

NORTHERN TERRITORY OF AUSTRALIA  
AMENDMENTS OF SUPREME COURT RULES

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Regulations 2000, No. 52

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# NORTHERN TERRITORY OF AUSTRALIA

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Regulations 2000, No. 52\*

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## Rules of Court under the *Supreme Court Act*

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 30 October 2000.

D. N. ANGEL ACJ

S. R. BAILEY J

S. G. THOMAS J

T. J. RILEY J

Judges of the Supreme Court  
of the Northern Territory of Australia

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\* Notified in the *Northern Territory Government Gazette* on 8 November 2000.

*Supreme Court Rules*

**AMENDMENTS OF SUPREME COURT RULES**

**1. Principal Rules**

The Supreme Court Rules are in these Rules referred to as the Principal Rules.

**2. Interpretation**

Rule 1.09 of the Principal Rules is amended by omitting subrule (3).

**3. New Part**

Order 1 of the Principal Rules is amended by inserting after Part 2 the following:

***"Part 2A – Master's jurisdiction***

**"1.09A Direction that Registrar may exercise Master's jurisdiction**

"(1) Where under these Rules –

(a) the jurisdiction of the Court is exercisable by the Master; or

(b) a power or function is conferred on the Master,

the Master may direct that the Registrar may exercise the whole or a specified part of that jurisdiction, power or function.

"(2) The Master must not make a direction under subrule (1) without the prior approval of the Chief Justice."

**4. Repeal and substitution**

Rule 3.07 of the Principal Rules is repealed and the following substituted:

**"3.07 Registry**

"(1) The Registry is to be open on every day of the year except Saturdays, Sundays, and public holidays under the *Public Holidays Act*.

"(2) The hours of the Registry are to be from 9.00 am until 4.00 pm unless the Chief Justice directs otherwise.

"(3) A Judge, the Master or the Registrar may open the Registry at any time on the request of a person if it is necessary to do so to avoid injustice."

**5. Repeal and substitution**

Rule 29.02 of the Principal Rules is repealed and the following substituted:

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### **"29.02 Discovery**

"(1) When the pleadings between the parties to a proceeding have closed, there is to be discovery by the parties of all documents that are or have been in their possession relating to a question raised by the pleadings.

"(2) Nothing in this Order is to be taken to prevent the parties from agreeing to dispense with or limit the discovery of documents that, but for the agreement, they would be required to make to each other.

"(3) Except where a pleading contains allegations of a kind referred to in rule 13.10(3), unless the Court orders otherwise, a party is not required to discover a document that is relevant only because it may lead to a train of enquiry."

### **6. Repeal and substitution**

Order 31 of the Principal Rules is repealed and the following substituted:

#### **"ORDER 31 – DISCOVERY BY ORAL EXAMINATION**

### **"31.01 Definitions**

"In this Order, unless the contrary intention appears –

'examiner', in relation to an oral examination, means the examiner who under this Order is presiding, or is to preside, over the examination;

'examining party' means a party who orally examines, or is to orally examine, another party under this Order;

'party examined' means a party orally examined, or to be orally examined, by another party under this Order and, where the party examined is a corporation, includes an officer of the corporation or other person examined or to be examined under rule 31.05(2).

### **"31.02 When is examination available**

"(1) Where a party might, with the leave of the Court under rule 30.02, serve interrogatories on another party relating to a question between them in a proceeding, subject to this rule, the party may instead orally examine the other party on oath in relation to the question.

"(2) A party must not orally examine another party unless –

- (a) the other party has consented in accordance with rule 31.03 to being examined; or

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- (b) the Court has made an order under rule 31.03(9) requiring the other party to be examined.

**"31.03 Application for and consent to examination**

"(1) A party seeking to orally examine another party in accordance with this Order must serve on that other party a request in writing that the party served consent to be orally examined.

"(2) A notice under subrule (1) may nominate an examiner for the purpose of the examination.

"(3) A party served with a notice under subrule (1) may, by notice in writing served on the party seeking the examination –

- (a) consent to be examined before the examiner nominated;
- (b) consent to be examined but not before the examiner nominated; or
- (c) refuse to be examined.

"(4) Where subrule (3)(b) applies, the party consenting to be examined may state in the notice the name of an examiner before whom the party consents to be examined.

"(5) Where subrule (4) applies, the party seeking the examination may, by notice in writing given to the party consenting to be examined, agree to the appointment of the examiner named in the notice under subrule (4).

"(6) Where the parties do not agree on an examiner, the party sought to be examined is to be taken to have refused to be examined.

"(7) Where –

- (a) the party sought to be examined has consented under subrule (3)(a) or (b); and
- (b) in the case of consent under subrule (3)(b) – the party seeking the examination has agreed to the appointment of an examiner under subrule (5),

the party seeking the examination must file a Memorandum of Agreement that is to be one document consisting of a copy of each of the notices that together constitute the consent and (if applicable) the agreement.

"(8) If a party –

- (a) refuses under subrule (3)(c) to be examined; or
- (b) is to be taken under subrule (6) to have refused to be examined,

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the party seeking the examination may apply to the Court for an order requiring the party to be orally examined in accordance with this Order.

"(9) The Court may make an order requiring a party to be orally examined if satisfied that –

- (a) the Court would have granted the party seeking the examination leave to serve written interrogatories on the party; and
- (b) one or more of the following apply:
  - (i) it is likely that an oral examination will be less costly to the parties than preparing and answering written interrogatories in relation to the question in respect of which the examination is sought;
  - (ii) there is some other advantage to the parties that warrants the making of the order;
  - (iii) the party sought to be examined was taken to have refused to be examined only by virtue of subrule (6).

"(10) If the parties cannot agree on an examiner, the Court may appoint a suitably experienced legal practitioner to be the examiner.

### **"31.04 Effect of consent or order**

"(1) Where, under rule 31.03, a party consents to being orally examined or the Court makes an order requiring a party to be orally examined, the following apply:

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

### **"31.05 Examination of corporations**

"(1) A corporation may be orally examined under this Order.

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"(2) Where the party examined is a corporation –

(a) one of the following persons may be examined:

(i) an officer of the corporation;

(ii) if the party examined and the examining party agree – a person who is not an officer of the corporation; and

(b) an answer given by the officer or other person is to be taken to be the answer of the corporation.

"(3) Unless the party examined and the examining party agree otherwise or the Court orders otherwise, nothing in subrule (2) authorises the examination of more than one person.

### **"31.06 Examiner**

"(1) An examination is to be held before an examiner –

(a) in respect of whom there has been consent under rule 31.03(3)(a) or agreement under rule 31.03(5) or who has been appointed by the Court under rule 31.03(10); and

(b) who consents to being appointed.

"(2) The consent of the examiner is to be in writing and filed.

### **"31.07 Attendance on examination**

"(1) The time and place of the examination is to be determined by the examiner.

"(2) The party examined must attend 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 the examination, the Court may order that the party attend to be examined in accordance with this Order at the time and place the Court directs.

### **"31.08 Powers of examiner**

"The examiner –

(a) may, for the purpose of the examination, administer an oath or receive an affirmation; and



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- (b) may adjourn the examination from time to time and from place to place.

**"31.09 Record of examination**

"(1) A deposition of the examination of the party examined is to be made.

"(2) Where objection is taken to a question, proceedings before the examiner with respect to the objection are to be recorded in the deposition.

"(3) The deposition is to be authenticated by the signature of the examiner and, without delay after signing the deposition, the examiner must give notice in writing of the authentication to the party examined and the examining party.

**"31.10 How party to be examined**

"(1) At the examination, the party examined may be questioned by or on behalf of the examining party but no questions may be asked of the party examined by that party's own counsel or solicitor.

"(2) The examination is to be in the nature of an examination in chief of the party examined by the examining party.

"(3) Subject to subrule (4), the party examined must answer each question asked of the party.

"(4) The party examined may object to a question as if it were a written interrogatory and rule 30.07 applies (with the necessary changes) accordingly.

"(5) The party examined is not required to answer a question to which the party objects unless the Court orders otherwise.

"(6) Where the party examined answers a question, rules 30.05 and 30.06(1) apply (with the necessary changes) as if the answer to the question were the answer to a written interrogatory.

"(7) A question may be answered by counsel or the solicitor for the party examined and the answer is to be taken to be the answer of the party.

"(8) Where rule 30.05(1)(e) applies, the examiner may adjourn the examination to enable the party examined to conduct the enquiries referred to in that rule.

**"31.11 Order to answer question**

"(1) Where the party examined objects to a question under 31.10(4), the examining party may apply by summons to the Master for an order that the party examined is required to answer the question.

"(2) The application is to identify each question to which it relates.

"(3) The Master may order that the party examined is required to answer a question to which the application relates.

"(4) If an order is made under subrule (3), unless the Master orders otherwise, the party examined must answer the question before the examiner and the Master may direct that the examining party be at liberty to ask further questions of the party examined as the case requires.

"(5) The Master may order that the party examined answer the question in writing and may direct whether that written answer is to be given on oath.

**"31.12 Costs of examination**

"(1) Subject to this Order, as between the parties, the costs of and incidental to attending an oral examination are to be costs in the proceeding unless the Court orders otherwise.

"(2) The party seeking the examination must pay the costs of the examiner in the first instance.

"(3) The Court may fix the examiner's costs and, on the application of a party or the examiner, may order that those costs be paid in accordance with subrule (2)."

**7. Repeal and substitution**

Order 48 of the Principal Rules is repealed and the following is substituted:

**"ORDER 48 – CASE FLOW MANAGEMENT AND SETTING DOWN FOR TRIAL**

***"Part 1 – Preliminary***

**"48.01 Definitions**

"In this Order, unless the contrary intention appears –

'directions hearing' means a directions hearing under Part 2 and, in relation to a proceeding, includes –

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- (a) the initial directions hearing and each further directions hearing (if any) in the proceeding; and
- (b) if a directions hearing referred to in paragraph (a) is adjourned – the adjourned directions hearing;

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

'listing hearing' means a directions hearing at which a proceeding is ordered to be listed for trial under rule 48.17;

'Master' includes the Registrar;

'mediation' means a mediation under rule 48.13 and, in relation to a proceeding, includes –

- (a) each mediation (if any) in the proceeding; and
- (b) if a mediation referred to in paragraph (a) is adjourned – the adjourned mediation;

'mediator', in relation to a mediation, means the mediator or mediators before whom the mediation is or is to be held under rule 48.13;

'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 to a proceeding of those issues in the proceeding that will or are likely to reduce the hearing time of the proceeding,

whether or not the agreement is subject to a contingency;

'settlement conference' means a settlement conference under rule 48.12 and, in relation to a proceeding, includes –

- (a) each settlement conference (if any) in the proceeding; and
- (b) if a settlement conference is adjourned – the adjourned settlement conference;

'trial Judge', in relation to a proceeding, means the Judge allocated the trial of the proceeding;

'trial list' means a list kept under rule 48.20 of proceedings that have been ordered under rule 48.17 to be listed for trial.

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**"48.02 Application**

"(1) This Order applies to –

- (a) all proceedings in the Court commenced by writ; and
- (b) all proceedings in respect of which an order has been made under rule 4.07.

"(2) Where in a proceeding commenced by originating motion –

- (a) it is proposed to call oral evidence under rule 45.02(2); or
- (b) for any other reason that appears desirable,

a Judge or the Master may order that this Order applies to the proceeding.

**"48.03 Directions by Registrar**

"Where –

- (a) a directions hearing is convened by or held before the Registrar; and
- (b) the Registrar gives a direction for the conduct of the proceeding in accordance with this Order,

Order 34 applies (with the necessary changes) to that direction.

***"Part 2 – Case flow management***

**"48.04 Convening initial directions hearing**

"(1) Where no appearance has been entered to an originating proceeding, within 2 months after the originating process was filed, the Master must –

- (a) fix a time, date and place for the holding of an initial directions hearing; or
- (b) hold an initial directions hearing.

"(2) Where an appearance has been entered to an originating proceeding, within 21 days after the appearance was filed, the Master must –

- (a) fix a time, date and place for the holding of an initial directions hearing; or
- (b) hold an initial directions hearing.

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"(3) The Master may hold an initial directions hearing under subrule (1) or (2) by telephone without notice of the hearing to a party.

### **"48.05 Notice of initial directions hearing**

"(1) Subject to rule 48.04(3), the Master must give each party at least 2 days notice of the initial directions hearing in a proceeding.

"(2) A notice under subrule (1) may be given to a party –

- (a) by sending it by pre-paid post to the party's address for service; or
- (b) where the party appears by a solicitor – in accordance with rule 6.06(1)(d).

"(3) The Master must file a copy of the notice given under subrule (1).

"(4) The copy of the notice filed in accordance with subrule (3) is to be endorsed with the date the notice was given and is to be signed by the Master.

"(5) A copy of a notice duly filed, endorsed and signed in accordance with this rule is, for the purposes of this Part, evidence that the notice was given.

### **"48.06 Categorising proceedings**

"(1) The purposes of the initial directions hearing include the following:

- (a) to determine whether the proceeding is still current or has been settled or is to be discontinued;
- (b) if the originating process has not been served – to make appropriate orders (if necessary) to enable prompt service of the originating process to take place;
- (c) if the originating process has been served but no appearance has been entered – to facilitate (where appropriate) the entry of an interlocutory or final judgment in the proceeding in accordance with these Rules;
- (d) if the originating process has been served and an appearance has been entered –
  - (i) to determine which of the categories specified in subrule (2) it is appropriate to designate the proceedings; and
  - (ii) to consider and, as necessary, make orders in accordance subrules (4) and (5).

"(2) At the initial directions hearing, the Master must designate the proceeding to be in one of the following categories:

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- (a) if the hearing time is likely to be 1 to 2 days – Category A;
- (b) if the proceeding is an ordinary matter requiring the supervision of the Master – Category B;
- (c) if the proceeding is a complex matter requiring the supervision of a Judge – Category C;
- (d) if the proceeding is an urgent matter requiring the supervision of a Judge – Category D;
- (e) if the proceeding involves local witnesses only or no witnesses and, when ready for trial, is likely to be capable of being brought on for trial on less than 2 days' notice – Category E.

"(3) The category to which a proceeding belongs may be altered by a Judge or the Master if there is a good reason for doing so.

"(4) At the initial directions hearing, the Master must –

- (a) consider whether it is appropriate to refer the matter to mediation in accordance with this Order and, if so, make the appropriate orders;
- (b) consider whether it is appropriate to refer the matter to a settlement conference in accordance with this Order and, if so, make the appropriate orders; and
- (c) if it is appropriate, fix a target date by which the matter is to be ready for trial and fix a timetable for the completion of all interlocutory steps so that the matter will be ready for trial by that date.

"(5) At the initial directions hearing, the Master may –

- (a) make the orders and give the directions under these Rules the Master thinks fit;
- (b) refer the making of an order or the giving of a direction to a Judge;
- (c) adjourn the initial direction hearing and fix a time, date and place for the adjourned hearing; or
- (d) convene a further directions hearing and fix a time, date and place for the further hearing.

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### **"48.07 Category C and D proceedings**

"(1) If at a directions hearing a proceeding is designated as a Category C or D proceeding, the Master must refer the proceeding to the Chief Justice who must then allocate it to a Judge.

"(2) A Judge to whom a proceeding is allocated by the Chief Justice under subrule (1) has charge of the proceeding and must make the orders and give the directions the Judge thinks fit for the proceeding to be promptly, completely, effectively and economically determined.

"(3) For the purpose of achieving the objectives specified in subrule (2), a Judge may do one or more of the following:

- (a) make the orders and give the directions under these Rules the Judge thinks fit;
- (b) convene the directions hearings the Judge thinks fit;
- (c) adjourn a directions hearing convened under paragraph (b) and fix a time, date and place for the adjourned hearing.

### **"48.08 Category A, B and E proceedings**

"(1) The Master has charge of all proceedings designated as Category A, B or E proceedings and must make the orders and give the directions the Master thinks fit for the proceeding to be promptly, completely, effectively and economically determined.

"(2) For the purpose of achieving the objectives specified in subrule (1), the Master may do one or more of the following:

- (a) make the orders and give the directions under these Rules the Master thinks fit;
- (b) refer the proceeding to a Judge for the making of the orders or the giving of the directions the Judge thinks fit;
- (c) convene the further directions hearings the Master thinks fit;
- (d) adjourn a directions hearing convened under paragraph (c) and fix a time, date and place for the adjourned hearing.

"(3) A Judge may exercise the powers of the Master conferred by this rule as the Judge thinks fit.

**"48.09 Notice of adjourned or further directions hearings**

"(1) A Judge must give each party notice of the first directions hearing convened by the Judge in a proceeding under rule 48.07(3)(b) and rule 48.05 applies (with the necessary changes) accordingly.

"(2) Where a party attended a directions hearing at which a Judge or the Master –

- (a) adjourned the directions hearing or convened a further directions hearing; and
- (b) fixed a time, date and place for the adjourned or further hearing,

the party is taken to have been given notice of that time, date and place.

"(3) Where a party did not attend a directions hearing at which a Judge or the Master –

- (a) adjourned the directions hearing or convened a further directions hearing; and
- (b) fixed a time, date and place for the adjourned or further hearing,

the Judge or Master must give the party notice of the adjourned or further hearing and rule 48.05 applies (with the necessary changes) accordingly.

**"48.10 Party to attend directions hearing**

"A party must attend a directions hearing of which the party has had notice in accordance with rule 48.05 or 48.09 in person or by counsel or the party's solicitor.

**"48.11 Non-attendance at directions hearing**

"(1) If a party fails to attend a directions hearing of which notice has been duly given, a Judge or the Master may do one or both of the following:

- (a) make the orders the Judge or Master considers appropriate for the expeditious hearing of the matter;
- (b) give the party who failed to attend notice of a time, date and place when the party is to attend before the Judge or Master and show cause why –
  - (i) if the party is a plaintiff – the party's claim should not be dismissed for want of prosecution; or
  - (ii) if the party is a defendant – the party's appearance, defence or counterclaim should not be struck out.



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"(2) At the time, date and place specified in the notice under subrule (1)(b) or at an adjourned time, date and place, the Judge or Master may –

- (a) if the party required to show cause is a plaintiff – dismiss the party's claim for want of prosecution;
- (b) if the party required to show cause is a defendant – strike out the party's appearance, defence or counterclaim;
- (c) in the case of an initial directions hearing – proceed in accordance with rule 48.06; or
- (d) adjourn the hearing.

"(3) In acting under subrule (2), a Judge or the Master may award costs against the party required to show cause or that party's solicitor.

"(4) Rule 48.27(5), (6) and (7) applies (with the necessary changes) to a claim, appearance or pleading dismissed or struck out under this rule.

### **"48.12 Settlement conference**

"(1) If 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 the matter be set down for a settlement conference for the purpose of exploring the possibility of settlement.

"(2) A settlement conference is to be held before the Master.

"(3) The Judge or Master must give the parties notice of the settlement conference and rule 48.05 applies (with the necessary changes) accordingly.

"(4) The Judge or Master –

- (a) may direct that the parties attend the settlement conference in person; and
- (b) if a party is a corporation – may order that the settlement conference be attended by an agent of the corporation who is familiar with the substance of the issues in the proceeding and has unqualified authority either to settle the proceeding or to make recommendations to the corporation that are likely to result in the settlement of the proceeding.

"(5) The Judge or Master may direct that a party attend the settlement conference by a videoconference or teleconference facility.

"(6) A direction under subrule (4) –

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- (a) may be given to a party –
  - (i) orally either in person or by the party's solicitor;
  - (ii) in writing sent by pre-paid post to the party's address for service; or
  - (iii) where the party appears by a solicitor – in accordance with rule 6.06(1)(d); and
- (b) may be given either by the Judge or Master or an officer of the Court authorised by the Judge or Master.

"(7) The attendance of a party in person at a settlement conference (whether in response to a direction under subrule (4) or otherwise) does not prevent the party being represented at the conference by counsel or the party's solicitor or both.

"(8) Except to prove that a settlement was reached between the parties and the terms of the settlement, evidence of things said or admissions made at a settlement conference is not admissible in either the proceeding or a court without the consent of those parties.

- "(9) If a party ('the party at fault') –
  - (a) fails to attend a settlement conference after having been notified of the conference under subrule (3); or
  - (b) having attended a settlement conference –
    - (i) refuses to participate in the settlement conference; or
    - (ii) applies (other than with the consent of the other parties) to adjourn or further adjourn the settlement conference and the adjournment is granted by the Master,

the party at fault must pay the costs of the other parties thrown away as a result, which costs may (despite rule 63.04(3)) be taxed immediately by the Taxing Master.

"(10) A settlement conference may be adjourned by the Master if the parties consider that further negotiations may lead to a settlement.

"(11) A Judge or the Master may order each party to prepare a precis of the party's case to be given to the Master at the settlement conference.

"(12) Despite subrule (8), if an offer of settlement is made before the Master at a settlement conference –

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- (a) the Master must record the offer and place that record in a sealed envelope on the Court file; and
- (b) the offer may be taken into consideration by the Court in exercising its discretion to award costs once final judgment in the proceeding is given.

**"48.13 Mediation**

"(1) If 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 the matter be set down for mediation for the purpose of exploring the possibility of settlement.

"(2) The mediator is to be appointed from the list kept under subrule (9) and may be appointed by the Judge, the Master or the parties.

"(3) Under subrule (2), 2 mediators may be appointed to mediate jointly.

"(4) The Judge or Master must give the parties notice of the mediation and rule 48.05 applies (with the necessary changes) accordingly.

"(5) The Judge or Master –

- (a) may direct that the parties attend the mediation in person; and
- (b) if a party is a corporation – may order that the mediation be attended by an agent of the corporation who is familiar with the substance of the issues in the proceeding and has unqualified authority either to settle the proceeding or to make recommendations to the corporation that are likely to result in the settlement of the proceeding.

"(6) A direction under subrule (5) –

- (a) may be given to a party –
  - (i) orally either in person or by the party's solicitor;
  - (ii) in writing sent by pre-paid post to the party's address for service; or
  - (iii) where the party appears by a solicitor – in accordance with rule 6.06(1)(d); and
- (b) may be given either by the Judge or Master or an officer of the Court authorised by the Judge or Master.

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"(7) The attendance of a party in person at a mediation (whether in response to a direction under subrule (5) or otherwise) does not prevent the party being represented at the mediation by counsel or the party's solicitor or both.

"(8) Except to prove that a settlement was reached between the parties and the terms of the settlement, evidence of things said or admissions made at a mediation is not admissible in either the proceeding or a court without the consent of those parties.

"(9) The Master must keep a list of persons who, in the opinion of a Judge or the Master, are suitably qualified and willing to act as mediators.

"(10) The list kept under subrule (9) is to include details of the following:

- (a) the qualifications and experience of each mediator listed;
- (b) the kinds of matters each mediator listed is willing to mediate.

"(11) The costs and expenses of a mediator –

- (a) may be fixed by a Judge or the Master; and
- (b) are to be met equally by all parties to the mediation.

"(12) A Judge or the Master may make the orders necessary to secure or enforce payment of a mediator's costs and expenses under this rule.

"(13) If a party ('the party at fault') –

- (a) fails to attend a mediation after having been notified of the mediation under subrule (4); or
- (b) having attended a mediation –
  - (i) refuses to participate in the mediation; or
  - (ii) applies (other than with the consent of the other parties) to adjourn or further adjourn the mediation and the adjournment is granted by the mediator,

the party at fault must pay the costs of the mediator and the other parties thrown away as a result, which costs may (despite rule 63.04(3)) be taxed immediately by the Taxing Master.

"(14) Subject to subrules (8) and (16) but despite any other law of the Territory, a mediator must not disclose and is not to be required to disclose information of which the mediator becomes aware in the course of or for the purposes of the mediation.

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"(15) A mediation may be adjourned by the mediator if the parties consider that further negotiations may lead to a settlement.

"(16) Within 7 days of the conclusion of a mediation, the mediator –

- (a) must file a report signed by the mediator indicating one of the following:
  - (i) that the proceeding has been finally resolved;
  - (ii) that certain issues, that are identified in the report, have not been resolved but that all other issues between the parties have been resolved;
  - (iii) that no issues between the parties have been resolved; and
- (b) must give each party a copy of the report.

#### **"48.14 Costs of directions hearings, settlement conferences and mediations**

"Subject to this Order, as between the parties, the costs of and incidental to attending a directions hearing, settlement conference or mediation are to be costs in the proceeding unless the Court orders otherwise.

#### ***"Part 3 – Setting down for trial***

#### **"48.15 Papers for trial Judge**

"The plaintiff or applicant in a proceeding must, within 14 days after the pleadings in the proceeding have closed in accordance with rule 14.08, file a copy of all of the pleadings, including any request for particulars of those pleadings and all particulars given in response to that request but not including the writ or notice of appearance.

#### **"48.16 Listing hearing**

"Subject to these Rules, unless a Judge or the Master orders otherwise, a proceeding is not to be listed for trial unless a listing hearing has been held.

#### **"48.17 Listing for trial**

"At a directions hearing, if a Judge or the Master is satisfied that a proceeding –

- (a) is ready for trial; or
- (b) should, in the interests of justice, proceed to trial,

the Judge or Master may order that the proceeding be placed on a list of proceedings ready for trial.

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**"48.18 Matters to be considered before listing for trial**

"(1) Before making an order under rule 48.17, the Judge or Master must give consideration to the following matters:

- (a) the possibility of the claim being settled by compromise and the desirability of a settlement conference or mediation;
- (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 examinations and reports under Order 33;
- (e) limiting the number of witnesses or the issues to be covered by evidence from witnesses;
- (f) submissions by the parties to the trial Judge of written arguments on issues of law or issues that are a mixture of law and fact;
- (g) the necessity to refer the proceeding to a Judge to secure appropriate directions or orders to ensure the proceeding is ready for and will proceed to trial;
- (h) the estimated duration of the trial;
- (j) whether a witness's evidence will be heard by means of a videoconference in accordance with these Rules;
- (k) whether advice on evidence has been obtained;
- (m) other matters that might facilitate the disposal of the proceeding.

"(2) Except in special circumstances, the Judge or Master must not make an order under 48.17 unless –

- (a) each party is represented at the listing hearing by the personal attendance (including by videoconference or teleconference under Part 4) at the hearing of –
  - (i) counsel who is briefed in the proceeding;
  - (ii) a solicitor who is a partner in the firm representing the party;  
or
  - (iii) if the party is represented by a solicitor who is not in private practice – a legal practitioner who holds an unrestricted practising certificate; and

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(b) in the case of paragraph (a)(ii) or (iii) – the party has filed a certificate by counsel in accordance with subrule (3).

"(3) The certificate by counsel is to state the following:

- (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) the dates (if any) during the proposed sittings when counsel or a witness will not be available;
- (e) whether or not counsel has discussed the proceeding with counsel representing the other parties;
- (f) whether or not there are outstanding pre-trial matters yet to be resolved or finalised and, if so, full details of those matters;
- (g) the prospects of the proceeding being settled before the trial.

"(4) For the purposes of subrule (2)(a), an unrepresented party who appears at a listing hearing is to be treated as if the party were a legal practitioner holding an unrestricted practising certificate.

"(5) In considering whether or not the special circumstances referred to in subrule (2) exist, the Judge or Master may have regard to –

- (a) the extent to which, in the opinion of the Judge or Master, a party or a party's counsel or solicitor has failed to expeditiously prosecute or defend the proceeding or otherwise prepare for trial; and
- (b) the interests of the other parties to have the proceeding brought to trial.

### **"48.19 Cost of listing hearing**

"Subject to this Order, as between the parties, the costs of and incidental to attending a listing hearing are to be costs in the proceeding unless a Judge or the Master orders otherwise.

### **"48.20 Trial lists**

"There are to be kept in the Darwin Registry and in the Alice Springs Registry the following lists of proceedings that have been ordered under rule 48.17 to be placed on a list for trial:

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- (a) a list (to be known as 'the A list') of all Category A and B proceedings;
- (b) a list (to be known as 'the B list') of all Category C and D proceedings;
- (c) a list (to be known as 'the C list') of all Category E proceedings.

### **"48.21 Fixing hearing dates**

"(1) Once a proceeding has been ordered under rule 48.17 to be listed for trial, the Registrar must allocate to it the earliest available hearing dates.

"(2) In determining the earliest available hearing dates, the Registrar must have regard to the following:

- (a) the trial list the proceeding has been placed on;
- (b) the urgency of the proceeding;
- (c) the order in which the proceeding was placed on the trial list;
- (d) representations by the parties as to dates that are or are not suitable and the reasons for that;
- (e) the length of time the trial of the proceeding is expected to take;
- (f) relevant practice directions made by the Chief Justice;
- (g) other relevant considerations.

### **"48.22 Pre-trial directions hearing before trial Judge**

"(1) The trial Judge in a proceeding that has been given hearing dates may, at the time, date and place determined by the Judge, hold a directions hearing to ensure that the proceeding is ready to proceed to trial.

"(2) Where the trial of a proceeding is listed to be held in Alice Springs, the directions hearing referred to in subrule (1) may be held by means of a videoconference or teleconference.

"(3) At a directions hearing referred to in subrule (1), the Judge may make the orders he or she thinks necessary, including an order that no further amendments to the pleadings will be permitted.



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***"Part 4 – Directions hearings or listing hearings by videoconference or teleconference***

**"48.23 Proceedings commenced in Alice Springs**

"(1) Subject to this Order, where a proceeding has been filed in the Alice Springs Registry, a Judge or the Master may conduct a directions hearing or listing hearing in respect of the proceeding by means of a videoconference or teleconference.

"(2) Where a directions hearing or listing hearing is held under subrule (1), the following apply in relation to the hearing:

- (a) the Court must provide and meet the expenses of the facilities necessary to enable the hearing to be held by videoconference or teleconference;
- (b) the Court must notify the parties or their solicitors of the place where they may attend the hearing by use of those facilities;
- (c) the Court file must be sent by the Alice Springs Registry to the Darwin Registry in time for the hearing;
- (d) a party seeking to rely at the hearing on an affidavit or other document that was not filed before the Court file was sent to the Darwin Registry may –
  - (i) file the document in the Alice Springs Registry; and
  - (ii) request that a copy of the document so filed be faxed by the Alice Springs Registry to the Darwin Registry;
- (e) where a request is made under paragraph (d)(ii), the Alice Springs Registry must fax the copy to the Darwin Registry as soon as possible after payment by the person who made the request of the fee (if any) determined by the Chief Justice by practice direction;
- (f) a copy of a document faxed under paragraph (e) is to be treated as if it were the original document duly filed;
- (g) a Judge or the Master may take evidence from witnesses who are duly sworn at the hearing and may exercise the same powers in relation to the parties and the witnesses as if the parties and the witnesses were physically in the presence of the Judge or Master.

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### **"48.24 Other proceedings**

"(1) Subject to this Order, with the permission of a Judge or Master, a party may attend a directions hearing or listing hearing by videoconference or teleconference wherever the hearing is to take place.

"(2) A Judge or the Master may take evidence from witnesses who are duly sworn at a directions hearing or listing hearing attended by a party under subrule (1) and may exercise the same powers in relation to the parties and the witnesses as if the parties and the witnesses were physically in the presence of the Judge or Master.

"(3) A party intending to attend a directions hearing or listing hearing under subrule (1) must, at least 24 hours before the time set for the hearing, seek the permission of the Judge or Master required by that subrule.

"(4) Permission to attend a directions hearing or listing hearing under subrule (1) may be granted without formality by telephone and without notice to the other parties.

"(5) A party who has been granted permission to attend a directions hearing or listing hearing under subrule (1) –

- (a) must give notice to the other parties of the party's intention to attend the hearing under subrule (1) as a Judge or the Master directs; and
- (b) unless a Judge or the Master directs otherwise, must provide and meet the expenses of the facilities necessary to enable the hearing to be held by videoconference or teleconference.

"(6) A Judge or the Master may –

- (a) on his or her own motion, conduct a directions hearing or listing hearing by videoconference or teleconference; and
- (b) for that purpose, give the directions he or she thinks fit.

### ***"Part 5 – Miscellaneous***

### **"48.25 Witness statements**

"(1) At a directions hearing or listing hearing, the Judge or Master may –

- (a) order that the parties exchange, or that a party deliver to another party, witness statements; and

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- (b) give the directions the Judge or Master thinks necessary to give effect to the order or give directions about the use to which the statements may be put.

"(2) A witness statement –

- (a) is to be signed by the witness before it is exchanged or delivered in pursuance of an order under subrule (1); and
- (b) is to be filed.

"(3) Where a witness statement is exchanged or delivered in pursuance of an order under subrule (1), the witness must confine his or her evidence in chief at the trial to the matters dealt with in the statement.

"(4) At a directions hearing or listing hearing at which it is proposed to make an order under subrule (1), a party must be represented by counsel or the solicitor who has actual charge of the proceeding for the party.

"(5) In this rule, 'witness statement' means a written statement of the evidence in chief of a witness proposed to be adduced from the witness at the trial.

**"48.26 Evidence at trial by videoconference**

"(1) If a party intends to adduce evidence at the trial of a proceeding by means of a videoconference, not later than 4 weeks before the date fixed for the trial, the party must –

- (a) give to the other parties notice of that 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) is to –

- (a) state the name of the witness;
- (b) state the proposed time of the videoconference; and
- (c) be accompanied by a copy of a statement of the witness's evidence in chief signed by the witness.

"(3) Within 7 days after receiving a notice under subrule (1), a party may object to the proposal contained in the notice.

"(4) An objection under subrule (3) is to be dealt with by the trial Judge.

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"(5) If, within the period referred to in subrule (3), no objection to the proposal has been made, all parties to the proceeding are to be taken to have consented to the proposal.

"(6) If an objection made in accordance with subrule (3) is upheld, the trial Judge may order that, regardless of the outcome of the proceeding, the party objecting pay as costs to the party who proposed the videoconference the difference between the costs of adducing the evidence by means of a videoconference and the costs of bringing the witness into the physical presence of the Court to adduce the evidence.

"(7) At a videoconference under this rule, the evidence in chief of the witness is to be confined to the evidence in chief in the witness's statement referred to in subrule (2)(c).

"(8) The party proposing to adduce evidence by a videoconference under this rule must arrange and meet the expenses of the facilities necessary for the witness to give the evidence and for the trial Judge and the other parties to see and hear that evidence as it is given.

### **"48.27 Self-executing orders**

"(1) A Judge or the Master may make a self-executing order –

- (a) dismissing a proceeding; or
- (b) striking out a pleading in a proceeding,

for a party's failure to comply with these Rules or an order of the Court.

"(2) An order under subrule (1) may be made –

- (a) despite that the default was that of the party's solicitor; and
- (b) despite that the default by the party or the party's solicitor was not contumelious.

"(3) An order under subrule (1) is of no effect unless –

- (a) it is made in the presence of the parties;
- (b) it is served personally on the party at fault within the time fixed by the Judge or Master for service of the order; or
- (c) it is served on the party at fault in accordance with an order for substituted service made by the Court.

"(4) For the purpose of enabling an order under subrule (1) to be served in accordance with subrule (3), the solicitor for the party at fault must provide to

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the solicitor for the party in whose favour the order is made with the address of the party at fault that is last known to the solicitor.

"(5) On an application by interlocutory summons in the matter made within one month after the making of an order under subrule (1), a Judge may reinstate the proceeding dismissed or the pleading struck out despite that judgment may have been entered in the matter.

"(6) Despite subrule (5), on a motion filed at any time with the special leave of a Judge, a Judge may reinstate a proceeding dismissed, or a pleading struck out, under subrule (1).

"(7) A Judge who reinstates a proceeding or pleading under subrule (5) or (6) –

- (a) may reinstate the proceeding or pleading on the terms as to costs the Judge thinks fit, including a term that the costs thrown away be paid before the proceeding or pleading is reinstated; and
- (b) may require the party at fault to lodge with the Court security for future costs in the proceeding.

### **"48.28 Experimental rules**

"(1) For the purpose of considering the practicality of changing this Order, the Chief Justice may by practice direction substitute the whole or any part of this Order (other than this rule) with a new procedure.

"(2) A practice direction made under subrule (1) is to –

- (a) state whether the new procedure is to apply to matters generally or only to a specified class of matters; and
- (b) specify the period (not exceeding 12 months) during which the practice direction is to apply.

"(3) The Chief Justice may by practice direction renew (with or without alteration) a practice direction made under subrule (1) for the specified period (not exceeding 12 months) commencing when the practice direction being renewed expires.

"(4) A practice direction made or renewed under this rule has effect as if it were a rule under this Order and, to the extent of an inconsistency between it and another rule under this Order, is to prevail."

