

NORTHERN TERRITORY OF AUSTRALIA

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Regulations 1990, No. 4\*

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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*, hereby make the following Rules of Court.

Dated 18 January 1990.

AUSTIN ASCHE CJ

JOHN NADER J

DAVID ANGEL J

W. KEARNEY J

BRIAN MARTIN J

Judges of the Supreme  
Court of the Northern  
Territory of Australia

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AMENDMENTS OF THE SUPREME COURT RULES

1. NEW RULE

The Supreme Court Rules are amended by inserting in Order 6, before rule 6.01, the following:

"6.001 APPLICATION TO COMPANIES

"Notwithstanding anything in this Order, a document served on a company within the meaning of the Companies (Northern Territory) Code shall be effectively served for the purposes of these Rules if it is served as provided by section 528 of that Code."

2. HOW ORDINARY SERVICE EFFECTED

Rule 606 of the Supreme Court Rules is amended -

- (a) by inserting in subrule (1)(c), after "corporation", the words "(other than a company within the meaning of the Companies (Northern Territory) Code)"; and

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\* Notified in the *Northern Territory Government Gazette* on 14 March 1990.

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(b) by omitting from subclause (2)(c) all words after "a corporation -" and substituting the following:

"(i) where the corporation is a company within the meaning of the Companies (Northern Territory) Code - the registered office of the company situated as indicated in section 528 of that Code; and

(ii) where the corporation is not a company - the registered or principal office of the corporation."

3. TIME FOR THIRD PARTY NOTICE

Rule 11.05(1) of the Supreme Court Rules is amended by omitting "rule 4.07(1)" and substituting "rule 4.07(a)".

4. ORDER FOR PAYMENT OUT AFTER ACCEPTANCE

Rule 26.23(1) of the Supreme Court Rules is amended by omitting all words before paragraph (a) and substituting the following:

"(1) Where a plaintiff accepts money in satisfaction of a claim, the money shall not be paid out in the following circumstances except by order of the Court:"

5. CONTENTS OF DOCUMENT

Rule 27.02(1) of the Supreme Court Rules is amended by omitting "'In the Supreme Court of the Northern Territory at'" and substituting "'In the Supreme Court of the Northern Territory of Australia at'".

6. COPIES ON REQUEST

Rule 27.05(3) of the Supreme Court Rules is amended by omitting "praecipe or".

7. INSPECTION OF DOCUMENTS REFERRED TO IN LIST OF DOCUMENTS OR AFFIDAVIT

Rule 29.09(1) of the Supreme Court Rules is amended -

(a) by omitting paragraph (b) (second occurring) and substituting the following:

"(c) to whom, under rule 29.06, a list or affidavit of documents is supplied,"; and

(b) by omitting "From 29C" and substituting "Form 29B".

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8. CONTENTS OF BILL

Rule 63.40(7) of the Supreme Court Rules is amended by omitting "rule 13.01(3)" and substituting "rule 13.01(1)".

9. NEW RULE

The Supreme Court Rules are amended by inserting after rule 63.60 the following:

"63.60.1 COSTS IN GRANT OF PROBATE OR ADMINISTRATION

"(1) Costs allowable to a solicitor for professional services rendered in connection with obtaining a grant of probate or administration of an estate of a deceased person shall be calculated in accordance with the relevant scale in these Rules.

"(2) In addition to the costs a solicitor is entitled to receive under subrule (1), the solicitor may recover such reasonable disbursements as are incurred by him in obtaining the grant.

"(3) Where an executor or administrator seeks the payment of Commission to him in respect of the administration of the estate, such costs and disbursements as have been paid or are payable by him to his solicitor in relation to obtaining the grant, or to any matter in connection with the estate, shall be taxed by the Taxing Master in accordance with rule 63.59 or 63.60, as the case requires.

"(4) All costs and fees allowable in accordance with these Rules shall be paid out of the estate.

"(5) Where a bill of costs is taxed under these rules and the amount of the bill (exclusive of the costs of submitting it to taxation) and all amounts referred to in subrule (2) do not, after taxation, equal or exceed the amount which would otherwise have been allowed under subrule (1), the costs of submitting the bill for taxation shall be paid by the solicitor."

10. APPENDIX TO ORDER 63

The Appendix to Order 63 of the Supreme Court Rules is amended -

(a) by omitting item 4 from Part 1 and substituting the following:

"4. The rate per unit shall be that from time to time declared by the Chief Justice by practice directions after considering the recommendation of the Master who shall, not later than 1 January in each year, calculate and recommend any adjustment to the rate for that year on the following basis:

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- (a) as to 37% of the rate - calculated by multiplying the existing rate by the Consumer Price Index for Darwin; and
- (b) as to 50% of the rate - calculated by multiplying the existing rate by the Average Weekly Earnings (ordinary time) for Darwin,

where the Consumer Price Index and Average Weekly Earnings are the latest available yearly percentage variations published by the Australian Bureau of Statistics with the resulting rates (rounded off to 2 decimal places for the purposes of recalculating the rate for the following year) rounded off to the nearest dollar."; and

- (b) by omitting item 4 from Part 2 and substituting the following:

"4. There may be allowed, in addition to a charge under item 1, a charge being a percentage of the amount allowed under that item which, in the opinion of the Taxing Master, ought to be allowed for specific care and conduct having regard to all the relevant circumstances.

"5. The Taxing Master may allow for preparation, within the meaning of 63.40(1), in addition to other allowances (including any allowances for specific care and conduct), a charge, being a percentage of the amount allowed for that preparation, which, in his opinion, ought to be allowed for general care and conduct, having regard to all the relevant circumstances.

"6. In items 4 and 5 -

'specific care and conduct' means the care and consideration needed to be given, and the conduct and skill needed to be applied, by a solicitor directly in respect of a specific item of work performed by him;

'general care and conduct' means the care and consideration given and the conduct and skill applied, by a solicitor in the proceeding as a whole for which no direct time can be substantiated, and includes -

- (a) the general supervision of and indirect responsibility for the conduct of the proceeding; and
- (b) such other relevant factors which in the opinion of the Taxing Master warrant additional reward."

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11. AUTHORITY

Rule 77.01 of the Supreme Court Rules is amended -

- (a) by omitting "Subject to this Order" (first occurring) and substituting "(1) Subject to this Order";
- (b) by omitting paragraph (b)(iii); and
- (c) by omitting paragraph (b)(vi) and substituting the following:

"(vi) the Service and Execution of Process Act 1901 of the Commonwealth, section 11 (proceedings where no appearance entered), section 16(1) (subpoenas or summons to witness may be served in any State or part of Commonwealth by leave of Court), section 21(3) (registration of judgments and proceedings thereunder) and section 22A (Costs of proceedings under this Act), in relation to the assessing of the amount of the plaintiff's costs;"

12. NOTICE OF APPEAL

Rule 87.04 of the Supreme Court Rules is amended by omitting "in writing" and substituting "of appeal in accordance with Form 87A".

13. NEW RULE

The Supreme Court Rules are amended by inserting after rule 88.01 the following:

"88.011

"(1) Subject to subrule (2), an application for the admission to probate of a document referred to in section 12(2) of the *Wills Act* shall be supported by an affidavit setting out the grounds of the application, together with the consents in writing to the application given by all persons who may be prejudiced by the admission of the document to proof.

"(2) Where a person who may be prejudiced by an application referred to in subrule (1) is not *sui juris* or cannot be ascertained or found, or the Court is satisfied that in the circumstances it is just and expedient to do so, it may nevertheless dispense with the consent."

14. POWERS OF REGISTRAR

Rule 88.05(1) of the Supreme Court Rules is amended by inserting after paragraph (p) the following:

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"(pa) an application referred to in section 12(2) of the *Wills Act* where the gross value of the estate, wherever situated, does not exceed \$15,000;"

15. EVIDENCE AND DOCUMENTS IN APPLICATIONS FOR RESEALING

Rule 88.26(2) of the Supreme Court Rules is amended by omitting "Rule 25(4)" and substituting "Rule 88.24(4)".

16. PROCEEDING FOR PASSING ACCOUNTS, &c.

Rule 88.78(14) of the Supreme Court Rules is amended by omitting "a Deputy Registrar" and substituting "the Deputy Registrar".

17. SOLEMN FORM

Rule 88.90(2) of the Supreme Court Rules is amended by omitting "solemn of law form" and substituting "solemn form of law".

18. SCHEDULE

The Schedules to the Supreme Court Rules is amended -

(a) by omitting paragraphs (b) and (c) from clause 2 in Part 3 of Form 5A and substituting the following:

"(b) for the plaintiff by [*name or firm of solicitor and, where the solicitor is a firm, the name of the member of the firm having responsibility for the conduct of the matter*], solicitor; or [*business address of solicitor*];

(c) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] or agent for [*name of firm or principal solicitor and, where the principal solicitor is a firm, indicate the name of the member of the firm having responsibility for the conduct of the matter*], solicitor, of [*business address of principal.*]"

(b) by inserting after item 21 in Form 48B the following:

"22. The proceeding shall be listed for trial at (e.g. Darwin/Alice Springs)".

(c) by omitting from Form 60A "[e.g. Mr. Justice or Master ]" and substituting "[e.g. Smith J or Master Jones]"; and

(d) by omitting from clause 4 in Form 83C "rule 83.22" and substituting "rule 83.23";

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- (e) by omitting from the note at the foot of Form 86L "reference" and substituting "application";
- (f) by omitting from clause 2 in Form 86S "has";
- (g) by inserting after Form 86V the following:

"FORM 87A

Rule 87.04

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

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)  
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No.                      of 19

IN THE MATTER of an appeal  
under the Work Health Act

BETWEEN:

Appellant

and

Respondent

NOTICE OF APPEAL

The proceeding appealed from was heard in (*place*) by the Work Health Court on (*date*) and decided on (*date*).

(*Where leave to appeal has been granted, add: Leave to appeal was granted on [date].*)

The appellant appeals from the decision of (*or the following part of the decision of or as the case may be*) (*briefly but specifically state the decision or part appealed against*).

GROUND(S): (*state briefly but specifically the grounds relied upon in support of the appeal*).

ORDER SOUGHT: (*state what judgment, relief or decision the appellant seeks in lieu of that which is the subject of the appeal*).

To the respondent (*address*)

NOTE: A directions hearing in this appeal will take place before (*Judge or Master, as the case may be*) in (*place*) at (*time*) on (*date*). If you do not attend that hearing either in person or by your solicitor or counsel, orders may be made in your absence.

Before you take a step in this appeal and before you may be heard in relation to it or on a directions hearing, you must enter an appearance in the Registry.

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Appellant: (name, address and occupation)

Solicitor: (name, address and telephone number)

Solicitor's agent: (name, address and telephone number)

Appellant's address for service:

DATE: (e.g. 20 June 19 )

Signed by appellant  
or his solicitor

\_\_\_\_\_".

- (h) by omitting from the end of Form 88A "Plaintiff's Solicitor" and substituting "Applicant's Solicitor";
  - (j) by omitting from Forms 88F and 88G "(heading as in Form 8A)" and substituting "(heading as in Form 88A)";
  - (k) by omitting from the end of Forms 88G, 88H, 88I, 88K, 88P, 88Q, 88S and 88T "(as in Form 15A)" and substituting "(as in Form 88F)";
  - (m) by omitting from Form 88M all words after clause 2 and substitution the following:  
"Sworn etc. (as in Form 88F)  
(This affidavit may be subscribed to Form 88L)";  
and
  - (n) by omitting from Form 88W "(heading as in Form 47A)" and substituting "(heading as in Form 88V)".
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