the pay-day(s) falling on 19 and thereafter \$ each pay-day].

3. The protected earnings rate, that is, the rate below which the earnings of *[judgment debtor]* may not be reduced by a payment under this order, shall be \$ in respect of each pay-day.

4. *[The employer]* shall, in respect of each pay-day whilst the order is in force, if the net earnings of *[judgment debtor]* exceed the sum of:

- (a) the protected earnings of *[judgment debtor]*; and
- (b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any previous pay-day,

pay, so far as that excess permits, to *[judgment creditor]* the normal deduction in relation to that pay-day and so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

[complete as in Form 60C)

NOTE – An attachment of earnings order does not come into force until the expiration of 7 days after the day on which the order is served on the person to whom the order is directed.

FORM 72J

rule 72.06(3)

NOTICE TO EMPLOYER

[heading as in originating process]

The attachment of earnings order served with this notice requires you to deduct from earnings becoming payable to *[judgment debtor]* as your employee, from pay-day to pay-day until the order is discharged or suspended, the amount referred to in the order as the normal deduction, and to pay that amount to _____ of _____ towards securing payment of \$ _____, being the amount of \$ _____ due and unpaid in respect of the judgment referred to in the order and \$ _____ for costs.

Earnings in relation to *[judgment debtor]* means any amounts payable to him or her (as the case may be):

- (a) by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary; or
- (b) by way of pension, including:
 - (i) an annuity in respect of past services whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but does not include a pension payable to *[judgment debtor]* under the Commonwealth Acts known as the *Social Security Act 1947* (as amended from time to time) the *Repatriation Act 1920* (as amended from time to time) or the *Seamen's War Pensions and Allowances Act 1940* (as amended from time to time).

Where 2 or more attachment of earnings orders are directed to you with respect to earnings payable or likely to become payable by you to *[judgment debtor]*, you are required to:

- (a) comply with those orders according to the respective dates on which they took effect, and disregard any order until an earlier order has been complied with; and

- (b) comply with any order as if the earnings to which it relates were the residue of the earnings of *[judgment debtor]* after the making of any payment under an earlier order.

You are required to give *[judgment debtor]* a notice specifying particulars of the payments made by you under the attachment of earnings order.

In addition to deducting the amount required to be deducted under an attachment of earnings order, you are entitled to make a further deduction of \$3 from the earnings of *[judgment debtor]* towards the clerical and administrative costs of making payments under the order. You are required to give *[judgment debtor]* notice of the amount deducted for this purpose.

If you are in doubt whether payments to *[judgment debtor]* of a particular class or description are earnings for the purpose of the attachment of earnings order you may apply to the Court to have that question determined.

You must give notice in writing to the Registrar:

- (a) if you are not the employer of *[judgment debtor]* at the time the order is served, immediately after service; or
- (b) if you are the employer of *[judgment debtor]* at the time the order is served, but later cease to be his or her (as the case may be) employer immediately, after you cease to be employer.

A person who dismisses an employee, injures him in his employment or alters his position to his prejudice because an attachment of earnings order has been made or because the person is required to make payments under the order in relation to the employee may be dealt with as for contempt of court.

Dated (e.g. 20 June 19)

REGISTRAR

FORM 72K

rule 72.06(3)

NOTICE BY EMPLOYER THAT JUDGMENT DEBTOR IS NOT IN HIS
EMPLOY

[heading as in originating process]

To the Registrar,

of *[address]*.

And to *[judgment creditor]*

of *[address]*.

I refer to the order made on 19 that I make payments to
[judgment creditor] out of the earnings of (*judgment debtor*) and give notice
that I am not the employer of *[judgment debtor]* [or I ceased to be the
employer of *[judgment debtor]* on 19 .]

Dated

[signature of employer]

FORM 72L

rule 72.11(3)

NOTICE OF CESSATION OF ATTACHMENT OF EARNINGS ORDER

[heading as in originating process]

To: *[employer]* of _____, the employer of *[judgment debtor]*.

The attachment of earnings order made on _____, 19 _____ whereby you were ordered to make payments for or towards securing payment of the amount due and unpaid in respect of a judgment in favour of *[judgment creditor]* out of the earnings payable to *[judgment debtor]*, ceased to have effect on _____, 19 _____ because *[state reason]*.

Dated (e.g. 20 June 19 _____)

REGISTRAR

NOTE – Where the order ceases to have effect, you will not incur any liability in consequence of your treating it as still in force at any time before the expiration of 7 days after this notice or a copy of the order discharging the earlier order, as the case may be, is served on you.

FORM 73A

rule 73.05(2)

CHARGING SUMMONS

[heading as in originating process]

To *[name]*
of *[address]*.
And to *[judgment debtor]*.

You are summoned to attend before the Court on the hearing of an application by *[judgment creditor]* for an order that certain securities *[or as the case may be]* in which *[judgment debtor]* has a beneficial interest, namely, *[give particulars sufficient to identify the securities and the interest of the judgment debtor]*, stand charged to the extent of the value of the entire beneficial interest of *[judgment debtor]* in the securities or of so much of that value as may be sufficient to satisfy a judgment recovered against *[judgment debtor]* by *[judgment creditor]* in the Court on [e.g. 20 June 19] for \$, made up as follows:

- (a) \$, the amount due and unpaid under the judgment;
- (b) \$, the amount of interest accrued or estimated to accrue;
and
- (c) \$, the estimated costs of the charging order proceedings.

This summons is filed and served by order of the Court made on 19 .

The application will be heard. *[continue as in Form 46A]*.

[Insert the following at the end of the summons]

To *[name]*
of *[address]*

Upon service of this summons you shall not, except by order of the Court, cause or permit a transfer of any of the abovementioned securities to be made or pay to a person any dividend or interest on those securities.

To *[judgment debtor]*.

Unless the Court otherwise orders, no disposition by you of your interest in any of the abovementioned securities made after service of this summons and before the application for the charging order is heard by the Court is valid as against *[judgment creditor]*.

FORM 73B

rule 73.13(1)(a)

AFFIDAVIT AS TO STOCK

In the Supreme Court
of the Northern Territory No. of 19
of Australia

In the matter of [*identify the document comprising the stock under which the claimant's interest arises*].

I, of make oath and say that according to the best of my knowledge, information and belief I have [or if the affidavit is made by the solicitor: (*name of claimant*) of has] a beneficial interest in the stock specified in the notice filed with this affidavit as [*describe the interest of the claimant in the stock and identify any document under which it arises*].

This affidavit is filed on behalf of [*name of claimant*] of .

FORM 73C

rule 73.13(1)(a)

NOTICE AS TO STOCK

[heading as in Form 73B]

[To be filed with Form 73B.]

To *[name]*

of *[address]*.

The stock comprised in and subject to the trusts of the settlement *[or as the case may be]* referred to in the affidavit filed with this notice consists of the following, namely *[identify the stock, stating the names in which it stand]*.

This notice is intended to stop the transfer of the stock and not the payment of any dividend or interest on that stock *[or also the payment of any dividend or interest on that stock]*.

*[Signature of claimant, or
solicitor where affidavit
made by solicitor]*

FORM 75A

rule 75.02(b)

ARREST WARRANT IN SUMMARY PROCEEDINGS FOR CONTEMPT IN
FACE OF SUPREME COURT

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

To the Sheriff and

Arrest _____ and bring him before the Court to answer a charge
of contempt, detaining him in custody in the meantime.

Dated [e.g. 15 June 19 ____].

Judge

FORM 75B

rule 75.09(2)

ARREST WARRANT IN CONTEMPT PROCEEDINGS BY SUMMONS OR
ORIGINATING MOTION

[heading as in summons or originating motion]

To the Sheriff, and to all members of the Police Force of the Northern Territory.

Arrest _____ and bring him before the Court to answer a charge of contempt, detaining him in custody in the meantime, unless by paying \$ _____ into Court [*or as the case may be*], he gives security for his appearance in person before the Court to answer the charge and to submit to the judgment of the Court.

Dated [e.g. 15 June 19 ____].

Judge

FORM 75C

rule 75.13

COMMITTAL WARRANT

[heading as in Form 75A or 75B, as appropriate]

To the Sheriff, and to all members of the Police Force of the Northern Territory.

Take _____ to the prison at _____ and deliver him to the Officer in Charge of that prison.

To the Officer in Charge of the prison at _____ .

Receive _____ into your custody and keep him until the further order of this Court [or as the case may be].

His committal is for contempt of court in that he [state nature of the contempt].

Dated [e.g. 15 June 19 ____].

Judge

FORM 83A

rule 83.05(1)

IN THE SUPREME COURT)
 OF THE NORTHERN TERRITORY) No. of 19
 OF AUSTRALIA)

IN THE MATTER of an appeal

under (specify relevant Act)

BETWEEN:

Appellant

and

Respondent

NOTICE OF APPEAL

The proceeding appealed from was heard in (*place*) by (*name tribunal below*) on (*date*) and decided on (*date*).

(*Where leave to appeal has been granted, add:*
 Leave to appeal was granted on [date]).

The appellant appeals from the decision of (*or the following part of the decision of or as the case may be*) (*briefly but specifically state the decision or part appealed against*).

GROUND(S): (*state briefly but specifically the grounds relied upon in support of the appeal*).

ORDER SOUGHT: (*state what judgment, relief or decision the appellant seeks in lieu of that which is the subject of the appeal*).

To the respondent (*address*)

NOTE: A directions hearing in this appeal will take place before (*Judge or Master, as the case may be*) in (*place*) at (*time*) on (*date*). If you do not attend that hearing either in person or by your solicitor or counsel, orders may be made in your absence.

Before you take a step in this appeal and before you may be heard in relation to it or on a directions hearing, you must enter an appearance in the Registry.

Appellant: (*name, address and occupation*)

Solicitor: (*name, address and telephone number*)

Solicitor's agent: (*name, address and telephone number*)

Appellant's Address for Service:

DATE: (e.g. 20 June 19)

Signed by appellant
or his solicitor

FORM 83B

rule 83.12(3)

(Heading as in process originating appeal, or as the case may be)

The respondent appears in this appeal *(or as the case may be)*.

The respondent's address for service is:

Date:

Signed by respondent
or his solicitor

To the Appellant (*address*)

FORM 83C

rule 83.22(1)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

)
)
)

No. of 19

IN THE MATTER of an
application for leave
to appeal under
(specify relevant Act)

BETWEEN:

Applicant

and

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies for leave to appeal from the judgment of (*specify tribunal below*) given on (*specify date*) at (*specify place*).
2. Leave to appeal is required by (*specify legislation giving right to appeal with leave*).
3. The grounds of the application appear in the affidavit of (*name of deponent*) sworn (*date*) and filed with this application.
4. (*Where rule 83.23(2) applies*). The applicant applies for an order that compliance with rule 83.23 be dispensed with.

To the respondent (*address*)

NOTE: A directions hearing in this application will take place before (*Judge or Master as case may be*) in (*place*) at (*time*) on (*date*). If you do not attend that hearing either in person or by your solicitor or counsel, orders may be made in your absence.

Before taking a step in the proceeding you must file an address for service in the Registry.

The applicant's address for service is (*specify address for service*)

DATE:

Signed by applicant
or his solicitor

FORM 84A

84.07(3)

(heading as in process originating appeal)

INDEX

(Follow the order of arrangement prescribed by rule 87.7(3), for example.)

No.	Document	Date	Page
1	Statement of Claim	17-2-79	<i>(Leave this column blank in the draft index.)</i>
2	Defence (if relevant to the appeal)		
4	Transcript of evidence taken before Mr Justice (<i>name</i>)	1-3-78 2-3-78 6-3-78	
	LEE, John Examined Cross-Examined JONES, Dr Henry Examined Cross-Examined Further cross-examined		
5	Exhibits <i>(In the draft index, list all exhibits, whether relevant to the appeal or not)</i>		
	(A) Reports to Dr H. Jones (transcript p 1)	28-1-75 16-4-75	
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FORMS

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6	Reasons for judgment of Mr Justice (name)		
7	(Where relevant) Judge's associate's certificate		
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Solicitor for the respondent
(plaintiff)
(name)
telephone
address

Solicitor for the appellant
(defendant)
(name)
telephone
address

FORM 84B

rule 84.11(4)

REQUEST TO SET DOWN APPEAL FOR HEARING

(heading as in Form 83A)

To the Master *(or Registrar)*

Please set down this appeal for hearing.

Date:

Signed by person making
request or his solicitor

FORM 84C

rule 84.15(2)

(heading as in process originating appeal, or as the case may be)

NOTICE OF DISCONTINUANCE

I/We *(name of party or parties giving notice)*, the appellant, *(or as the case may be)* give notice that I/We withdraw from these proceedings.

Date (e.g. 20 June 19)

Signed by party or parties
or his or their solicitor

To the respondent *(or as the case may be)*

(Address)

FORM 84D

rule 84.26

(heading as in process originating appeal, or as the case may be)

ORDER

ORDER MADE BY: *(Name of Judge or person making the order)*

DATE OF ORDER:

PLACE WHERE ORDER MADE:

THE COURT ORDERS THAT:

- 1.
- 2.
- 3.

DATE AUTHENTICATED

REGISTRAR

FORM 85A

rule 85.04(1)

IN THE COURT OF APPEAL)
OF THE NORTHERN TERRITORY)
OF AUSTRALIA)

No. of 19

A.B.

Applicant

C.D.

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies for leave to appeal from the judgment of (*specify Judge appealed from*) given on at .
2. Leave to appeal is required by (*specify legislation giving right to appeal with leave*).
3. The grounds of the application appear in the affidavit of (*deponent's name*) sworn (*date*) filed with this application.
4. (*Where rule 85.03(2) applies*) The applicant asks that the Court dispenses with compliance with rule 85.03(1).

To the Respondent (*address*).

NOTE: Before taking a step in these proceedings you must enter an appearance in the Registry.

The applicant's address for service is

Date: (e.g. 5 June 19)

Signature of applicant
or his solicitor

FORM 85B

rule 85.09

IN THE COURT OF APPEAL)
OF THE NORTHERN TERRITORY) No. of 19
OF AUSTRALIA)

ON APPEAL from the judgment of (specify Judge) in proceeding
No. (specify number in proceeding appealed from).

BETWEEN:

A.B. Appellant

AND

C.D. Respondent

NOTICE OF APPEAL

1. The appellant appeals from the whole (*or if from a part, specify part*) of
the judgment of (*specify Judge*) given on at

2. (*Where rule 85.10(3) applies*) The appeal is brought pursuant to leave
granted on

GROUND(S):

3.)
(*briefly, but specifically specify*)

4.)

5. (*Where relevant, set out the fact that rule 85.12(b) or (c) or 85.12(2)
applies and give brief details of the orders made*).

ORDER SOUGHT:

(*State what judgment or relief the appellant seeks in lieu of the judgment
appealed from*)

To the respondent (*address*).

NOTE:

(a) Before taking a step in the proceeding you must enter an appearance
in the Registry.

(b) The papers in the appeal will be settled before the Master at on at
(*place, date and time to be inserted by the Master*).

The appellant's address for service is
.....

Date: (e.g. 20 June 19)

Signature of appellant
or his solicitor

FORM 85C

rule 85.12(4)

(heading as in the action in which application is sought)

APPLICATION FOR EXTENSION OF TIME OR FOR LEAVE *(as the case may be)* TO FILE AND SERVE NOTICE OF APPEAL

1. The applicant applies for an extension of time in which to file *(or for leave to file)* and serve a notice of appeal from the judgment of *(specify Judge)* given on at
2. An extension of time *(or leave)* is required because a notice of appeal was not filed and served within the time limited by rule 85.12(1)(a).
3. *(Where rule 85.12(3) applies)* The applicant intends to present his case and argument in writing in accordance with rule 85.14.

or

3. This application will be heard by the Court at on
(time, place and date to be inserted by the Master)
4. The grounds of the application appear in the affidavit of sworn and filed with this application.
5. The applicant's address for service is

Date: (e.g. 20 June 19)

Signature of applicant
or his solicitor

FORM 86A

rule 86.04(1)

IN THE COURT OF CRIMINAL APPEAL

No. of 19

The Queen v. A.B. (Appellant)

JUDGE'S CERTIFICATE

ON (*date*) in the Supreme Court at (*place*) A.B. was tried and convicted before me, the undersigned, on an indictment charging him with (*state shortly the offence, e.g., murder, forgery, etc.*) and was on that conviction sentenced by me to

I NOW CERTIFY, in pursuance of section 410(b) of the Criminal Code, that the case is a fit case for an appeal by A.B. to the Court of Criminal Appeal on the following grounds:

Date: (e.g. 20 June 19)

(Signed)
Judge of Trial

FORM 86C

rule 86.05(9)

IN THE COURT OF CRIMINAL APPEAL

No. of 19

The Queen v. (Appellant)

NOTICE TO SURETY FOR APPELLANT OF FORFEITURE OF
RECOGNIZANCE

To (*surety's name and address*).

You became bound in recognizances as surety, that (*name of appellant*), having been convicted of and for his offence fined the sum of \$, should prosecute an appeal in relation to that conviction before this Court. (*appellant's name*) has not so prosecuted his appeal. I THEREFORE GIVE YOU NOTICE that, at the sitting of the Court of Criminal Appeal to be held at on at the Court may order that your recognizances be forfeited, unless you then show cause why the Court should not make such an order.

Date:

REGISTRAR

FORM 86D

rule 86.05(10)

(Title)

WARRANT FOR ARREST

To the Sheriff:

Arrest _____ and bring him before the Court of Criminal Appeal to answer a charge that he, having been convicted of _____ on _____ and sentenced to pay a fine of \$ _____ in default of payment of which he was sentenced to prison for (period), has:

- (a) failed to pay that fine within that time; and
- (b) failed, as required by the *Supreme Court (Appeal) Rules*, to file and serve a notice of appeal against that sentence or conviction.

Until _____ is brought before the Court you are to detain him in custody.

Date: (e.g. 20 June 19)

Judge

FORM 86E

rule 86.05(10)

(*Title*)

WARRANT OF COMMITTAL

To the Sheriff:

Take _____ to (*name of prison*) and deliver him to the Superintendent of that prison.

To the Superintendent of Her Majesty's prison at

Receive _____ into your custody and keep him there until the further order of this Court (*or as the case may be*).

His committal is for that, having been convicted of _____ on _____ and sentenced to pay (*where relevant*) by (*date*) a fine of \$ _____ in default of payment of which he was sentenced to prison for (*period*), he has:

- (a) failed to pay that fine (*within that time*); and
- (b) failed, as required by the *Supreme Court (Appeal) Rules*, to file a notice of appeal.

Date:

REGISTRAR

FORM 86F

rule 86.07

(Title)

CERTIFICATE OF CONVICTION

I, _____ an officer having the care, custody and control of the criminal records of the Supreme Court of the Northern Territory of Australia, hereby certify that on _____ at _____ in the Northern Territory, _____ was convicted before the Court for that on _____ at _____ in the Northern Territory he committed the following offence(s):

and upon conviction _____ was sentenced on _____ to _____ .

Date:

(Signed)

FORM 86G

rule 86.10

IN THE COURT OF CRIMINAL APPEAL

No. of 19...

A.B.

Applicant

C.D.

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies for leave to appeal from the judgment of (*specify Judge*) given on at .
2. Leave to appeal is required by (*specify legislation giving right to appeal with leave*).
3. The grounds of the application appear in the affidavit of (*deponent's name*) sworn (*date*) filed with this application.
4. (*Where applicable*) The applicant intends to present in writing his (*or as the case may be*) argument with respect to this application.

To the Respondent (*address*)

NOTE: Before taking a step in the proceeding you must enter an appearance in the Registry.

The applicant's address for service is

Date: (e.g. 20 June 19)

(*Signed by applicant
or his solicitor*)

FORM 86H

rules 86.15(1)

IN THE COURT OF)
)
CRIMINAL APPEAL)

No. of 19...

ON APPEAL FROM (specify Judge and set out
number of proceeding appeal from)

BETWEEN:

A.B.

Appellant

AND

C.D.

Respondent

NOTICE OF APPEAL

1. The appellant appeals against his being convicted before the Supreme Court of the Northern Territory of Australia at (*place of trial*) on (*date*) on a charge (*set out charge*) (*or where there has been a special finding within the meaning of section 410(a) of the Criminal Code*) against the special finding of His Honour Mr Justice (*name of Judge*) on (*date*) in which His Honour found (*set out brief details of the special finding*) [*or where the Attorney-General appeals under section 414 of the Criminal Code: against the whole (or if part specify the part) of (here set out the sentence, determination, declaration or order which is the subject of the appeal).*]
2. (*Where applicable*) The appeal is brought pursuant to leave granted on

GROUND(S):

3.) (*Briefly, but specifically, set out grounds*)
4.)
5. (*Where rule 86.15(3) applies*) This appeal is brought under section 410(b) of the Criminal Code on a certificate of (*name of Judge*) dated .
6. (*Where applicable*) The appellant intends to present in writing his (*or as the case may be*) argument with respect to this appeal.

ORDER SOUGHT:

(State what judgment or relief the appellant seeks in lieu of the judgment appealed from).

To the respondent (*address*).

NOTE:

- (a) Before taking a step in the proceeding you must enter an appearance in the Registry.
- (b) The papers in the appeal will be settled before the Registrar at on
(place, date and time to be inserted by the Registrar).

The appellant's address for service is

Date: (e.g. 20 June 19)

(Signed)

NOTE: This reference is set down for consideration by the Court of
Criminal Appeal at _____ on _____
at _____ or at such later time as
counsel for the parties may be heard.

Date:

REGISTRAR

FORM 86K

rule 86.18(3)

(heading as in originating process)

REFERENCE BY REGISTRAR

In pursuance of section 426(2) of the Criminal Code, I refer to the Court of Criminal Appeal for summary determination the notice of appeal/application for leave to appeal* against the conviction of _____ and sentence imposed (or as the case may be) on _____ .

It appears to me that the notice of appeal/*application for leave to appeal* does not show any substantial ground of appeal.

NOTE: This reference is set down for consideration by the Court of Criminal Appeal at _____ on _____ at _____ or at such later time as counsel for the parties may be heard.

Date:

REGISTRAR

* Strike out that which is not applicable.

FORM 86L

rule 86.19(1)

(heading as in Form 86G)

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL

To the Registrar of the Court of Criminal Appeal.

BETWEEN

A.B.

Applicant

AND

the Crown

Respondent

I _____ having been convicted of the offence of _____ in the Supreme Court, held at _____ on _____, and being now a prisoner in Her Majesty's prison at (or, where the appellant for any reason is not in custody) and now living at _____ give you notice that I apply to the Court of Criminal Appeal for an extension of the time within which I may give notice of appeal (or make application for leave to appeal) on the grounds set out in the accompanying affidavit of sworn _____.

(Where applicable) I intend to present in writing my argument with respect to this application.

Date:

Signed

NOTE: This application is set down for consideration by the Court of Criminal Appeal at _____ on _____ at _____ or such later time as Counsel for the parties may be heard.

FORM 86M

rule 86.22(1)

(heading as in originating process)

NOTIFICATION TO APPELLANT OF JUDGE'S DECISION UNDER
SECTION 429 OF THE CRIMINAL CODE

On (*date*), a Judge of the Court of Criminal Appeal having considered your application for:

- *(a) leave to appeal;
- *(b) for extension of time within which to file notice of appeal or within which application for leave to appeal may be given;
- *(c) permission for you to be present at the hearing of a proceedings;
- *(d) bail;
- *(e) a suspension of an order made with respect to your driver's licence,

has granted/refused* the application(s).

** If you want to have the application(s) which has/have* been refused determined by the Court of Criminal Appeal, you are required to complete the enclosed form and return it to me immediately.

Date:

REGISTRAR

To (*appellant's name and address*).

* Strike out that which is not applicable.

** Strike out this paragraph if application granted.

FORM 86N

rule 86.22(2)

*(heading as in originating process)*NOTICE OF APPLICATION FOR REHEARING BY COURT OF CRIMINAL
CRIMINAL APPEAL UNDER SECTION 429(2) OF THE CRIMINAL CODE

I, _____, having received your notification that my application(s) for:

- (a) leave to appeal;
- (b) for extension of time within)
which notice of appeal or of) *(Strike out*
application for leave to) *any of those*
appeal may be given;) *which are not*
) *relevant.)*
- (c) permission to me to be)
present at the hearing of)
any proceedings in relation)
to my appeal;)
)
- (d) bail; or)
- (e) suspension of an order
made with respect to my
driver's licence,

has/have been refused; HEREBY APPLY FOR my application(s) to be considered and determined by the Court of Criminal Appeal (*and that, as I am not legally represented, I desire to be present at the determination of my application).

Date:

Appellant.

To the Registrar of the Court of Criminal Appeal.

(If you want to state any reasons in addition to those set out by you in your original notice upon which you submit that the Court of Criminal Appeal should grant your applications, you may do so in the space below.)

** Strike this out if you do not want to be present.*

FORM 86P

rule 86.22(8)

(heading as in originating process)

NOTIFICATION TO APPELLANT OF RESULT OF APPLICATION UNDER
SECTION 429(2) OF THE CRIMINAL CODE

To the appellant (address).

The Court of Criminal Appeal has considered the matter of your application for permission to be present during the proceedings in your appeal (*or as the case may be*) and has granted (*or has refused*) you leave to be present at on when the following application will be heard, namely

Date:

REGISTRAR

FORM 86Q

rule 86.22(9)(b)

(heading as in originating process)

NOTIFICATION TO DIRECTOR, &c., OF RESULT OF APPLICATION

To the Superintendent of Her Majesty's prison at

This is to give you notice that _____ having applied for:

- (a) leave to appeal to the Court of Criminal Appeal;
- (b) leave to extend the time within which he may give notice of appeal or of an application for leave to appeal;
- (c) permission to be present during the proceedings in his appeal;
- (d) admission to bail;
- (e) suspension of an order made with respect to his driver's licence,

the Court of Criminal Appeal has this day finally determined his applications and has given judgment to the effect following:

Date:

REGISTRAR

FORM 86R

rule 86.28(1)

(heading as in originating process)

NOTICE TO DIRECTOR

To the Director, Correctional Services

ON *(date)* *(name)* at the Supreme Court at was convicted of , and was sentenced to be imprisoned and kept to hard labour *(or as the case may be)* in Her Majesty's prison at for ;

Afterwards *(name)* appealed to the Court of Criminal Appeal against that conviction and sentence *(or as the case may be)* AND on *(date)* *(name)* was released from custody on bail.

The Court of Criminal Appeal has this day dismissed the appeal and confirmed the conviction and sentence *(or as the case may be)*.

Date:

REGISTRAR

FORM 86S

rule 86.29(1)

(heading as in Form 86H)

APPLICATION FOR FURTHER WITNESSES

I,
(or the Crown) having appealed to the Court of Criminal Appeal, hereby request(s) you to take notice that I (or the Crown) desire(s) that the Court order the following witness[es] to attend the Court and be examined on my behalf (or on behalf of the Crown).

(You are required to fill up the following form and sign it)

1. Name and address of witness(es):
.....
.....
.....
2. Has that witness been examined at trial?.....
.....
3. If not, give the reason why he or she was not examined:.....
4. On what matters do you wish him or her to be examined on the appeal? *(State shortly the evidence it is believed the witness can give:*
.....

Date:

(Signed)

FORM 86T

rule 86.29(4)

(heading as in Form 86H)

ORDER TO WITNESS TO ATTEND COURT OF CRIMINAL APPEAL FOR
EXAMINATION

To
of

You have been ordered to attend and be examined as a witness before the
Court of Criminal Appeal on the appeal of _____,

THIS IS TO GIVE YOU NOTICE to attend before the Court at
_____ on _____ at _____.

(Where applicable) You are also required to have with you at that time and
place such books, papers, or other things of which you have had notice to
produce as relate to the appeal.

Date:

REGISTRAR

NOTE: that if you do not comply with this subpoena you may be
arrested and dealt with by the Court for contempt.

FORM 86U

rule 86.30(3)

(heading as in originating process)

NOTICE TO RESPONDENT

1. You have filed a notice of appeal (*or as the case may be*) against (*give details*).
2. If you wish to appear in person at the Court of Criminal Appeal on the hearing of the appeal (*or as the case may be*), you must seek the leave of the Court.
3. You may make in writing an application for leave to appear and may present in writing your argument in support of that application.
4. You may present in writing your argument with respect to your appeal (*or as the case may be*).
5. I expect your appeal (*or as the case may be*) will be heard at the sittings of the Court of Criminal Appeal commencing on (*date*).
6. (*Here set out any relevant matter to which section 426(4)(e) of the Criminal Code relates.*)

Date:

REGISTRAR

FORM 86V

rule 86.30(4)

(heading as in originating process)

NOTICE TO RESPONDENT

1. The Attorney-General has filed a notice of appeal in this matter.
2. You may appear yourself at the hearing of the appeal if you are not represented by counsel.
3. You may present your argument in writing with respect to the appeal or to any preliminary or incidental proceeding.
4. I expect the appeal will be heard on *(date)*.
5. *[Here set out, if necessary, any matter required under section 426(5)(d)].*

Date:

REGISTRAR

FORM 87A

rule 87.04

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

)
)
)

No. of 19

IN THE MATTER of an appeal
under the Work Health Act

BETWEEN:

Appellant

and

Respondent

NOTICE OF APPEAL

The proceeding appealed from was heard in (*place*) by the Work Health Court on (*date*) and decided on (*date*).

(*Where leave to appeal has been granted, add:*
Leave to appeal was granted on [*date*]).

The appellant appeals from the decision of (*or the following part of the decision of or as the case may be*) (*briefly but specifically state the decision or part appealed against*).

GROUND(S): (*state briefly but specifically the grounds relied upon in support of the appeal*).

ORDER SOUGHT: (*state what judgment, relief or decision the appellant seeks in lieu of that which is the subject of the appeal*).

To the respondent (*address*)

NOTE: A directions hearing in this appeal will take place before (*Judge or Master, as the case may be*) in (*place*) at (*time*) on (*date*). If you do not attend that hearing either in person or by your solicitor or counsel, orders may be made in your absence.

Before you take a step in this appeal and before you may be heard in relation to it or on a directions hearing, you must enter an appearance in the Registry.

Appellant: (name, address and occupation)

Solicitor: (name, address and telephone number)

Solicitor's agent: (name, address and telephone number)

Appellant's address for service:

DATE:(e.g. 20 June 19)

Signed by appellant
or his solicitor

FORM 88A

rule 88.07(1)

IN THE SUPREME COURT
OF THE NORTHERN
TERRITORY OF AUSTRALIA
PROBATE JURISDICTION
DARWIN REGISTRY (or as
the case may be)

No. of 19

THE ESTATE of the late
(*name*) late of (*address
and occupation at time
of death*)

APPLICATION

The applicant, (*name*), the executor named in the will dated (e.g. 1 April 1986), (*where applicable*: and 2 codicils dated (*date*) and (*date*)) of (*name*) late of (*address and occupation*), deceased, claims that probate of the will (*where applicable*: and 2 codicils) be granted to him.

or

The applicant (*name*), a beneficiary named in the will dated (e.g. 1 July, 1971, (*where applicable* and 2 codicils dated (*date*) and (*date*)) of (*name*) late of (*address and occupation*), deceased, claims that administration with the will (*where applicable*: and 2 codicils) annexed of the estate of the deceased be granted to him (*where applicable*: (*name*), the executor named in the will, having renounced probate) (*where applicable*: and that the administration bond be dispensed with).

or

The applicant (*name*), the widow of (*name*), late of (*address and occupation*), deceased, claims that administration of the estate of the deceased be granted to her (*where applicable*: and that the administration bond be dispensed with).

or

The applicant (*name*) (*where applicable*: as attorney of (*name*)) claims that probate of the will dated (e.g. 1 April 1986) (*or where applicable*: letters of administration of the estate) of (*name*) late of (*address and occupation*) granted by (*description of court*) to (*name*) be sealed with the seal of this Court (*where applicable*: and that the administration bond be dispensed with).

Applicant: (*name, address and occupation*)

Applicant's address for service: .

Filed: (date)

(Signature)
Applicant's Solicitor.

FORM 88B

rule 88.09(1)

NOTICE OF INTENDED APPLICATION FOR PROBATE

In the Supreme Court of the Northern Territory of Australia.

After 14 days from publication of this notice an application for probate of the will dated (date e.g. 10 April 1960) (*where applicable*: and 2 codicils dated (*date*) and (*date*)) of (*name in capitals*), late of (*address and occupation*), will be made by (*name*). Creditors are required to send particulars of their claims upon his estate to (*name*) solicitors (*address*) (*and, where applicable*: or their agents, name, address).

FORM 88C

rule 88.09(1)

NOTICE OF INTENDED APPLICATION FOR ADMINISTRATION

In the Supreme Court of the Northern Territory of Australia.

After 14 days from publication of this notice an application for administration (*or where applicable: administration with the will dated (date e.g. 10 April 1960) annexed of the estate of (name in capitals) late of (address and occupation) will be made by (name), the (relationship to deceased or capacity of applicant). Creditors are required to send particulars of their claims upon his estate to (name) solicitors (address) (and, where applicable, or their agents, name, address).*

FORM 88D

rule 88.09(1)

NOTICE OF INTENDED APPLICATION FOR RESEALING

In the Supreme Court of the Northern Territory of Australia.

After 14 days from publication of this notice an application will be made that the Probate of the will and codicils (*or where applicable: Letters of Administration of the estate*) of (*name in capitals*), late of (*address and occupation*), granted by (*court*) to (*name*) be sealed with the seal of this Court. Creditors are required to send particulars of their claims upon his estate to (*name*) solicitors (*address*) (*and, where applicable: or their agents, name, address*).

FORM 88E

rule 88.13(2)

RENUNCIATION OF PROBATE

I, *(name)* of *(address of place of residence)* *(occupation e.g. labourer)*
declare:

1. I am the executor *(or one of the executors or as the case may be)* appointed by the will dated *(date e.g. 1 April 1960)* *(where applicable)*: and 2 codicils dated *(date)* and *(date)* of *(name)* late of *(address and occupation)* who died on *(date)*.
2. I have not intermeddled in the estate of the deceased.
3. I renounce all rights to probate of the will *(where applicable)*: and codicils) and to all trusts, powers and authorities expressed by the will *(where applicable)*: and codicils) to be made or given to me.

Dated: *(date)*

Signed in the)
)
presence of)

FORM 88F

rule 88.14(1)

(heading as in Form 88A)

AFFIDAVIT OF ATTESTING WITNESS

I *(name, address and occupation)* make oath and say that:

1. On *(date)* the document annexed and marked "A" was signed *(as appears on the document)* by *(name)*, the deceased, as his will in my presence and that of *(name of other witness)* present at the same time and we then at the request of the deceased attested and subscribed that will in his presence and in the presence of each other.

2. The signatures *(set out)* and *(set out)* subscribed as witnesses to the will are respectively my signature and that of *(name of other witness)*.

Sworn at (e.g. Darwin))
on (e.g. 6 June 1987))
before me)

FORM 88G

rule 88.23(1)(a)
and 88.24(1)(a)

(heading as in Form 88A)

AFFIDAVIT OF DEATH

I (*name, address and occupation*) make oath and say that:

1. I was well acquainted with (*name of deceased*), late of (*address and occupation*) for (*number*) years.
2. I saw his dead body on the day he died, that is to say, on (*date*).
3. I am not interested in his estate.

or in lieu of paragraphs 2 and 3

2. I believe that he is (*name in certificate of registration of death*) referred to in the certificate of registration of death which is annexed and marked "A".

Sworn etc (*as in Form 88F*)

on

FORM 88H

rule 88.23(1)(b)

(heading as in Form 88A)

AFFIDAVIT OF EXECUTOR

I *(name, address and occupation)* make oath and say that:

1. My full residential address is *(address)*.
2. The document, dated *(date)* and signed in the margin by me and by the person before whom this affidavit is sworn is, I believe, the last will of *(name)*, the deceased which will has not been revoked.
3. My means of identifying the will are *(state these)*.
4. I am the executor *(or one of the executors)* named in the will *(where relevant add: The other executors named in the will are and set out names and addresses)*.
5. The subscribing witnesses to the will are *(name)* and *(name)*.
6. The deceased did not marry after the will was made. *(If he did marry state particulars of the marriage)*.
7. The deceased left an estate within the Territory the value of which is under \$ being *(give brief details)*.
8. I am over 18 years of age *(or as the case may be. See Rule 88(1)(b)(vii))*
9. *(where applicable)* *(name)*, one of the executors appointed by the will died on *(date)*.
10. *(where applicable)* *(name)*, one of the executors named in the will renounced probate of the will on *(date)*.
11. The deceased died on *(date)* aged years.

Sworn etc *(as in Form 88F)*

FORM 88I

rule 88.23(1)(c)

(heading as in Form 88A)

AFFIDAVIT OF PUBLICATION AND SEARCH

I *(name, address and occupation)* make oath and say that:

1. A notice, a copy of which is annexed and marked "A", was published on *(date)* in the *(name)* which is a Darwin daily newspaper.
2. *(where applicable)* The notice was also published on *(date)* in the *(name)* which is a newspaper published and circulating in the district where *(name)*, the deceased, resided at the time of his death.
3. I have this day searched in the Registry of the Court and have found:
 - (a) no evidence of a caveat having been lodged relating to a grant or reseal being made in the estate of the deceased *(or state the evidence)*;
 - (b) *(where 2 years have elapsed since the date of death)* no evidence of a prior application for probate or administration or resealing in the estate having been made; and
 - (c) that, before the making of this application for grant of probate no election has been filed under Part VII of the *Public Trustee Act* *(supply information to comply with Rule 88.24(1)(c)(v) where relevant)*.
4. I have this day searched the index of wills kept at the office of the Public Trustee for the Northern Territory under section 88B of the *Public Trustee Act* and have found *(where rule 88.24(1)(c)(ii) applies supply such information as is required.)*

Sworn etc *(as in Form 88F)*

FORM 88J

rule 88.23(7)

(heading as in Form 88A)

OATH OF OFFICE

I *(name)* of *(address and occupation)* make oath and say that if the Supreme Court of the Northern Territory of Australia grants to me *(state the grant sought)* of *(name)* late of *(address and occupation)* I will well and truly collect and administer the estate of the deceased according to law and will exhibit and deposit in the office of the Registrar of Probates a just and true account of the administration of it within 12 months from the date of the grant.

Dated: *(date)*

Sworn by *(name)*)

)

at *(place)* before me:)

FORM 88K

rule 88.24(1)(b)

(heading as in Form 88A)

AFFIDAVIT OF APPLICANT FOR ADMINISTRATION

I *(name, address and occupation)* make oath and say that:

1. My full residential address is *(address)*.
2. I am *(state relationship to deceased)* of *(name)* late of *(address and occupation)* who died on *(date)*.
3. I believe that the deceased did not leave a will.
4. *(State what searches have been made for a will.)*
5. The names, ages and relationship to the deceased of his next of kin who survived him are *(state these)*.
6. The deceased died a widower *(or as the case may be)*. (See Rule 88.24(1)(iv)).
7. I am over 18 years of age *(or as the case may be)*.
8. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate.
9. The deceased left an estate within the Territory.
10. I am not aware of any claims against the estate *(where applicable: other than those set out in the affidavit of assets and liabilities filed in this proceeding)*.
11. I estimate that the estate is under the value of \$ *(gross value)*. (see Rule 88.24(1)(v)).
12. The deceased died on *(date)* aged years.
13. *(State facts to comply with Rule 88.24(1)(b)(xi))*.
14. *(If applicable)* I am a creditor of the deceased *(add details of debt, amount and evidence to support claim)*.

Sworn etc. *(as in Form 88F)*

FORM 88L

rule 88.24(2)(a)

CONSENT TO ADMINISTRATION

I (*name*) of (*address and occupation*) am (*state relationship*) of (*name*) late of (*address and occupation*) I am over 18 years of age. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate of the deceased.

I consent to letters of administration being granted to (*name*) who is (*state relationship*) of the deceased (*where applicable*: and to an administration bond being dispensed with).

Date: (*date*)

Signed in the)
)
presence of)

FORM 88M

rule 88.24(2)(a)

(heading as in Form 88A)

AFFIDAVIT OF WITNESS TO CONSENT

I *(name, address and occupation)* make oath and say that:

1. The document marked 'A' annexed to this my affidavit was signed in my presence on *(date)* by *(name)*.
2. The signatures *(set these out)* are respectively my signature and that of *(name of person consenting)*.

Sworn etc. *(as in Form 88F)*

(This affidavit may be subscribed to Form 88L)

FORM 88N

rule 88.24(4)

ADMINISTRATION BOND

We (*state the name, address and occupation of the proposed administrator and of each surety to the bond*) jointly and severally covenant to pay to Her Majesty the Queen and her successors \$ *(penalty of bond)* if administration of the estate of (*name*) late of (*address and occupation*) deceased, is granted by the Supreme Court of the Northern Territory to (*name of proposed administrator*) and any one or more of the following occurs, namely:

1. he does not collect, get in and administer the estate according to law;
2. he does not pay out of the estate the just debts of the deceased;
3. he prefers any debt of the deceased to him;
4. he does not file or file and pass his accounts relating to the estate within 12 months after the grant and whenever ordered to do so by the Court.

Dated: *(date)*

Signed sealed and delivered etc.

FORM 88P

rule 88.24(7)
88.33(6)(d)

(heading as in Form 88A)

AFFIDAVIT OF SURETY

On *(date)*, I *(name, address and occupation)* make oath and say:

1. My full residential address is *(state address)*.
2. I am one of the sureties for *(name)* the intended administrator of the estate of *(name)* late of *(address and occupation)* who died on *(date)*.
3. I own property to the value of \$ *(state value)* after deduction of all my just debts and every sum for which I am bail or surety in any civil or criminal matter, action or proceeding.
4. My property consists of *(set out in detail the location and nature of assets and whether held severally or jointly with any other person, and state particulars of encumbrances)*.

Sworn etc. *(as in Form 88F)*

FORM 88Q

rule 88.25(2)

*(heading as in Form 88A)*AFFIDAVIT OF APPLICANT FOR ADMINISTRATION WITH THE WILL
ANNEXED

I, *(name, address and occupation)* make oath and say that:

1. My full residential address is *(state address)*.
2. The document, dated *(date)* and signed in the margin by me and the person before whom this affidavit is sworn is, I believe, the last will of *(name)*, the deceased.
3. My means of identifying the will are *(state these)*.
4. The executor named in the will is *(name)* and his full residential address is *(state this)*.
5. The subscribing witnesses to the will are *(name)* and *(name)*.
6. The deceased did not marry after the will was made. *(if he did marry state particulars of the marriage.)*
7. The deceased left an estate within the Territory.
8. *(Where applicable)* *(name)*, the executor named in the will, died on *(date)*.
9. *(Where applicable)* *(name)*, the executor named in the will renounced probate of the will on *(date)*.
10. I am over 18 years of age *(or as the case may be)*.
11. I am not an undischarged bankrupt and I have not assigned or encumbered my interest in the estate.
12. The names and ages of the persons entitled to share in the estate are *(state these)*. *(Where the names of all the persons entitled do not appear on the face of the will, state the facts showing that the persons named in this paragraph are entitled and that no other person is entitled.)*
13. I am not aware of any claims against the estate *(where applicable)* other than those set out in the affidavit of assets and liabilities filed in this proceeding.
14. I estimate that the estate is under the value of \$ *(gross value)*.

15. The deceased died on (date) aged years.

Sworn etc. (*as in Form 88F*)

FORM 88R

rules 88.24(12)
88.25(4), 88.33(6)(c)

(heading as in Form 88A)

RENUNCIATION IN FAVOUR OF PUBLIC TRUSTEE

I, *(name)* of *(address of place of residence)* labourer declare:

1. I am the executor *(or one of the executors or as the case may be)* appointed by will dated *(date)* *(where applicable: and 2 codicils dated (date) and (date))* of *(name)* late of *(address and occupation)* who died on *(date)*.
2. I have not intermeddled in the estate of the deceased.
3. I renounce all right to probate of the will *(where applicable: and codicils)* and to all trusts, powers and authorities expressed by the will *(where applicable: and codicils)* to be made or given to me.
4. I request the Public Trustee to apply for administration with the will *(where applicable: and codicils)* annexed of the estate.

or

(In case of renunciation of Letters of Administration in favour of Public Trustee)

1. *(Name of deceased)*, late of *(address and occupation)* who died *(date)* intestate.
2. The deceased left surviving him his *(name of survivor and relationship)*.
3. I *(name)*, the *(only son or as the case may be)* renounce all right to Letters of Administration of the real and personal estate of the deceased.

Dated: *(date)*

Signed in the
presence of

FORM 88S

rule 88.26(1)(a)

(heading as in Form 88A)

AFFIDAVIT OF APPLICANT FOR RESEALING

I, *(name, address and occupation)* make oath and say that:

1. My full residential address is *(state address)*.
2. *(name)*, the deceased, died at *(place)* in *(indicate State, Territory or elsewhere)* on *(date)* aged years.
3. The deceased died intestate.

or

The deceased left a will dated *(date)* by which he appointed me *(or where applicable: (name))* sole executor of it.

4. Probate of the will was *(where applicable: Letters of Administration of the estate of the deceased were)* granted by *(name of court)* to me *(or where applicable: to (name))* on *(date)*.
5. The grant has not been revoked.
6. *(Where applicable)* By Power of Attorney annexed hereto and marked 'A' dated *(date)* *(name)* appointed me his attorney to apply to this Court to reseal the Probate *(or Letters of Administration)*.
7. *(where applicable)* I have not received any notice of revocation of the Power of Attorney by death, unsoundness of mind, act of the donor or otherwise.
8. The deceased left an estate within the Territory.
9. I am over 18 years of age *(or as the case may be)*.
10. I am aware that, if the Probate is *(or where applicable Letters of Administration are)* sealed by this Court, accounts relating to the estate must be filed within 12 months after the sealing.
11. I am not aware of any claims against the estate *(or I am not aware of any claims against the estate other than those set out in the affidavit of assets and liabilities filed in this proceeding)*.
12. *(Comply with Rule 88.26(1)(b)(iv) where relevant)*.

13. The persons beneficially entitled under the grant are:

Sworn etc (*as in Form 88F*)

FORM 88T

rule 88.27(1)

(heading as in Form 88A)

AFFIDAVIT OF ASSETS AND LIABILITIES

I, *(name, address and occupation)* make oath and say that:

1. I am the person applying for a grant *(of probate or as the case may be)* in respect of the estate of *(name)*, deceased, late of *(address and occupation)*.
2. The statement of the assets of the deceased in the attached inventory (signed in the margin by me and by the person before whom this affidavit is sworn) and the within statement under the heading "Liabilities" comprise a true statement of all the assets and liabilities of the deceased of which at the date of swearing this affidavit I am aware.

Unless the application is an application for resealing add:

3. The within statement under the heading "Persons entitled" is a true statement showing the persons entitled to the assets of the deceased, a description of, and an estimate of the value of, their entitlements and, where a person entitled is a minor, his age.

Sworn etc *(as in Form 88F)*

Inventory of Property

1. *Property of the deceased shall be listed in the inventory under the headings below and in the order in which the headings appear but the inventory should not show a heading if the deceased did not have property of that description.*
2. *Property held by the deceased as joint tenant should not be included in the inventory but may be noted at the foot of it as shown.*
3. *The value of each item of property shall be stated, or, if the value is not known, an estimate of value must be stated. It is not necessary to furnish evidence of value unless the Court so requires.*

Liabilities

4. *The amount of each liability shall be stated or, if the amount is not known, an estimate of the amount shall be stated. It is not necessary to furnish evidence of the amount unless the Court so requires.*

The headings are:

1. *Real Estate, leasehold estate, rents accrued.*
2. *Furniture, watches and jewellery.*
3. *Money in house or hand.*
4. *Money in current accounts.*
5. *Money in bank or financial institution on deposit.*
6. *Life policies.*
7. *Superannuation, long service leave, other leave.*
8. *Shares in companies.*
9. *Government stock.*
10. *Debenture and mortgages.*
11. *Debts.*
12. *Interest in partnership or business.*
13. *Interest in deceased estate.*
14. *Motor vehicles.*
15. *Livestock, farming plant, wool and crops.*
16. *Payments under any medical benefits or hospital contribution fund.*
17. *Taxation credits.*
18. *Other personal property.*

State the balance as follows:

SUMMARY OF ASSETS AND LIABILITIES

Total value of assets	\$95,370.86
Total amount of liabilities	<u>\$ 933.00</u>
Net	<u>\$94,437.86</u>

INVENTORY OF PROPERTY
of the estate of (*name*) or (*place*) labourer deceased

	Estimated or known value
SCHEDULE No. 1 REAL ESTATE	
No. 33 (<i>name</i>) Road, (<i>place</i>) being Lot 33 D.P. 3333 Certificate of Title Volume 3333 Folio 33 (estimated)	\$52,000.00
SCHEDULE No. 2 MONEY IN CURRENT ACCOUNT	
(<i>name of bank</i>) at (<i>place</i>) Account No. 44-4444	\$ 1,909.31
SCHEDULE No. 3 MONEY IN BANKS, &c., ON DEPOSIT	
(<i>name of bank</i>) at (<i>place</i>) Savings Account No. 5-5555 \$ 9,746.17 Term Deposit, Account No. 666-666	<u>\$29,615.38</u> \$39,361.55
SCHEDULE NO. 4 MOTOR VEHICLES	
(<i>make</i>) Sedan Registered No. 123-333 (estimated)	<u>\$ 2,100.00</u>
TOTAL	<u>\$95,370.86</u>

JOINT TENANCY

100 shares in X Pty. Ltd. held by the
deceased and (*name*) as joint tenants.

LIABILITIES

Date	Name of Creditor, &c.	Description of liability	Estimated or known amount	
			Secured	Unsecured
			\$	\$
3-8-81	(name)	Repair account		883.00
3-8-81	(name)	Ambulance account		50.00
				<hr/> 933.00

PERSONS ENTITLED

Name	Relationship, if any to the deceased	Age if a minor	Description of entitlement	Estimated or known value
				\$

FORM 88U

rule 88.42(1)

(heading as in proceeding in which grant was made)

APPLICATION FOR REVOCATION OF GRANT

On the grounds appearing in the accompanying affidavit, the applicant claims that probate of the will (*or where applicable Letters of Administration*) of (*name*) late of (*address and occupation*) granted to him on (*date*) and numbered (*number of grant*) be revoked.

Applicant: (*name, address and occupation*)

Applicant's address for service: (*See Rule 6.05(1)*)

Filed: (*date*)

(signature)
Applicant's solicitor

FORM 88V

rule 88.46(1)

(Heading as in originating process)

REQUEST FOR ISSUE OF CITATION

I request that a citation issue to each of *(name and address of each person to be cited)* to take probate of the will dated *(date)* (or where applicable pray for administration of the estate) of *(name)* late of *(name and address)*

(Where applicable) I request that the time limited for *(name)* to answer the citation be *(number)* days after service on him of the citation.

Person applying: *(name, address and occupation)*

Filed: *(date)*

(signature)
Solicitor for person applying

or

(Title, etc, as in originating process)

I request that a citation to see these proceedings issue to each of *(name and address of each person to be cited)*.

Party applying: *(name)*

Filed: *(date)*

(signature)
Solicitor for person applying

FORM 88W

rule 88.51(1)

(heading as in Form 88V)

CITATION TO PRAY FOR ADMINISTRATION

To *(name)* of *(address)*,

This citation is issued at the request of *(name)* of *(address and occupation)* who has filed in this Court an affidavit by him stating that:

1. *(name)* late of *(address and occupation)* died at *(place)* on *(date)*;
2. he believes that the deceased died without leaving a will *(or where applicable he believes that the deceased left a will, a copy of which is annexed and marked "A")*;
3. *(where applicable)* no executor was appointed by the will *(or where applicable: (name) the executor appointed by the will has renounced probate or (name) the executor appointed by the will died on (date))*; and
4. he is *(state relationship to the deceased)* of the deceased *(or where applicable: he is a beneficiary under the will or he is a creditor of the deceased)*.

You are cited to pray for administration of the estate of the deceased. If you wish to comply with this citation you must:

1. within *(number of days)* days after service on you of this citation *(or if this citation is served on you outside the Northern Territory within (number of days) after service of it on you)* file in the Registry of this Court an answer stating *(if it be the case)* that you intend to apply to the Court for a grant to you of administration of the estate of the deceased; and
2. with reasonable promptness commence a proceeding in this Court for a grant to you of administration of the estate of the deceased and pursue that proceeding diligently.

If you do not comply with this citation the Court may grant administration of the estate of the deceased to *(name)* without further notice to you in your absence.

Dated: *(date)*

By the Court

Registrar

FORM 88X

rule 88.51(2)

(heading as in citation)

ANSWER TO CITATION TO PRAY FOR ADMINISTRATION

I *(name)* of *(address and occupation)* having been served on *(date)* at *(place)* with a citation issued at the request of *(name)* and dated *(date)* to pray for administration of the estate of *(name)* late of *(address and occupation)* answer that I intend to apply to this Court for a grant to me of administration of the estate of the deceased.

Filed: *(date)*

(signature)
Solicitor for person cited

FORM 88Y

rule 88.52(1)
and 88.54(3)

(heading as in Form 88A)

CITATION TO TAKE PROBATE

To *(name)* of *(address)*,

This citation is issued at the request of *(name)* of *(address and occupation)* who has filed in this Court an affidavit by him stating that:

1. *(name)* late of *(address and occupation)* died at *(place)* on *(date)*;
2. he believes that the deceased left a will, a copy of which is annexed and marked "A", which appoints you the executor *(or one of the executors)* of it; and
3. he is a beneficiary under the will *(or where applicable: he is (state relationship to the deceased))* of the deceased *(or where applicable: he is a creditor of the deceased)*.

You are cited to take probate of the will. If you wish to comply with this citation you must:

1. within *(number of days)* days after service on you of this citation *(or if this citation is served on you outside the Northern Territory within (number of days) after service of it on you)* file in the Registry of this Court an answer stating that you intend to apply *(if it be the case)* to the Court for a grant to you of probate of the will; and
2. with reasonable promptness commence a proceeding in this Court for a grant to you of probate of the will and pursue that proceeding diligently.

If you do not comply with this citation your right in respect of the executorship shall wholly cease, and the representation to the deceased and the administration of his estate shall, without any further renunciation, go devolve and be committed as if you had not been appointed executor.

Dated: *(date)*

By the Court

Registrar

FORM 88Z

rule 88.52(2)

(heading as in citation)

ANSWER TO CITATION TO TAKE PROBATE

I *(name)* of *(address and occupation)* having been served on *(date)* at *(place)* with a citation issued at the request of *(name)* and dated *(date)* to take probate of the will, a copy of which is annexed to the citation, of *(name)* late of *(address and occupation)* answer that I intend to apply to this Court for a grant to me of probate of the will.

Filed: *(date)*

(signature)
Solicitor for person cited

FORM 88ZA

rule 88.53(2)

(Heading as in originating process)

CITATION TO SEE PROCEEDINGS

To *(name)* of *(address)*,

This citation is issued at the request of *(name)* of *(address and occupation)* who is the applicant *(or where applicable: a respondent)* in a proceeding commenced in this Court by application. A copy of the *(originating process or as the case may be)* is annexed and marked "A".

A copy of the will referred to in the *(originating process)* is annexed and marked "B".

The applicant has filed an affidavit stating that you have an interest adverse to him in the proceeding in that *(state the adverse interest)*.

If you do not answer his citation by filing an appearance in the proceeding before the proceeding is heard and determined, the Court may hear and determine the proceeding in your absence with such consequences as may ensue according to law.

Dated: *(date)*

By the Court

Registrar

FORM 88ZB

rule 88.54(2)(a)

(Order under section 34 of Administration and Probate Act)

(heading as in originating process)

(other particulars as in Form 60C of General Rules)

ORDER

THE COURT ORDERS THAT:

1. Probate of the will of *(name)* late of *(address and occupation)* dated *(date e.g. 1 April 1945)* who died on *(date)* will, after the expiration of *(number)* days *(or one month or as the case may be)* be granted to *(applicant's name)* of *(applicant's address and occupation)*.
2. *(name of executor who neglects or refuses to prove the will or renounce probate or who is unknown or cannot be found)* have liberty to apply within the time specified in paragraph 1 of this Order to set aside or vary this order.
3. *(Insert other orders made by the Court)*.

DATE AUTHENTICATED:

Judge or
Registrar

or

By the Court
Registrar

FORM 88ZC

rule 88.62(1)

(Caveat in respect of a grant or reseal being made)

(heading as in Form 8A)

CAVEAT

I demand that no grant or reseal be made in the estate of *(name)* late of *(address and occupation)* without prior notice to me.

My interest is *(state interest)*.

Caveator: *(name, address and occupation)*

Caveator's address for service: *(See Rule 6.05 of General Rules)*

Lodged: *(date)*

(signature)
Caveator or his solicitor

FORM 88ZD

rule 88.63(1)

(Caveat requiring proof of will in solemn form)

(heading as in Form 88A)

CAVEAT

I require that any will (*or where applicable: the will dated (date) or otherwise identify the will) of (name) late of (address and occupation) be proved in solemn form.*

My interest is *(state interest)*.

Caveator: *(name, address and occupation)*

Caveator's address for service: *(See Rule 6.05 of General Rules)*

Lodged: *(date)*

(signature)
Caveator or his solicitor

FORM 88ZE

rule 88.74(2)

(Summons under section 91(2) of Administration and Probate Act)

(heading as in originating process)

REGISTRAR'S SUMMONS

You are required, on the application of the Registrar, to show cause to the Court why you should not be ordered, under section 91(2) of the *Administration and Probate Act*:

- * to file an inventory or statement as required by section 89 of that Act and by the Rules of Court;
- * to fill accounts;
- * to file and pass accounts;
- * to pass accounts forthwith.

The application will be heard before a Judge [*or the Registrar*] on (*date*) at a.m. [*or p.m.*] or so soon afterwards as the business of the Court will allow.

Registrar.

To: [identify person to whom summons is address].

* *Strike out whichever is inapplicable.*

FORM 88ZF

rule 88.88

*(No heading or title is necessary)***NOTICE OF INTENDED DISTRIBUTION OF ESTATE**

Any person having a claim upon the estate of (*name in capitals*) late of (*place*) (*occupation*) who died on (*date*) must send particulars of his claim to the executor (*or as the case may be*) (*name*) at (*address of executor*) (*or care of name of solicitor, solicitor, address, and, where applicable, or their agents, name, address*) within 2 calendar months (*or more*) from publication of this notice. After that time the executor (*or as the case may be*) may distribute the assets of the estate having regard only to the claims of which at the time of distribution he has notice. Probate was (*or Letters of Administration were*) granted in the Territory on (*date*).

FORM 92A

rule 92.03(a)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

19 No
IN THE MATTER OF
the *Crimes (Forfeiture
of Proceeds) Act* and
IN THE MATTER of CD,
a person convicted.

BETWEEN

AB

Applicant

and

CD

Respondent

APPLICATION

TO: [Respondent]

You have been convicted in the Supreme Court of [set out details of conviction].

TAKE NOTICE that the applicant applies for the following orders against you:

Directions as to the hearing of this application will be given by the Court [state the date or the occasion, e.g. after sentence].

Dated: [e.g. 15 June 19 .]

[Signed]

Filed:

The Applicant's address for service is:

[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.]

FORM 92B

rule 92.03(b)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

19 No
IN THE MATTER OF
the *Crimes (Forfeiture
of Proceeds) Act* and
IN THE MATTER of CD,
a person convicted.

BETWEEN

AB

Applicant

and

CD

Respondent

APPLICATION

TO: [Respondent]

You have been charged/are about to be charged* with [state offence(s)]

TAKE NOTICE that the applicant applies for the following orders against you:

Directions as to the hearing of this application will be given by the Court on [date].

Dated: [e.g. 15 June 19 .]

[Signed]

The Applicant's address for service is:

[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.]

* Delete whichever is inapplicable.

 FORM 92C

rule 92.03(c)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

19 No
IN THE MATTER OF
the *Crimes (Forfeiture
of Proceeds) Act* and
IN THE MATTER of CD,
a person convicted.

BETWEEN

AB

Applicant

and

CD

Respondent

TO: *[name parties]*OF: *[address]*

On *[date]* in the Supreme Court of the Northern Territory of Australia an order was made *[here set out short summary of order e.g. whereby the property described in the Schedule was forfeited]*:

I *[full name and address]* apply for an order *[here set out order as sought e.g. directing that the property be transferred to me]* on the grounds set out in the affidavit of *[name of deponent]* sworn *[date]* and filed with this application.

Directions as to the hearing of this application will be given by the Court on *[date]* at *[time]*.

SCHEDULE

[Describe property affected by the order]

Dated: [e.g. 15 June 19 .]

[Signed]

The Applicant's address for service is:
[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.]

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**Refer Volume 1 of Laws of the Northern Territory 1987**

Notified	—
Commenced	1 November 1987 (r 2)

Supreme Court (Probate and Administration) Rules (SL No. 44, 1987)

Notified	29 October 1987
Commenced	1 November 1987 (r 2)

Amendments of the Supreme Court Rules (SL No. 1, 1988)

Notified	27 January 1988
Commenced	1 February 1988 (r 1)

Amendments of the Supreme Court Rules (SL No. 34, 1988)

Notified	1 July 1988
Commenced	1 July 1988

Amendments of the Supreme Court Rules (SL No. 35, 1988)

Notified	3 August 1988
Commenced	3 August 1988

Amendments of the Supreme Court Rules (SL No. 56, 1988)

Notified	30 December 1988
Commenced	1 January 1989 (r 1)

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Notified 8 September 1993
 Commenced 8 September 1993

Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)

Assent date 31 December 1993
 Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and *Gaz S35*, 20 May 1994)

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