

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1991, No. 71*

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*, hereby make the following Rules of Court.

Dated 19 November 1991.

Austin Asche C.J.

John Nader J.

W. Kearney J.

Brian Martin J.

D. Angel J.

D. Mildren J.

Judges of the Supreme
Court of the Northern
Territory of Australia

AMENDMENTS OF THE SUPREME COURT RULES

1. PERIOD OF SERVICE

Rule 11.07 of the Supreme Court rules is amended -

- (a) by omitting from subrule (1) "within 28 days" and substituting "within 60 days"; and
- (b) by omitting subrule (5) and substituting the following:

"(5) At the time of service of a third party notice on a third party there shall also be served a copy of -

- (a) an order or consent under rule 11.05(2)(b);
- (b) an order under subrule (2) made before the third party notice was filed fixing a period for service of the notice;

* Notified in the *Northern Territory Government Gazette* on 16 December 1991.

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- (c) an order under subrule (3);
- (d) the writ or other originating process; and
- (e) any pleadings or affidavits filed and served in the proceeding."

2. REPEAL AND SUBSTITUTION

Rule 24.05 of the Supreme Court Rules is repealed and the following substituted:

"24.05 INHERENT JURISDICTION

"Nothing in this Order affects the inherent power of the Court -

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

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

3. COSTS

Order 63 of the Supreme Court Rules is amended -

- (a) by omitting the heading to rule 63.12 and substituting:

"63.12 ENFORCEMENT OF ORDER OF TAXING MASTER"; and

- (b) by inserting in Items 1 and 2(e) in Part 4 of the Appendix, after "stamp duty paid on filing the writ and on relevant copies", the words "or fees payable under Item 1 of that part of the Schedule to the Supreme Court Regulations referring to fees payable 'IN RESPECT OF ALL OTHER PROCEEDINGS IN THE SUPREME COURT'".

4. AUTHORITY

Rule 77.01(2)(c) of the Supreme Court Rules is amended -

- (a) by omitting from the end of subparagraph (viii) "or";

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(b) by omitting from subparagraph (ix) "purchase money" and substituting "purchase money;"; and

(c) by adding at the end the following:

"(x) order that, on the failure of a party -

(A) to do an act or take a step which, under these Rules, the party is required to do or take (other than under an order for the payment of costs); or

(B) to comply with an order that he do such an act or take such a step,

the proceeding be dismissed or the defence (including a counterclaim) struck out and that judgment be entered or there be judgment accordingly."

5. 86.01. NEW RULE

Order 86 of the Supreme Court Rules is amended by inserting after rule 86.01 the following:

"86.01.1. APPLICATION OF THIS ORDER TO APPEAL UNDER
CRIMES (FORFEITURE OF PROCEEDS) ACT

"For the purposes of section 60(6) of the *Crimes (Forfeiture of Proceeds) Act*, an appeal lies to the Court of Criminal Appeal and this Order, with the necessary changes, applies to such an appeal and to an appeal under the other provisions of that section."

6. NEW RULES

The Supreme Court Rules are amended by inserting after Chapter 5 the following:

"CHAPTER 6 - COMMERCIAL ARBITRATION RULES

"ORDER 91 - COMMERCIAL ARBITRATION

"91.01. INTERPRETATION

In this Order -

'the Act' means the *Commercial Arbitration Act*.

"91.02. APPLICATION OF ORDER

This Order applies -

(a) to an arbitration in respect of which the Court has jurisdiction under the Act; and

(b) to a proceeding in the Court under the Act.

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"91.03. APPLICATION OF CHAPTER 1

Chapter 1, with the necessary changes, applies to and in relation to an arbitration or proceeding referred to in rule 91.02.

"91.04. JURISDICTION

"(1) A proceeding in the Court under the Act shall be commenced by originating motion.

"(2) The Master has jurisdiction under the Act except under Part V.

"91.05. ENFORCEMENT OF AWARD

"(1) Unless the Court otherwise orders, an application for leave under section 33 of the Act to enforce an award as a judgment or order of the Court shall be supported by affidavit and may be made without notice to any person.

"(2) An affidavit referred to in subrule (1) shall -

- (a) exhibit the arbitration agreement and the award or, in either case, a copy;
- (b) state the extent to which the award has not been complied with at the date the application is made;
- (c) state the usual or last known place of residence or business of the person against whom it is sought to enforce the award or, when the person is a corporation, its last known registered office.

"(3) If leave is given, a party to the award may enter judgment in terms of the award.

"91.06. SERVICE OF ORDER AND APPLICATION FOR STAY

"(1) An order of the Court giving leave to enforce an award and a copy of the affidavit in support referred to in subrule (1) shall be served on the person against whom it is sought to enforce the award.

"(2) A debtor may, within 7 days after service on the debtor of the order (or if the order is served out of the Territory, within such time as the Court orders), apply to the Court to set aside the order and the award cannot be enforced until the determination of the application.

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"91.07. APPEAL UNDER SECTION 38

"An appeal under section 38 of the Act shall be brought in accordance with Order 83.

"91.08. APPLICATION UNDER SECTION 39(1)

"In respect of an application under section 39(1) of the Act to determine a question of law arising in the course of an arbitration, the originating motion shall be filed and served within 14 days after the arbitrator or umpire has consented to the making of the application or the parties have so consented.

"91.09. APPLICATION UNDER SECTION 42 OR 43

"In respect of an application -

- (a) to set aside an award under section 42 of the Act; or
- (b) to remit an award under section 43 of the Act,

the originating motion shall be filed and served within 28 days after the award is made.

"91.10. OFFER OF COMPROMISE

"A party to an arbitration may serve on any other party an offer of compromise of a claim the subject of the arbitration on the terms specified in the offer.

"91.11. FORM OF OFFER

"An offer of compromise shall be in writing and contain a statement to the effect that it is served for the purpose of section 34 of the Act.

"91.12. TIME FOR MAKING, ACCEPTING, PAYMENT UNDER, &c., OFFER

"(1) An offer of compromise may be served at any time before the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates have been determined.

"(2) A party may serve more than one offer of compromise.

"(3) An offer of compromise may be expressed to be limited as to the time the offer is open to be accepted after service on the party to whom it is made, but the time expressed shall be not less than 14 days after service.

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"(4) A party on whom an offer of compromise is served shall, within 3 days after service, serve a written acknowledgment of service on the party serving the offer.

"(5) A party on whom an offer of compromise is served may accept the offer by serving notice of acceptance in writing on the party who made the offer before -

- (a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified, the expiration of 14 days after service of the offer; or
- (b) the determination of all questions of liability and the relief to be granted in respect of the claim to which the offer relates,

whichever event is the sooner.

"(6) An offer of compromise shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.

"(7) An offer of compromise is open to be accepted within the period referred to in subrule (5) notwithstanding that during the period the party on whom the offer is served makes an offer of compromise to the party who served the offer of compromise, whether or not the offer made by the party served is made in accordance with this Order.

"(8) An offer of compromise providing for payment of a sum of money to a plaintiff shall, unless it otherwise provides, be taken to be an offer providing for payment of the sum within 14 days after acceptance of the offer.

"(9) An application to the Court under subrule (6) for leave to withdraw an offer shall be made by originating motion in Form 5C.

"91.13. EFFECT OF OFFER

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

"91.14. DISCLOSURE OF OFFER

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

"(2) Where an offer of compromise has not been accepted, no communication with respect to the offer shall be made to the arbitrator or umpire until after the determination of all questions of liability and the relief

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to be granted in respect of the claim to which the offer relates.

"(3) Subrules (1) and (2) do not apply where an offer of compromise provides that the offer is not made without prejudice.

"91.15. FAILURE TO COMPLY WITH ACCEPTED OFFER

"(1) Where a party to an accepted offer of compromise fails to comply with the terms of the offer then, unless for special cause the Court otherwise orders, the other party shall be entitled, as he or she elects -

- (a) judgment in the terms of the accepted offer; or
- (b) where the party in default is -
 - (i) the claimant, an order that the arbitration be forever stayed; and
 - (ii) the respondent to the claim, an order declaring the compromise constituted by the acceptance of the offer to be of no effect and that the claimant be at liberty to proceed with the arbitration.

"(2) An application for judgment or an order under subrule (1) shall be made to the Court by originating motion.

"91.16. COSTS WHERE OFFER NOT ACCEPTED

"In an exercise of discretion as to costs the arbitrator or umpire shall consider whether the party serving an offer of compromise was at all material times willing and able to carry out the party's part of what was proposed in the offer.

"91.17 HEARING ON COSTS

"In arbitration proceedings the arbitrator shall not make a final award with respect to costs until the parties have had an opportunity to be heard on the question of the costs of the arbitration.

"CHAPTER 7 - FORFEITURE OF PROCEEDS RULES

"ORDER 92 - FORFEITURE OF PROCEEDS

"92.02 INTERPRETATION

"In this Order -

'the Act' means the *Crimes (Forfeiture of Proceeds) Act*.

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"92.03 APPLICATION

"An application -

- (a) for a forfeiture order or a pecuniary penalty order shall be in Form 92A;
- (b) for a restraining order shall be in Form 92B,

adapted as the circumstances of the case require; and

- (c) for an order declaring the nature, extent and value of a third person's interest in certain property shall be in Form 92C.

"92.04 NOTICE

"A notice required by the Act to be given shall be in writing.

"92.05 FILING, SERVICE AND DIRECTIONS

"(1) An application, an affidavit and a copy of a notice given in a proceeding under the Act shall be filed in the Court unless the Court otherwise orders.

"(2) A copy of an application, a copy of an affidavit, and a notice given in a proceeding under the Act shall be served personally or in such manner as the Court directs.

"(3) An application shall be taken to have been made when it is filed.

"(4) After an application is filed a Judge may give directions as to its hearing.

"92.06 NOTICE OF APPLICATION FOR ORDER UNDER SECTION 19

"For the purposes of section 29 of the Act, notice of an application under section 19 of the Act shall be given by the applicant by serving a sealed copy of the application personally on the person to whom the notice is to be given and by filing an affidavit of service of the copy of the application.

"92.07 NOTICE OF DISCHARGE OF ORDER

"When a pecuniary penalty order registered in accordance with section 31 of the Act is discharged, the person who procured the registration of the order shall promptly give to the Prothonotary, Registrar or other proper officer of the court in which the order was registered -

- (a) notice of the discharge of the pecuniary penalty order; and

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- (b) a sealed copy of the order discharging the pecuniary penalty order.

"92.08 FACSIMILE COPY OF INTERSTATE ORDER

"For the purposes of section 39(1) of the Act, a facsimile copy of an interstate order or of an amendment to an interstate order shall be taken to be certified if it contains -

- (a) a facsimile copy of the seal of the court that made the order; or
(b) a facsimile copy of a statement signed by an appropriate person to the effect that the copy is a true copy of the order of the court."

7. SCHEDULE

The Schedule to the Supreme Court Rules is amended by adding at the end the following:

"FORM 92A

Rule 92.03(a)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

19 No.
IN THE MATTER OF
the *Crimes (Forfeiture
of Proceeds) Act* and
IN THE MATTER of CD,
a person convicted.

BETWEEN

AB

Applicant

and

CD

Respondent

APPLICATION

TO: [*Respondent*]

You have been convicted in the Supreme Court of [*set out details of conviction*].

TAKE NOTICE that the applicant applies for the following orders against you:

Directions as to the hearing of this application will be given by the Court [*state the date or the occasion, e.g. after sentence*].

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"FORM 92A (continued)

Dated: [e.g. 15 June 19 .]

[Signed]

Filed:

The Applicant's address for service is:

[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.]

"FORM 92B

Rule 92.03(b)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

19 No.
IN THE MATTER OF
the Crimes (Forfeiture
of Proceeds) Act and
IN THE MATTER of CD,
a person convicted.

BETWEEN

AB

Applicant

and

CD

Respondent

APPLICATION

TO: [Respondent]

You have been charged/are about to be charged* with [state offence(s)]

TAKE NOTICE that the applicant applies for the following orders against you:

Directions as to the hearing of this application will be given by the Court on [date].

Dated: [e.g. 15 June 19 .]

[Signed]

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"FORM 92B (Continued)

The Applicant's address for service is:
[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.]

* Delete whichever is inapplicable.

"FORM 92C

Rule 92.03(c)

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

19 No.
IN THE MATTER OF
the *Crimes (Forfeiture
of Proceeds) Act* and
IN THE MATTER of CD,
a person convicted.

BETWEEN

AB

Applicant

and

CD

Respondent

TO: [name parties]

OF: [address]

On [date] in the Supreme Court of the Northern Territory of Australia an order was made [here set out short summary of order e.g. whereby the property described in the Schedule was forfeited]:

I [full name and address] apply for an order [here set out order as sought e.g. directing that the property be transferred to me] on the grounds set out in the affidavit of [name of deponent] sworn [date] and filed with this application.

Directions as to the hearing of this application will be given by the Court on [date] at [time].

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"FORM 92C

SCHEDULE

[Describe property affected by the order]

Dated: [e.g. 15 June 19 .]

[Signed]

The Applicant's address for service is:

[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought]."

8. FURTHER AMENDMENTS

The Supreme Court Rules are further amended as provided in the Schedule.

SCHEDULE

Provision	Amendment	
	omit	substitute
Rule 9.11 (3)(c)	"ordered"	"orders"
Rule 10.01	"rule 4.07(1)"	"rule 4.07(a)"
Rule 21.03(3)	"the Chief Justice"	"a Judge"
Rule 58.02	"they are"	"it is"
	"apply"	"applies"
Rule 63.01(1) definition of "Taxing Master"	"a Deputy Master"	"the Registrar"
Rule 63.31(3)(c)	"subparagraph"	"paragraph" (twice occurring)
Rule 78.01(2)(c)	"an objections"	"objections"

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SCHEDULE - continued

Provision	Amendment	
	omit	substitute
Rule 82.01 definition of "Court"	"84"	"87"
Rule 84.06(4)	"in relation"	"in relation to"
Rule 88.04(2)	"(c) where"	"(d) where"
Rule 88.33(6)(c)	"Form 88R"	"Form 88N"
Rule 88.33(7)	the whole subrule	
Rule 88.64(1)	"remain"	"remains"
Rule 88.07(2)	the whole subrule	
Rule 88.77	"(1)"	