

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1992, No. 49*

Rules of Court under the *Small Claims Act*

I, Ian Leslie Gray, the Acting Chief Magistrate, in pursuance of section 50(1) of the *Small Claims Act*, hereby make the following Rules.

Dated 28 September 1992.

I.L. GRAY
Acting Chief Magistrate

AMENDMENTS OF SMALL CLAIMS RULES

1. PRINCIPAL RULES

The Small Claims Rules (Regulations 1989, No. 12) are in these Rules referred to as the Principal Rules.

2. COMMENCEMENT

These Rules shall come into operation on 4 October 1992.

3. DEFINITIONS

Rule 1.01 of the Principal Rules is amended by omitting the definition of "Registrar".

4. NEW RULE

The Principal Rules are amended by inserting in Order 1 after Rule 1.05 the following:

"1.06 JURISDICTION OF REGISTRARS

"In accordance with the Act and these Rules, a Registrar may exercise the jurisdiction of the Court other than the jurisdiction to -

- (a) make an order or give a direction under Rule 19.04 (Transfer of Claim to Local Court); or

* Notified in the *Northern Territory Government Gazette* on 2 October 1992.

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(b) consider an application under Rule 22.01 (Application for Re-hearing).".

5. FORM OF CLAIM

Rule 5.02 of the Principal Rules is amended -

(a) by inserting after paragraph (d) the following:

"(da) if the claim arises from a motor vehicle collision, have attached to it an itemised quotation of the damages sought; and"; and

(b) by omitting from paragraph (e) "or 5B" and substituting ", 5B or 5C".

6. CLAIM NOT TO BE DIVIDED

Rule 5.03 of the Principal Rules is amended by omitting from subrule (2) ", under section 8 of the Act".

7. REPEAL AND SUBSTITUTION

Order 18 of the Principal Rules is omitted and the following substituted:

"18.01 PREHEARING CONFERENCE

"(1) The Registrar shall fix a date for the prehearing of the claim, unless the Court otherwise orders -

(a) on the filing of -

(i) a notice of defence (without offer to pay);

(ii) a counterclaim; or

(iii) a notice rejecting money paid into court or an offer to pay;

(b) 14 days after the issue of a notice of payment into court in accordance with Form 7B, if the plaintiff does not file a completed Form 7B accepting money paid into court; or

(c) 14 days after the filing of a notice of admission (without offer to pay) in accordance with Form 6A,

whichever first occurs.

"(2) Where, at the time a defence is filed, an application under Rule 9.01 has been made but no order has been made under Rule 9.03, the Court shall deal with the application and the defence at the same time.

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"(3) The Court may, at any stage of a proceeding, with or without the presence of parties, order that a prehearing conference be held.

"(4) Where a prehearing conference is fixed, a notice in accordance with Form 18A shall be sent to each party not present when the date is fixed.

"18.02 PROCEDURE

"(1) If a prehearing conference is to be held (whether after application by a party or on the motion of the Court), all parties shall attend.

"(2) If a party does not attend a prehearing conference after being given notice to attend, the Court may -

- (a) in the case of failure by a plaintiff, dismiss the claim; or
- (b) in the case of failure by a defendant, make an order against that party permitting the plaintiff to proceed as if a notice of defence had not been filed.

"(3) The person conducting the prehearing conference may conduct it by way of -

- (a) preliminary conference to clarify issues in dispute;
- (b) mediation; or
- (c) arbitration in accordance with Rule 18.04,

and must conduct it in accordance with any practice directions issued by the Chief Magistrate.

"18.03 DECISION BY CONSENT

"(1) If the parties at a prehearing conference express their agreement and consent to the Court making a decision in accordance with agreed terms, the Court may decide the proceeding on the terms as agreed.

"(2) A decision made by the Court under this rule -

- (a) shall be expressed to be a decision by consent; and
- (b) shall have the same force and effect as if it had been made after the trial of the proceeding concerned.

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"18.04 DECISION BY ARBITRATION

"(1) If the parties at a prehearing conference consent, the Court may arbitrate the dispute.

"(2) A decision made by the Court under this rule -

(a) shall be expressed to be pursuant to an arbitration by consent; and

(b) shall have the same force and effect as if it had been made after the trial of the proceeding concerned.

"18.05 CONFIDENTIALITY

"The proceedings of a prehearing conference shall be confidential and no answers given or admissions made at a prehearing conference shall be used or referred to at the hearing, or be disclosed to the Court at the trial, without the consent of all parties."

8. FIXED HEARING

Rule 19.01 of the Principal Rules is omitted and the following substituted:

"19.01 FIXING HEARING

"The Court may fix a date for the trial of a claim at any stage of a proceeding and shall serve a copy of a notice in accordance with Form 19A on each party who is not present when the date for the trial was fixed."

9. INTEREST ON JUDGMENT

Rules 23.01 and 23.02 of the Principal Rules are omitted and the following substituted:

"23.01 INTEREST ON JUDGMENT

"Subject to Rule 23.03, every judgment debt carries interest from the date of judgment at the rate fixed in accordance with Rule 59.02 of the Supreme Court Rules unless the Court otherwise orders."

10. SERVICE GENERALLY

Rule 25.03(2)(c) of the Principal Rules is amended by omitting "\$10" and substituting "the bailiff's fee for service".

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11. REPEAL AND SUBSTITUTION

Rule 25.06 of the Principal Rules is omitted and the following substituted:

"25.06 HOW PERSONAL SERVICE EFFECTED ON FIRM OR CORPORATION

"(1) Personal service may be effected on a firm by effecting service on an officer of the firm in accordance with Rule 25.05.

"(2) Personal service may be effected on a corporation by leaving a copy of the document at the registered office or the principal place of business or the principal office of the corporation with some person apparently an officer of, or in the service of, the corporation and apparently of or above the age of 16 years.

"(3) If a person refuses to accept service of a document, personal service may be effected on the person by putting the document down in his or her presence and telling him or her its nature.

"(4) It shall not be necessary in order to effect personal service that the original document be shown.

"(5) In spite of subrule (2), where a liquidator, receiver or manager has been appointed, personal service may be effected -

- (a) on a company, as defined in section 9 of the *Corporations Act 1989* of the Commonwealth or corresponding legislation of a State or Territory ("the Corporations Law"), in any manner permitted by section 220 of the Corporations Law;
- (b) on the liquidator of a company, in the manner permitted by subsection 220(5) of the Corporations Law; and
- (c) on an official manager of a company, in the manner permitted by subsection 220(6) of the Corporations Law.

"(6) For the purposes of subrule (5), a document served by sending it by prepaid post addressed to -

- (a) a company at the registered office of the company;
- (b) a liquidator at the last address of the office of the liquidator notice of which has been lodged; or

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(c) an official manager at the last address of the office of the official manager notice of which has been lodged,

is taken to be served on the seventh day after posting."

12. SCHEDULE

The Schedule to the Principal Rules is amended by inserting after Form 5B the following:

"FORM 5C

Rule 5.02(e)

Local Court
at Darwin

Small Claims Act

STATEMENT OF CLAIM

Claim no.

Between
the plaintiff:
(person claiming
money)

.....
.....
.....

name
address
for service

and
the defendant:
(person claimed
against)

.....
.....
.....

name
address

TO THE DEFENDANT

The plaintiff claims that you owe the plaintiff the amount of \$
on the following grounds:

.....
Signature of plaintiff

Registrar
Filed:

WHAT IS THE NATURE OF YOUR CLAIM? (e.g. cost of repairs to motor
vehicle; cost of repairs to damaged fence.)

WHERE DID YOUR CLAIM ARISE? (Give the location of a collision,
and in the space below draw a sketch plan of the collision with
names of roads, &c., identify your vehicle as "1", the vehicle
driven by the defendant as "2" and any other vehicles involved
as "3", "4", "5", &c.)

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WHEN DID YOUR CLAIM ARISE?

HOW DID THE COLLISION HAPPEN? (*You must set out here in as much detail as you can how the collision happened and why you believe the defendant is at fault. If the space is insufficient you may attach other sheets.*)

*HOW MUCH ARE YOU CLAIMING?

Plaintiff's solicitor (if any):

NOTES FOR PLAINTIFF - SEE BACK OF DOCUMENT

NOTES FOR DEFENDANT - PLEASE READ CAREFULLY

If you wish to settle the claim, contact the plaintiff.

If you wish to pay the amount you consider you owe contact the Court or plaintiff.

You may defend the claim or admit to all or part of the claim: see the attached Notice in Form 6A.

If you do not do one of the above within 28 days from the date this document was served on you, then judgment may be given against you in your absence and enforced by the plaintiff against your property.

If there is no written agreement providing for interest on the claim a successful plaintiff is entitled by law to interest -

- (a) at 12% p.a. commencing 28 days after the claim was served on you until judgment, then
- (b) at 15% p.a. commencing from the date of judgment,

unless the Court otherwise orders.

[back of Form 5C]

NOTES FOR PLAINTIFF

Normally the Court will arrange service of the **Statement of Claim** and Notice in Form 6A. If personal service is required, you can pay a fee to the Court, a private bailiff or licensed process server who will arrange service for you.

The documents must be served within one year of the filing date. If you feel you cannot serve the defendant in this period contact court staff for advice.

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

The person serving these documents must also return one copy to the Court with a completed Declaration of Service within 28 days after the date of service.

"DECLARATION OF SERVICE

FORM 25A

I, declare that at [time] on [date] I served a copy of this document together with a notice in Form 6A on the defendant at [place]

by + handing them to [person], or + putting them down in the presence of [person] and telling that person the nature of the documents that person being + the defendant, or + an officer of the defendant firm or corporation or by

+ posting the documents by certified mail to at the defendant's last known place of + residence/business or + registered/principal office, and annexed hereto and marked A and B respectively are a duly completed certified mail posting receipt, and an acknowledgement of delivery of the postal article both issued pursuant to the Postal By-laws made under the Postal Services Act 1975 of the Commonwealth.

and that this declaration is true in every particular Declared at [place] on [date]

.....
Signature of declarant

NO WITNESS IS REQUIRED FOR THIS DECLARATION

+ delete if inappropriate

A person wilfully making a false statement in a declaration is liable to a penalty of \$2,000 or imprisonment for 12 months, or both.

