

NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT AMENDMENT (SERVICE OUTSIDE AUSTRALIA) RULES 2009

Subordinate Legislation No. 42 of 2009

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 42 of 2009*

Supreme Court Amendment (Service Outside Australia) Rules 2009

We, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, under section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 4 November 2009

B. MARTIN CJ

D. N. ANGEL J

T. J. RILEY J

S. R. SOUTHWOOD J

J. KELLY J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 1 September 2010.

1 Citation

These Rules may be cited as the *Supreme Court Amendment (Service Outside Australia) Rules 2009*.

2 Commencement

These Rules commence on the date fixed by the Minister by *Gazette* notice.

3 Rules amended

These Rules amend the *Supreme Court Rules*.

4 Amendment of rule 1.09 (Interpretation)

- (1) Rule 1.09(1), definition ***Convention country***

omit

- (2) Rule 1.09(1)

insert (in alphabetical order)

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

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

- (3) Rule 1.09(1), definition ***Convention***

omit

a Convention

substitute

a Convention (other than the Hague Convention)

5 Repeal and substitution of Order 7

Order 7

repeal, substitute

Order 7 Service outside Australia

Part 1 General

7.01 Originating process that may be served outside Australia

- (1) Subject to rule 7.02, an originating process may be served on a person in a foreign country in a proceeding if:
- (a) the whole subject matter of the proceeding is land (with or without rents or profits) situated in the Territory or the perpetuation of testimony relating to land situated in the Territory; or
 - (b) an act, deed, will, contract, obligation or liability affecting land situated in the Territory is sought to be construed, rectified, set aside or enforced in the proceeding; or
 - (c) relief is sought against a person domiciled or ordinarily resident in the Territory; or
 - (d) the proceeding is for the administration of the estate of a person who died domiciled in the Territory or a relief or remedy which might be obtained in such a proceeding; or
 - (e) the proceeding is for the execution, as to property situated 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; or
 - (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; or
 - (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; or

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- (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; or
 - (h) the proceeding is founded on a contract the parties to which have agreed that the Court will have jurisdiction to entertain a proceeding in respect of the contract; or
 - (i) the proceeding is founded on a tort committed in the Territory; or
 - (j) 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; or
 - (k) 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, the thing; or
 - (l) the proceeding is properly brought against a person duly served in or out of the Territory and another person in a foreign country is a necessary or proper party to the proceeding; or
 - (m) the proceeding:
 - (i) is brought by a mortgagee of property (other than land) situated in the Territory; and
 - (ii) seeks the sale of the property, foreclosure of the mortgage or delivery by the mortgagor of possession of the property; and
 - (iii) unless permitted by another paragraph of this subrule, does not seek a personal judgment or order for the payment of moneys due under the mortgage; or
 - (n) the proceeding:
 - (i) is brought by a mortgagor of property (other than land) situated in the Territory; and
 - (ii) seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property; and

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- (iii) unless permitted by another paragraph of this subrule, does not seek a personal judgment or order for the payment of moneys due under the mortgage; or
 - (o) the proceeding is brought under the *Civil Aviation (Carriers' Liability) Act 1959* (Cth).
- (2) In this rule:

mortgage includes a charge or lien.

mortgagee means a person entitled to, or with an interest in, a mortgage.

mortgagor means a person entitled to, or with an interest in, property subject to a mortgage.

7.02 Application for leave to serve originating process outside Australia

- (1) Service of an originating process on a person in a foreign country is effective for the purpose of a proceeding only if:
 - (a) the Court has given leave under subrule (2) before the originating process is served; or
 - (b) the Court confirms the service under subrule (5); or
 - (c) the person served waives any objection to the service by filing an appearance in the proceeding.
- (2) The Court may give leave to a person to serve an originating process on a person in a foreign country under a Convention, the Hague Convention, or the law of the foreign country, on the terms and conditions it considers appropriate, if the Court is satisfied:
 - (a) the Court has jurisdiction in the proceeding; and
 - (b) the proceeding is of a kind mentioned in rule 7.01; and
 - (c) the person seeking leave has a prima facie case for the relief claimed by the person in the proceeding.

Notes for subrule (2)

- 1 The law of a foreign country may permit service through the diplomatic channel or service by a private agent.
- 2 Order 7A, Part 2, deals with service of local judicial documents in a Hague Convention country.

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- (3) The evidence on an application for leave under subrule (2) must include the following:
- (a) the name of the foreign country where the person to be served is or is likely to be;
 - (b) the proposed method of service;
 - (c) a statement that the proposed method of service is permitted by:
 - (i) if a Convention applies – the Convention; or
 - (ii) if the Hague Convention applies – the Hague Convention; or
 - (iii) in any other case – the law of the foreign country.
- (4) Nothing in this rule prevents the Court from giving leave to a person to give notice, in a foreign country, of a proceeding in the Court on the basis that giving the notice takes the place of serving the originating process in the proceeding.
- (5) If an originating process was served on a person in a foreign country without the leave of the Court, the Court may, by order, confirm the service if satisfied:
- (a) subrule (2)(a), (b) and (c) apply in relation to the proceeding; and
 - (b) the service was permitted by:
 - (i) if a Convention applies – the Convention; or
 - (ii) if the Hague Convention applies – the Hague Convention; or
 - (iii) in any other case – the law of the foreign country; and
 - (c) the failure to apply for leave is sufficiently explained.

7.03 Service of other documents

- (1) The Court may give leave to a person to serve a document (other than an originating process) issued by the Court on a person in a foreign country under a Convention, the Hague Convention, or the law of the foreign country, on the terms and conditions it considers appropriate.

Notes for subrule (1)

1 *The law of a foreign country may permit service through the diplomatic channel or service by a private agent.*

2 *Order 7A, Part 2, deals with service of local judicial documents in a Hague Convention country.*

(2) The evidence on an application for leave under subrule (1) must include the information mentioned in rule 7.02(3)(a) to (c).

(3) If a document (other than an originating process) was served on a person in a foreign country without the leave of the Court, the Court may, by order, confirm the service if satisfied:

(a) the service was permitted by:

(i) if a Convention applies – the Convention; or

(ii) if the Hague Convention applies – the Hague Convention; or

(iii) in any other case – the law of the foreign country; and

(b) the failure to apply for leave is sufficiently explained.

7.04 Application of other Orders

The other Orders of these Rules apply to service of a document on a person in a foreign country in the same way as they apply to service on a person in Australia, so far as they are:

(a) relevant and not inconsistent with this Order; and

(b) not inconsistent with:

(i) if a Convention applies – the Convention; or

(ii) if the Hague Convention applies – the Hague Convention; or

(iii) in any other case – the law of the foreign country.

7.05 Method of service

A document that is to be served on a person in a foreign country need not be served personally if it is served on the person under the law of the foreign country.

7.06 Substituted service

- (1) This rule applies if an official certificate or declaration (whether made on oath or otherwise) is sent to the Court by the government or a court of a foreign country stating that attempts to serve a document on a person in the foreign country, under a Convention or the Hague Convention, or through the diplomatic channel, have not been successful.
- (2) On application by the person seeking service, the Court may order that specified steps be taken to bring the document to the notice of the person to be served.
- (3) If the Court makes an order under subrule (2), the Court may order that a document is taken to have been served when a specified event happens or on the expiry of a specified time.

7.07 Proof of service

- (1) This rule does not apply in relation to a document served under the Hague Convention.

Note for subrule (1)

Order 7A, Part 2, deals with service of local judicial documents in a Hague Convention country.

- (2) An official certificate or declaration (whether made on oath or otherwise) stating that a document has been personally served on a person in a foreign country, or served on the person in another way under the law of the foreign country, is sufficient proof of the service of the document.
- (3) If filed, the certificate or declaration:
 - (a) is taken to be a record of the service of the document; and
 - (b) has effect as if it were an affidavit of service.

Part 2 Service through the diplomatic channel or under Convention

7.08 Documents to be filed with Court

- (1) This rule applies if a person has been given leave to serve a document on a person in a foreign country:
 - (a) through the diplomatic channel; or
 - (b) by transmission to a foreign government under a Convention (the **relevant convention**).

Note for subrule (1)

This rule does not apply if a person has been given leave to serve a document on a person in a Hague Convention country. Service in a Hague Convention country is dealt with in Order 7A, Part 2.

- (2) The person given leave must file in the Registry:
- (a) a request for service in Form 7A; and
 - (b) a request for transmission in Form 7B; and
 - (c) a written undertaking by the person, or the person's legal practitioner, to pay to a Registrar the amount of the expenses incurred by the Court in giving effect to the person's request; and
 - (d) 2 copies (or such other number of copies required by the relevant convention) of each document to be served; and
 - (e) if necessary, a translation into an official language of the foreign country (including a statement by the translator attesting to the accuracy of the translation) of the following:
 - (i) the request for transmission mentioned in paragraph (b);
 - (ii) each document to be served.

7.09 Order for payment of expenses

- (1) This rule applies if:
- (a) a person files an undertaking under rule 7.08(2)(c) in relation to a request for service on a person in a foreign country through the diplomatic channel or under a Convention; and
 - (b) the person does not, within 14 days after being sent an account for expenses incurred in relation to the request, pay to a Registrar the amount of the expenses.
- (2) On application by a Registrar, the Court may:
- (a) order the person to pay the amount of the expenses to a Registrar; and
 - (b) stay the proceeding, so far as it concerns the whole or any part of a claim for relief by the person, until the amount of the expenses is paid.

Order 7A Service under Hague Convention

Part 1 Preliminary

Notes for Part 1

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

7A.01 Definitions

In this Order:

additional authority, for a Hague Convention country, means an authority that is:

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

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

Note

*The term **applicant** may have a different meaning in other provisions of these Rules.*

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

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

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

civil proceedings means any judicial proceedings in relation to civil or commercial matters.

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

Note

*The term **defendant** may have a different meaning in other provisions of these Rules.*

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

forwarding authority means:

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

initiating process means originating process.

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

request for service abroad means a request for service in a Hague Convention country of a local judicial document mentioned in rule 7A.04(1).

request for service in this jurisdiction means a request for service in this jurisdiction of a foreign judicial document mentioned in rule 7A.13(1).

this jurisdiction means the Territory.

7A.02 Provisions of this Order to prevail

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

Part 2 Service abroad of local judicial documents

7A.03 Application of Part

- (1) Subject to subrule (2), this Part applies to service in a Hague Convention country of a local judicial document.
- (2) This Part does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Convention.

7A.04 Application for request for service abroad

- (1) A person may apply to a Registrar, in the Registrar's capacity as a forwarding authority, for a request for service in a Hague Convention country of a local judicial document.
- (2) The application must be accompanied by 3 copies of each of the following documents:
 - (a) a draft request for service abroad, which must be in accordance with Part 1 of Form 7A-A;
 - (b) the document to be served;
 - (c) a summary of the document to be served, which must be in accordance with Form 7A-B;
 - (d) if, under Article 5 of the Hague Convention, the Central Authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, the official language or one of the official languages of that country, a translation into that language of both the document to be served and the summary of the document to be served.

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- (3) The application must contain a written undertaking to the Court, signed by the legal practitioner on the record for the applicant in the proceedings to which the local judicial document relates or, if there is no legal practitioner on the record for the applicant in the proceedings, by the applicant:
- (a) to be personally liable for all costs that are incurred:
 - (i) by the employment of a person to serve the documents to be served, being a person who is qualified to do so under the law of the Hague Convention country in which the documents are to be served; or
 - (ii) by the use of any particular method of service that has been requested by the applicant for the service of the documents to be served; and
 - (b) to pay the amount of those costs to a Registrar within 28 days after receipt from a Registrar of a notice specifying the amount of those costs under rule 7A.06(3); and
 - (c) to give such security for those costs as a Registrar may require.
- (4) The draft request for service abroad:
- (a) must be completed (except for signature) by the applicant; and
 - (b) must state whether, if the time fixed for filing an appearance in the proceedings to which the local judicial document relates expires before service is effected, the applicant wants service to be attempted after the expiry of that time; and
 - (c) must be addressed to the Central Authority, or to an additional authority, for the Hague Convention country in which the person is to be served; and
 - (d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority.
- (5) Any translation required under subrule (2)(d) must bear a certificate (in both English and the language used in the translation), signed by the translator, stating:
- (a) that the translation is an accurate translation of the documents to be served; and
 - (b) the translator's full name and address and his or her qualifications for making the translation.

7A.05 How application to be dealt with

- (1) If satisfied that the application and its accompanying documents comply with rule 7A.04, the Registrar:
 - (a) must sign the request for service abroad; and
 - (b) must forward 2 copies of the relevant documents:
 - (i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Hague Convention country in which service of the document is to be effected – to the nominated additional authority; or
 - (ii) in any other case – to the Central Authority for the Hague Convention country in which service of the document is to be effected.
- (2) The relevant documents mentioned in subrule (1)(b) are the following:
 - (a) the request for service abroad (duly signed);
 - (b) the document to be served;
 - (c) the summary of the document to be served;
 - (d) if required under rule 7A.04(2)(d) – a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).
- (3) If not satisfied that the application or any of its accompanying documents complies with rule 7A.04, the Registrar must inform the applicant of the respects in which the application or document fails to comply.

7A.06 Procedure on receipt of certificate of service

- (1) Subject to subrule (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, a Registrar:
 - (a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and
 - (b) must send a copy of the certificate to:
 - (i) the legal practitioner on the record for the applicant in the proceedings; or

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- (ii) if there is no legal practitioner on the record for the applicant in the proceedings – the applicant.
 - (2) For the purposes of subrule (1), a certificate of service is in due form if:
 - (a) it is in accordance with Part 2 of Form 7A-A; and
 - (b) it has been completed by a certifying authority for the Hague Convention country in which service was requested; and
 - (c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority, it has been so countersigned.
 - (3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), a Registrar must send to the legal practitioner or applicant who gave the undertaking mentioned in rule 7A.04(3) a notice specifying the amount of those costs.
 - (4) For the purposes of subrule (3), a statement of costs is in due form if:
 - (a) it relates only to costs of a kind mentioned in rule 7A.04(3)(a); and
 - (b) it has been completed by a certifying authority for the Hague Convention country in which service was requested.
 - (5) Subrule (1) does not apply unless:
 - (a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 7A.04(3)(c); or
 - (b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which those costs exceed the security so given has been paid to a Registrar.

7A.07 Payment of costs

- (1) On receipt of a notice under rule 7A.06(3) in relation to the costs of service, the legal practitioner or applicant, as the case may be, must pay to a Registrar the amount specified in the notice as the amount of the costs.
- (2) If the legal practitioner or applicant fails to pay that amount within 28 days after receiving the notice:

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- (a) except by leave of the Court, the applicant may not take any further step in the proceedings to which the local judicial document relates until the costs are paid to a Registrar; and
 - (b) a Registrar may take such steps as are appropriate to enforce the undertaking for payment of the costs.

7A.08 Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of rule 7A.06(2)) that certifies that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that:

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

Part 3 Default judgment following service abroad of initiating process

7A.09 Application of Part

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

7A.10 Restriction on power to enter default judgment if certificate of service filed

- (1) This rule applies if:
 - (a) a certificate of service of initiating process has been filed in the proceedings, being a certificate in due form (within the meaning of rule 7A.06(2)) that states that service has been duly effected; and
 - (b) the defendant has not appeared or filed a notice of address for service.
- (2) In circumstances to which this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that:
 - (a) the initiating process was served on the defendant:

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- (i) by a method of service prescribed by the internal law of the Hague Convention country for the service of documents in domestic proceedings on persons who are within its territory; or
 - (ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to his or her residence) and that method is compatible with the law in force in the country – by that method; or
 - (iii) if the applicant did not request a particular method of service – in circumstances where the defendant accepted the document voluntarily; and
- (b) the initiating process was served in sufficient time to enable the defendant to file an appearance in the proceedings.
- (3) In subrule (2)(b):

sufficient time means:

- (a) 42 days from the date specified in the certificate of service in relation to the initiating process as the date on which service of the process was effected; or
- (b) such lesser time as the Court considers, in the circumstances, to be a sufficient time to enable the defendant to file an appearance in the proceedings.

7A.11 Restriction on power to enter default judgment if certificate of service not filed

- (1) This rule applies if:
- (a) a certificate of service of initiating process has not been filed in the proceedings; or
 - (b) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of rule 7A.06(2)) that states that service has not been effected;
- and the defendant has not appeared or filed a notice of address for service.
- (2) If this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that:

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

7A.12 Setting aside judgment in default of appearance

- (1) This rule applies if default judgment has been entered against the defendant in proceedings to which this Part applies.
- (2) If this rule applies, the Court may set aside the judgment on the application of the defendant if it is satisfied that the defendant:
 - (a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceedings; and
 - (b) has a prima facie defence to the proceedings on the merits.
- (3) An application to have a judgment set aside under this rule may be filed:
 - (a) at any time within 12 months after the date on which the judgment was given; or
 - (b) after the expiry of that 12 month period, within such time after the defendant acquires knowledge of the judgment as the Court considers reasonable in the circumstances.
- (4) Nothing in this rule affects any other power of the Court to set aside or vary a judgment.

Part 4 Local service of foreign judicial documents

7A.13 Application of Part

- (1) This Part applies to service in this jurisdiction of a foreign judicial document in relation to which a due form of request for service has been forwarded to the Court:
 - (a) by the Attorney-General's Department of the Commonwealth, whether in the first instance or following a referral under rule 7A.14; or
 - (b) by a forwarding authority.
- (2) Subject to subrule (3), a request for service in this jurisdiction is in due form if it is in accordance with Part 1 of Form 7A-A and is accompanied by the following documents:
 - (a) the document to be served;
 - (b) a summary of the document to be served, which must be in accordance with Form 7A-B;
 - (c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);
 - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- (3) Any translation required under subrule (2)(d) must bear a certificate (in English) signed by the translator stating:
 - (a) that the translation is an accurate translation of the document; and
 - (b) the translator's full name and address and his or her qualifications for making the translation.

7A.14 Certain documents to be referred back to Attorney-General's Department of Commonwealth

If, after receiving a request for service in this jurisdiction, a Registrar is of the opinion:

- (a) that the request does not comply with rule 7A.13; or
- (b) that the document to which the request relates is not a foreign judicial document; or

-
- (c) that compliance with the request may infringe Australia's sovereignty or security;

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

Note for rule 7A.14

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

7A.15 Service

- (1) Subject to rule 7A.14, on receipt of a request for service in this jurisdiction, the Court must arrange for the service of the relevant documents in accordance with the request.
- (2) The relevant documents mentioned in subrule (1) are the following:
 - (a) the document to be served;
 - (b) a summary of the document to be served;
 - (c) a copy of the request for service in this jurisdiction;
 - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- (3) Service of the relevant documents may be effected by any of the following methods of service:
 - (a) by a method of service prescribed by the law in force in this jurisdiction:
 - (i) for the service of a document of a kind corresponding to the document to be served; or
 - (ii) if there is no such corresponding kind of document – for the service of initiating process in proceedings in the Court;
 - (b) if the applicant has requested a particular method of service and that method is compatible with the law in force in this jurisdiction – by that method;

-
- (c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily – by delivery of the document to the person requested to be served.

7A.16 Affidavit as to service

- (1) If service of a document has been effected pursuant to a request for service in this jurisdiction, the person by whom service has been effected must file with the Court an affidavit specifying:
 - (a) the time, day of the week and date on which the document was served; and
 - (b) the place where the document was served; and
 - (c) the method of service; and
 - (d) the person on whom the document was served; and
 - (e) the way in which that person was identified.
- (2) If attempts to serve a document pursuant to a request for service in this jurisdiction have failed, the person by whom service has been attempted must file with the Court an affidavit specifying:
 - (a) details of the attempts made to serve the document; and
 - (b) the reasons that have prevented service.
- (3) When an affidavit as to service of a document has been filed in accordance with this rule, a Registrar:
 - (a) must complete a certificate of service, sealed with the seal of the Court, on the reverse side of, or attached to, the request for service in this jurisdiction; and
 - (b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.
- (4) A certificate of service must be:
 - (a) in accordance with Part 2 of Form 7A-A; or
 - (b) if a form or certificate that substantially corresponds to Part 2 of Form 7A-A accompanies the request for service – in that accompanying form.

6 Repeal and substitution of rule 80.01

Rule 80.01

repeal, substitute

80.01 Application

(1) This Order applies to service in the Territory of a document in connection with civil or commercial proceedings pending before a foreign court if:

(a) a letter from the court requesting service on a person in the Territory is received by the Registry; and

(b) either:

(i) the request is for service in accordance with a Convention; or

(ii) the Attorney-General certifies that effect ought to be given to the request.

(2) In this rule:

foreign court means a court or other tribunal in a country outside Australia, other than a Hague Convention country.

7 Amendment of Schedule 1

Schedule 1, Form 7A

omit, substitute

FORM 7A

rule 7.08(2)(a)

REQUEST TO COURT FOR SERVICE IN A FOREIGN COUNTRY

[heading as in originating process]

I, *(full name)*, request that *(describe document(s) to be served)* be transmitted *in accordance with the *(name of convention)*/*through the diplomatic channel to *(insert name of country)* for service on *(full name of person to be served)* at *(address for service)* or elsewhere in *(name of country)*.

I personally undertake to be responsible for all expenses incurred by the Territory in respect of the requested service and, on receiving due notification of the amount of the expenses, will pay the amount to the Territory and will produce the receipt for that payment to a Registrar of the Supreme Court of the Northern Territory of Australia.

Date:

[Signed]

* *Delete if not applicable*

FORM 7B

rule 7.08(2)(b)

REQUEST FOR TRANSMISSION OF NOTICE TO A FOREIGN
GOVERNMENT

[heading as in originating process]

The Chief Justice of the Supreme Court of the Northern Territory of Australia at *(address of relevant registry)* requests the Secretary of the *Attorney-General's Department/*Department of Foreign Affairs and Trade to transmit to the government of *(name of country)* the following documents:

(describe documents)

with the request that:

- (a) the documents be served on *(name of person to be served)*, against whom these proceedings have been taken in the Supreme Court of the Northern Territory of Australia, in accordance with the law of *(name of country)*; and
- (b) evidence of service of the documents be officially certified or declared (on oath or otherwise) to this Court in such manner as is consistent with usage or practice of the courts in *(name of country)* in proving service of legal process.

*The Chief Justice further requests that, if efforts to effect personal service of the documents prove ineffectual, the government or court of *(name of country)* be requested to certify or declare (on oath or otherwise) that fact to this Court.

*The following information is provided in support of the request:

(insert any additional information that may be required by any convention applying to the service of the documents)

Date:

**Delete if not applicable. The request should be made to:*

- (a) if the Attorney-General's Department is the Central Authority for the purposes of a convention that applies to the service of the documents – the Secretary of the Attorney-General's Department; or*
- (b) in any other case – the Secretary of the Department of Foreign Affairs and Trade.*

FORM 7A-A

rules 7A.04(2)(a), 7A.06(2)(a),
7A.13(2) and 7A.16(4)(a) and (b)

REQUEST FOR SERVICE ABROAD OF JUDICIAL DOCUMENTS AND CERTIFICATE

Part 1 Request for service abroad of judicial documents

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

| | |
|---|--|
| Identity and address of the forwarding authority requesting service | Identity and address of receiving authority [<i>Central Authority/ additional authority</i>] |
|---|--|

The undersigned forwarding authority (on the application of [*name and address of applicant on whose behalf forwarding authority requests service*]) has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the abovementioned Convention, requests prompt service of one copy thereof on the addressee, ie:

(identity and address)

.....

- (a) in accordance with the provisions of subparagraph (a) of the first paragraph of Article 5 of the Convention*.

(b) in accordance with the following particular method (subparagraph (b) of the first paragraph of Article 5*):

(c) by delivery to the addressee, if he or she accepts it voluntarily (second paragraph of Article 5)*.

The receiving authority [*Central Authority/additional authority*] is requested to return or to have returned to the forwarding authority a copy of the documents – and of the annexures* – with a certificate as provided in Part 2 of this Form on the reverse side.

List of documents

.....
.....

Done at, the

Signature or stamp (or both) of forwarding authority.

**Delete if not applicable.*

Part 2 Certificate

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

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention:

1 that the documents listed in Part 1 have been served*

– the (*date*)

– at (*place, street, number*)

.....

– in one of the following methods authorised by Article 5 of the Convention:

(a) in accordance with the provisions of subparagraph (a) of the first paragraph of Article 5*,

.....

(b) in accordance with the following particular method*:

.....

(c) by delivery to the addressee, who accepted it voluntarily*.

The document referred to in the request, has been delivered to:

– *(identity and description of person)*

.....

– relationship to the addressee *(family, business or other)*

.....

.....

2 that the document has not been served, by reason of the following facts*:

.....

.....

In conformity with the second paragraph of Article 12 of the Convention, the forwarding authority is requested to pay or reimburse the expenses detailed in the attached statement*.

Annexures

Documents returned:

.....

.....

In appropriate cases, documents, establishing the service:

.....

.....

Done at, the

Signature or stamp, (or both).

**Delete if not applicable.*

FORM 7A-B

rules 7A.04(2)(c) and 7A.13(2)(b)

SUMMARY OF DOCUMENT TO BE SERVED

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

Identity and address of the addressee [Central Authority/additional authority]:

| |
|--|
| |
|--|

Date and place for entering appearance

Court in which proceedings pending/judgment given

.....

Date of judgment (if applicable)

Time limits stated in the document

.....

8 Further amendments

The Schedule has effect.

Schedule Further amendments

rule 8

| Provision | Amendment | |
|--|--|----------------------------|
| | <i>omit</i> | <i>substitute</i> |
| rule 63.73(4) | section | rule |
| Order 63, Appendix, Part 4, item 3(e) | or under Rule 7.04 | |
| rule 89.07(1) | Notwithstanding rule 7.01, originating process shall | Originating process may |
| Schedule, Form 42A, note 13 | Note 14 is | Note 12 is |
