

NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT RULES

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FORMS

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1990, No. 21*

Rules of Court under the *Local Court Act*

I, SALLY GORDON THOMAS, the Chief Magistrate of the Local Court of the Northern Territory of Australia, in pursuance of section 21 of the *Local Court Act*, hereby make the following Rules.

Dated 30 October 1990.

S. G. THOMAS

Chief Magistrate of the
Local Court of the Northern
Territory of Australia

LOCAL COURT RULES

CHAPTER 1 - GENERAL RULES OF PROCEDURE

ORDER 1 - PRELIMINARY

*Part 1 - Title, Commencement, Revocation,
Objective*

1.01 COMMENCEMENT

These Rules shall come into operation on the commencement of the *Local Court Act*.

Part 2 - Application of Rules

1.02 INTERPRETATION

In this Part -

"former Rules" means the Local Courts Rules made pursuant to the *Local Courts Act*;

"pending proceeding" means a proceeding in the Court to which, immediately before the commencement date, the former Rules applied.

1.03 APPLICATION

(1) Subject to subrule (3) these Rules apply to every proceeding commenced in the Court on or after the commencement date.

* Notified in the *Northern Territory Government Gazette* on 12 December 1990.

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(2) These Rules apply, with any necessary modification, to a pending proceeding, and anything required or permitted to be done under these Rules with respect to a proceeding commenced on or after the commencement date shall or may be done in a pending proceeding.

(3) These Rules, with the exception of Orders 29, 30 and 31, do not apply to a small claim proceeding unless the Court specifically so orders.

1.04 PROCEEDINGS IN ANOTHER COURT

(1) Except as the Court otherwise orders, these Rules apply, with the necessary modification, to proceedings commenced in another court and remitted or transferred to or removed into the Court on or after the commencement date as if they were a proceeding commenced in the Court on the day they were remitted, transferred or removed.

(2) For the purpose of this Part, proceedings commenced in another court and remitted or transferred to or removed into the Court on or after the commencement date shall be taken to be a pending proceeding.

1.05 ORDER IN PENDING PROCEEDING

(1) Except as provided in this rule, these Rules apply to an order made in a pending proceeding as if it had been given in a proceeding commenced after the commencement date.

(2) An order made in a pending proceeding before the commencement date may be enforced in accordance with these Rules, but otherwise the order shall have the same force and effect as if it were made under an Act or Rules previously in force.

(3) Without limiting subrule (2) -

- (a) no appeal may be brought, application to set aside or vary made, or other proceeding taken in respect of an order made before the commencement date which could not have been brought, made or taken in respect of the order under the former Rules immediately before the commencement date; and
- (b) process commenced under the former Rules to enforce an order made before the commencement date may be continued or carried out and aided in accordance with these Rules.

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1.06 PAYMENT INTO COURT

(1) In this rule, "payment into court" means, in relation to a pending proceeding, the payment into court of a sum of money in satisfaction of the claim in the manner provided by the former Rules.

(2) Where a payment into court was made in a pending proceeding before the commencement date, the former Rules continue to apply with respect to the payment as if these Rules had not been made.

(3) Without limiting subrule (2), a second or further payment into court may be made in accordance with the former Rules.

(4) In a pending proceeding a defendant who has made a payment into court may not serve an offer of compromise on the plaintiff.

Part 2 - Interpretation

1.07 INTERPRETATION

(1) In these Rules, unless the contrary intention appears -

"Act" includes an Act of the Commonwealth;

"corporation" means a body corporate, whether formed within or out of the Territory;

"counterclaim" means a claim by the defendant against the plaintiff in proceedings and includes a setoff;

"discovery" means discovery and inspection of documents or discovery by written interrogatories or oral examination;

"document" includes a video tape, audio tape, disc, film, facsimile or other means of recording;

"judgment given" means a judgment given by the Court at the trial of a proceeding or on the hearing of an application in a proceeding;

"legal practitioner" means -

- (a) a person whose name is on the Roll of Legal Practitioners kept in pursuance of section 16 of the *Legal Practitioners Act*;
- (b) the Secretary within the meaning of section 8 of the *Law Officers Act*;

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- (c) the Secretary to the Attorney-General's Department of the Commonwealth; or
- (d) an officer of the Attorney-General's Department of the Commonwealth authorised under section 55E(4) of the *Judiciary Act 1903* of the Commonwealth to act in the name of the Australian Government Solicitor;

"make discovery of documents" means make a list or an affidavit of documents complying with the requirements of this Chapter, file the list or affidavit and serve a copy on the party or person entitled to the discovery;

"officer", in relation to a corporation, includes a director, secretary, receiver, receiver and manager, official manager, liquidator and trustee administering a compromise or arrangement made between the corporation and another person;

"order made" means an order made by the Court at the trial of a proceeding or on the hearing of an application in a proceeding;

"originating process" means process by which a proceeding is commenced, and includes a third party notice and, where a counterclaim is made against a person not previously a party to the proceeding in which the counterclaim is made, the counterclaim;

"pleading" includes a statement of claim and includes particulars of a pleading;

"proceeding" includes a matter in the Court commenced by or under an Act or these Rules;

"proper officer" means an officer of the Court appointed by the Chief Magistrate in relation to the exercise of a power or the performance of a duty under this Chapter;

"question" means a question, issue or matter for determination by the Court, whether of fact or law or of fact and law, raised by the pleadings or otherwise at any stage of a proceeding by the Court, by a party or by a person, not a party, who has a sufficient interest;

"Registrar" means a person appointed under section 9 of the Act to be a Registrar, Deputy Registrar or Acting Registrar;

"the Act" means the *Local Court Act*.

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(2) In these Rules, a reference to a form by number is a reference to a form so numbered in the Schedule.

Part 3 - Miscellaneous

1.08 EXERCISE OF POWER

The Court may, of its own motion or on application, exercise a power under these Rules.

1.09 PRINCIPAL SEAT, &c.

(1) The principal seat of the Court shall be at Darwin.

(2) The Court shall have power to sit and act at any time and at any place the Chief Magistrate directs, for the transaction of any part of the business of the Court, or for the discharge of any duty which by a law in Force in the Territory it is required to discharge.

(3) For the purposes of subrule (2), the Chief Magistrate shall be deemed to have directed that the Court has power to sit or act at those places at which there was a Local Court in existence immediately before the commencement of these Rules.

1.10 SEAL OF THE COURT

(1) There shall be a common seal of the Court as determined by the Attorney-General.

(2) The common seal of the Court shall be kept at the principal seat of the Court in such custody as the Chief Magistrate determines.

(3) Each Registrar shall have in his or her custody a stamp the design of which shall as nearly as practicable be the same as the design of the common seal of the Court.

(4) A document, or a copy of a document marked with a stamp referred to in subrule (3) is as valid and effectual as if it had been sealed with the common seal of the Court.

1.11 PROCEDURE WANTING OR IN DOUBT

(1) Where the manner or form of the procedure -

(a) for commencing, or for taking a step, in a proceeding; or

(b) by which the jurisdiction, power or authority of the Court is exercisable,

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is not prescribed by these Rules or by or under an Act, the general principles of practice and the Rules and forms observed and used in the Supreme Court may, at the discretion of the Court, be adopted and applied to a proceeding with the necessary modification.

(2) An act done in accordance with a determination or direction under subrule (1) is regular and sufficient.

(3) An application for directions with respect to the commencement of a proceeding shall be made by application in which no person is named as defendant.

1.12 ACT BY CORPORATION

Where the Court makes an order that a corporation do an act, it may order that the act be done by an officer of the corporation specified by the Court.

1.13 POWER TO ACT BY LEGAL REPRESENTATIVE

(1) Unless the context or subject matter otherwise requires, an act, matter or thing which under the Act or these Rules or otherwise by law is required or permitted to be done by a party may be done by the party's legal representative.

(2) A legal practitioner will cease to be on the record when the legal practitioner files a notice of ceasing to act and the Court gives leave or the party's new legal practitioner files a notice of acting.

1.14 REPRESENTATION

A party may appear -

- (a) in person;
- (b) by a legal practitioner;
- (c) in the case of a corporation, by such officer as the Court thinks fit;
- (d) by an articulated clerk unless the Court otherwise orders; or
- (e) with the leave of the Court, by some other person.

1.15 SIGNATURE OF LEGAL PRACTITIONER

(1) Where a signature by a legal practitioner is required or permitted for the purpose of a proceeding, the signature of the legal practitioner by -

- (a) a partner of the legal practitioner;

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- (b) a legal practitioner who is an agent of the legal practitioner;
- (c) a partner of the agent; or
- (d) a legal practitioner in the employ of the legal practitioner or the agent,

shall be as sufficient for the purpose as the signature of the legal practitioner, except in the case of an oath.

(2) A signature made in pursuance of subrule (1) shall be accompanied by an indication of the capacity in which the signature is made.

1.16 FILING OF DOCUMENTS

If, by these Rules, a person is required to file a document, the document is filed by being lodged with and accepted by the Registrar in the office of the Court at the proper venue of the Court, unless the Court otherwise orders.

1.17 APPOINTMENTS AND DUTIES OF BAILIFF

(1) The Chief Magistrate shall appoint a bailiff or bailiffs as he or she considers necessary.

(2) A member of the Police Force of the Northern Territory has all the powers, and may perform all the duties and functions of, a bailiff of the Local Court.

(3) The bailiff shall carry out such duties as are authorised by these Rules on receipt of a warrant directed to him or her.

ORDER 2 - NON-COMPLIANCE WITH RULES

2.01 EFFECT OF NON-COMPLIANCE

(1) A failure to comply with these Rules is an irregularity and does not render a proceeding or a step taken or a document or order in the proceeding a nullity.

(2) Subject to rules 2.02 and 2.03, where there has been a failure to comply with these Rules, the Court may -

- (a) set aside the proceeding, either wholly or in part;
- (b) set aside a step taken, or a document or order in the proceeding; or
- (c) exercise its powers under these Rules to allow amendments and to make orders dealing with the proceeding generally.

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2.02 ORIGINATING PROCESS

The Court shall not wholly set aside a proceeding or a complaint by which the proceeding was commenced on the ground that the proceeding was commenced by the wrong process.

2.03 APPLICATION TO SET ASIDE FOR IRREGULARITY

The Court shall not set aside a proceeding or a step taken or a document or order in a proceeding on the ground of a failure to comply with this Chapter on the application of a party unless the application is made -

- (a) within a reasonable time after the applicant becomes aware of the failure; and
- (b) before the applicant has taken a fresh step (except for filing a defence) after becoming aware of the failure.

2.04 DISPENSING WITH COMPLIANCE

The Court may dispense with compliance with the requirements of these Rules either before or after the occasion for compliance arises.

ORDER 3 - TIME, DOCUMENTS AND REGISTRARS

Part 1 - Time

3.01 CALCULATING TIME

(1) Unless otherwise ordered by the Court, a period of time fixed by these Rules or by another order or by a document in a proceeding shall be calculated in accordance with this Rule.

(2) Where a time of one day or longer is to begin, or to be calculated, from a day or event, the day or the day of the event shall be excluded.

(3) Where a time of one day or longer is to end on, or to be calculated to, a day or event, the day or the day of the event shall be included.

(4) Where a period of 5 days or less would include a day on which an office of the Court is closed, that day shall be excluded.

(5) Where the last day for doing an act at an office of the Court is a day on which the office is not open, the act may be done on the next day the office is open.

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3.02 EXTENSION AND ABRIDGEMENT

(1) With the exception of the time limits imposed under rule 36.12 or under rule 30.04, the Court may extend or abridge a time fixed by these Rules or by an order fixing, extending or abridging time.

(2) Subject to rule 4.06, the Court may extend time under subrule (1) before or after the time expires whether or not an application for the extension is made before the time expires.

3.03 FIXING TIME

Where no time is fixed by these Rules or by order for doing an act in a proceeding, the Court may fix a time.

3.04 TIME FOR SERVICE

(1) In this rule, "document" does not include originating process.

(2) In calculating the time fixed by these Rules or by an order fixing, extending or abridging time a document that is served after 4.00 p.m. or on a day on which an office of the Court is not open the order shall be taken to have been served on the next day the office is open.

Part 2 - Documents

3.05 CONTENT AND FORM OF DOCUMENTS

(1) A document prepared by a party for use in the Court shall be prepared in accordance with this rule.

(2) A document shall be headed "In the Local Court at", stating the venue of the Court in which the proceeding has been or is to be commenced and shall show an identifying number assigned by the Court to the proceeding.

(3) A document shall be of durable paper 297 millimetres by 210 millimetres, the size known as International Paper Size A4, and be capable of receiving writing in ink.

(4) Except in the case of a form published by a law stationer, a document shall have double spacing between the lines and a left-hand margin of at least 25 millimetres.

(5) The text of a document shall be clear, sharp, legible and permanent.

(6) A document shall not bear an erasure or alteration that causes material disfigurement.

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(7) A document shall be endorsed with the title of the proceeding and an identifying number, a short description of the document and the name and address and the telephone, facsimile and reference numbers of the legal practitioner preparing it or, where the party acts without a legal practitioner, the name, address and telephone and facsimile numbers of the party.

(8) A document shall not contain a backsheet.

(9) Dates (other than months), amounts and other numbers shall be expressed in figures and not in words.

(10) The Court may require a document in a proceeding to be prepared in a manner it thinks fit.

3.06 REGISTRAR REFUSING TO ACCEPT DOCUMENTS

(1) A Registrar may refuse to accept a document where the Registrar considers that the form or contents of the document show that were the document to be accepted the proceeding so commenced would be irregular or an abuse of the process of the Court.

(2) Where a document for use in the Court is not prepared in accordance with these Rules or with an order of the Court -

(a) a Registrar may refuse to accept it for filing without the direction of the Court; and

(b) the Court may order that the party responsible shall not be entitled to rely on it in any manner in the proceeding until a document which is properly prepared is filed.

(3) The Court may direct a Registrar to accept a document for filing.

Part 3 - Registrars

3.07 JURISDICTION OF REGISTRARS

(1) In accordance with the Act and this Chapter, a Registrar may exercise the jurisdiction of the Court other than the jurisdiction to -

(a) make an order under Order 2 (Non-compliance with Rules);

(b) make an order under Order 21 (Injunctions and Preservation of Property);

(c) make an order under Order 22 (Summary Judgment for Plaintiff);

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- (d) make an order under Order 23 (Summary Stay or Dismissal of Claim and Striking out Pleading);
- (e) make an order under Order 24 (Summary Proceeding for Recovery of Possession of Land);
- (f) preside at the trial of a proceeding; and
- (g) authorise the issue of a warrant of arrest under Order 30.04 (Failure to attend in answer to Examination Summons).

(2) The Chief Magistrate may, by practice direction, provide that the Registrars at a specified office of the Local Court are not to exercise all or any jurisdiction conferred under subrule (1).

3.08 REFERENCE TO MAGISTRATE

If on an application to a Registrar under the Act or this Chapter, the Registrar considers that it is proper that the application be determined by a magistrate, the Registrar may refer the application to a magistrate.

3.09 APPEAL FROM REGISTRAR

(1) A person affected by an order made by a Registrar may appeal to a magistrate.

(2) An appeal may be made by application in accordance with Order 20.

(3) The appeal shall be by way of hearing *de novo*.

(4) Unless a magistrate otherwise orders, an appeal does not operate as a stay on the order of a Registrar.

(5) Except with the leave of the Registrar or a magistrate an appeal pursuant to this rule shall be commenced within 7 days after the date of the order.

ORDER 4 - PROCESS IN COURT

4.01 NAMES OF PARTIES

A person who commences a proceeding is called a plaintiff and a person against whom a proceeding is commenced is called a defendant.

4.02 FILING OF PROCESS

(1) A proceeding shall be commenced by filing a statement of claim in the office of the Court at the proper venue as specified in rule 27.03 of the Court.

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(2) If an office of the Court is closed, a statement of claim may be produced by the plaintiff to a magistrate or Registrar and on the plaintiff's undertaking that the statement of claim will be lodged in the office on the day the office is next open and giving such other undertaking as the magistrate or Registrar requires, the magistrate or Registrar may initial the statement of claim and it shall thereon be taken to have been filed.

4.03 CLAIM NOT TO BE DIVIDED

(1) A plaintiff shall not divide a claim or cause of action for the purpose of making 2 or more statements of claim.

(2) A plaintiff who has a claim for more than the amount for which a claim may be made in the Court may abandon the excess by so stating in the particulars of the claim and on proof of the claim shall be entitled to judgment.

4.04 FORM OF STATEMENT OF CLAIM

- (1) A statement of claim shall -
 - (a) state the full name of the plaintiff, an address for service of notices and documents on the plaintiff and, if the plaintiff sues in a representative capacity, the capacity in which the plaintiff sues;
 - (b) state the name and address of the defendant;
 - (c) where the plaintiff sues by a legal practitioner, state the name and firm and business address within the Territory and the telephone, facsimile and reference numbers of the legal practitioner and also, if the legal practitioner is the agent of another, the name and firm and the business address and the telephone, facsimile and reference numbers of the principal;
 - (d) contain -
 - (i) a concise statement of the nature of the claim;
 - (ii) particulars of the plaintiff's claim;
 - (iii) a statement of the relief or remedy sought;
 - (iv) in the case of a claim for a liquidated amount, a precise statement of the amount and the basis upon which it is calculated; and

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- (v) in the case of a claim for an unliquidated amount, the basis upon which it is estimated; and

(e) be in accordance with Form 4A.

(2) In addition to the matters specified in subrule (1), the statement of claim of a party who claims damages for bodily injury shall state -

- (a) particulars, with dates and amounts, of all earnings lost in consequence of the injury complained of;
- (b) particulars of loss of earning capacity, if any, resulting from the injury;
- (c) the date of the party's birth; and
- (d) the name and address of each of the party's employers commencing from the day 12 months before the party sustained the injury, the time of commencement and the duration of each employment and the total net amount, after deduction of income tax, that was earned in each employment.

4.05 COSTS TO BE SPECIFIED

(1) If the plaintiff claims a debt or liquidated demand only, the statement of claim shall be endorsed with a statement as follows:

"If you pay the amount of \$ and costs of \$ to the plaintiff or the plaintiff's legal practitioner without giving notice of defence you may avoid further costs.".

(2) The amount of costs stated in an endorsement shall be the amount of scale costs applicable to the amount claimed plus the fee, if any, for the filing and service of the statement of claim.

4.06 DURATION

(1) A statement of claim is valid for service for one year after the day it is filed.

(2) If a statement of claim has not been served on a defendant, the Court may from time to time extend the period of validity for such period from the day of the order as the Court directs, being not more than one year after that day.

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(3) An application for an extension under subrule (2) shall be made on or before a day on which a statement of claim would cease to be valid and no order for extension shall be made after a statement of claim ceases to be valid.

4.07 INTERLOCUTORY APPLICATION

Unless the Court otherwise orders, an interlocutory or other application in a proceeding shall be by application.

4.08 URGENT CASES

In an urgent case, the Court may, on the application of a person who intends to commence a proceeding and on the person's undertaking to commence the proceeding within such time as the Court directs, make any order which the Court might make if the applicant had commenced the proceeding and the application were made in the proceeding.

4.09 DISCONTINUANCE AND WITHDRAWAL

(1) A statement of claim, counterclaim or claim by third party notice may be discontinued, and a notice of defence may be withdrawn, at any time before the day of hearing without the leave of the Court.

(2) Notice of discontinuance or withdrawal shall be filed and served on each other party.

(3) Discontinuance or withdrawal is not effective until the notice under subrule (2) is filed.

4.10 COSTS ON DISCONTINUANCE OR WITHDRAWAL

Unless the Court otherwise orders, a party who discontinues or withdraws in accordance with rule 4.09 shall pay the costs of the other party to the time of the discontinuance or withdrawal.

4.11 STAY ON NEW PROCEEDING

If by reason of discontinuance or withdrawal a party is liable to pay the costs of another party and the party, before paying the costs, commences another proceeding for the same or substantially the same cause of action, the Court may by order stay the proceeding until the costs are paid.

4.12 GENERAL POWER OF AMENDMENT

For the purpose of determining the real question in issue between the parties to a proceeding, or of correcting a defect or error in a proceeding, or of avoiding multiplicity of proceedings, the Court may at any

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stage order that a document (including a statement of claim) in a proceeding be amended or that a party have leave to amend a document in the proceeding.

ORDER 5 - SERVICE

5.01 WHEN PERSONAL SERVICE NECESSARY

A document required or permitted to be served in a proceeding need not be served personally unless personal service is required by these Rules or by order.

5.02 PERSONAL SERVICE OF STATEMENT OF CLAIM

(1) Except where otherwise provided by or under an Act or this Chapter, a statement of claim with a copy of a notice of defence in accordance with Form 9A shall be served personally on each defendant.

(2) An affidavit or declaration of service shall be filed as soon as practicable after service, and in any case within 28 days after service.

5.03 HOW PERSONAL SERVICE EFFECTED

(1) Personal service of a document is effected by leaving a copy of the document with the person to be served or, if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.

(2) To effect personal service it is not necessary to show the original document.

5.04 SERVICE ON PARTICULAR PARTIES

Personal service of a document may be effected by serving the document in accordance with rule 5.03 -

- (a) in the case of a corporation - on the mayor, chairman, president or other officer of the corporation, or on the town clerk, clerk, treasurer, manager, secretary or other similar officer of the corporation;
- (b) in the case of a claim against partners in the name of their firm - on any of the partners;
- (c) in the case of an infant - on a parent or guardian of the infant and, if there is no such person, on the person with whom the infant resides or in whose care the infant is;

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- (d) in the case of a person under a disability as defined in rule 34.02 -
 - (i) on the person who, in accordance with rule 34.02(2), would be entitled to be litigation guardian in a proceeding to which the person with a disability was party; or
 - (ii) if there is no such person - on the person with whom the person under a disability resides or in whose care the person is;
- (e) in the case of the Commonwealth or the Crown in right of the Commonwealth - at the office of the Australian Government Solicitor; or
- (f) in the case of the Territory or the Crown in right of the Territory - at the office of the Solicitor for the Northern Territory.

5.05 ADDRESS FOR SERVICE

- be - (1) The address for service of a plaintiff shall
 - (a) where the plaintiff sues by a legal practitioner - the business address in the Northern Territory of the legal practitioner or his or her agent endorsed on the originating process; or
 - (b) where the plaintiff sues in person - the address endorsed on the originating process.
- be - (2) The address for service of a defendant shall
 - (a) where the defendant appears by a legal practitioner - the business address of that legal practitioner stated in the notice of appearance, being an address not more than 15 kilometres from the office of the court at which the originating process is filed or, where the business address of the defendant's legal practitioner is more than that distance from the office of the court, the business address of the legal practitioner's agent whose office is within that distance; or
 - (b) where the defendant appears in person - the address stated in the notice of defence or admission.

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5.06 HOW ORDINARY SERVICE EFFECTED

(1) Where personal service of a document is not required, the document may be served -

- (a) by leaving it at the proper address of the person to be served;
- (b) by sending it by prepaid post to the person to be served at the person's proper address;
- (c) where provision is made by or under an Act for service of a document on a corporation, by serving it in accordance with the provision;
- (d) where the legal practitioner for a party has facilities for the reception of documents in a document exchange, by delivering it into the facilities; or
- (e) where the legal practitioner for a party has the facility for the reception of documents by facsimile transmission, by transmitting the document to the facility.

(2) For the purpose of subrule (1), the proper address of a person is the address for service of the person in the proceeding but if, at the time service is to be effected, the person has no address for service, the proper address is -

- (a) in the case of an individual - the person's usual or last known place of residence or of business;
- (b) in the case of individuals suing or being sued in the name of a firm - the principal or last known place of business of the firm; and
- (c) in the case of a corporation - the registered or principal office of the corporation.

(3) The day of service of a document, where it is delivered into the facilities of a document exchange in accordance with subrule (1)(d), shall be taken to be -

- (a) the day following the day on which it was so delivered; or
- (b) where it was delivered on a Friday, the following Monday.

(4) In this rule, "document exchange" means a document exchange approved for the time being by the Chief Justice on the recommendation of the Law Society of the Northern Territory.

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5.07 IDENTITY OF PERSON SERVED

For the purposes of proof of service, evidence of a statement by a person of the person's identity or that the person holds some office is evidence of the person's identity or that the person holds the office.

5.08 ACCEPTANCE OF SERVICE BY LEGAL PRACTITIONER

Where in a proceeding a document is required or permitted to be served on a person and a legal practitioner makes on a copy of the document a note that the legal practitioner accepts service of the document on behalf of the person to be served, the document shall, unless the legal practitioner is shown not to have had authority to accept service, be taken to have been duly served on the person on the day on which the legal practitioner made the note or on such other day as is proved.

5.09 SUBSTITUTED SERVICE

(1) Where for any reason it is impracticable to serve a document in a manner required by this Chapter, the Court may order that, instead of service, such steps be taken as it specifies for the purpose of bringing the document to the notice of the person to be served.

(2) Where the Court makes an order under subrule (1), it may order that the document be taken to have been served on the happening of a specified event or on the expiry of a specified time.

(3) The Court may make an order under subrule (1) notwithstanding that the person to be served is out of the Territory or was out of the Territory when the proceeding commenced.

(4) In having regard to whether it is impracticable to serve a document, the Court shall consider -

- (a) whether the applicant has taken all reasonable steps to discover the whereabouts of the person to be served and to serve the person with the process that is the subject of the application;
- (b) the means of the applicant, the likely cost to the applicant and the nature of the process sought to be served;
- (c) whether by advertising or some other method the existence of the process is likely to come to the knowledge of the person to be served; and
- (d) all other relevant matters.

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5.10 CONFIRMATION OF INFORMAL SERVICE

Where for any reason a document has not been served in a manner required by or under a law in force in the Territory or by these Rules but steps have been taken for the purpose of bringing, or which may have a tendency to bring, the document to the notice of the person to be served, the Court may, by order, direct that the document be taken to have been served on the person on a date specified in the order.

5.11 SERVICE ON AGENT

(1) Where a contract has been entered into in the Territory by or through an agent residing or carrying on business in the Territory on behalf of a principal residing or carrying on business out of the Territory, originating process in a proceeding relating to or arising out of the contract may, by leave of the Court given before the determination of the agent's authority or of the agent's business relations with the principal, be served on the agent.

(2) Where an order giving leave is made under subrule (1) -

- (a) the order shall limit the time within which the defendant shall file a defence; and
- (b) a copy of the order and of the originating process shall be sent without delay by pre-paid post to the defendant at the defendant's proper address out of the Territory.

5.12 SERVICE UNDER AGREEMENT

Where the parties to a proceeding have, before or after the commencement of the proceeding, agreed that process may be served on a party or on a person on behalf of a party in a manner or at a place specified in the agreement, service in accordance with the agreement is sufficient service.

5.13 RECOVERY OF VACANT LAND

(1) In a proceeding for the recovery of land, the Court may, if it is satisfied that no person appears to be in possession of the land and that service -

- (a) of originating process cannot be otherwise effected on a defendant without undue delay or expense, authorise service on the defendant to be effected by affixing a copy of the originating process to a conspicuous part of the land; or

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- (b) could not otherwise have been effected on a defendant without undue delay or expense,

order that service already effected by affixing a copy of the originating process to a conspicuous part of the land shall be taken to be good service on the defendant.

- (2) This rule has effect notwithstanding that the defendant is out of the Territory at the time of affixing the copy of the originating process.

5.14 SERVICE OF NOTICE BY COURT

Where under these Rules or under an order of the Court a notice or other document is to be given to or served on a person by the Court, the notice or document shall, unless this Chapter otherwise provides or the Court otherwise orders, be sufficiently given or served in a manner in which a document not requiring to be served personally may be served under this Order.

5.15 AFFIDAVIT OR DECLARATION OF SERVICE

- (1) In the case of personal service of a document, an affidavit or declaration of its service shall state by whom it was served, the hour of the day, day of the week and date on which it was served, the place of service and the manner of identification of the person served.

- (2) In any other case of service of a document, an affidavit or declaration of its service shall state, with relevant dates, the facts constituting service.

- (3) A document purporting to be an affidavit or declaration of service shall be taken to be evidence of the proper service of the document unless the contrary is proved.

ORDER 6 - CLAIMS AND PARTIES

Part 1 - Joinder

6.01 JOINDER OF CLAIMS

- (1) A plaintiff may join any number of claims against a defendant whether the plaintiff makes the claim in the same or in different capacities and whether the claims are made against the defendant in the same or in different capacities.

- (2) If the Court considers that it is appropriate and convenient to hear separately any claims joined in one statement of claim, the Court may order that the claims be heard separately.

- (3) The total amount claimed where claims are joined in the same statement of claim shall not exceed the jurisdiction of the Court.

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6.02 JOINDER OF PARTIES PERMITTED

(1) Two or more persons may be joined as plaintiffs or defendants in a proceeding where, if separate proceedings were brought by or against each of them, some common question of law or fact would arise in all the proceedings.

(2) Persons may be joined whether or not -

- (a) all rights to relief are in respect of or arise out of the same transaction or series of transactions; or
- (b) each person is entitled to damages and the damages will need to be assessed individually.

6.03 PLAINTIFF SUING FOR NUMEROUS PERSONS

(1) Two or more persons may commence proceedings by a representative where they have the right to the same or substantially the same relief against the same person and if separate proceedings were brought by each of them against that person in respect of that right, some common question of law or fact would arise in all the proceedings.

(2) A representative proceeding may be brought whether or not -

- (a) all rights to relief are in respect of or arise out of the same transaction or series of transactions; or
- (b) each person is entitled to damages and the damages will need to be assessed individually.

6.04 COURT'S DISCRETION AS TO JOINDER AND PROCEDURE

The Court may on application rule that a joinder is oppressive and may make such orders as to the conduct of the proceeding as it thinks fit.

Part 2 - Consolidation

6.05 CONSOLIDATION OF PROCEEDINGS

If 2 or more proceedings are pending in the Court, and -

- (a) some common question of law or fact arises in both or all of them;
- (b) the rights to relief claimed in the proceedings are in respect of or arise out of the same transaction or series of transactions; or

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- (c) for any other reason it is desirable to make an order under this rule,

the Court may order the proceedings to be consolidated, or to be heard at the same time or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them.

6.06 WHERE SEVERAL STATEMENTS OF CLAIM AGAINST ONE DEFENDANT

(1) If several statements of claim by different plaintiffs against the same defendant are pending in the Court and the claims arise out of the same circumstances, the defendant may apply to the Court for an order that all but one of the statements of claim be stayed.

(2) An application under subrule (1) shall be accompanied by an undertaking by the defendant that the defendant will be bound by the decision or order in the proceeding to be heard in respect of all other proceedings to be stayed by the order.

(3) On an application under subrule (1) the Court shall select the proceeding to be heard.

ORDER 7 - COUNTERCLAIM

7.01 WHEN COUNTERCLAIM ALLOWED

(1) A defendant who has a claim against a plaintiff may counterclaim in the proceedings.

(2) Rule 6.01 applies to a counterclaim as if the plaintiff were the defendant and the defendant were the plaintiff.

(3) A defendant who counterclaims shall make the counterclaim when the notice of defence is given unless the Court otherwise orders.

7.02 FORM OF COUNTERCLAIM

A counterclaim shall contain -

- (a) a concise statement of the nature of the claim;
- (b) particulars of the counterclaim; and
- (c) a statement of the amount, relief or remedy sought.

7.03 TRIAL OF COUNTERCLAIM

A counterclaim shall be heard at the hearing of the claim unless the Court otherwise orders.

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7.04 COUNTERCLAIM ON STAY, &c., OF ORIGINAL PROCEEDING

If an original claim is stayed, dismissed, discontinued or struck out or if a decision is given for the plaintiff, a counterclaim nevertheless may be prosecuted.

ORDER 8 - THIRD PARTY PROCEDURE

8.01 CLAIMS BY THIRD PARTY NOTICE

If a defendant, as against a person not already a party to the proceeding (in this Order called "the third party"), claims -

- (a) a contribution or indemnity;
- (b) a relief or remedy relating to or connected with the original subject-matter of the proceeding and substantially the same as some relief or remedy claimed by the plaintiff; and
- (c) that a question relating to or connected with the original subject-matter of the proceeding should be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party,

the defendant may join the third party as a party to the proceeding and make the claim against the third party by filing and serving a third party notice in Form 8A.

8.02 FILING AND SERVICE OF THIRD PARTY NOTICE

(1) A claim against a third party shall be commenced by filing a third party notice.

(2) A third party notice shall be served on the third party in the same manner as a statement of claim is served on a defendant.

(3) A third party becomes a party to a proceeding when served with a notice.

(4) A third party shall not be served later than 28 days after the day on which a notice of defence is given unless the Court otherwise orders.

8.03 PLAINTIFF MAY JOIN THIRD PARTY

(1) If a defendant files a third party notice against a person the plaintiff may join the person as a defendant.

(2) A plaintiff shall give notice in writing to a third party, a defendant and the Registrar that the third party is joined as a defendant.

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(3) When a notice is filed a third party becomes a defendant to the proceeding.

8.04 SEPARATE DISPOSAL OR STAY OF THIRD PARTY PROCEEDING

If a third party notice has been filed and served the Court may at any time before the claim is determined -

- (a) order that the defendant's claim or part of the claim or the facts on which the claim or part of the claim depends be dealt with or enquired into separately; or
- (b) stay proceedings on the defendant's claim.

8.05 DIRECTIONS

The Court may give directions or make an order for directions in a proceeding involving the defendant and a third party.

8.06 TRIAL

Unless the Court otherwise orders -

- (a) a third party may attend and take part at the hearing of a claim; and
- (b) the third party shall be bound by the result of the hearing.

8.07 SUBSEQUENT PARTIES

With the leave of the Court, a third party who wishes to obtain relief of the kind mentioned in rule 8.01 against another person, may file and serve a notice on the other person and on every other person who is then a party to the proceeding and, if the other person is or other persons are not parties, shall serve on the other person and on each of the other persons a copy of the claim.

8.08 COUNTERCLAIM

If a defendant has served a counterclaim, this Order with the necessary modification, applies as if the defendant were the plaintiff and the plaintiff were the defendant.

8.09 CONTRIBUTION PROCEEDINGS

If a party claims against another party to a proceeding contribution pursuant to section 12 of the *Law Reform (Miscellaneous Provisions) Act*, a notice claiming relief of the kind described in rule 8.01 shall be in Form 8B.

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ORDER 9 - DEFENCES AND PARTICULARS

9.01 NOTICE OF DEFENCE AFTER SERVICE

(1) A notice of defence shall be filed within 28 days after service of the statement of claim unless the Court otherwise orders.

(2) A notice of defence shall -

- (a) state the name and address of the defendant;
- (b) if the defendant acts by a legal practitioner, the name and address and the telephone, facsimile and reference numbers of the legal practitioner;
- (c) contain a statement of the defendant's intention to defend the claim;
- (d) state particulars of the defence which shall include a summary of the material facts on which the defendant relies;
- (e) state the defence or defences relied on and if the defendant intends by way of defence to rely on -
 - (i) illegality or fraud, the defendant shall give particulars of the illegality or fraud;
 - (ii) minority, the defendant shall state the date and place of the defendant's birth;
 - (iii) limitation by statute, the defendant shall state the date after which the defendant claims that the statute began to run;
 - (iv) discharge under a law relating to bankruptcy or insolvency, the defendant shall state the date of the order sequestrating the defendant's estate and the court by which it was made and, if necessary, the date of the certificate of an order for the bankrupt's or insolvent's discharge;
 - (v) tender, the defendant shall state the date of the tender and where the amount tendered is less than the amount claimed, specify the item or items in the plaintiff's particulars of demand in respect of which tender was made; or

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(vi) any statutory defences; and

(f) be in accordance with Form 9A.

(3) A notice of defence fails to satisfy the requirements of this rule if it is in the form of general denials and non-admissions.

(4) Notice of defence may be given by serving a copy of the notice on the plaintiff or the plaintiff's legal practitioner at the address for service and by filing a copy with the Registrar.

(5) The defence of tender is not available unless the defendant pays into court the amount alleged to have been tendered not later than 5 days before the date of hearing of the proceeding.

9.02 PARTICULARS FROM PLAINTIFF

(1) A defendant may give notice to a plaintiff that the defendant requires further and better particulars of the plaintiff's claim.

(2) A notice seeking further and better particulars shall be in writing and shall specify in respect of which facts or matters alleged particulars are sought and shall be filed with the Court.

9.03 PARTICULARS FROM DEFENDANT

(1) A plaintiff may give notice to a defendant that the plaintiff requires further and better particulars of the defendant's defence.

(2) A notice seeking further and better particulars shall be in writing and shall specify in respect of which facts or matters alleged particulars are sought and shall be filed with the Court.

9.04 TIME FOR GIVING NOTICE

Unless the Court otherwise orders, a notice under rule 9.02 or 9.03 shall be given not later than 14 days before the day fixed for the prehearing conference to set the matter down for hearing.

9.05 PARTICULARS TO BE FILED

Within 7 days after receiving a notice seeking further and better particulars, a party shall file and serve the further and better particulars.

9.06 PARTICULARS IN COUNTERCLAIM

Rules 9.01, 9.03, 9.04 and 9.05 shall apply, with the necessary modification, to a counterclaim as if the plaintiff in the proceeding were a defendant.

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9.07 FAILURE TO GIVE PARTICULARS

If a party fails to comply with a notice requiring further and better particulars, the Court may make an order against the party -

- (a) if the party is a plaintiff, dismissing the statement of claim; and
- (b) if the party is a defendant, permitting the plaintiff to proceed as if a notice of defence had not been filed.

9.08 MONEY CLAIM AS DEFENCE

Where a defendant has a claim against a plaintiff for the recovery of a debt or damages, the claim may be relied on as a defence to the whole or part of a claim made by the plaintiff for the recovery of a debt or damages and may be included in the defence and set off against the plaintiff's claim, whether or not the defendant also counterclaims for the debt or the damages.

9.09 CONDITIONAL DEFENCE

(1) A defendant may file a conditional notice of defence.

(2) A conditional notice of defence shall be in accordance with Form 9B.

(3) A conditional notice of defence shall have effect for all purposes as an unconditional notice of defence unless, on application by the defendant, the Court otherwise orders.

(4) An application under subrule (3) shall be made within 14 days after the day the conditional notice of defence is filed.

ORDER 10 - ORDER IN DEFAULT OF DEFENCE

10.01 PLAINTIFF MAY APPLY FOR ORDER

If a defendant does not file a notice of defence within 28 days after the service of the statement of claim or, in the event that a notice of defence is struck out under rule 23.02, within 28 days after the order striking out the notice of defence is made, the plaintiff may apply for an order for default judgment.

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10.02 AFFIDAVIT REQUIRED

An application under rule 10.01 shall be filed with the Court and shall be accompanied by -

- (a) in the case where a claim is for a debt or liquidated demand, an affidavit of service of the statement of claim; and
- (b) in any other case -
 - (i) an affidavit of service of the statement of claim; and
 - (ii) an affidavit verifying the claim and the nature and extent of the injury, loss or damage suffered by the plaintiff.

10.03 REGISTRAR MAY MAKE ORDER OR REFER TO COURT

(1) If an application under rule 10.01 has been made and the Registrar is satisfied that an order should be made, the Registrar may make such an order.

(2) If an application under rule 10.01 has been made and the Registrar is not satisfied that an order should be made, the Registrar shall refer the matter to the Court for decision.

(3) If the Registrar refers an application to the Court, the Court may -

- (a) make the order sought in the application;
- (b) direct that a further affidavit be filed; or
- (c) give directions as to the application.

(4) If the Court, under subrule (3)(b), directs a further affidavit to be filed, the Registrar may, on the filing of the affidavit, make an order.

ORDER 11 - DISCOVERY

11.01 INTERPRETATION

In this Order, "possession" means possession, custody or power.

11.02 REQUEST FOR DISCOVERY

(1) Except where these Rules otherwise provide, a party to a proceeding may serve on another party a request for discovery requiring the party served to make discovery of all documents which are or have been in the other party's possession relating to the proceeding.

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(2) A request for discovery shall be in accordance with Form 11A.

11.03 TIME FOR REQUEST

A request for discovery shall be served not later than 14 days after the day on which notice of defence is given unless the Court otherwise orders.

11.04 LIST OR AFFIDAVIT OF DOCUMENTS

(1) A list or affidavit of documents for the purpose of making discovery of documents may be in accordance with Form 11B and shall -

- (a) identify the documents that are or have been in the possession of the party making the list or affidavit;
- (b) enumerate the documents in convenient order and describe each document or, in the case of a group of documents of the same nature, describe the group sufficiently to enable the document or group to be identified;
- (c) distinguish those documents that are in the possession of the party making the list or affidavit from those that have been but are no longer in the party's possession, and where a document that has been but is no longer in the party's possession, state when the party no longer had possession of the document and the party's belief as to what has become of it; and
- (d) if the party making the list or affidavit claims that a document in the party's possession is privileged from production, state sufficiently the grounds of the privilege.

(2) It is not necessary to set out correspondence between the legal practitioners for the parties.

(3) There shall be no privilege from setting out or production of documents on the sole ground that they relate solely to and do not tend to impeach the party's case, and do not relate to the other party's case or tend to support it.

11.05 TIME FOR MAKING DISCOVERY

A party on whom a request for discovery is served shall, within 14 days after service of the request, make discovery of documents.

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11.06 INSPECTION OF DOCUMENTS

(1) A party may, by notice to produce served on another party, require that the other party produce for inspection a document in the party's possession referred to -

- (a) in the list or affidavit of documents; or
- (b) in particulars of claim, notice of defence or counterclaim or in an affidavit.

(2) A party on whom a notice to produce is served in accordance with subrule (1) shall, within 7 days after service, serve on the party requiring production a notice appointing a time within 7 days after service of the notice under this subrule when, and a place where, the documents may be inspected.

(3) A notice to produce shall be in accordance with Form 11C.

11.07 FAILURE TO MAKE DISCOVERY

(1) If a plaintiff or other party claiming relief fails to make discovery, the Court may dismiss the claim.

(2) If a defendant or other party against whom relief is claimed fails to comply with a request for discovery, the Court may make an order against the person permitting the party seeking the order to proceed as if a notice of defence had not been filed.

(3) An application for an order under subrule (1) or (2) shall be made before the day fixed for hearing of the claim.

11.08 CONTINUING DISCOVERY

(1) A party on whom a request for discovery is served shall continue to give discovery in accordance with rule 11.04 until the commencement of the hearing.

(2) Discovery shall be made -

- (a) within 14 days after the document comes into the party's possession; or
- (b) as soon as practicable if the document comes into the party's possession at any time after 28 days before the prehearing conference.

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ORDER 12 - INTERROGATORIES

12.01 WHEN INTERROGATORIES ALLOWED

A party to a proceeding may serve on another party interrogatories relating to a question between them in the proceeding with the consent in writing of the party interrogated or with leave of the Court.

12.02 TIME FOR SERVING INTERROGATORIES

An application for leave to serve interrogatories shall be made within 28 days after the day on which notice of defence is given or, in a case where a party has requested discovery, within 14 days after the day on which discovery was given, unless the Court otherwise orders.

12.03 STATEMENT AS TO WHO TO ANSWER

If interrogatories are to be answered by 2 or more parties, the interrogating party shall state in the document containing the interrogatories which of the interrogatories each party is required to answer.

12.04 FILING INTERROGATORIES AND TIME FOR ANSWERS

If interrogatories are served -

- (a) the party who serves the interrogatories shall file a copy without delay; and
- (b) the party on whom interrogatories are served shall, within 28 days after service, answer by affidavit, file it and serve a copy on the party who served the interrogatories.

12.05 ANSWERS AND OBJECTIONS

(1) A party interrogated shall answer each interrogatory specifically by answering the substance of the interrogatory without evasion unless it is objectionable on any of the grounds in subrule (2).

(2) If a party objects to answering an interrogatory, the party shall state briefly on which of the following grounds the party objects to answer:

- (a) the interrogatory does not relate to a question between the party and the interrogating party;
- (b) the interrogatory is unclear or vague or too wide;
- (c) the interrogatory is oppressive;

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(d) the interrogatory requires the party to express an opinion that the party is not qualified to give;

(e) privilege, and shall also state sufficiently the grounds of privilege.

(3) The person answering interrogatories shall make such enquiries as are reasonable in order to enable him or her to provide a proper answer.

12.06 WHO TO ANSWER

Interrogatories shall be answered -

(a) where the person on whom the interrogatories are served is -

(i) a natural person, by the person; or

(ii) a corporation, by an officer of the corporation, or by a person duly authorised by an officer of the corporation to answer; or

(b) by such person as the Court directs.

12.07 FAILURE TO ANSWER INTERROGATORIES

(1) If a plaintiff or other party claiming relief fails to answer interrogatories, the Court may dismiss the proceeding.

(2) If a defendant or other party against whom relief is claimed fails to answer interrogatories, the Court may make an order against the person permitting the party seeking the order to proceed as if a notice of defence had not been filed.

(3) An application for an order under subrule (1) or (2) shall be made before the day fixed for hearing of the claim.

12.08 ANSWERS AS EVIDENCE

(1) On an application in or at the hearing of a proceeding a party may tender as evidence -

(a) one or more answers to interrogatories given by another party without tendering the others; or

(b) part of an answer to an interrogatory without tendering the whole of the answer.

(2) On the tender of the whole or part of an answer to an interrogatory, the Court may look at the whole of the answers and if another answer or a part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without the other answer or

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part, the Court may reject the tender unless the other answer or part is also tendered.

ORDER 13 - PRELIMINARY DISCOVERY AND DISCOVERY
FROM NON-PARTY

13.01 INTERPRETATION

In this Order -

"applicant" means applicant for an order under this Order;

"description" includes the name, place of residence, place of business, occupation and sex of the person against whom the applicant desires to bring a proceeding and whether the person is an individual or a corporation;

"possession" means possession, custody or power.

13.02 PRIVILEGE

An order made under this Order shall not operate to require the person against whom the order is made to produce a document which, on the ground of privilege, the person could not be required to produce -

- (a) in the case of an order under rule 13.03 or 13.05, if the applicant had commenced a proceeding against the person;
- (b) in the case of an order under rule 13.04 or 13.06, if the applicant had made the person a party to the proceeding; or
- (c) in the case of an order made under rule 13.07, if the person had been served with a witness subpoena for production of the document at the trial of the proceeding.

13.03 DISCOVERY TO IDENTIFY DEFENDANT

(1) If an applicant, having made reasonable enquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against the person (in this rule called "the person concerned") and it appears that some person has or is likely to have knowledge of facts, or has or is likely to have or has had or is likely to have had in the person's possession a document or thing tending to assist in such ascertainment, the Court may make an order under subrule (2).

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(2) The Court may order that the person concerned, and in the case of a corporation, the corporation by an appropriate officer, shall -

- (a) attend before the Court to be orally examined in relation to the description of the person concerned; and
- (b) make discovery to the applicant of all documents which are or have been in the person's or its possession relating to the description of the person concerned.

(3) If the Court makes an order under subrule (2)(a), it may order that the person concerned or corporation against whom or which the order is made shall produce to the Court on the examination a document or thing in the person's or the corporation's possession relating to the description of the person concerned.

13.04 PARTY AN APPLICANT

Rule 13.03 applies, with the necessary modification, where the applicant is a party to a proceeding and wishes to make in the proceeding against a person who is not a party a claim that the applicant could properly have made in the proceeding had the person been a party.

13.05 DISCOVERY FROM PROSPECTIVE DEFENDANT

Where -

- (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from a person whose description the applicant has ascertained;
- (b) after making all reasonable enquiries, the applicant has not sufficient information to enable the applicant to decide whether to commence a proceeding in the Court to obtain the relief; and
- (c) there is reasonable cause to believe that the person has or is likely to have or has had or is likely to have had in the person's possession a document relating to the question whether the applicant has the right to obtain the relief and that inspection of the document by the applicant would assist the applicant to make the decision,

the Court may order that the person shall make discovery to the applicant of a document of the kind described in rule 13.02(c).

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13.06 PARTY AN APPLICANT

Rule 13.05 applies, with the necessary modification, where the applicant is a party to a proceeding and there is reasonable cause to believe that the applicant has or may have the right to obtain against a person who is not a party relief that the applicant could properly have claimed in the proceeding had the person been a party.

13.07 DISCOVERY FROM NON-PARTY

On the application of a party to a proceeding the Court may order that a person who is not a party and in respect of whom it appears that the person has or is likely to have or has had or is likely to have had in the person's possession a document that relates to a question in the proceeding shall make discovery to the applicant of such a document.

13.08 PROCEDURE

(1) An application under rule 13.03, 13.04, 13.05, 13.06 or 13.07 shall be made by application served on each party to the proceeding and served personally on the person against whom the order is sought.

(2) An application under subrule (1) shall be supported by an affidavit -

(a) stating the facts on which the application is made; and

(b) specifying or describing the documents or a class of documents in respect of which the order is sought.

(3) A copy of the supporting affidavit shall be served on each person on whom the application is served.

13.09 INSPECTION OF DOCUMENTS

Rule 11.06 applies, with the necessary modification, to the inspection of the documents referred to in an affidavit of documents made and served in accordance with this Order as if the affidavit were an affidavit of documents as mentioned in rule 11.06.

13.10 COSTS

(1) On an application under this Order the Court may make an order for the costs and expenses of the applicant, of the person against whom the order is made or sought and of a party to the proceeding, including the costs of making and serving an affidavit of documents, or of producing a document for inspection in accordance with rule 13.09.

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(2) The Court may make an order under this Order on condition that the applicant give security for the costs and expenses of the person against whom the order is made.

ORDER 14 - ADMISSIONS

14.01 INTERPRETATION

In this Order, "authenticity of a document" means that a document -

- (a) is what it purports to be;
- (b) if it is an original or is described as such, is an original document and was printed, written, signed or executed as it purports to have been; or
- (c) if it is a copy or is described as such, is a true copy.

14.02 ADMISSION OF DEBT

(1) A party may, by notice served on another party and filed in the office of the Court, admit the debt by notice in Form 14A.

(2) On filing of an admission of debt the Court may enter judgment against the defendant.

(3) On filing of an application for an instalment order in accordance with Form 14A the Court may make an order in the terms of the application or otherwise as the Court thinks fit.

(4) On filing of an agreed instalment order the Court may make an order in terms of the application.

14.03 VOLUNTARY ADMISSION OF FACTS

(1) A party may, by notice served on another party and filed in the office of the Court, admit, in favour of the other party, for the purpose of the proceeding only, the facts specified in the notice.

(2) A party may, by leave of the Court, withdraw an admission made in accordance with subrule (1).

14.04 NOTICE FOR ADMISSION OF FACTS

(1) A party may serve on another party a notice in accordance with Form 14B stating that unless the other party, within a time to be expressed in the notice (which

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shall be not less than 14 days after service), disputes the facts specified in the notice, the other party shall, for the purpose of the proceeding only, be taken to admit the facts.

(2) If a party served with a notice does not dispute a fact specified by serving, within the time allowed for the purpose, a notice in accordance with Form 14C that the party disputes the fact, the party shall, for the purpose of the proceeding only, be taken to admit the fact.

(3) A party may, by leave of the Court, withdraw an admission which is taken to have been made under subrule (2).

14.05 NOTICE FOR ADMISSION OF DOCUMENTS

(1) A party may serve on another party a notice stating that unless the party, within a time to be expressed in the notice (which shall be not less than 14 days after service), disputes the authenticity of the documents mentioned in the notice, that party shall, for the purpose of the proceeding only, be taken to admit the authenticity of the documents.

(2) If a party served with a notice does not dispute the authenticity of a document mentioned by serving, within the time allowed for the purpose, notice that the party disputes its authenticity, the party shall, for the purpose of the proceeding only, be taken to admit its authenticity.

(3) A party may, by leave of the Court, withdraw an admission which is taken to have been under subrule (2).

(4) A notice under subrule (1) shall be in accordance with Form 14A, and a notice under subrule (2) shall be in accordance with Form 14B.

14.06 COST OF NON-ADMISSION OF FACT OR DOCUMENT

If a party serves a notice -

- (a) under rule 14.04(2) disputing a fact, and afterwards the fact is proved in the proceeding; or
- (b) under rule 14.05(2) disputing the authenticity, and afterwards the authenticity of the document is proved in the proceeding,

the party shall pay the costs of proof unless the Court otherwise orders.

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14.07 RESTRICTIVE EFFECT OF ADMISSION

An admission made by a party under this Order is for the purpose of the particular proceeding only and shall not be used against the party as an admission in some other proceeding.

14.08 JUDGMENT ON ADMISSIONS

(1) Where a party makes admissions of fact in a proceeding, whether by the party's pleading or otherwise, the Court may, on the application of another party, give the judgment or make the order to which the applicant is entitled on those admissions.

(2) The powers of the Court under subrule (1) are not dependent on the determination of some other question in the proceeding.

ORDER 15 - OFFERS OF COMPROMISE

15.01 INTERPRETATION

In this Order -

"claim" includes a counterclaim and a claim made in accordance with Order 8;

"defendant" includes a defendant by counterclaim and a party against whom a claim is made in accordance with Order 8;

"plaintiff" includes a defendant who serves a counterclaim and a party who makes a claim in accordance with Order 8;

15.02 DEFENDANT MAY MAKE OFFER

(1) A defendant may, at any time before judgment in a proceeding, serve on a plaintiff an offer of compromise of the plaintiff's claim on the terms specified in the offer.

(2) For the purpose of this Order, an offer of compromise shall -

(a) be in writing and be prepared in accordance with rule 3.05; and

(b) contain a statement to the effect that it is served in accordance with this Order.

(3) A defendant may serve more than one offer of compromise.

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15.03 ACCEPTANCE OF OFFER

(1) An offer of compromise shall be open to be accepted by the plaintiff at any time after service on the plaintiff.

(2) A plaintiff shall, within 3 days after service of an offer of compromise, serve a written acknowledgement of service on the defendant.

(3) A plaintiff may, at any time prior to judgment or withdrawal, accept an offer by serving notice of acceptance in writing on the defendant.

(4) An offer of compromise may be withdrawn by notice to the plaintiff at any time prior to acceptance.

(5) On the acceptance of an offer of compromise in accordance with subrule (3), unless the Court otherwise orders, the defendant shall pay the costs of the plaintiff in respect of the claim to and including the day the offer was served and the plaintiff shall pay the defendant's costs from the date 7 days after the offer was served to the date of acceptance.

(6) If an offer of compromise contains a term that purports to negative or limit the operation of subrule (1) or (5), the offer shall be of no effect for any purpose under this Order.

15.04 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.

15.05 DISCLOSURE OF OFFER TO COURT

(1) No statement of the fact that an offer of compromise has been made shall be contained in a document filed in the Court.

(2) If an offer of compromise has not been accepted, no communication with respect to the offer shall be made to the Court on the trial of the proceeding until after all questions of liability and the relief to be granted have been determined.

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

15.06 ENFORCEMENT OF ACCEPTED OFFER

Either party may apply to the Court for an order in the proceedings in terms of an offer of compromise which has been accepted.

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15.07 COSTS CONSEQUENCES OF FAILURE TO ACCEPT

(1) This rule applies to an offer of compromise that has not been accepted at the time of the final order of the Court.

(2) If an offer of compromise is made by a defendant and not accepted by a plaintiff, and the plaintiff obtains a judgment on the claim to which the offer relates not more favourable to the plaintiff than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim to and including the day the offer was served taxed on a standard basis and the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim thereafter taxed on a standard basis.

15.08 MULTIPLE DEFENDANTS

(1) Where 2 or more defendants are joined in proceedings in respect of a claim for debt or damages and rights of contribution or indemnity appear to exist between them, one or more of the defendants may make an offer of compromise of -

- (a) the plaintiff's claim; and
- (b) the claims of other defendants for contribution or indemnity.

(2) An offer of compromise under this rule must be served on the plaintiff and all other defendants.

(3) If such an offer is not accepted and the judgment is not less favourable to the defendant than the terms of the offer that the defendant made then, unless the Court otherwise orders, the defendant is entitled to an order against either the plaintiff or one or more of the other defendants as the Court shall determine for the defendant's costs in respect of the claim commencing 7 days after the day the offer was served, taxed on a standard basis.

15.09 OFFER TO CONTRIBUTE

(1) If in a proceeding a defendant makes a claim (in this rule called "a contribution claim") to recover contribution or indemnity against a person, whether a defendant to the proceeding or not, in respect of a claim for a debt or damages made by the plaintiff in the proceeding, a party to the contribution claim may serve on any other party to the contribution claim an offer to contribute toward a compromise of the claim made by the plaintiff on the terms specified in the offer.

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(2) The Court may take an offer to contribute into account in determining whether it should order that the party on whom the offer to contribute was served should pay the whole or part of -

- (a) the costs of the party who made the offer; or
- (b) the costs that the party is liable to pay to the plaintiff.

(3) Rules 15.04 and 15.05 shall, with the necessary modification, apply to an offer to contribute as if it were an offer of compromise.

15.10 OFFER OF COMPROMISE BY PLAINTIFF

Where a plaintiff makes an offer of compromise in accordance with this order and the plaintiff obtains a judgment on the claim not less favourable than the defendant shall pay the plaintiff's costs commencing on the date of service of the offer on an indemnity basis unless the Court otherwise orders.

15.11 INTEREST ON OFFER OF COMPROMISE

In considering the effect of an offer of compromise the Court shall not take into account interest that accrued on the claim the subject of the offer after the date of service of the offer.

15.12 WHERE TENDER BEFORE ACTION PLEADED

Where a defendant pleads or otherwise raises a defence of tender before action, the sum of money alleged to have been tendered shall, unless the Court otherwise orders, be paid into court.

15.13 NOTICE OF DEPOSIT

On paying money into court under rule 15.12 the defendant shall file a notice of deposit in accordance with Form 15A.

15.14 WITHDRAWAL BY DEFENDANT

(1) Subject to subrule (2), a defendant may, with the leave of the Court, withdraw the whole or a part of money paid into court by the defendant under this Part.

(2) A defendant may not make a withdrawal of money after the money has been accepted by the plaintiff.

(3) A withdrawal under subrule (1) shall be made by filing a notice of withdrawal of deposit in accordance with Form 15B.

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(4) On the filing of a notice of withdrawal of deposit under subrule (1) the defendant is entitled to receive payment of the money.

15.15 EFFECT OF ACCEPTANCE

(1) On a plaintiff accepting money in satisfaction of a claim as against a defendant paying money into court, the proceeding is stayed in relation to -

- (a) the claim as against the defendant;
- (b) an alternative claim against the defendant or some other defendant; and
- (c) where the defendant, in paying the money into court, has taken into account a counterclaim referred to in rule 15.19(3) made by the defendant, the counterclaim as against the plaintiff.

(2) Where a defendant pays money into court in answer to a claim and the plaintiff accepts the money in satisfaction of the claim as against the defendant, the liability of another person (whether a party to the proceeding or not) jointly with the defendant in respect of the claim shall be satisfied in the amount of the money accepted but shall not be discharged by the acceptance, except to the extent of the satisfaction.

15.16 ORDER FOR PAYMENT OUT AFTER ACCEPTANCE

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

- (a) where the money is paid into court in answer to a claim to which the defendant properly raises a defence of tender before the commencement of the proceeding;
- (b) where the plaintiff accepts the money after the beginning of the trial;
- (c) where the plaintiff is a person under a disability.

(2) On an application for an order under subrule (1) the Court shall, so far as practicable, deal with the costs of the proceeding.

15.17 MONEY NOT ACCEPTED

Where money paid into court by a defendant is not accepted, the defendant is entitled to receive payment of the money.

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15.18 NON DISCLOSURE

(1) Subject to subrules (2) and (3), the fact that money has been paid into court shall not be -

- (a) pleaded or disclosed in an affidavit; and
- (b) disclosed to the Court at the trial or hearing of a question of liability or the amount of debt or damages until all such questions have been decided.

(2) Subrule (1) does not apply where the money has been paid into court in answer to a claim to which the defendant pleads or otherwise properly raises a defence of tender before commencement of the proceeding.

(3) Subrule (1)(b) does not apply -

- (a) where the plaintiff accepts the money in pursuance of rule 15.15; or
- (b) where the disclosure is necessary for the purpose of an application under this Part.

15.19 EFFECT OF PAYMENT INTO COURT

(1) Where, in pursuance of this Part, a plaintiff before a trial or hearing begins -

- (a) accepts money paid into court by a defendant in answer to a claim;
- (b) discontinues the claim against all other defendants, if any, sued on the claim jointly with the defendant paying the money into court; and
- (c) discontinues all the plaintiff's other claims, if any,

then, after payment out, the plaintiff may, unless the Court otherwise orders, tax the plaintiff's costs of the proceeding in respect of the plaintiff's claims for relief against the defendant paying the money into court incurred before service of notice of the deposit of the money accepted.

(2) A party whose costs under this rule are not paid within 7 days after the signing of a certificate of taxation may enter judgment for the taxed costs.

(3) Where a defendant who has counterclaimed pays the money into court and in the notice of deposit states that the defendant takes into account the counterclaim with a view to its discontinuance in case the money is accepted and the money is accepted before the trial or hearing begins, the defendant may, unless the Court

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otherwise orders, tax the defendant's costs of the counter-claim incurred before service of notice of the acceptance.

(4) A defendant entitled under this rule to costs that are not paid within 7 days after the signing of a certificate of taxation may enter judgment against the party accepting the money for the taxed costs.

(5) Where a party has paid money into court, the Court may, in exercising its discretion as to costs, take into account that fact and the amount of money paid into court.

(6) Without limiting its discretion under subrule (5), the Court shall, in the exercise of its discretion, take into account the amount that an applicant recovers in respect of a claim in a proceeding as against the party paying money into court in respect of the claim.

ORDER 16 - EVIDENCE GENERALLY

16.01 EVIDENCE OF WITNESS

Except where otherwise provided by an Act or by these Rules or unless the Court otherwise orders, the evidence of a witness -

- (a) at the hearing of a claim shall be taken orally on oath or, subject to rule 16.02, by affidavit; and
- (b) on any other application shall be by affidavit.

16.02 USE OF AFFIDAVITS

Unless the Court otherwise orders, where an affidavit is to be used at the hearing of a claim -

- (a) it shall be filed and a copy served on the other parties to the proceedings not less than 14 days before the date of the hearing;
- (b) the Court may order the deponent to attend to be examined before the Court;
- (c) another party to the proceeding may serve notice within 7 days after service of the affidavit to the party intending to rely on the affidavit that he or she requires the attendance of the deponent at the hearing for cross-examination;
- (d) the Court may make specific orders as to witnesses' costs where witnesses are required to attend in accordance with paragraph (c); and

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- (e) where a deponent in respect of whom an order is made under paragraph (b) or a notice is served under paragraph (c) does not attend for examination, the Court may order that the affidavit be not received in evidence.

16.03 AFFIDAVITS RELATED TO MOTOR VEHICLE ACCIDENTS

An affidavit in accordance with Form 16A shall be admissible as evidence of the assessment or repair of a motor vehicle if the party relying on it has complied with rule 16.02.

16.04 ATTENDANCE AND PRODUCTION

(1) On the application of a party the Court may, in a proceeding, make an order for -

- (a) the attendance of a person for the purpose of being examined;
- (b) the attendance of a person and production by the person of a document or thing specified or described in the order; or
- (c) the production by a corporation of a document or thing described in the order.

(2) An order under subrule (1) shall not operate to require the person against whom the order is made to produce a document which the person could properly object to produce on the ground of privilege.

16.05 VIEW

The Court may, during a proceeding, inspect a place, process or thing.

16.06 ADMISSION OF DOCUMENTS

(1) If a document is produced to the Court from proper custody it may be read without further proof if it appears genuine and if no objection to its admission is made.

(2) If objection is taken to a document produced under subrule (1), the Court may adjourn the hearing for proof of the document and if the document is afterwards proved then, unless the Court otherwise orders, the party who made the objection shall pay the costs incurred by the objection.

(3) The Court may, on the hearing of a claim, if it considers it is proper to do so and there is no real dispute as to the contents or authenticity of the original document, admit as evidence a copy of the document without enquiring into the non-production of the original document.

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16.07 PERSON ABOUT TO LEAVE TERRITORY MAY BE ORDERED TO BE EXAMINED OR TO PRODUCE DOCUMENTS

(1) If the Court on the application of a party is satisfied by evidence on oath that a person is -

(a) able to give material evidence or to produce relevant or material documents or things relating to a pending claim; and

(b) likely to be absent from the Territory at the time the claim comes on for hearing -

the Court may order that, before the hearing -

(c) the evidence of the person be taken; or

(d) the documents or things be produced by the person.

(2) An order under subrule (1) shall be served on -

(a) the person named in the order; and

(b) all other parties to the claim.

(3) An order under subrule (1)(a) shall be served on the person named in the order personally.

(4) The person named in an order shall, at a reasonable time before the evidence is to be taken or documents are to be produced, be given a reasonable sum for expenses and rules 17.04 and 17.05 shall, with the necessary modification, apply to an order under this rule.

ORDER 17 - WITNESS SUMMONS

17.01 ATTENDANCE BY SUMMONS

(1) In a proceeding the Court may by summons order that a person named in the summons attend at the hearing or at any stage of the proceeding for the purpose of giving evidence or of producing a document or thing or for both purposes.

(2) A summons shall be in accordance with Form 17A, 17B, 17C or 17D, whichever is appropriate.

17.02 FILING OF SUMMONS

(1) An order by summons for the attendance of a person in a proceeding shall be taken to be made on the filing of the summons by a party.

(2) On the filing of a summons, the Registrar, on the request of the party filing it, shall sign a sufficient number of copies for service and proof of service.

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(3) A summons requiring the production of a document or thing may be addressed to one person only except in the case of partners where all the members of a firm may be addressed in the summons.

17.03 SERVICE

Service of a summons, if the person to whom the summons is addressed -

- (a) is a natural person, shall be by personal service of a copy of the summons on the person named in accordance with rule 5.03; or
- (b) is a corporation, shall be by service of a copy in accordance with rule 5.04(a) or, where provision is made by or under an Act for service of a document on a corporation, in accordance with the provision.

17.04 CONDUCT MONEY

A person to whom a summons is addressed shall be excused from complying with the summons unless conduct money, sufficient to meet the person's reasonable expenses of complying, is given or tendered to the person at the time of service of the summons or at a reasonable time before the day for compliance.

17.05 EXPENSES OF WITNESS

(1) If a person who attends in answer to a summons, before being sworn, requests the Court to fix the amount to be paid to the person as a witness, the Court shall do so.

(2) No witness shall be compelled to give evidence until the amount of expenses fixed by the Court has been paid.

17.06 SETTING ASIDE

The Court may set aside a summons either wholly or in part.

17.07 PRODUCTION BEFORE DATE OF ATTENDANCE

(1) A summons requiring production before the Court or an officer of the Court shall, unless the Court otherwise orders, permit the person to whom the summons is addressed, instead of producing the document or thing before the Court or officer of the Court, to produce it to the Registrar by hand or by post, in either case so that the Registrar receives it not later than 2 days before the day on which production is required by the summons to be made.

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(2) This rule does not apply to so much of a summons as requires a person to attend for the purpose of giving evidence.

ORDER 18 - AFFIDAVITS

18.01 FORM OF AFFIDAVIT

(1) An affidavit shall be made in the first person.

(2) Unless the Court otherwise orders, an affidavit shall state the deponent's place of residence and the deponent's occupation or, if the deponent has none, the deponent's description, and whether the deponent is a party to the proceeding or employed by a party.

(3) Notwithstanding subrule (2), where a deponent makes an affidavit in a professional or other occupational capacity, the affidavit may, instead of stating the deponent's place of residence, state the address of the deponent's place of business, the position of the deponent and the name of the deponent's firm or employer, if any.

(4) An affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(5) An affidavit shall be signed by the deponent, except as provided by rule 18.02(1), and the jurat shall be completed and signed by the person before whom it is sworn.

(6) Each page of an affidavit shall be signed by the person before whom it is sworn.

(7) The first page of an affidavit shall be headed immediately beneath the title of the proceeding with the name of the deponent and the date of swearing.

(8) An affidavit shall contain a statement of -

- (a) the name and address of the party on whose behalf it is filed;
- (b) the name of the deponent;
- (c) the date of swearing; and
- (d) the name and a contact address or telephone number of the person before whom it was sworn, printed legibly beneath the person's signature.

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18.02 AFFIDAVIT BY ILLITERATE, BLIND OR INCAPACITATED PERSON

(1) If it appears to the person before whom an affidavit is sworn that the deponent is illiterate, blind or physically incapacitated, he or she shall certify in or below the jurat that -

- (a) the affidavit was read in the person's presence to the deponent;
- (b) the deponent seemed to the person to understand it; and
- (c) if the deponent is illiterate or blind, the deponent made his or her signature or mark in the person's presence.

(2) If an affidavit is made by an illiterate, blind or physically incapacitated deponent and a certificate in accordance with subrule (1) does not appear on the affidavit, it may not be used in evidence unless the Court is satisfied that the affidavit was read to the deponent and that the deponent seemed to understand it.

18.03 CONTENT OF AFFIDAVIT

(1) Except where otherwise provided by or under these Rules an affidavit shall be confined to facts that the deponent is able to state of his or her own knowledge.

(2) On an application in a proceeding an affidavit may contain a statement of fact based on information and belief if the grounds are set out in the affidavit.

18.04 AFFIDAVIT BY 2 OR MORE DEPONENTS

If an affidavit is made by 2 or more deponents, the names of the persons making the affidavit shall be inserted in the jurat, except that, if the affidavit is sworn by both or all of the deponents at one time before the same person, it shall be sufficient to state that it was sworn by "each of the above-named" deponents.

18.05 ALTERATIONS

Notwithstanding an interlineation, erasure or other alteration in the jurat or body, an affidavit may be filed, unless the Court otherwise orders but may not be used without the leave of the Court unless the deponent and the person before whom it is sworn has initialled the alteration.

18.06 ANNEXURES AND EXHIBITS

(1) A document referred to in an affidavit shall be annexed to the affidavit but where it is too large it may be referred to as an exhibit.

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(2) An exhibit to an affidavit shall be identified by a separate certificate annexed to it bearing the same title as the affidavit and signed by the person before whom the affidavit is sworn.

18.07 TIME FOR SWEARING

Unless the Court otherwise orders, an affidavit may be used in a proceeding notwithstanding that it was sworn before the commencement of the proceeding.

18.08 IRREGULARITY

Notwithstanding an irregularity in form an affidavit may -

- (a) unless the Court otherwise orders, be filed; and
- (b) with the leave of the Court, be used in evidence.

18.09 FILING

- (1) An affidavit shall be filed.
- (2) Unless the Court otherwise orders, an affidavit that has not been -
 - (a) filed; or
 - (b) served or filed in compliance with an order in respect of its service or filing,

shall not be used by the party by whom or on whose behalf it was made.

18.10 AFFIDAVIT SWORN BEFORE PARTY

An affidavit sworn before the legal practitioner acting for the party on whose behalf it is to be used or before an employee of the legal practitioner may be used in evidence unless the Court otherwise orders.

ORDER 19 - EXPERT EVIDENCE

19.01 SERVICE OF STATEMENT OF EXPERT EVIDENCE

(1) A party who intends at a hearing to adduce the evidence from a person in his or her capacity as an expert shall, not later than 28 days before the day fixed for the hearing, serve on every other party a statement from the expert in accordance with subrule (2).

- (2) A statement from an expert shall -
 - (a) contain the name and address of the witness;

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- (b) describe the witness's qualifications to give evidence as an expert; and
- (c) give the substance of the evidence it is proposed to adduce from the witness as an expert.

(3) Except with the leave of the Court or by consent of the parties, a party shall not, except in cross-examination, adduce at the trial of a proceeding any evidence from a witness as an expert unless the party has served a statement under subrule (1).

19.02 MAKING STATEMENT OF OTHER PARTY EVIDENCE

A party may put in evidence a statement served on the deponent by another party in accordance with rule 19.01.

19.03 NOTICE FOR EXAMINATION

Where a plaintiff claims damages for personal injury -

- (a) a defendant may, in writing, request the plaintiff to submit to an appropriate examination by a medical expert at a specified time and place; and
- (b) where a plaintiff refuses or neglects without reasonable cause to comply with a request under paragraph (a), the Court may, if the request was on reasonable terms, stay the proceeding.

19.04 EXPENSES

(1) Unless the Court otherwise orders, the costs of and incidental to an examination referred to in rule 19.03 shall be costs in the proceeding.

(2) Without limiting subrule (1), the defendant shall, on request by the plaintiff whether before or after the plaintiff is examined, pay to the plaintiff a reasonable sum to meet the plaintiff's travelling and other expenses of and incidental to the examination.

19.05 REPORT OF EXAMINATION

A defendant for whom a plaintiff is examined under rule 19.03 shall, as soon as practicable after the examination, obtain from the medical expert a medical report and serve a copy on the plaintiff within 21 days unless the Court otherwise orders.

19.06 EXPERT'S REPORT ADMISSIBLE

(1) Where a copy of a report or statement is served in accordance with rule 19.01 or 19.05 the report or statement is admissible as evidence of the expert's

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opinion and, where the expert's oral evidence of a fact on which the opinion was based would be admissible, as evidence of fact.

(2) Unless the Court otherwise orders, a party on whose behalf a copy of a report or statement is served shall cause the expert to attend at the trial of the proceeding to be cross-examined if notice that such attendance is required is served on the party by another party not later than 14 days after the service of the report or at the time the proceeding is set down for hearing, whichever is the later.

(3) Where an expert in respect of whom a notice is served under subrule (2) does not attend for cross-examination, the Court may order that the report or statement not be received into evidence.

(4) Where an expert's report is received into evidence in a proceeding and the expert does not attend for cross-examination a party shall not, without the leave of the Court on such terms as may be just, lead evidence to contradict the evidence of the expert.

ORDER 20 - APPLICATIONS

20.01 APPLICATION OF ORDER

This Order applies to an application in a proceeding to the extent that another Order does not expressly apply.

20.02 FORM OF APPLICATION

An application in a proceeding made on notice to a person shall be by application, unless the Court otherwise orders, and shall be supported by affidavit where the applicant wishes to lead evidence in support of the application.

20.03 FORM AND FILING

(1) An application in a proceeding shall be in accordance with Form 20A.

(2) An application shall be filed and, on filing, an application shall be taken to have been made.

(3) On the filing of an application, or at a later time on the request of the applicant, the Registrar shall sign a sufficient number of copies of the application for service and proof of service.

(4) An affidavit in support of an application shall be filed before the hearing of the application.

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20.04 SERVICE

(1) An applicant shall serve a copy of an application and a copy of an affidavit in support on every person to whom notice of the application is to be given.

(2) An application shall be served within a reasonable time before the day for hearing named in the application, and in no case later than 2 p.m. on the day before the day for hearing or, where the office of the Court was closed on the day before the day for hearing, not later than 2 p.m. on the day the office was last open.

20.05 HEARING

(1) On the hearing of an application the Court may order that a copy of the application, and any document in support, be served on a person appearing to the Court to have a sufficient interest in the determination of the application.

(2) The Court may adjourn the hearing of an application on such terms as it thinks fit.

20.06 ABSENCE OF PARTY TO APPLICATION

(1) If a person to whom an application is addressed fails to attend, the Court may hear the application if satisfied that the application was duly served.

(2) If on an application the applicant fails to attend, the Court may dismiss the application or make such other order as it thinks fit.

ORDER 21 - INJUNCTIONS AND PRESERVATION OF PROPERTY

21.01 INJUNCTIONS

(1) The Court may grant an injunction at any stage of a proceeding or, in the circumstances referred to in rule 4.08, before the commencement of a proceeding.

(2) Unless the Court grants special leave to apply *ex parte*, all applications for injunctions shall be on notice.

(3) No person may apply for an injunction unless the person proffers an undertaking to pay to a party adversely affected by the injunction or undertaking such compensation, if any, as the Court thinks just in such manner as the Court directs which for the purpose of any proceedings is defined as the usual undertaking as to damages.

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21.02 PRESERVATION OF PROPERTY

(1) In a proceeding, the Court may make an order for the inspection, detention or preservation of property whether or not in the possession, custody or power of a party.

(2) An order under subrule (1) may authorise a person -

- (a) to enter on land or do any thing for the purpose of obtaining access to the property;
- (b) to take samples of the property;
- (c) to make observations, including the photographing, of the property;
- (d) to conduct an experiment on or with the property; or
- (e) to observe a process.

(3) If the Court makes an order under subrule (1) the Court may make an order for the costs and expenses of a person who is not a party to the proceeding.

(4) The Court may make an order under this rule on condition that the person applying for the order gives security for the costs and expenses of a person, whether or not a party, who will be affected by the order.

ORDER 22 - SUMMARY JUDGMENT FOR PLAINTIFF

22.01 APPLICATION FOR JUDGMENT

(1) Where a defendant has filed a defence to the whole or part of a claim, a plaintiff may at any time apply to the Court for judgment against the defendant on the ground that the defendant has no defence to the whole or part of the claim or no defence except as to the amount of the claim.

(2) Except by order of the Court, a plaintiff shall make only one application for judgment under this Order.

22.02 AFFIDAVIT IN SUPPORT

(1) An application for judgment shall be made by application supported by an affidavit verifying the facts on which the claim or the part of the claim to which the application relates is based and stating that, in the belief of the deponent, there is no defence to the claim or part or no defence except as to the amount claimed.

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(2) Where a statement in a document tends to establish a fact within subrule (1) and at the trial of the proceeding the document would be admissible by or under the *Evidence Act* or some other Act to verify the fact, the affidavit under subrule (1) may set out the statement.

(3) An affidavit under subrule (1) may contain a statement of fact based on information and belief if the grounds are set out and, having regard to all the circumstances, the Court considers that the statement ought to be permitted.

(4) A plaintiff shall serve an application and a copy of an affidavit or affidavits in support and of an exhibit referred to in it on the defendant not later than 7 days before the day for hearing named in the application.

22.03 DEFENDANT TO SHOW CAUSE

(1) A defendant may, by affidavit or otherwise to the satisfaction of the Court, show cause against an application.

(2) An affidavit under subrule (1) may contain a statement of fact based on information and belief if the grounds are set out.

(3) Unless the Court otherwise orders, a defendant shall serve a copy of an affidavit and of an exhibit referred to in the affidavit on a plaintiff not later than 3 days before the day for the hearing named in the application.

22.04 HEARING OF APPLICATION

(1) On the hearing of an application the Court may -

- (a) dismiss the application;
- (b) give such judgment for the plaintiff against the defendant on the claim or the part of the claim to which the application relates as is appropriate having regard to the nature of the relief or remedy claimed, unless the defendant satisfies the Court that in respect of the claim or part a question ought to be tried or that there ought for some other reason to be a trial of the claim or part;
- (c) give the defendant leave to defend with respect to the claim or the part of the claim to which the application relates either unconditionally or on terms in relation to giving security, paying money into court, time, the mode of trial or otherwise; or

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- (d) with the consent of all parties, dispose of the proceeding finally in a summary manner.

(2) The Court may stay the execution of a judgment given under subrule (1)(b) until after the trial of a counterclaim made by the defendant in the proceeding.

ORDER 23 - SUMMARY STAY OR DISMISSAL OF
CLAIM AND STRIKING OUT PLEADING

23.01 STAY OR JUDGMENT IN PROCEEDING

(1) Where a proceeding generally or a claim in a proceeding -

- (a) does not disclose a cause of action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the Court,

the Court may stay the proceeding generally or in relation to a claim or give judgment in the proceeding generally or in relation to a claim.

(2) Where the defence to a claim in a proceeding -

- (a) does not disclose an answer;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the Court,

the Court may give judgment in the proceeding generally or in relation to the claim.

(3) In this rule, a claim in a proceeding includes a claim by counterclaim and a claim by third party notice and a defence includes a defence to a counterclaim and a defence to a claim by third party notice.

23.02 STRIKING OUT PLEADING

Where a pleading -

- (a) does not disclose a cause of action or defence;
- (b) is scandalous, frivolous or vexatious;
- (c) may prejudice, embarrass or delay the fair trial of the proceeding; or
- (d) is otherwise an abuse of the process of the Court,

the Court may order that the whole or part of the pleading be struck out or amended.

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23.03 SUMMARY JUDGMENT FOR DEFENDANT

On application by a defendant who has filed a defence to a whole or part of a claim, the Court may, at any time, give judgment for the defendant against the plaintiff if the defendant has a good defence on the merits.

23.04 DECLARATORY ORDERS

No proceeding is open to objection on the ground that only a declaratory order is sought in the proceeding, and the Court may make binding declarations of right whether or not a consequential relief is or could be claimed.

ORDER 24 - SUMMARY PROCEEDING FOR RECOVERY OF POSSESSION OF LAND

24.01 APPLICATION

(1) Subject to subrule (2), this Order applies where the plaintiff claims the recovery of land which is occupied solely by a person who entered into occupation or, having been a licensee, remained in occupation without the plaintiff's licence or consent or that of a predecessor in title of the plaintiff.

(2) This Order does not apply where the land is occupied by a mortgagor or successor in title and the claim is made by the mortgagee or successor in title.

24.02 ORIGINATING PROCESS

(1) The plaintiff may make a claim in a proceeding in accordance with this Order.

(2) A proceeding shall be commenced by application.

24.03 WHO TO BE DEFENDANT

(1) Each person in occupation of land whose name the plaintiff knows shall be a defendant.

(2) If a plaintiff does not know the name of a person in occupation, a proceeding may be commenced without naming a person as defendant.

24.04 AFFIDAVIT IN SUPPORT

At the time a proceeding is commenced an affidavit shall be filed stating -

- (a) the interest of the plaintiff in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and

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- (c) that the plaintiff does not know the name of a person occupying the land who is not a defendant.

24.05 SERVICE

(1) An application and a copy of an affidavit and of an exhibit referred to in the affidavit shall be served on each defendant, if any, and on a person occupying the land who is not a defendant.

(2) Service on a defendant shall be personal.

(3) Service on a person occupying land who is not a defendant shall be effected -

(a) by -

(i) affixing a copy of the application and a copy of the affidavit to some conspicuous part of the land; and

(ii) if practicable, leaving in a letter-box or other receptacle for mail on the land a copy of the application and a copy of the affidavit enclosed in a sealed envelope addressed to "The Occupiers"; or

(b) in such other manner as the Court directs.

24.06 OCCUPIER MADE PARTY

The Court may order that a person occupying land who is not a defendant be made defendant or added as a defendant.

24.07 JUDGMENT FOR POSSESSION

A judgment for possession shall be in accordance with Form 24A.

24.08 WARRANT OF POSSESSION

(1) Where 3 months have elapsed since the judgment for possession in a proceeding under this Order took effect, a warrant of possession to enforce the judgment shall not be issued without the leave of the Court.

(2) An application for leave under subrule (1) may be made without notice to any person, unless the Court otherwise orders.

(3) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall be in accordance with Form 24B.

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ORDER 25 - PREHEARING CONFERENCES

25.01 PREHEARING CONFERENCE TO BE HELD

(1) The Court shall fix a date for the holding of a prehearing conference on the filing of a notice of defence and shall give notice to the parties.

(2) The date fixed under subrule (1) shall be 14 days after a defence is filed or as soon as practicable thereafter.

(3) A further prehearing conference to set the matter down for hearing shall be held 60 days after a defence is filed or as soon as practicable thereafter.

(4) At any stage of a proceeding the Court may order a prehearing conference to be held (whether after application by a party or of the Court's own motion).

25.02 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 -

(a) attend the conference either -

(i) in person; or

(ii) by legal practitioner; and

(b) be prepared to answer a question asked by the Court concerning the claim or its defence; and

(c) be in a position to respond properly to an offer of settlement made by some other party.

(2) At a prehearing conference -

(a) the plaintiff shall, as far as practicable, be in a position to indicate the precise extent, and all the particulars, of the claim; and

(b) the defendant shall, as far as practicable, be in a position to indicate the issues, if any, on which liability is denied and the grounds on which it is denied.

(3) If a party does not -

(a) attend a prehearing conference after receiving notice to attend; or

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- (b) comply with subrule (1)(b) or (c) -
the Court may -
 - (c) in the case of failure by a plaintiff, dismiss the claim;
 - (d) in the case of failure by a defendant or other party against whom a claim is made, make an order against the person permitting the party making the claim to proceed as if a notice of defence had not been filed; or
 - (e) in the case of a failure by a legal practitioner acting for either party, adjourn the conference to a further date and require the attendance of that party in person, order that the legal practitioner is not entitled to claim costs against his or her client related to the default or make an order for a personal award of costs against the legal practitioner.

25.03 HOLDING OF PREHEARING CONFERENCE

- (1) A prehearing conference shall be held expeditiously and informally.
 - (2) At a prehearing conference, the Court may -
 - (a) give such directions as it thinks necessary for the expeditious determination of the proceedings; or
 - (b) of its own motion or on application by a party -
 - (i) adjourn the conference and fix a date for the adjourned conference;
 - (ii) fix a date for the hearing of the proceeding; or
 - (iii) fix a date after which either party may apply for a formal determination of the proceeding,
- or a combination of those things, and give leave, on such terms and conditions as it thinks fit, for a party to apply.
- (3) For the purpose of, but without limiting the generality of, subrule (2)(a), directions given by the Court may relate to -
 - (a) the service of documents;
 - (b) the settling of issues for the hearing of the application;

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- (c) particulars of the statement of claim or defence to be provided;
- (d) the attendance of the parties to give evidence, whether or not on oath, at the prehearing conference or the hearing of a proceeding;
- (e) the facilitating of agreement between the parties;
- (f) the giving of evidence and the calling of witnesses;
- (g) discovery and inspection;
- (h) settling interrogatories;
- (j) dispensing with the requirement and delivery of pleadings, making of discovery, delivery of interrogatories and other matters of practice and procedure;
- (k) the making of admissions in relation to questions involved in the action;
- (m) the admission into evidence of facts or documents;
- (n) expediting further hearings; and
- (p) time limits for further pleadings.

25.04 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 hearing without the consent of all parties.

25.05 CASE MANAGEMENT STATEMENT TO BE FILED

No later than 2 days before the date fixed for the prehearing conference referred to in 25.01(3), each party shall file and serve on each other party a statement of case management in accordance with Form 25A.

ORDER 26 - HEARING

26.01 ORDER OF HEARING

The Court may give directions relating to the order of evidence and generally relating to the conduct of the hearing of a claim.

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26.02 ABSENCE OF PARTY

If, when the hearing of a proceeding is called on, a party is absent, the Court -

(a) may -

- (i) proceed with the hearing as if a notice of defence had not been filed;
- (ii) strike out the claim or dismiss the proceeding; or
- (iii) adjourn the hearing; and

(b) may, in addition to an action referred to in paragraph (a), order costs.

26.03 ADJOURNMENT OF HEARING

The Court may at any time adjourn a hearing on such terms as it thinks fit.

26.04 DISQUALIFICATION OF MAGISTRATE

A magistrate may disqualify himself or herself from presiding at the hearing of a proceeding if the magistrate previously presided at the prehearing conference in the proceeding and is of the view that his or her earlier involvement in the matter may prejudice its outcome.

ORDER 27 - VENUE AND TRANSFER OF PROCEEDINGS

27.01 VENUE OF COURT

(1) A proceeding shall be commenced in the proper venue of the Court.

(2) Subject to subrule (3), if -

- (a) a defendant objects that the venue from which process is issued is not the proper venue of the Court; and
- (b) the Court is satisfied, having regard to the convenience of the parties, that the proceeding should be transferred,

the Court may adjourn the proceeding to another venue of the Court.

(3) If a defendant objects that the venue from which process is issued is not the proper venue of the Court the defendant shall give notice of the objection to the plaintiff with the notice of defence unless the Court otherwise orders.

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(4) Notwithstanding that a proceeding is commenced in a venue of the Court which is not the proper venue within subrule (1), the Court may proceed to hear and determine the proceeding at the venue at which the proceeding was commenced or at another venue, as the Court thinks fit.

(5) A proceeding is not void or in any other way affected by reason only that the proceeding was heard and determined at a venue of the Court other than the proper venue within subrule (1).

(6) Notwithstanding anything in these Rules, the Court may of its own motion order the transfer of a proceeding from venue to venue of the Court.

27.02 TRANSFER OF PROCEEDING TO COURT

(1) Where the Supreme Court orders that a proceeding be heard in the Local Court, the file shall be transferred and the Local Court shall serve notice on all the parties that it has received the file and specify the date on which the order for transfer is made.

(2) If no statement of claim or particulars of claim has been filed in the other Court, the plaintiff shall file a concise statement of the particulars of the plaintiff's claim and shall serve a copy on all parties within 7 days after filing the statement.

(3) If by these Rules a time is prescribed for the doing of an act by reference to the date of filing notice of defence, the time for the doing of the act shall be determined by reference to the date on which the order for transfer was made.

27.03 PROPER VENUE

(1) The proper venue means the Court the office of which is nearest to -

- (a) the defendant's residence;
- (b) the defendant's residence at the time the claim arose;
- (c) the defendant's place of business;
- (d) the defendant's place of business at the time the claim arose;
- (e) the defendant's place of employment;
- (f) the defendant's place of employment at the time the claim arose; or
- (g) where the claim arose.

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(2) In this rule, "defendant" includes, where there are 2 or more defendants, any one of the defendants.

ORDER 28 - ORDERS

28.01 GENERAL RELIEF

The Court may at any stage of a proceeding on the application of a party make such order as the case requires notwithstanding that the order was not sought in the statement of claim.

28.02 DATE OF EFFECT

An order made by the Court shall, unless the Court otherwise orders, bear the date of and take effect on and from the day it is made.

28.03 TIME FOR COMPLIANCE

(1) Subject to subrule (2), an order which requires a person to do an act shall provide, unless the Court otherwise orders, that the act be done within 14 days after service of an order or of a certified extract of the order from the court records.

(2) Subrule (1) does not apply to -

- (a) so much of an order as requires a person to pay money otherwise than into court; or
- (b) an order for the delivery of goods.

28.04 ORDER MAY BE DRAWN UP: CERTIFIED EXTRACT

(1) An order in accordance with Form 28A may be drawn up by a party and verified by a Registrar if a party so desires.

(2) Except where a special form of order is prescribed by these Rules, a certified extract from the Court record of an order shall be sufficient for a purpose for which an order is required.

28.05 ORDERS BY CONSENT

(1) A party may consent to an application for an order made by another party by -

- (a) filing a notice of consent in accordance with Form 28B; or
- (b) endorsing the other party's consent on the application that is filed.

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(2) If all parties to a proceeding consent to the making of an order, a Registrar -

- (a) may, without delay, make an order in terms of the consents of the parties; or
- (b) if not satisfied that the order should be made, shall refer the matter to the Court.

(3) An order under subrule (2) takes effect from the date specified in the order or, if no date is specified, on the service of the order by the party filing the application on the other party or on all of the other parties.

(4) If some but not all parties to a proceeding consent to the making of an order, a Registrar -

- (a) may, without delay, make an order in terms of the consents of the parties as against those parties; or
- (b) if not satisfied that the order should be made, shall refer the matter to the Court.

(5) An order under subrule (4) takes effect from the date specified in the order or, if no date is specified, on the service of the order by the party filing the application on the other party or on all of the other parties consenting to the order.

28.06 ORDER WHERE EXCESS ABANDONED

An order of the Court in a claim referred to in rule 4.01(1) is conclusive evidence for abandoning the excess of a claim above the jurisdictional limit of the Court.

ORDER 29 - ENFORCEMENT OF ORDERS

Part 1 - Definitions

29.01 DEFINITIONS

(1) In this Order -

"attachment of earnings order" means an order under Part 5 or such an order as varied from time to time;

"earnings", in relation to a judgment debtor, means amounts payable to the judgment debtor by way of -

- (a) wages or salary, including fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary; or

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(b) pension, including -

- (i) an annuity in respect of past services whether or not the services were rendered to the person paying the annuity; and
- (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or a diminution in the emoluments, of an office or employment,

but does not include a pension payable to the judgment debtor under the *Social Security Act 1947* of the Commonwealth as amended from time to time, the *Veteran's Entitlements Act 1986* of the Commonwealth as amended from time to time or the *Seamen's War Pensions and Allowances Act 1940* of the Commonwealth as amended from time to time;

"employer", in relation to a judgment debtor, means a person (including the Crown, a Minister of the Crown and a statutory authority representing the Crown) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the judgment debtor;

"garnishee" means a person from whom a judgment creditor claims that a debt is due or accruing to a judgment debtor;

"judgment creditor" means the person entitled to enforce an order;

"judgment debt" means the amount of money payable under an order and includes the costs of recovering the amount;

"judgment debtor" means the person liable under an order;

"net earnings", in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer on that pay-day after the deduction from the earnings of -

- (a) a sum deducted from the earnings under Division 2 of Part 6 of the *Income Tax Assessment Act 1936* of the Commonwealth as amended and in force for the time being; and
- (b) a sum deducted from the earnings that would be an allowable deduction -

Local Court Rules

(i) under section 82H of that Act, other than life insurance premiums not being life insurance premiums payable in respect of superannuation; or

(ii) under section 82HA of that Act;

"normal deduction", in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between the pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer;

"officer", in relation to a corporation, has the same meaning as in section 5 (1) of the *Companies (Northern Territory) Code*;

"order" means an order made by the Court for the payment of -

(a) money, with or without costs; or

(b) costs alone;

"pay-day", means an occasion on which earnings to which the attachment of earnings order relates become payable;

"protected earnings" in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between the pay-day and either the last preceding pay-day or, where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer.

(2) For the purposes of the definition of "garnishee" in subrule (1), an amount standing to the credit of a judgment debtor in an account in a bank, building society, co-operative housing society or similar society, credit union, credit society or investment fund or corporation is a debt due or accruing to the judgment debtor, whether or not a demand or notice is required before money may be withdrawn.

Part 2 - Warrants Generally

29.02 ISSUE OF WARRANT

(1) A warrant of execution shall not be issued unless the person requesting it to be issued produces to a Registrar a form of the warrant.

Local Court Rules

(2) Where the warrant is to enforce an order for the payment of money, the person requesting it to be issued must file an application for the issue of a warrant which shall state -

- (i) the date of the order;
- (ii) the amount for which the order was made;
- (iii) the amount, including interest accrued and costs due and payable in respect of the order at the date of request with particulars stating how the amount is calculated or made up;
- (iv) the daily amount of interest, if any, that, subject to a future payment under the order, will accrue after the date of request in respect of the amount of the order and costs; and
- (v) particulars of any amounts paid on account or recovered under a previous warrant or other proceeding.

(3) A warrant is issued when the warrant is filed.

(4) A warrant shall bear the date of its issue.

(5) Any money received by a bailiff under a warrant of execution shall be paid without delay into the Court.

29.03 DURATION AND PRIORITY

(1) A warrant shall be valid for the purpose of execution for one year after the day it is issued.

(2) Notwithstanding subrule (1), a Registrar may from time to time extend the period of the validity of a warrant for the purpose of execution for a period of not more than one year from the day on which it would otherwise expire and so on from time to time.

(3) An extension under subrule (2) shall not be made after the day of expiry of the warrant.

(4) The priority of a warrant in respect of which an extension under subrule (2) has been made shall be determined by reference to the date and time on which the warrant was originally delivered to the person to whom it is directed for execution.

29.04 COSTS OF PRIOR EXECUTION

The amount for which a warrant may be issued shall include the costs, fees and expenses incurred in respect of a prior warrant of execution on the same order, whether the prior warrant was or was not productive.

Local Court Rules

29.05 INTERPLEADER

(1) If a claim is made to or in respect of property seized under a warrant, or in respect of the proceeds or value of the property, by a person other than the judgment debtor, a Registrar may, on the application of the person to whom the warrant is directed, issue an interpleader hearing notice directed to the judgment creditor and the person making the claim seeking relief by way of interpleader.

(2) The person to whom a warrant is directed may apply under subrule (1) whether or not proceedings have been brought against him or her in the Court or in some other court.

(3) A claimant under subrule (1) shall, within a reasonable time after the claimant has become aware or ought reasonably to have been aware of the execution of a warrant, give the person to whom the warrant is directed a notice in writing showing -

- (a) particulars of the property alleged to be the property of the claimant;
- (b) the grounds of the claim; and
- (c) the claimant's address and description.

(4) A notice under subrule (1) shall be in accordance with Form 29A.

(5) A notice under subrule (1) may be served on the judgment creditor and the claimant by leaving a copy at the address for service or sending a copy by security post to the address.

29.06 WHEN INTERPLEADER DECIDED AGAINST CLAIMANT

If the claim to property the subject of a warrant of seizure and sale is decided against the claimant, the costs of the person to whom the warrant is directed in the interpleader shall be retained by the person to whom the warrant is directed out of the proceeds of the execution of the warrant unless -

- (a) the party who procured the issue of the warrant requests the Court to order that the costs be paid by the claimant and the Court so orders; or
- (b) the Court otherwise orders.

29.07 ORDER AGAINST 2 OR MORE DEFENDANTS

(1) If an order is made against 2 or more defendants jointly, the order may be enforced by warrant or otherwise against any of the defendants as if the order had been made against the defendant separately.

Local Court Rules

(2) If an order against 2 or more defendants jointly is satisfied by one of the defendants, no further steps may be taken to enforce it against another defendant.

29.08 ORDER AGAINST PARTNERS

An order made against a firm may be enforced against any or all of the persons who were members of the firm at the time the cause of action arose.

Part 3 - Warrant of Seizure and Sale

29.09 WARRANT OF SEIZURE AND SALE

(1) If an order is made by the Court, a Registrar may on application by the judgment creditor issue a warrant of seizure and sale for the purpose of satisfying the judgment debt.

(2) A warrant of seizure and sale authorises the person to whom it is directed to seize and sell the personal property belonging to the judgment debtor with the exception of all personal property necessary for adequate living and continuation of work and, if the warrant so specifies, the land described in the warrant.

(3) Money or bank notes belonging to a judgment debtor may be seized under a warrant to seize property but need not be sold.

(4) Cheques, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to a judgment debtor may be seized under a warrant of seizure and sale and held as security for a judgment debt or the unsatisfied part of a judgment debt and when the time of payment arrives the person to whom the warrant is directed may demand and receive payment of them and may sue in a proper court in the name of the judgment debtor or in the name of a person in whose name the judgment debtor might have sued for the recovery of the money secured or made payable by them.

(5) Subject to this Order and except where otherwise expressly provided by these Rules, the rules, practice and procedure of the Supreme Court which apply to or are adopted by the sheriff in the execution of warrants of execution apply, with the necessary modification, to the execution of a warrant of seizure and sale.

29.10 FORM OF WARRANT

A warrant of seizure and sale shall be in accordance with Form 29B.

Local Court Rules

Part 4 - Warrant of Delivery

29.11 WARRANT OF DELIVERY

(1) If an order is made by the Court for delivery of goods or recovery of their assessed value, a Registrar may issue a warrant of delivery.

(2) If an order of the Court is for the assessed value of goods only, the order may be enforced by the same means as any other order for the payment of money.

(3) Rule 29.09(5) applies to execution of a warrant of delivery.

29.12 FORM OF WARRANT

A warrant of delivery shall be in accordance with Form 29C.

Part 5 - Attachment of Earnings Orders

29.13 ATTACHMENT OF EARNINGS ORDER

(1) If the Court is satisfied that a judgment debtor -

- (a) is a person to whom earnings are payable or are likely to become payable; and
- (b) has failed to comply with an order with respect to a judgment debt,

the Court may order a person who appears to the Court to be the judgment debtor's employer in respect of the earnings or part of them to make payments out of the earnings or part payments in accordance with rule 29.20.

(2) Unless the Court otherwise orders, if an attachment of earnings order is in force, no warrant or other process of execution shall issue and no order shall be made for the enforcement of the order to which the attachment of earnings order relates.

29.14 ATTACHMENT OF EARNINGS IN PLACE OF OTHER ORDERS

If an application is made to the Court to enforce an order, the Court may, instead of making some other order, make an attachment of earnings order.

29.15 APPLICATION FOR ATTACHMENT OF EARNINGS ORDER

(1) A judgment creditor may apply for an attachment of earnings order.

Local Court Rules

(2) An application under subrule (1) shall be in accordance with Form 29D and shall be supported by affidavit which may contain statements of fact based on information and belief if the grounds are set out.

(3) The affidavit shall be in accordance with Form 29E.

(4) An application, a copy of the affidavit and a notice in accordance with Form 29F relating to the property and assets of the judgment debtor and the debts, liabilities and other financial obligations of the judgment debtor, shall be served on the judgment debtor not less than 14 days before the day for hearing named in the summons.

29.16 EXAMINATION OF JUDGMENT DEBTOR

(1) On an application for an attachment of earnings order or to enable an application to be made, the Court may direct -

(a) the judgment debtor to attend for an oral examination at the time and place specified in the direction; or

(b) a person who appears to the Court to owe money to the judgment debtor or to be the employer of the judgment debtor to give to the Court a statement, signed by or on behalf of the person containing such particulars as are specified in the direction, of money owed by the person to the judgment debtor that became payable during a period specified in the direction.

(2) On an oral examination the Court shall examine a judgment debtor as to the following matters:

(a) the amount and source of the income of the judgment debtor;

(b) the property and assets of the judgment debtor;

(c) the cash that is readily available to the judgment debtor or that can be made so available;

(d) the debts, liabilities and other financial obligations of the judgment debtor,

and may examine a judgment debtor in relation to any other matter related to the financial circumstances generally of the judgment debtor and the judgment debtor's means and ability to satisfy the judgment debt.

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(3) A document purporting to be a statement referred to in subrule (1)(b) is admissible in evidence in proceedings for the enforcement of the order.

(4) The provisions of subrule (1)(a) are without prejudice to any other mode of enforcing the attendance of the judgment debtor before the Court.

(5) An application for an order under subrule (1) shall be in accordance with Form 29G supported by affidavit in accordance with Form 29H.

(6) An order under subrule (1) shall be in accordance with Form 29J.

29.17 MAKING OF ORDER IN ABSENCE OF DEBTOR

(1) If an application is made to the Court for an attachment of earnings order and the Court is satisfied -

- (a) that the judgment debtor has been served with a copy of the application;
- (b) that the judgment debtor has had a reasonable opportunity of attending the hearing;
- (c) that the judgment debtor is employed by a known employer; and
- (d) in relation to the earnings of the judgment debtor,

the Court may make an attachment of earnings order in the absence of the judgment debtor.

(2) For the purposes of this rule, the Court may act on -

- (a) evidence given by or on behalf of the judgment debtor's employer;
- (b) evidence given by the judgment debtor's spouse; or
- (c) a statement or information furnished under rule 29.16(1).

(3) If the Court, in considering an application for an attachment of earnings order in the absence of the judgment debtor or his or her spouse -

- (a) has before it sufficient evidence in the opinion of the Court on which to specify a protected earnings rate and a normal deduction rate, the Court shall specify the rates; or

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- (b) does not have such evidence before it, the Court may, without specifying the rates, make an order requiring the payment by the judgment debtor's employer to the judgment creditor of such amount as the Court thinks reasonable having regard to the circumstances of the judgment debtor so far as they are known to the Court.

29.18 CONTENTS OF ORDER

(1) An attachment of earnings order shall specify either generally or in relation to a particular pay-day the normal deduction rate, that is to say, the rate that the Court considers reasonable for the earnings of the judgment debtor to be applied in satisfying the order to which the attachment of earnings order relates but not exceeding a rate that appears to the Court to be necessary for the purpose of securing payment -

- (a) of the amount due and unpaid under the order; and
- (b) within a reasonable time of costs ordered by the Court to be paid by the judgment debtor.

(2) An attachment of earnings order may specify differing deduction rates to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to other pay-days.

(3) An attachment of earnings order shall also specify the protected earnings rate, that is, the rate below which, having regard to the resources and needs of the judgment debtor and of some other person for whom the judgment debtor provides or reasonably may provide, the Court considers it unreasonable for the earnings to which the order relates to be reduced by a payment under the order.

(4) An attachment of earnings order shall specify an amount in respect of the clerical and administrative costs of making payments under the order which an employer is entitled to deduct in respect of each payment from the earnings of the judgment debtor in addition to any other amount.

- (5) Unless the Court has -

- (a) received from the judgment debtor a completed form pursuant to the notice in accordance with Form 29F given under rule 29.15(4); or

(b) examined the judgment debtor as to the matters, the Court shall not under subrule (3) specify as the protected earnings rate a rate that is less than 80% of the net earnings of the judgment debtor.

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(6) An attachment of earnings order shall be in accordance with Form 29K.

29.19 SERVICE OF ORDER

(1) An attachment of earnings order shall be served on a judgment debtor and on the person to whom the order is directed.

(2) There shall also be served on a person to whom an attachment of earnings order is directed -

(a) a notice informing the person of the effect of the order and of the person's obligation under this Part; and

(b) 2 forms of notice that the judgment debtor is not in the person's employ.

(3) A notice under subrule (2)(a) shall be in accordance with Form 29L and a notice under subrule 2(b) shall be in accordance with Form 29N.

(4) The order shall not come into force until the end of 7 days after the day on which the order is served on the person to whom the order is directed.

29.20 EMPLOYER TO MAKE PAYMENTS

(1) An employer to whom an attachment of earnings order is directed shall, in respect of each pay-day whilst the order is in force, if the net earnings of the judgment debtor exceed the sum of -

(a) the protected earnings of the judgment debtor; and

(b) so much of an amount by which the net earnings that became payable on a previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any other previous pay-day,

pay, so far as the excess permits, to the person specified in the order the normal deduction in relation to that pay-day and so much of the normal deduction in relation to a previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

(2) A payment made by an employer under subrule (1) is a valid discharge to the employer as against the judgment debtor to the extent of the amount paid.

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29.21 DISCHARGE OR VARIATION OF ORDER

(1) If an attachment of earnings order is in force the Court may, on the application of the judgment creditor or the judgment debtor, discharge, suspend or vary the order.

(2) An order suspending or varying an attachment of earnings order shall be served on the respondent to the application and the person to whom the attachment of earnings order is directed.

(3) An order suspending or varying an attachment of earnings order does not come into force until the end of 7 days after the day on which the order is served on the person to whom it is directed.

29.22 CESSATION OF ATTACHMENT OF EARNINGS ORDER

(1) An attachment of earnings order ceases to have effect -

(a) on being discharged under rule 29.21; or

(b) unless the Court otherwise orders, on the making of another order for the recovery of the money owing under the order in relation to which the attachment of earnings order was made.

(2) If an attachment of earnings order ceases to have effect, a Registrar shall promptly give notice in accordance with Form 29M to the person to whom the order was directed.

(3) If an attachment of earnings order ceases to have effect, the person to whom the order is directed does not incur a liability in consequence of treating the order as still in force at any time before the end of 7 days after the day on which the notice required by subrule (2) or a copy of the order discharging the attachment of earnings order is served on the person.

29.23 TWO OR MORE ATTACHMENT OF EARNINGS ORDERS IN FORCE

(1) If earnings become payable to a judgment debtor and there are in force 2 or more attachment of earnings orders, whether made under this Act or otherwise, in relation to the earnings, the person to whom the orders are directed shall comply with -

(a) the orders according to the respective dates on which they took effect and shall disregard an order until the earlier order had been complied with; and

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- (b) an order as if the earnings to which the order relates were the residue of the earnings of the judgment debtor after the making of a payment under an earlier order.

(2) For the purpose of this rule, an attachment of earnings order which has been varied under rule 29.22 is to be taken to have been made as so varied on the day on which the attachment of earnings order was made.

29.24 NOTICE TO JUDGMENT DEBTOR OF PAYMENTS

(1) A person who makes a payment in compliance with an attachment of earnings order shall give to the judgment debtor a notice specifying the particulars of the payment.

(2) If a person served with an attachment of earnings order directed to the person is not the employer of the judgment debtor at the time of service of the order, the person shall, promptly after service of the order, give notice in writing accordingly to a Registrar.

(3) If a person served with an attachment of earnings order directed to the person is the employer of the judgment debtor at the time of service of the order but ceases to be the judgment debtor's employer at any time thereafter, the person shall, promptly after ceasing to be the judgment debtor's employer, give notice in writing accordingly to a Registrar.

29.25 DETERMINATION OF EARNINGS

(1) The Court shall, on the application of the person to whom an attachment of earnings order is directed, determine whether payments to the judgment debtor of a particular class or description specified in the application are earnings for the purpose of the order.

(2) A person to whom an attachment of earnings order is directed who makes an application under subrule (1) does not incur a liability for failing to comply with the order with respect to a payment of the class or description specified in the application that is made by the person to the judgment debtor while the application, or an appeal from an order made on the application, is pending.

(3) Subrule (2) does not apply in respect of a payment made before an application is withdrawn or an appeal from an order made on the application is abandoned.

29.26 SERVICE

An order or document that under this Part is required or permitted to be served on a person shall be served personally on the person.

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Part 6 - Attachment of Debts

29.27 ATTACHABLE DEBTS

A debt may be attached under this Part if the debt -

- (a) is due or accruing to the judgment debtor from the garnishee on the day an order for the filing and service of a garnishee summons is made; or
- (b) becomes due or accrues to the judgment debtor from the garnishee between the day an order for the filing and service of a garnishee summons is made and the day for hearing marked in the summons.

29.28 ORAL EXAMINATION OF JUDGMENT DEBTOR

(1) If an order is made by the Court, a Registrar may, on the application of a judgment creditor, issue a summons calling on the judgment debtor (or, if the judgment debtor is a corporation, an officer of the corporation) to appear at a sitting of the Court nearest or most convenient to the judgment debtor's or the officer's place of residence or business at the time specified in the summons to be orally examined by a Registrar as to the matters specified in rule 29.16(2).

(2) A Registrar may issue a summons calling on other persons to appear to give evidence or to produce documents or to give evidence and to produce documents.

(3) Persons summoned to appear under this rule may be examined on oath.

(4) At an examination a Registrar may make such order as to the costs of application, summons and examination as is appropriate.

(5) At an examination under this rule, unless both parties consent, no persons other than the judgment creditor and the judgment debtor and their counsel or legal practitioners may be present.

29.29 APPLICATION FOR SUMMONS

(1) An application for a summons under rule 29.28 shall be by affidavit which shows that -

- (a) the judgment is unsatisfied, either wholly or to a stated extent; and
- (b) a debt -
 - (i) is due or accruing to the judgment debtor from the garnishee; or

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- (ii) will or is likely to become due or accrue to the judgment debtor from the garnishee.

(2) Where an application is made for an order under rule 29.28 in respect of a debt within subrule (1)(b)(ii), the affidavit shall give particulars identifying the transaction between the judgment debtor and the garnishee under which the debt will or is likely to become due or accrue and state the date or likely date it will become due or accrue.

(3) An affidavit under this rule may contain statements of fact based on information and belief if the grounds are set out.

29.30 ORDER FOR ATTACHMENT OF DEBT

(1) If an order is made by the Court, a Registrar may, on the application of the judgment creditor, order that all debts (other than earnings within the meaning of this Order) due or accruing from a garnishee to the judgment debtor shall be attached to answer the original order.

(2) A judgment debtor may apply for an order under subrule (1) without notice to any person and either before or after the examination of the judgment debtor under rule 29.28.

(3) On application for an order for the attachment of a debt the Court may direct the garnishee to attend before the Court and if such an order is made the Registrar shall issue a summons in accordance with Form 29P.

(4) An order shall not be made under subrule (1) unless it is shown by affidavit -

- (a) that the original order is unsatisfied, either wholly or to a stated extent; and
- (b) that -
 - (i) a debt is due or accruing to the judgment debtor from the garnishee; and
 - (ii) the garnishee is within the Territory.

(5) A Registrar may refuse to make an order under subrule (1) if the Registrar is of the opinion that the remedy being sought is worthless or vexatious on account of the smallness of the amount to be recovered or of the debt sought to be attached or otherwise.

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(6) The judgment creditor may appeal to a magistrate against the refusal of the Registrar to make an order under subrule (1).

(7) An order made under subrule (1) shall be served personally on the garnishee within 7 days after the making of the order and the order binds the debts to which it applies at the end of the period of 14 days after it has been served on the garnishee unless within the period the garnishee applies to the Court to have the order set aside.

(8) An order under subrule (1) shall be in accordance with Form 29Q or 29R, whichever is appropriate.

29.31 DISPUTE OF LIABILITY BY GARNISHEE

If on the hearing of an application in which the garnishee disputes liability to pay the debt attached, the Court may determine the question of liability or give directions for its determination.

29.32 FAILURE TO COMPLY

If a garnishee fails to comply with a binding order under rule 29.30 the judgment creditor may apply to the Court to have the order enforced against the garnishee by means of this Order.

29.33 CLAIM BY ANOTHER PERSON

If on the hearing of an application for an attachment of debts order it appears to the Court that a person other than the judgment debtor may be entitled to the debt sought to be attached or to a charge or lien on it, the Court may order the person to appear and then determine the entitlement or give directions for its determination.

29.34 DISCHARGE OF GARNISHEE

A payment made by a garnishee in compliance with, and execution levied against a garnishee under, an attachment of debts order is a valid discharge of the garnishee's liability to the judgment debtor to the extent of the amount paid or levied even if subsequently the garnishee proceedings are set aside or the order from which they arose is reversed or varied.

Part 7 - Warrant of Possession

29.35 FORM OF WARRANT

A warrant of possession shall be in accordance with Form 29S.

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29.36 REMOVAL OF GOODS ON WARRANT OF POSSESSION

(1) On the execution of a warrant of possession a bailiff need not remove any goods found on land.

(2) The bailiff shall mark goods seized under subrule (1) and not removed.

ORDER 30 - EXAMINATION OF JUDGMENT DEBTOR

30.01 INTERPRETATION

In this Order, "examination summons" means a summons issued under section 26(1) of the Act.

30.02 SUMMONS FOR EXAMINATION OF JUDGMENT DEBTOR

(1) An application for the issue of an examination summons shall be in accordance with Form 30A.

(2) An examination summons shall be in accordance with Form 30B.

(3) Where the judgment debtor is a corporation the summons may require an officer of the corporation to attend to be orally examined.

(4) An application shall be supported by affidavit evidence of default in payment of the judgment.

(5) The judgment creditor shall serve a copy of the examination summons on the judgment debtor not later than 14 days before the examination date and shall tender conduct money at the time of service.

30.03 EXAMINATION OF JUDGMENT DEBTOR

(1) An examination under an examination summons need not be conducted in open court.

(2) An examination shall be conducted by -

(a) the Court;

(b) the judgment creditor; or

(c) a person in the exclusive employ of the judgment creditor.

(3) Where the Court conducts the examination, the Court need not, confine itself to the matters listed in Form 29F.

(4) After an examination has been conducted the Court may make an order for instalments.

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30.04 FAILURE TO ATTEND IN ANSWER TO EXAMINATION SUMMONS

(1) If, at the time set down (whether originally or on adjournment) for the examination of a judgment debtor before the Court -

- (a) the judgment debtor fails to attend before the Court;
- (b) the Court has no information which satisfies it that the judgment debt has been paid; and
- (c) there is due proof of service of the examination summons on the judgment debtor (or, if the examination has been adjourned, of service on the judgment debtor of notice of the time and place fixed for the examination),

the Court may -

- (d) authorise the issue of a warrant, in accordance with Form 30C, for the arrest of the judgment debtor after 14 days from the date of the original examination summons; or
- (e) adjourn the examination proceedings and order that the judgment debtor attend before the Court at a time and on a date, 14 days or more from the date originally set down, specified in the order.

(2) The Court shall forthwith cause to be served on the judgment debtor a notice informing him or her of any action taken by it under this rule.

ORDER 31 - JUDGMENT DEBT INSTALMENT ORDERS

31.01 INTERPRETATION

In this Order, "instalment order" means an order made under section 27(1) of the Act.

31.02 APPLICATION

(1) An application for an instalment order shall be in accordance with Form 31A.

(2) An application for the variation or cancellation of an instalment order shall be in accordance with Form 31B.

(3) Where an application is made by a judgment debtor, the judgment debtor shall -

- (a) where the judgment debtor is -

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- (i) a natural person, file an affidavit of his or her financial situation which gives the information required by Form 29F; or
 - (ii) a corporation, file an affidavit of its financial situation; and
- (b) serve a copy of the affidavit on the judgment creditor at the time of service of the application.

(4) Where an application is made by a judgment creditor the judgment creditor shall file an affidavit stating the facts on which the application is based and serve a copy of the affidavit on the judgment debtor.

31.03 REGISTRAR TO CONSIDER APPLICATION

(1) A Registrar shall without delay consider and determine an application under rule 31.02 and may -

- (a) order that the judgment debt be paid in the instalments and at the times specified in the application;
- (b) order that an instalment order be varied or cancelled in the manner specified in the application; or
- (c) refuse to make an order.

(2) An instalment order shall be in accordance with Form 31C.

(3) A notice of order or refusal shall be in accordance with Form 31D and shall be given to the parties.

31.04 OBJECTION TO REGISTRAR'S DETERMINATION

Where -

- (a) a Registrar refuses to make an order under rule 31.03; or
- (b) a judgment creditor files a notice of objection in accordance with Form 31E within 14 days after service of a notice in accordance with Form 31D on the judgment creditor,

the Registrar shall set down the judgment debtor's application or judgment creditor's objection for hearing and give notice in accordance with Form 31F to the parties.

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31.05 INSTALMENT AGREEMENT

(1) A judgment debtor and a judgment creditor may enter into an agreement for the payment of a judgment debt by instalments ("instalment agreement") whether or not an instalment order has been made.

(2) An instalment agreement shall be in accordance with Form 31G and shall be filed with a Registrar within 7 days after its execution by the judgment creditor.

(3) Each party shall execute the agreement in the presence of a witness (other than the other party) who shall by his or her signature attest the execution.

(4) Where an instalment agreement is filed, the Registrar shall promptly order that the judgment debt be paid as specified in the agreement.

(5) An order for the payment of a judgment debt by instalments pursuant to an instalment agreement shall be in accordance with Form 31H.

31.06 NOTICES

Where under this rule the Court is required to cause a judgment debtor or judgment creditor to be notified of a matter, the notification may be effected by a proper officer of the Court causing notice in writing of the matter to be -

- (a) served personally on the judgment debtor or judgment creditor; or
- (b) sent by pre-paid post addressed to the judgment debtor or to the judgment creditor at the address for service or the usual or last known place of residence or of business of the judgment debtor or of the judgment creditor.

ORDER 32 - RE-HEARING

32.01 APPLICATION FOR RE-HEARING

(1) An application for an order under section 20 of the Act shall be filed.

(2) Not later than 14 days before the day specified in an application, a copy of the application shall be served personally on the other party or parties unless the Court otherwise orders.

32.02 FORM OF APPLICATION

- (1) An application under rule 32.01 shall state -

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- (a) why the applicant did not appear on the hearing of the claim; and
- (b) if applicable, why notice of defence was not given.

(2) An application under rule 32.01 shall be in accordance with Form 32A.

32.03 RE-HEARING DATE

If the Court sets aside an order the claim shall be re-heard on a date fixed by the Court.

ORDER 33 - SECURITY FOR COSTS

33.01 INTERPRETATION

In this Order, unless the context or subject-matter otherwise requires -

"defence" includes defence to counterclaim and defence to statement of third party claim;

"defendant" includes a person against whom a claim is made in a proceeding;

"plaintiff" includes a person who makes a claim in a proceeding.

33.02 WHEN SECURITY FOR COSTS MAY BE ORDERED

(1) Where -

- (a) a plaintiff is ordinarily resident out of the Territory;
- (b) a plaintiff is a corporation or (not being a plaintiff who sues in a representative capacity) sues, not for the plaintiff's own benefit, but for the benefit of some other person, and there is reason to believe that the plaintiff has insufficient assets in the Territory to pay the costs of the defendant if ordered to do so;
- (c) a proceeding by the plaintiff in another court for the same claim is pending;
- (d) subject to subrule (2), the address of the plaintiff is not stated or is not stated correctly in the plaintiff's originating process;
- (e) the plaintiff has changed his or her address after the commencement of the proceeding in order to avoid the consequences of the proceeding; or

Local Court Rules

- (f) under an Act or the Companies Code the Court may require security for costs,

the Court may, on the application of a defendant, order that the plaintiff give security for the costs of the defendant of the proceeding and that the proceeding as against the defendant be stayed until the security is given.

(2) The Court shall not require a plaintiff to give security by reason only of subrule (1)(d) if in failing to state his or her address or to state his or her correct address the plaintiff acted innocently and without intention to deceive.

33.03 MANNER OF GIVING SECURITY

Where an order is made requiring the plaintiff to give security for costs, security shall be given in the manner and at the time the Court directs.

33.04 FAILURE TO GIVE SECURITY

Where a plaintiff fails to give the security required by an order, the Court may dismiss the plaintiff's claim.

33.05 VARIATION OR SETTING ASIDE

The Court may set aside or vary an order requiring a plaintiff to give security for costs.

33.06 PAYMENT BY WAY OF IRREVOCABLE GUARANTEE

If the Court makes an order requiring a plaintiff to pay money into court as security for costs, it is sufficient compliance, subject to rule 33.07, if the plaintiff files an irrevocable guarantee given by a bank to pay that sum.

33.07 REQUIREMENTS OF GUARANTEE

An irrevocable guarantee given by a bank shall be -

- (a) given by a bank approved by a Registrar;
- (b) sealed by the bank or signed by an officer of the bank who has written authority from the bank to sign such a guarantee on behalf of the bank; and
- (c) in accordance with Form 33A.

33.08 LIABILITY OF BANK

(1) A bank guarantee which is filed pursuant to an order under rule 33.06 may not be amended or revoked without the leave of the Court.

Local Court Rules

(2) Unless the Court otherwise orders, a bank which has given a guarantee may discharge its liability under the guarantee only by -

- (a) payment into court of the total sum guaranteed; and
- (b) filing a notice of discharge and payment into court in accordance with Form 33B.

ORDER 34 - PERSON WITH DISABILITY

34.01 LITIGATION GUARDIAN OF INFANT

(1) If an infant wishes to file a statement of claim and section 14(6) of the Act does not apply, the infant may appoint a litigation guardian for the purpose and shall give notice to the Registrar to that effect in accordance with Form 34A.

(2) A litigation guardian shall be appointed by notice in writing which shall be filed in the Court at the same time as a statement of claim is filed.

(3) A litigation guardian under this rule shall be liable for costs in the same manner and to the same extent as if he or she were the plaintiff.

(4) A statement of claim filed by a litigation guardian shall state that the proceeding is taken by the litigation guardian on behalf of the infant.

34.02 PERSON WITH DISABILITY

(1) In this Order, "person with a disability" means a person who is incapable (by reason of age, injury, disease, or physical or mental infirmity) of managing his or her affairs in relation to a proceeding.

(2) If a person is authorised by or under an Act to conduct legal proceedings in the name of or on behalf of a person with a disability, the person shall, unless the Court otherwise orders, be entitled to be litigation guardian of the person with a disability in a proceeding to which the person's authority extends.

(3) Subject to an Act, if there is no person authorised to conduct legal proceedings in the name of or on behalf of a person with a disability the Court may appoint a litigation guardian and rules 34.01(2) to (4) apply to the appointment.

34.03 LITIGATION GUARDIAN OF DEFENDANT

(1) In this rule, "defendant" includes a party against whom relief is claimed in a proceeding.

Local Court Rules

(2) If an infant or person with a disability is a defendant, rules 34.01 and 34.02 apply with the necessary modification except that a litigation guardian for a defendant is not, unless the Court otherwise orders, responsible for costs.

34.04 POWER OF LITIGATION GUARDIAN

A litigation guardian under this Order may take a step or do an act in a proceeding that is required or permitted to be done by a party.

34.05 COMPROMISE OF CLAIM BY INFANT OR PERSON WITH DISABILITY

(1) If in a proceeding a claim is made by or on behalf of or against an infant or a person with a disability, no compromise, payment of money or acceptance of an offer of compromise under Order 15, whenever entered into or made, shall, so far as it relates to the claim, be valid without the approval of the Court.

(2) Application for approval shall be made by application under Order 20 filed not later than 28 days after the compromise, payment or acceptance.

(3) If application for approval is made at the hearing of a proceeding, the Court may dispense with the requirement of subrule (2).

(4) On the application, evidence shall be given of the date of the compromise, payment or acceptance, the date of birth of the infant or person with a disability and the signature of the litigation guardian, and the dates shall be stated in an order approving the compromise, payment or acceptance.

(5) Where the acceptance of an offer of compromise is approved, the infant or person with a disability shall be taken to have made or accepted the offer at the time of the approval.

34.06 MONEY TO BE PAID INTO COURT

(1) All money or damages received by or awarded to an infant or person with a disability by settlement or compromise shall, unless the Court otherwise orders, be paid into court without delay after approval by the Court of the compromise, payment or acceptance.

(2) Money held in court on behalf of an infant or a person with a disability may be paid out of court from time to time to a person by order of the Court.

(3) Nothing in this Order affects the lien of a legal practitioner for costs.

Local Court Rules

CHAPTER 2 - MISCELLANEOUS RULES OF PROCEDURE

ORDER 35 - APPEALS

Part 1 - Appeals

35.01 APPLICATION

This Order applies to an appeal where under an Act a person may appeal to the Local Court but does not apply to an appeal under the *Tenancy Act* to which Part 2 of this Order applies.

35.02 INTERPRETATION

In this Part -

"appellant" means a person who is entitled to appeal;

"respondent" means the decision-maker in relation to whose decision an appeal is made.

35.03 NOTICE OF APPEAL

(1) Except as provided by an Act, an appeal shall be commenced by filing, not later than 28 days after a decision is made, a notice of appeal at the proper venue of the Court.

(2) A notice of appeal shall -

(a) be in Form 35A; and

(b) set out -

(i) the name of the respondent;

(ii) the decision in respect of which it is brought;

(iii) the date on which the decision was made; and

(iv) concisely the grounds of appeal.

(3) As soon as practicable after filing a notice of appeal the appellant shall serve a copy on the respondent.

35.04 AMENDMENT OF GROUNDS

The Court may give leave to amend the grounds of appeal.

35.05 DATE FOR HEARING

At the time of filing a notice of appeal a Registrar shall fix a hearing date, insert it in the notice of appeal and return sufficient copies to the appellant.

Local Court Rules

35.06 REPRESENTATION

A party to an appeal may appear in person or by an agent authorised in writing by the party.

35.07 HEARING APPEAL

(1) The Court may give such directions as to the hearing of an appeal as it thinks fit.

(2) If the person to whom an appeal is addressed fails to attend, the Court may hear the appeal if it is satisfied that the notice was duly served.

(3) If an appellant fails to attend, the Court may dismiss the appeal or make such other orders as it thinks fit.

(4) If neither party attends, the Court may make such orders as it thinks fit.

Part 2 - Appeals under Tenancy Act

35.08 APPLICATION

This Part applies to an appeal under section 19 of the *Tenancy Act*.

35.09 INTERPRETATION

In this Part, unless the contrary intention appears, words and expressions have the same meaning as in the *Tenancy Act*.

35.10 NOTICE OF APPEAL TO BE FILED

An appeal shall be commenced by filing a notice of appeal in accordance with Form 35B in the office of the Court at a proper venue of the Court.

35.11 HEARING DATE FIXED ON FILING

On filing a notice of appeal, the Registrar shall -

- (a) fix a hearing date, insert it in the notice of appeal and return a copy to the appellant; and
- (b) serve a copy of the notice on -
 - (i) the Commissioner; and
 - (ii) all other persons directly affected by the determination or variation.

Local Court Rules

35.12 REPRESENTATION

A party to an appeal may appear in person or by an agent authorised in writing by the party.

35.13 HEARING APPEAL

- (1) The Court may hear submissions from -
 - (a) an appellant;
 - (b) the Commissioner; and
 - (c) all other persons directly affected by the determination or variation,

in such order as it thinks fit.

(2) If the Commissioner, or person to whom an appeal is addressed, fails to attend, the Court may, if satisfied that the notice was duly served, hear the appeal.

(3) If an appellant fails to attend, the Court may dismiss the appeal or make such other orders as it thinks fit.

(4) If neither party attends the Court may make such order as it thinks fit.

Part 3 - Applications under Tenancy Act

35.14 APPLICATION BY LESSOR FOR WARRANT OF POSSESSION AFTER NOTICE TO QUIT

An application by a lessor for a warrant of possession under section 48 of the *Tenancy Act* shall be in accordance with Form 35C.

35.15 APPLICATION BY LESSOR FOR SUMMARY RECOVERY OF DWELLING HOUSE

An application by a lessor of a dwelling house for an order terminating a lease and giving immediate possession under section 51 of the *Tenancy Act* shall be in accordance with Form 35D and shall not be addressed to a person.

35.16 APPLICATION BY LESSEE FOR TERMINATION OF LEASE

An application by a lessee of a dwelling house for an order terminating a lease under section 51A(1) of the *Tenancy Act* shall be in accordance with Form 35E.

35.17 APPLICATION BY LESSOR TO ENFORCE TERMINATION ORDER

An application by a lessor of a dwelling house for a warrant of possession to enforce an order requiring the lessee to give up possession under section 51A(3) of the *Tenancy Act* shall be in accordance with Form 35C.

Local Court Rules

35.18 HEARING APPLICATIONS

(1) On the filing of an application, a Registrar shall -

- (a) fix a hearing date, insert it in the application and return a copy to the applicant; and
- (b) serve a copy of the notice on all other persons directly affected by the application.

(2) If the person to whom an application is addressed fails to attend, the Court may, if satisfied that notice of it was duly served, hear the application.

(3) If an applicant fails to attend, the Court may dismiss the application or make such other orders as it thinks fit.

(4) If neither party attends, the Court may make such order as it thinks fit.

ORDER 36 - COSTS

Part 1 - Preliminary

36.01 TRANSITIONAL

(1) Where judgment in a proceeding has been given by the Court before the commencement of these Rules, or before the commencement a proceeding had reached a stage where taxation of costs could and would be expected to proceed, a taxation of costs in the proceeding shall be in accordance with the rules then applying as if these Rules had never commenced.

(2) Except as provided by subrule (1) or as ordered by the Court, costs in a proceeding before the Court shall be in accordance with these Rules, whether these costs were incurred before or after the commencement of these Rules.

36.02 GENERAL RULE

(1) Subject to these Rules and to any other law in force in the Territory, unless the Court otherwise orders, the costs of a proceeding or an application in a proceeding shall follow the event.

(2) The Court may make an order for costs in relation to a particular question in, or a particular part of, a proceeding.

(3) The Court may exercise its power and discretion as to costs at any stage of a proceeding.

Local Court Rules

(4) Such costs may be awarded at any time after the conclusion of the proceedings.

(5) Notwithstanding subrule (4), if it appears to the Court when making an interlocutory order for costs or at a later time that all or a part of the costs ought to be awarded at an earlier stage, it may order accordingly.

36.03 COSTS ON STATEMENT OF CLAIM AND ON DEFAULT JUDGMENT

Where a judgment is entered together with costs under rule 10.03 in respect of a claim under rule 10.02(a), unless the Court otherwise orders, the costs shall not be taxed but shall be in accordance with the appropriate item in the scale in Part 2 of Schedule 1.

36.04 NO ORDER FOR COSTS REQUIRED IN CERTAIN CASES

(1) This rule applies unless the Court otherwise orders.

(2) Where an application is made under Order 22 or 23 and the application is dismissed, the party who made the application shall pay the costs of every other party to the application.

(3) Where a party applies for an extension or abridgment of a time fixed by these Rules or by an order fixing, extending or abridging time, he or she shall pay the costs of and occasioned by the application.

(4) A party who discontinues or withdraws in accordance with rule 4.09 shall pay the costs of the party to whom the discontinuance or withdrawal relates to the time of the discontinuance or withdrawal.

(5) A party who amends a pleading or other document shall pay the costs of and occasioned by the amendment and the costs thrown away because of the amendment.

(6) The costs of and occasioned by an adjournment made necessary by the default of a party shall be borne by the party.

36.05 ENFORCEMENT OF ORDER FOR COSTS

An order of the Court for the payment of a fixed sum for costs may be enforced in the same manner as a judgment for the payment of money.

Part 2 - Entitlement to Costs

36.06 COSTS RESERVED

(1) Where, by order of the Court, any costs are reserved, the Court may subsequently direct by and to whom the costs are to be paid.

Local Court Rules

(2) Where the Court makes no direction under subrule (1), a party may, within 21 days after the conclusion of the proceeding, apply to the Court for a direction as to the payment of costs reserved.

36.07 MONEY CLAIM IN WRONG COURT, &c.

Where in a proceeding a plaintiff recovers an amount which is an amount within the jurisdiction of the Local Court pursuant to the *Small Claims Act*, the plaintiff is not entitled to recover from the defendant an amount for costs, unless the Court is satisfied that he or she had good reason to commence the proceeding in the Court.

Part 3 - Costs of Party in Proceeding

36.08 APPLICATION

(1) This Part applies to costs in a proceeding which by or under an Act, these Rules or an order of the Court are to be paid to a party to the proceeding either by another party or legal practitioner or out of a fund.

(2) Subject to this Part, costs in a proceeding which are to be awarded shall be awarded on -

- (a) the standard basis; or
- (b) the indemnity basis.

36.09 COSTS PAYABLE TO LEGAL PRACTITIONER WHERE MONEY CLAIMED BY OR ON BEHALF OF PERSON WITH DISABILITY

(1) This rule applies to a proceeding in which money -

- (a) is claimed or recovered by or on behalf of, or adjudged, ordered, or agreed to be paid to or for the benefit of, a person with a disability; or
- (b) paid into Court is accepted on behalf of a person with a disability.

(2) The costs of a proceeding to which this rule applies which are payable by a plaintiff to his or her legal practitioner shall, unless the Court otherwise orders, be awarded pursuant to the Schedule hereto.

(3) Nothing in this rule prejudices a legal practitioner's lien for costs.

(4) This rule also applies to and in relation to a counterclaim by or on behalf of a person with a disability as if for a reference to a plaintiff there were substituted a reference to a defendant.

Local Court Rules

36.10 ASCERTAINING COSTS

(1) Subject to these Rules, the scales of costs contained in Schedule 1 apply in relation to the award of all costs for work done after the commencement of this Order.

(2) There shall be allowed to a witness attending at Court to give evidence such fees as are reasonable having regard to the occupation of the witness and those fees shall include -

- (a) the actual expense reasonably incurred by the witness for travel to and from the place of trial or hearing;
- (b) the actual expense reasonably incurred by the witness for accommodation and sustenance;
- (c) loss of salary, wages or other remuneration of any kind reasonably caused by the attendance; and
- (d) any other necessary expense reasonably incurred by the witness because of the attendance.

Part 4 - Award and Taxation of Costs

36.11 DEFINITIONS

(1) In this Order, unless the contrary intention appears -

"attendance at trial" is actual attendance at trial and includes all work reasonably done in and in relation to attending at the trial or hearing of a proceeding and to receive reserved judgment;

"conference" includes all work reasonably done in and in relation to the appointment of a conference with, or consultation with or between, counsel and attending to appoint, and attending at that conference or consultation;

"indemnity basis", in relation to the award of costs, means all costs shall be allowed except to the extent that they are of an unreasonable amount or have been unreasonably incurred;

"interlocutory applications" comprises all work reasonably done in and in relation to an application in a proceeding for -

- (a) the enforcement of an order for particulars, discovery, inspection or interrogatories; or

Local Court Rules

- (b) any other interlocutory order,
and includes -
- (c) necessary conferences;
- (d) all attendances in court or elsewhere at the hearing of the application; and
- (e) the authentication and service of the order made;

"party" includes a person, not a party to the proceeding, by or to whom costs in respect of a proceeding are payable by or under an Act, these Rules or an order of the Court, but does not include a legal practitioner;

"preparation" includes the doing of all reasonable work, other than that referred to in the definition of "originating process", which was reasonably done arising out of or incidental to a proceeding, including work done in respect of -

- (a) the client, including taking instructions to sue, defend, counterclaim, or appeal and attending on and corresponding with the client and taking and preparing proofs of evidence;
- (b) witnesses, including interviewing and corresponding with witnesses and potential witnesses, taking and preparing proof of evidence and, where appropriate, arranging attendance at court, including the issuing of a summons;
- (c) expert evidence, including obtaining and considering reports or advice from experts and plans, photographs and models and, where appropriate, arranging their attendance at court, including the issuing of a summons;
- (d) inspections, including inspecting a property or place material to the proceeding;
- (e) searches and enquiries, including making searches at offices or public records and elsewhere for relevant documents and similar matter;
- (f) special damages, including obtaining details of special damages and making or obtaining relevant calculations;

Local Court Rules

- (g) other parties, including attending on and corresponding with other parties or their solicitors;
- (h) documents, including consideration of instructions to and advice from counsel, any law involved and any other relevant documents, including collating and service;
- (j) negotiations, including work done in connection with negotiations with a view to settlement;
- (k) agencies, including correspondence and attendances on agents and work done by them;
- (m) interest, including, where relevant, the calculation of interest; and
- (n) notices, including preparation, consideration and service of miscellaneous notices, including notices to witnesses to attend court;

"Schedule" means the Schedule to this Order;

"standard basis", in relation to the award of costs, means a reasonable amount in respect of all costs reasonably incurred;

"Taxing Officer" means an officer of the Court who, in accordance with the Rules, is taxing a bill of costs;

"trustee" includes an executor of a will and an administrator of the estate of a deceased person.

(2) In this Order, unless the contrary intention appears, a reference to a fund -

- (a) being a fund out of which costs are to be paid, or being a fund held by a trustee, includes a reference to property held for the benefit of a person or class of persons (including the assets of a company in liquidation) or held on trust for any purpose; and
- (b) held by a trustee includes a reference to other property to which the trustee is entitled as trustee, whether alone or together with another person and whether or not the property is for the time being in the possession of the trustee.

Local Court Rules

36.12 TAXATION

(1) Where a successful party submits to the Court that the lump sum for preparation or the scale fees are not sufficient to cover the work actually and reasonably performed by his or her legal practitioner the Court may order the matter be referred to taxation.

(2) A party who obtains such an order must file with the Court a Bill of Costs in taxable form within 28 days of the final costs order.

(3) If the Bill of Costs referred to in subrule (2) is not filed within 28 days no extension of time for filing will be allowed and the party will not be entitled to taxation.

(4) If, at the taxation of costs, the taxation fails to result in the allowance of a sum of not less than 10% more than the scale figure for preparation, the party applying will not be awarded more than the scale and will have to pay the costs of taxation.

36.13 RULES OF TAXATION

(1) The rules of taxation under the Supreme Court Rules apply to this Order unless the contrary intention is expressed.

(2) The following percentages of the Supreme Court scale shall be used to guide taxation - where the subject matter is

\$0 - \$5,000	30%
\$5,000 - \$20,000	50%
Over \$20,000	80%

36.14 INDEXATION OF SCALE

Adjustments to the rate per unit contained in Part 2 of Schedule 1 shall be made in accordance with adjustments made to the Supreme Court Rules.

36.15 CHARGE OF LEGAL PRACTITIONER OUT OF TERRITORY

Where a request for an award of costs includes a charge for work done by a legal practitioner practising in a place out of the Territory -

- (a) the charge shall be shown as a disbursement; and
- (b) so far as practicable, the charge shall, if allowed, be allowed in an amount appropriate to the place where the legal practitioner practises.

Local Court Rules

36.16 TAXATION ON APPLICATION OF THIRD PARTIES

(1) This rule applies to -

- (a) a person (other than the party chargeable with an award of costs) who has paid, or is liable to pay, the amount either to the legal practitioner or to the party chargeable with the award;
- (b) the executor, administrator or assignee of a person referred to in paragraph (a);
- (c) the trustee of the estate of a person referred to in paragraph (a); and
- (d) a person interested in any property out of which a trustee, executor or administrator who has become chargeable with an award of costs of a legal practitioner who has paid, or is entitled to pay, the bill.

(2) Rules 36.11 to 36.14 (inclusive) apply to a person to whom this rule applies.

(3) If on an application by a person referred to in subrule (1)(d) the Court orders an award of costs it may order that such payments in respect of the amount found to be due be made to or by -

- (a) the applicant;
- (b) the legal practitioner; or
- (c) the trustee, executor or administrator,

as it thinks fit.

(4) In considering an application referred to in subrule (3) the Court shall have regard to the extent and nature of the interest of the applicant.

(5) If an applicant referred to in subrule (3) pays any money to the legal practitioner, the applicant has the same right to be paid the money by the trustee, executor or administrator chargeable with the bill as the legal practitioner has.

(6) If the Court on an application by a person to whom this rule applies orders an award of costs, it may order the legal practitioner to deliver to the applicant a notice of the award on payment of the costs of the notice.

Local Court Rules

Part 5 - Allowances or Disallowances

36.17 APPLICATION

This Part applies to all awards of costs in the Court.

36.18 ALTERED ALLOWANCE

The Court may, in relation to a particular award of costs, increase or decrease the amount or value of an allowance or expense in the Schedule as it thinks fit.

36.19 SERVICE OF SEVERAL DOCUMENTS

Two or more documents in the same proceeding which can be served together shall be so served and a fee for the service of one only shall be allowed.

36.20 DEFENDANTS WITH SAME LEGAL PRACTITIONER

Where 2 or more defendants are represented by the same legal practitioner and the legal practitioner does work for one or some of them separately which could have been done for some or all of them together, on award of the legal practitioner's bill, whether between party and party or between solicitor and client, the Court may disallow costs for the unnecessary work.

36.21 CERTAIN COSTS TO BE INCLUDED IN WITNESSES' ALLOWANCES

In an award of costs the attendance of a witness includes an attendance at a conference with counsel before trial and, in the case of an expert witness, includes qualifying to give evidence as an expert.

36.22 NEGOTIATIONS

Costs reasonably incurred in respect of negotiations for compromise shall be allowed whether or not the negotiations were successful.

36.23 COUNSEL'S FEES

(1) The allowance of counsel's fees is in the discretion of the Court.

(2) In assessing fees on brief and other fees for counsel the Court shall have regard to -

- (a) the complexity of the question of law or of fact involved;
- (b) the amount involved;

Local Court Rules

- (c) an interlocutory application or other work which has reduced the work otherwise necessary in relation to the brief;
 - (d) the possibility that counsel might be called on to argue on behalf of a party not represented at the hearing;
 - (e) the fees reasonably charged by counsel in matters of a similar kind; and
 - (f) the standing of counsel.
- (3) Costs reasonably incurred in respect of -
- (a) the advice of counsel on the pleadings, evidence or other matter in a proceeding; or
 - (b) counsel drawing or settling a pleading or other document in a proceeding which is reasonable to be drawn or settled by counsel,

shall be allowed.

(4) Where affidavits or interrogatories which are reasonable to be drawn or settled by counsel are or could have been drawn or settled at the same time, only one fee shall be allowed.

(5) Where a hearing or trial occupies, either on the first day only or partly on the first day and partly on a subsequent day or days, more than 5 working hours (not including a luncheon adjournment) without being concluded, the Taxing Officer may allow a refresher fee for every 5 working hours (not including a luncheon adjournment) subsequent to the expiration of the first 5 hours.

(6) The final refresher may be allowed for a period of less than 5 hours that the hearing or trial occupies.

(7) Costs in respect of the preparation and delivery of a brief to counsel for a hearing or trial which did not take place shall not be allowed if the costs were incurred prematurely.

(8) No fee shall be allowed for -

- (a) counsel attending on an interlocutory application, unless the Court otherwise certifies;
- (b) counsel of standing higher than junior counsel, unless the Court otherwise certifies; or
- (c) more than one counsel, unless the Court certifies that the retainer of more than one counsel was warranted.

Local Court Rules

(9) A legal practitioner may charge and be allowed a fee for an attendance on counsel to obtain or give some information in respect of which counsel does not charge a fee.

36.24 BARRISTER AND SOLICITOR

(1) This rule applies where a legal practitioner acts in both capacities as a barrister and solicitor, or appears as a barrister instructed by a partner, employee, fellow employee or employer.

(2) An allowance in accordance with rule 36.23 shall be allowed to a legal practitioner to whom subrule (1) of this rule refers and who appears as counsel.

ORDER 37 - FILING FEES

37.01 FILING FEES

Filing fees on any proceedings in the Local Court shall be payable in accordance with Part 1 of Schedule 1.

ORDER 38 - INTEREST ON COSTS AND JUDGMENT

38.01 INTEREST ON COSTS AND JUDGMENT

Every judgment debt carries interest at the rate fixed in accordance with rule 59.02 of the Supreme Court Rules from the date of judgment or, in the case of costs which are awarded by the Court, from the date of the order of the Court stating the result of an award, unless the Court otherwise orders.

ORDER 39 - PRACTICE DIRECTION

39.01 PRACTICE DIRECTION

The Chief Magistrate may, from time to time, issue practice directions not inconsistent with the Act or these Rules.

Local Court Rules

SCHEDULE 1

SCHEDULE TO ORDER 36

PART 1

Item	Matter in respect of which charge is made	Charge
		\$
1.	<i>Fees on commencement</i> Commencement of proceedings including filing of originating motion, applications, affidavits, issue of subpoenas. Where the subject matter is - less than \$5,000 - \$40 \$5,000 and less than \$20,000 - \$60 \$20,000 and over - \$80	
2.	<i>Service</i> The standard fee applies to 2 attempts at service. Standard fee - \$30	
3.	<i>Judgments</i> Registration - \$30	
4.	<i>Execution and Enforcement</i> Execution and enforcement including execution of warrants, application to set aside judgment, notice of appeal. Standard fee - \$30 Where service or property is involved and the value of property to be seized is - less than \$5,000 - \$40 \$5,000 and less than \$20,000 - \$60 \$20,000 and over - \$80	

Local Court Rules

PART 2

SCALE OF LEGAL PRACTITIONERS COSTS

Item	\$0 \$5,000	\$5,000 - \$20,000	Over \$20,000
1. All work involved in preparing the initiating document or the Defence to it, including all settling and engrossing and all filing, uplifting and serving, but excluding disbursements	\$98.00	\$164.00	\$262.00
2. Giving discovery	\$74.00	\$123.00	\$196.00
3. Seeking discovery and inspecting discovered documents	\$98.00	\$164.00	\$262.00
4. Preparing and delivering interrogatories for examination of other party	\$113.00	\$188.00	\$301.00
5. Receiving interrogatories for examination of client and all work associated with preparing sworn answers	\$119.00	\$199.00	\$318.00
6. Attendances at, say, 2 directions hearings, allowing 1 unit each way for travel and 3 units at each hearing - total of 10 units	\$36.00	\$60.00	\$96.00
7. Attending at prehearing conference to set matter down for hearing or to settle matter - 1 unit each way for travel and 5 units at Conference - total of 7 units	\$25.00	\$42.00	\$67.00

Local Court Rules

Item	\$0 \$5,000	\$5,000 - \$20,000	Over \$20,000
Preparation if matter discontinued or settled at or before prehearing conference to set matter down for hearing	\$141.00	\$235.00	\$376.00
SUB TOTAL OF COSTS IF SETTLED AT OR BEFORE PREHEARING CONFERENCE TO SET MATTER DOWN FOR HEARING	\$704.00	\$1,175.00	\$1,878.00
If matter proceeds beyond prehearing conference to set matter down for hearing, an additional fee to that fee specified in Item 8.	\$235.00	\$392.00	\$626.00
SUB TOTAL IF MATTER PROCEEDS BEYOND PREHEARING CONFERENCE TO SET MATTER DOWN FOR HEARING	<u>\$939.00</u>	<u>\$1,567.00</u>	<u>\$2,504.00</u>
Costs at hearing to be allowed -			
(a) for time legal practitioner actually attended at hearing	\$4.00 per 6 minute unit or part thereof (\$40 p/hour)	\$6.00 per 6 minute unit or part thereof (\$60 p/hour)	\$9.60 per 6 minute unit or part thereof (\$96 p/hour)
(b) for time a clerk in employ of a legal practitioner attended at hearing in lieu of practitioner	\$2.00 per 6 minute unit or part thereof (\$20 p/hour)	\$4.00 per 6 minute unit or part thereof (\$40 p/hour)	\$6.00 per 6 minute unit or part thereof (\$60 p/hour)

Local Court Rules

Item	Matter in which respect of which charge is made	\$0 \$5,000	\$5,000 - \$20,000	Over \$20,000
1.	Costs to be claimed on statement of claim	\$98.00	\$164.00	\$262.00
2.	Costs on judgment in default of defence	\$33.00	\$55.00	\$87.00
	In addition -			
	(a) where more than one defendant - for each	\$4.00	\$6.00	\$9.00
	(b) the cost of stamp duty or filing fees paid on filing the application and on relevant copies			
	(c) a reasonable amount paid for service			
3.	In addition costs on application for enforcement including issue of an examination summons or warrant and application for an order	\$33.00	\$55.00	\$87.00
<u>Additional Costs</u>				
4.	In addition to costs payable under item 2 and 3 -			
	(a) where service out of the jurisdiction is ordered and effected	\$49.00	\$82.00	\$131.00
	(b) where substituted service is ordered and effected -			
	(i) on single defendant	\$131.00	\$218.00	\$349.00

Local Court Rules

tem	Matter in which respect of which charge is made	\$0 \$5,000	\$5,000 - \$20,000	Over \$20,000
(ii)	where more than one - in respect of each defendant served	\$17.00	\$28.00	\$44.00
(iii)	the reasonable fees incurred for any advertising required under an order for substituted service; and			
(c)	where a judgment is registered under the <i>Service and Execution of Process Act 1901</i> of the Commonwealth - for costs of registration	\$33.00	\$55.00	\$87.00
(d)	where leave to proceed is given under the <i>Service and Execution of Process Act 1901</i> of the Commonwealth - on entry of judgment	\$98.00	\$164.00	\$262.00

Local Court Rules

SCHEDULE 2

FORMS

FORM 4A

Rule 4.04

STATEMENT OF CLAIM

IN THE LOCAL COURT
AT

Claim No.

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

TO THE DEFENDANT

This Statement of Claim has been brought against you by the plaintiff for the claim set out below.

IF YOU INTEND TO DEFEND this claim, YOU MUST GIVE NOTICE OF DEFENCE, within 28 days of service on you of this Statement of Claim, to -

(a) the plaintiff; and

(b) the Registrar of the Local Court at

IF YOU FAIL to give notice of defence, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PLAINTIFF CLAIMS (*set out concise statement of the nature of the claim and the amount claimed or the relief or remedy sought*) particulars of which are set out below, and seeks (*set out statement of amount, relief or remedy sought*).

*IF you pay the amount of \$ and costs of \$ to the plaintiff or the plaintiff's legal practitioner without giving notice of defence you may avoid further costs.

FILED: (e.g. 5 September 19)

Registrar

Local Court Rules

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This Statement of Claim was filed by -
 - * the plaintiff in person;
 - * for the plaintiff by (*name of firm of legal practitioner*), legal practitioner(s), of (*business address of legal practitioner*).
 2. The address of the plaintiff -
 3. the address for service of the plaintiff is (*if the plaintiff sues in person, the address in 2.*)
 4. The address of the defendant is -
- * Delete if inapplicable.

Particulars of Claim

(*set out particulars of claim
as rule 4.04(d)(iii)*)

AFFIDAVIT OF SERVICE

AFFIDAVIT OF SERVICE

In the Local Court

On..... at 19 No.
I,.....
of

say on oath

Local Court Rules

I did on 19 , BETWEEN
duly serve the defendant....
.....
.....
with this statement of claim Plaintiff
by delivering a true copy
thereof to
..... AND
.....
.....
at Defendant
.....
.....
.....

ORDINARY STATEMENT OF CLAIM

Sworn at

before me

Justice of the Peace or Legal Practitioner

Filed by:

of:

Telephone:

WHAT TO DO WHEN YOU GET A STATEMENT OF CLAIM

The person called the plaintiff has a complaint against you and wants the Court to decide it.

You can:

- (1) File a notice of defence.

You must fill out the form headed "Notice of Defence" that came with this claim explaining why you are not responsible for part or all of the amount the plaintiff claims. This form should be filed with the Court and a copy served on the plaintiff.

- (2) Pay the amount of the claim and the plaintiff's legal costs.

If you intend to do this you should contact the plaintiff or his or her legal practitioner immediately and make arrangements to pay. Make sure you get any agreements in writing.

Local Court Rules

- (3) File an application for an instalment order.

If you admit you owe the amount claimed but cannot pay it all at once you may apply to the Court for an instalment order. Forms for this are available from the Court office. You must file the original with the Court and serve a copy on the plaintiff.

Warning: DO NOT IGNORE THIS FORM OR A JUDGMENT MAY BE MADE AGAINST YOU FOR THE WHOLE AMOUNT OF THE CLAIM AND ADDITIONAL LEGAL COSTS.

If you do not understand what you have to do or need help contact:

- . A legal practitioner - look under "solicitors" in the Yellow pages.
 - . Law Society - they will refer you to a legal practitioner who can help with your particular matter (Phone: 81 5104)
 - . Legal Aid Commission (Phone 81 4799)
 - . Aboriginal Legal Aid (Phone Darwin: 81 5266)
(Phone Alice Springs: 52 2933)
 - . A Registrar of the Court.
-

Local Court Rules

FORM 8A

THIRD PARTY NOTICE

Rule 8.01

IN THE LOCAL COURT
AT

19

No.

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

and

E.F.

Third Party

To *E.F.*

of (*address*)

That the plaintiff has brought this proceeding against the defendant for the claim set out in the Statement of Claim attached.

The defendant disputes the plaintiff's claim on the grounds set out in the Notice of Defence attached and claims to be entitled to relief against you on the grounds set out in this notice.

FILED: (*e.g. 5 September 19*)

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This notice was filed by -

* the plaintiff in person

* for the defendant by (*name of firm of legal practitioner*), legal practitioner(s), of (*business address of legal practitioner*).

2. The address of the defendant is -

Local Court Rules

3. the address for service of the defendant is (*If the defendant sues by a legal practitioner, the business address of the legal practitioner. If the defendant sues in person, the address in 2*)

* Delete if inapplicable.

Particulars of Claim

(how and why third party is responsible for part or all of the plaintiff's claim)

FORM 8B

Rule 8.09

NOTICE CLAIMING CONTRIBUTION

(Heading as in Form 4A)

TO THE DEFENDANT

The plaintiff has brought this proceeding against the defendants to recover damages for loss sustained (*give brief statement of plaintiff's claim*).

The (identify party) claims contribution from you if the plaintiff is successful in the claim against him or her (where appropriate to the extent of such amount as may be found by the Court to be just and equitable, having regard to your responsibility for such damages on the ground that (insert ground(s))

FILED: (e.g. 5 September 19)

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 9A

Rule 9.01

NOTICE OF DEFENCE

(Heading as in Form 4A)

TO THE PLAINTIFF

AND TO THE REGISTRAR OF THE LOCAL COURT AT

The defendant's defence is as follows (*set out particulars of defence and summary of facts on which you rely*).

FILED: (*e.g. 5 September 19*)

- * Defendant
- * Legal practitioner for defendant

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This notice was filed by -
 - * the defendant in person;
 - * for the defendant by (*name or firm of legal practitioner*),
legal practitioner(s) of (*business address of legal practitioner*).
2. The address of the defendant is -
3. The address for service of the defendant is - (*If the defendant defends by a legal practitioner, the business address of the legal practitioner. If the defendant defends in person, the address in 2.*)

* Delete if inapplicable.

Local Court Rules

FORM 9B

Rule 9.09

NOTICE OF CONDITIONAL DEFENCE

(Heading as in Form 4A)

TO THE PLAINTIFF

AND TO THE REGISTRAR OF THE LOCAL COURT AT

The defendant denies that the Local Court has jurisdiction to hear and determine the proceeding on the following grounds:

The defendant's defence is as follows (*set out particulars of defence and summary of material facts on which the defendant relies*).

FILED: (e.g. 5 September 19)

- * Defendant
- * Defendant's legal practitioner

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a Legal Practitioner or your local Legal Aid Office.

1. This notice was filed by -
 - * the defendant in person
 - * for the defendant by (*name of firm of legal practitioner*), legal practitioner(s), of (*business address of legal practitioner*).
2. The address of the defendant is -
3. the address for service of the defendant is (*if the defendant sues by a legal practitioner, the business address of the legal practitioner; if the defendant sues in person, the address in paragraph 2*)

* Delete if inapplicable.

Local Court Rules

FORM 11A

Rule 11.02

REQUEST FOR DISCOVERY

(Heading as in Form 4A)

TO THE *(identify party)*

YOU are required to make discovery of documents within 28 days after service of this request on you.

You should make a list of ALL documents in your possession which are related to the claim and provide it to the party named below.

Dated: *(e.g. 5 September 19)*

*(Signed by requesting party
or party's legal practitioner)*

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 11B

Rule 11.04(1)

AFFIDAVIT OF DOCUMENTS

(Heading as in Form 4A)

I, the above-named *(party)*, make oath and say as follows:

1. I have in my possession, custody or power, the documents relating to the questions in this proceeding enumerated in Schedule 1.
2. The documents enumerated in Part 2 of Schedule 1 are privileged, and I object to produce them.

Local Court Rules

The documents are privileged on the ground -

e.g. (a) as to documents numbered 4 - 6, that
(*grounds of privilege*);

(b) as to documents numbered 7 - 9, that
(*grounds of privilege*).

3. I have had, but no longer have, in my possession, custody or power, the documents relating to the questions in the proceeding enumerated in Schedule 2.
4. (a) Document numbered (*e.g. 10*), referred to in Schedule 2, was last in my possession, custody or power on (*state date*) and I believe that (*state belief as to what has become of it*).
5. To the best of my knowledge, information and belief neither I nor my legal practitioner nor any other person on my behalf has now, or ever had, in my or his, her or its possession, custody or power, any documents relating to a question in the proceeding other than the enumerated in Schedules 1 and 2.

(*Describe each document in the Schedules as original or copy and number each of them*)

SCHEDULE 1

PART 1

PART 2

SCHEDULE 2

Sworn, &c.

FORM 11C

Rule 11.06(3)

NOTICE TO PRODUCE

(*Heading as in Form 4A*)

To the (*identify party*)

The (*party*) requires you to produce for the inspection of the (*party*) the following documents referred to in your (*complaint, defence, affidavit, &c.*):

Local Court Rules

(describe documents required).

Date: (e.g. 5 September 19)

(Signed)

NOTE: Within 7 days after service of this notice you must arrange with the (party) a time within a further 7 days and a place where the documents may be inspected.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 14A

Rules 14.02 and 14.05(4)

ADMISSION OF DEBT

(Heading as in Form 4A)

APPLICATION FOR INSTALMENT ORDER

(To be filled out where appropriate)

I apply to the Court for an order for the payment by instalments of the sum owing as follows:

(state the amount of each instalment, weekly, monthly or otherwise, the number of instalments and the date of first and last instalments.)

I am unable to pay the amount owing in one sum because (state briefly why)

I admit I owe the amount of \$..... being the total amount contained in the plaintiff's statement of claim and consisting of the amount of \$..... and costs of \$.....

My address is

Dated

Signed

Note: You must also attach a copy of Form 29F - "STATEMENT OF FINANCIAL SITUATION". This form must be filed with the Court and a copy served on the plaintiff.

Local Court Rules

I agree to the entering of judgment in the amount stated and consent to an order for instalments being made in accordance with the terms stated in this notice.

Plaintiff's address

Dated

Signed

FORM 14B

Rule 14.04(1)

Rule 14.05(4)

NOTICE TO ADMIT

(Heading as in Form 4A)

To the *(identify party)*

If you do not, within *(specify a number not less than 14 days)* after service of this notice on you serve a notice on the *(party)* disputing any fact specified *(or the authenticity of any document mentioned)* below, the fact *(or the authenticity of that document)* shall, for the purpose of this proceeding only, be taken to be admitted by you in favour of the *(party)*. If you do serve a notice disputing that fact *(or the authenticity of the document)*, and afterwards that fact *(or the authenticity of the document)* is proved, you must pay the costs of proof, unless the Court otherwise orders.

1. *(specify each fact)*

or

2. *(mention each document)*

Dated: *(e.g. 5 September 19)*

(Signed)

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 14C

Rule 14.04(2)

NOTICE OF DISPUTE

(Heading as in Form 4A)

To the *(identify party)*

The *(party)* disputes the following facts specified in the *(party)*'s notice dated *(e.g. 5 September 19)*:

1.

(identify each document)

2.

or

The *(party)* disputes the authenticity of the following documents mentioned in *(the party's)* notice dated *(e.g. 5 September 19)*.

1.

(identify each document)

2.

Dated: *(e.g. 5 September 19)*.

(Signed)

Local Court Rules

FORM 15A

Rule 15.13

NOTICE OF DEPOSIT

(Heading as in originating process)

The defendant has paid into court \$.

The sum is in answer to the plaintiff's claim for (specify) *The sum takes into account the defendant's claim for (specify) on his or her counter-claim.

or

The sum is in answer to the following claims of the plaintiff namely (specify) (and after taking into account, &c., as above).

or

Of the sum, \$ is in answer to the plaintiff's claim for (specify) on which the plaintiff claims \$ (and after taking into account, &c., as above) and \$ is in answer to the claim for (specify) on which the plaintiff claims \$ (and after taking into account, &c., as above).

Dated: (e.g. 15 June 19)

(Signed)

* Delete if inapplicable.
To the plaintiff
(or as the case may be)

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 15B

Rule 15.14(3)

NOTICE OF WITHDRAWAL OF DEPOSIT

(Heading as in originating process)

Pursuant to leave granted by the Court on *(date)*, the defendant withdraws the deposit of \$ paid into court by him or her on *(date)* relating to the plaintiff's claim of *(specify)*.

Dated: *(e.g. 15 June 19)*

(Signed)

To the plaintiff
(or as the case may be)

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 16A

Rule 16.03

AFFIDAVIT OF EVIDENCE (MOTOR VEHICLE ACCIDENT)

To be filled out by car repairer or assessor

I *(name)*
of *(address)*
being *(e.g., car repairer, assessor, panel beater, &c.)*
have assessed/repaired* vehicle number
belonging to *(owner of car)*
on *(date of assessment)*

Local Court Rules

I have seen the statement of claim and consider the damage consistent with the details of the accident described in the claim.

The following repairs were completed/are needed* and the amounts specified represent a fair and reasonable charge for that work.

(Itemize repairs and costs)

Sworn at *(place)* on *(date)*

by

Before me

Justice of the Peace/Legal Practitioner*

* Delete if inapplicable.

FORM 17A

Rule 17.01(2)

SUMMONS TO GIVE EVIDENCE

(Court)

(Heading as in Form 4A)

To *(name)*

of *(address)*

THE COURT ORDERS that you attend for the purpose of giving evidence -

- (a) before the Court;
- (b) at *(address of Court)*;
- (c) at 10.00 am *(or as the case requires)* on *(date)* and until you are excused from further attending.

FILED: *(e.g. 5 September 19)*

Registrar

Local Court Rules

Filed by the (*identify party*)

NOTE THAT -

- (1) If you do not comply with this summons you may be arrested.
- (2) Any question concerning this summons should be addressed not to the Court but to the (*name of legal practitioner or party*).

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 17B

Rule 17.01(2)

SUMMONS FOR PRODUCTION OF DOCUMENTS, &c.

(*Court*)

(*Heading as in Form 4A*)

To (*name*)

of (*address*)

THE COURT ORDERS that you attend and bring with you this summons and the document and things described in the Schedule at (*address of Court*) at 10.00 am (*or as the case requires*) on (*date*) and until you are excused from further attending.

Instead of attending, you may take this summons and the documents and things described in the Schedule to the Registrar of the Local Court at (*venue*) by hand or by post, in either case so that the Registrar receives them no later than 2 business days before the date on which you are required to attend.

SCHEDULE

(*description of documents and things*)

FILED: (*e.g. 5 September 19*)

Registrar

Local Court Rules

Filed by the (*identify party*)

NOTE -

1. If you do not comply with this summons you may be arrested.
2. Documents and things taken to court by you may be returned by post to you at your address shown on this summons. You may request in writing that they be posted to you at another address or you may ask to collect them from the Court.
3. Any question concerning this summons should be directed not to the Court but to the (*name legal practitioner or party*).
4. Conduct money must be provided with this summons.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 17C

Rule 17.01(2)

SUMMONS FOR PRODUCTION AND TO GIVE EVIDENCE

(*Court*)

(*Heading as in Form 4A*)

To (*name*)

of (*address*)

THE COURT ORDERS that you attend to give evidence and bring with you this summons and the document and things described in the Schedule at (*address of Court*) at 10.00 am (*or as the case requires*) on (*date*) and until you are excused from further attending.

SCHEDULE

(*description of documents and things*)

FILED: (*e.g. 5 September 19*)

Registrar

Local Court Rules

Filed by the (*identify party*)

NOTE that -

1. If you do not comply with this summons you may be arrested.
2. Documents and things taken to court by you may be returned by post to you at your address shown on this summons. You may request in writing that they be posted to you at another address or you may ask to collect them from the Court.
3. Any question concerning this summons should be directed not to the Court but to the (*name legal practitioner or party*).
4. Conduct money must be provided with this summons.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 17D

Rule 17.01(2)

(*Court*)

SUMMONS FOR PRODUCTION

(*Summons to a corporation for production and for its proper officer to answer questions concerning possession, &c., of documents and things*)

(*Heading as in Form 4A*)

To (*name of corporation*)

of (*address*)

THE COURT ORDERS that -

1. (*name of corporation*), called "the corporation", shall produce this summons and the documents and things described in the Schedule by an appropriate officer attending and producing them at (*address of Court*) at 10.00 am (*or as the case requires*) on (*date*) and until you are excused from further attending.

Local Court Rules

Instead of so attending, the corporation may produce this summons and the documents and things described in the Schedule to the Registrar of the Local Court at (*venue*) by hand or by post, in either case so that the Registrar receives them no later than 2 days (excluding Saturdays, Sundays or other holidays) before the first date on which the officer is required to attend.

2. The officer who is to attend must make enquiries for the purpose of answering, and, on attending, must answer, such questions as the Court requires the officer to answer concerning the possession or custody of those documents and things.
3. Conduct money must be provided with this summons.

SCHEDULE

(*description of documents and things*)

Registrar

Filed by the (*identify party*)

NOTE -

1. If you do not comply with this summons you may be arrested.
2. Documents and things taken to court by the corporation may be returned by post to it at its address shown on this summons. It may request in writing that they be posted to it at another address or it may ask to collect them from the Court.
3. A question concerning this summons should be directed not to the Court but to the (*name legal practitioner or party*).
4. Conduct money must be provided with this summons.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 20A

Rule 20.03(1)

(Heading as in Form 4A)

APPLICATION

To: (identify each party to whom application is addressed)

You are ordered to attend before the Court on the hearing of an application by the (party) for (describe the order sought).

The application will be heard by the Court at (venue) at (time) on (date).

Registrar

FILED: (e.g. 5 September 19)

This application was filed by , legal practitioner for (identify party).

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 24A

Rule 24.07

JUDGMENT IN SUMMARY PROCEEDING FOR RECOVERY
OF LAND

(Heading as in Form 4A)

DATE GIVEN:

HOW OBTAINED:

THE JUDGMENT OF THE COURT IS THAT:

The plaintiff recovers possession of the land described as (description of land*) (where there is a defendant: and that the defendant pay the plaintiff \$ costs) (or pay the plaintiff's costs to be assessed).

Local Court Rules

(other particulars)

* *Note:* The land should be so described as to be physically identifiable.

BY THE COURT

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 24B

Rule 24.08(3)

WARRANT OF POSSESSION IN SUMMARY PROCEEDING FOR
RECOVERY OF LAND

(Heading as in Form 4A)

TO THE BAILIFF:

In respect of the judgment dated (*e.g.* 20 April 19) by which it was decided that the plaintiff recover possession of the land described in the schedule (*where there is a defendant*: and that the defendant pay the plaintiff \$ costs or the plaintiff's costs, which have been taxed at \$), ENTER the land and cause the plaintiff to have possession of it (*where there is a defendant*, and levy on the property of the defendant which is authorised by law to be taken in execution for) (*continue as in Form 29B as for a levy for costs only*) AND INDORSE (*continue as in Form 29B*).

Local Court Rules

SCHEDULE

(Describe land as in judgment)

Issued (e.g. 15 June 19).

BY THE COURT

Registrar

Issued at the request of the plaintiff.

(Where there is a defendant) The last known address
of the defendant (continue as in Form 29B).

FORM 25A

Rule 25.05

CASE MANAGEMENT STATEMENT

(Heading as in Form 4A)

(comments to be as brief as possible)

	Plaintiff(s) (Comments)	Defendant(s) (Comments)
1.	The parties certify that this proceeding is ready for trial (Yes/No)	
2.	All pleadings have been completed and delivered and pleadings are closed (Yes/No)	
3.	All particulars requested have been furnished (Yes/No)	
4.	Discovery of documents has been made by the parties (Yes/No)	

Local Court Rules

	Plaintiff(s) (Comments)	Defendant(s) (Comments)
5. Inspection of documents has taken place (Yes/No)		
6. All necessary medical examinations have taken place (Yes/No)		
7. The parties require further medical examinations prior to trial (Yes/No)		
8. All reports and statements have been served (Yes/No)		
9. Where counsel is required, counsel has been briefed (Yes/No)		
10. Counsel's advice on evidence has been obtained (Yes/No)		
11. All witnesses should be available at trial (Yes/No)		
12. The length of hearing is estimated at		
13. (a) Offers of compromise made under Order 15 (Yes/No)		
(b) The prospects of settlement are		
14. Details of witnesses -		
(a) Within the jurisdiction		
(i) The number of experts:		
(ii) The number of non-experts:		

Local Court Rules

Plaintiff(s)
(Comments)

Defendant(s)
(Comments)

- (b) Outside the jurisdiction
 - (i) The number of experts:
 - (ii) The number of non-experts:
- 15. The directions required are
 - (a) For the plaintiff
 - (b) For the defendant
- 16. Other relevant facts regarding the fixing of a hearing date are
 - (a) For the plaintiff
 - (b) For the defendant
- 17. The shortest notice on which each part would be ready to commence the hearing is
- 18. The issues to be determined at trial are

Date (*e.g.* 20 June 19)

.....
Solicitors for the
plaintiff(s)

.....
Solicitors for the
defendant(s)

Local Court Rules

FORM 28A

Rule 28.04(1)

GENERAL FORM OF ORDER

(Heading as in Form 4A)

ORDER

COURT:

DATE GIVEN:

ORIGINATING PROCESS: *(state whether proceeding commenced by application or statement of claim, &c.)*

HOW OBTAINED: *(state whether made on application with date of application or at trial with date of commencement of trial.)*

APPEARANCE: *(set out appearance or non-appearance or any person entitled to attend and, if attending, whether by legal practitioner.)*

OTHER MATTERS: *(state any finding of jurisdictional fact, undertaking of party or other matter as directed by court.)*

THE COURT ORDERS THAT:

- 1.
2. *(terms of order)*

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 28B

Rule 28.05(1)

NOTICE OF CONSENT

(Heading as in Form 4A)

TO THE COURT

The plaintiff/defendant* consents to the Court making an order that:

(Signature of plaintiff/defendant)

Dated: (e.g. 5 September 19)

* Delete if inapplicable.

FORM 29A

Rule 29.05(4)

INTERPLEADER HEARING NOTICE

(Heading as in Form 4A)

To the (judgment creditor)

of (address)

and

To the (claimant)

of (address)

The claimant (*name of claimant*) has claimed the goods (or certain goods) (*if only certain goods are claimed, list them*) (or the proceeds of sale of (goods)) taken in execution by (*person to whom warrant was directed*) under the warrant of execution in this proceeding.

Local Court Rules

The Court will hear the claim at (time) on (date).

Dated: (e.g. 5 September 19)

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29B

Rule 29.10

WARRANT OF SEIZURE AND SALE

(Heading as in originating process)

TO THE BAILIFF:

In respect of the judgment (or order) dated (e.g. 20 June 19) by which it was adjudged (or ordered) that (judgment debtor) pay \$ to (judgment creditor) together with costs, which have been taxed at \$, (or by which it was ordered that) (judgment debtor) pay certain costs to (judgment creditor), which have been taxed at \$, LEVY ON THE PROPERTY of (judgment debtor) which is authorised by law to be taken in execution for -

- (a) \$, being \$ now due and payable exclusive of taxed costs and \$ for taxed costs; (or \$ for taxed costs);
- (b) \$, being interest at % per annum, the rate for the time being fixed in accordance with law, on (amount due and payable exclusive of taxed costs) from the date of the judgment (or order);
- (c) \$, being interest at % per annum, the rate for the time being fixed in accordance with law, on (amount of taxed costs) from 19 (date of taxation of costs);
- (d) \$, being the costs of this (and of any prior) warrant; and

Local Court Rules

(e) your fees and expenses for this (and for any prior) warrant,

AND PAY the amount so levied other than your fees and expenses to (*judgment creditor*) or otherwise as the law requires AND INDORSE on this warrant immediately after you have performed all your obligations under it a statement of the date, time and place at which you have executed or attempted to execute the warrant and the results of the execution and send a copy of the statement to (*judgment creditor*).

Issued 19 .

BY THE COURT

Registrar

Issued at the request of (*judgment creditor*).

The last-known address of (*judgment debtor*) is (*add if address is different*) the address of the place where it is believed that property of (*judgment debtor*) may be found is).

FORM 29C

Rule 29.12

WARRANT OF DELIVERY

(*Heading as in originating process*)

TO THE BAILIFF:

In respect of the judgment (*or order*) dated (*e.g. 20 June 19*) by which it was adjudged (*or ordered*) that (*identify party or other person against whom judgment was entered or given or order made*) deliver the goods described in the Schedule to (*identify party or other person for whom judgment was entered or given or order made*) and pay (\$ damages for their detention and) costs, which have been taxed at \$, CAUSE THE GOODS TO

Local Court Rules

BE DELIVERED to (identify party or other person) AND LEVY on the property of (identify party or other person) which is authorised by law to be taken in execution (continue as in Form 29B according to whether the levy is for a judgment amount and costs or for costs only) AND INDORSE (continue as in Form 29B).

or

(where judgment or order is for delivery of goods or payment of their assessed value with or without an award of damages for their detention:)

In respect of the judgment (or order) dated (e.g. 20 June 19) by which it was adjudged (or ordered) that (identify party or other person) deliver the goods described in the Schedule to (identify party or other person) or pay \$ their assessed value (and \$ damages for their detention) and costs, which have been taxed at \$, CAUSE THE GOODS TO BE DELIVERED to (identify party or other person) AND LEVY on the property of (identify party or other person), which is authorised by law to be taken in execution -

- (a) if you cannot cause the goods to be so delivered, for \$ (assessed value of the goods);
- (b) for \$, being \$ (amount of damages) due and payable exclusive of taxed costs and \$ for taxed costs; (or
- (c) for \$ for taxed costs;)

(continue as in Form 29B according to whether the levy is for interest on damages and costs or on costs only) AND INDORSE (continue as in Form 29B).

SCHEDULE

(Describe goods as in judgment)

Issued 19 .

BY THE COURT

Registrar

Issued at the request of (identify party or other person).

The last known address of (continue as in Form 29B).

Local Court Rules

FORM 29D

Rule 29.15(2)

ATTACHMENT OF EARNINGS APPLICATION

(Heading as in originating process)

To the (*judgment debtor*)
of (*address*)

You are summoned to attend before the Court on the hearing of an application by (*judgment creditor*) for an order that some of your earnings be paid to satisfy the judgment against you in favour of (*judgment creditor*) in the Local Court dated (*e.g. 20 June 19*) for \$, in respect of which judgment \$ is due and unpaid, made up as follows:

- (a) \$, the amount due under the judgment;
- (b) \$, the amount of costs; and
- (c) \$, the amount of interest.

The application will be heard (*continue as in Form 20A*).

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29E

Rule 29.15(3)

AFFIDAVIT IN SUPPORT OF APPLICATION FOR
ATTACHMENT OF EARNINGS ORDER

(Heading as in originating process)

I, of , the judgment creditor,
make oath and say that:

1. By a judgment dated (*e.g. 20 June 19*) it was decided that (*judgment debtor*) pay to me the sum of \$ together with costs.

Local Court Rules

2. In respect of that judgment, \$ is due and unpaid, made up as follows:

- (a) \$, the amount due under the judgment;
- (b) \$, the amount of costs; and
- (c) \$, the amount of interest.

or

(*Judgment debtor*), the judgment debtor, has failed to comply with an order with respect to the judgment made by the Local Court on 19 that (*judgment debtor*) (*insert terms of order not complied with*).

3. (*Judgment debtor*), the judgment debtor, is employed by of as a (*occupation*).

Sworn &c.

FORM 29F

Rule 29.15(4)

JUDGMENT DEBTOR'S STATEMENT OF FINANCIAL SITUATION

(*Heading as in originating process*)

To (*judgment debtor*)

of (*address*)

You are required to complete this form by giving the information requested below. The completed form signed by you must be sent to (*judgment creditor*) at (*address for service*) before 19 (*day for hearing named in the summons*). If you do not do this, the Court may make an order that you attend before the Court and give the information.

(*Signature of judgment creditor's legal practitioner*)

1. Amount and Source of Weekly Income

Occupation:

If working for an employer:

Name and address of employer:

Gross wage:

Current overtime (if any):

Local Court Rules

Car and other allowances and
commission

If self-employed or in partnership:

Average pre-tax earnings for last
12 months:

If unemployed:

State length of last employment,
date when last employment ceased
and gross weekly amount

Pension or other benefit received:

Workers' compensation received:

Maintenance received:

Superannuation received:

Board or rent received:

Average weekly interest on bank,
credit union or building society
deposit, debentures, &c.:

Average weekly dividend on shares:

Other income (give particulars):

Total Gross Weekly Income:

2. Property and Assets

Land, including vacant land:

For each piece of land -

Market value:

Amount of mortgage:

Net value:

Motor vehicle:

For each motor vehicle -

Year, make and model:

Amount owing to finance company:

Net value:

Deposit in bank, credit union,
building society, &c.:

Other investments including shares,
debentures, bonds:

Money owing to you:

From , \$

From , \$

Total:

Value of interest in partnership or business:

Furniture, household and personal goods:

Market value:

Local Court Rules

Amount owing to finance company:
Net value:

Life insurance policies:
Give particulars and state surrender value of each
policy:

Other assets (give particulars):

Total Property and Assets:

3. Debts, Liabilities and Other Financial Obligations

(a) Weekly expenses

Income tax:
Superannuation:
Housing (mortgage, rent, board, hospital
or institution):
Municipal rates:
Water and sewerage rates:
Land tax:
Child care expenses incurred for the
purpose of earning income:
Maintenance actually paid:
Instalment payments such as household
goods or tools of trade:

To , \$
To , \$

Total:

Electricity and gas:
Food:
Other general household expenses:
Motor vehicle expenses (registration,
insurance, maintenance, fuel):
Fares:
Telephone:
Insurance policy premiums:
School fees and other school expenses:
Clothing and shoes:
Medical and chemist expenses:
Entertainment:
Payments on court orders and fines:
Other expenses (give particulars):

Total:

Local Court Rules

(b) Other debts outstanding

Give particulars of debts under
hire purchase, leasing credit
card or other credit contracts,
department store accounts,
guarantee or personal loan:

\$, to , due on
\$, to , due on

Total:

4. If any of the assets referred to in paragraph 2
is owned jointly, identify each asset and give the name of
the other owner or owners:

.....
.....

5. If any of the debts referred to in paragraph 3
is due jointly, identify each debt and give the name of
the other debtor or debtors:

.....
.....

6. Give particulars of any other circumstances
which affect the financial situation of the judgment
debtor such as the number and age of dependants, marital
status and health:

.....
.....

Signature of judgment debtor:

Date:

Do not ignore this notice. If you do not understand this
notice or need help contact the Registrar of the Local
Court, a legal practitioner or your local legal aid
office.

Local Court Rules

FORM 29G

Rule 29.16(5)

APPLICATION FOR AN ORDER TO ATTEND FOR EXAMINATION
OR FURNISH PARTICULARS

(Heading as in originating process)

To: *(judgment debtor)*

or

(person indebted to or employer of judgment debtor)

of (address).

You are summoned to attend before the Court on the hearing of an application by *(judgment creditor)* for an order that *(set out the order sought)*.

The application will be heard *(continue as in Form 20A)*.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29H

Rule 29.16(5)

AFFIDAVIT IN SUPPORT OF SUMMONS FOR AN ORDER TO
ATTEND FOR EXAMINATION OR FURNISH PARTICULARS

(Heading as in originating process)

I, _____ of _____, the judgment creditor, make oath and say that:

1. By a judgment dated *(e.g. 20 June 19)* it was adjudged that *(judgment debtor)* should pay to me \$ _____ together with costs.

2. In respect of the judgment, the sum of \$ _____ is due and unpaid, made up as follows -

(a) \$ _____, the amount due under the judgment;

(b) \$ _____, the amount of costs; and

Local Court Rules

(c) \$, the amount of interest.

or

(Judgment debtor) has failed to comply with an order with respect to the judgment made by the Local Court on 19 that (judgment debtor) (insert terms of order not complied with).

3. I seek to obtain an order for the attachment of the earnings of (judgment debtor).

4. The place of residence of (judgment debtor) is .

5. On 19 , I was informed by of and believe that (judgment debtor) is employed by of as (occupation) and is a person to whom earnings are payable or likely to become payable by the said employer.

or

On 19, I was informed by of and believe that (judgment debtor) is employed by and is a person to whom earnings are payable or likely to become payable, but I do not know the name of whereabouts of the employer of (judgment debtor) or what the earnings of the (judgment debtor) are.

Sworn &c.

FORM 29J

Rule 29.16(6)

ORDER THAT JUDGMENT DEBTOR ATTEND OR GIVE
STATEMENT

(Heading as in originating process)

THE COURT ORDERS THAT:

(Judgment debtor), the judgment debtor, attend before the Registrar in the Court at (address) on 19 at a.m. (or p.m.) to be examined concerning the means and ability of (judgment debtor) to comply with the judgment (or to state to the Court the following particulars), namely:

(complete appropriately).

Local Court Rules

or

(*Judgment debtor*), the judgment debtor, furnish to the Court on or before 19 a statement in writing signed by him, her or it (*as the case may be*) setting forth the following particulars, namely:

(*complete appropriately*).

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29K

Rule 29.18(6)

ATTACHMENT OF EARNINGS ORDER

(*Heading as in originating process*)

The Court finds that:

1. By a judgment dated (*e.g. 20 June 19*) it was adjudged that (*judgment debtor*) pay to (*judgment creditor*) \$ together with costs.

2. \$ is due and unpaid in respect of the judgment.

or

2. (*Judgment debtor*) has failed to comply with an order with respect to the judgment made by the Court on 19 that he, she or it, as the case may be, (*insert terms of order not complied with*).

3. (*Judgment debtor*) was served with a copy of the summons in this proceeding and has had a reasonable opportunity of attending the hearing.

4. (*Judgment debtor*) is employed by at in the Northern Territory as a (*occupation*) and is a person to whom earnings are payable or are likely to become payable by that employer.

Local Court Rules

THE COURT ORDERS THAT:

1. (*The employer*), the above-named employer, on each pay-day whilst (*judgment debtor*) is employed by him or her or until this order ceases to have effect make payments out of the earnings of (*judgment debtor*) at the rate calculated in accordance with this order to (*name and address of person to whom payments are to be made*) for or towards \$, being the amount of \$ due and unpaid in respect of the judgment and the amount of \$ for costs.

2. For the purpose of calculating the normal deduction for the purposes of paragraph 4 of this order the normal deduction rate shall be \$ each pay-day (or on the pay-day(s) falling on 19 and thereafter \$ each pay-day).

3. The protected earnings rate, that is, the rate below which the earnings of (*judgment debtor*) may not be reduced by a payment under this order, shall be \$ in respect of each pay-day.

4. (*The employer*) shall, in respect of each pay-day whilst the order is in force, if the net earnings of (*judgment debtor*) exceed the sum of -

- (a) the protected earnings of (*judgment debtor*); and
- (b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any previous pay-day,

pay, so far as that excess permits, to (*judgment creditor*) the normal deduction in relation to that pay-day and so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

By the Court

Dated

Note: An attachment of earnings order does not come into force until the expiration of 7 days after the day on which the order is served on the person to whom the order is directed.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 29L

Rule 29.19(3)

NOTICE TO EMPLOYER

(Heading as in originating process)

The attachment of earnings order served with this notice requires you to deduct from earnings becoming payable to (*judgment debtor*) as your employee, from pay-day to pay-day until the order is discharged or suspended, the amount referred to in the order as the normal deduction, and to pay that amount to of towards securing payment of \$, being the amount of \$ due and unpaid in respect of the judgment referred to in the order and \$ for costs.

"Earnings" in relation to (*judgment debtor*) means any amounts payable to him or her, as the case may be, -

- (a) by way of wages or salary, including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary; or
- (b) by way of pension, including -
 - (i) an annuity in respect of past services whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but does not include a pension payable to (*judgment debtor*) under the Commonwealth Acts known as the *Social Security Act 1947* (as amended from time to time) the *Repatriation Act 1920* (as amended from time to time) or the *Seamen's War Pensions and Allowances Act 1940* (as amended from time to time).

Where 2 or more attachment of earnings orders are directed to you with respect to earnings payable or likely to become payable by you to (*judgment debtor*), you are required to -

- (a) comply with those orders according to the respective dates on which they took effect, and disregard any order until an earlier order has been complied with; and

Local Court Rules

- (b) comply with any order as if the earnings to which it relates were the residue of the earnings of (*judgment debtor*) after the making of any payment under an earlier order.

You are required to give (*judgment debtor*) a notice specifying particulars of the payments made by you under the attachment of earnings order.

In addition to deducting the amount required to be deducted under an attachment of earnings order, you are entitled to make a further deduction of \$3 per pay period from the earnings of (*judgment debtor*) towards the clerical and administrative costs of making payments under the order. You are required to give (*judgment debtor*) notice of the amount deducted for this purpose.

If you are in doubt whether payments to (*judgment debtor*) of a particular class or description are earnings for the purpose of the attachment of earnings order you may apply to the Court to have that question determined.

You must give notice in writing to the Registrar -

- (a) immediately if you are not the employer of (*judgment debtor*); or
- (b) if you are now the employer of (*judgment debtor*) but later cease to be his or her employer, immediately after you cease to be employer.

A person who dismisses an employee, injures him or her in his or her employment or alters his or her position to his or her prejudice because an attachment of earnings order has been made or because the person is required to make payments under the order in relation to the employee may be dealt with as for contempt of court.

Dated (*e.g. 20 June 19*)

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 29M

Rule 29.22(2)

NOTICE OF CESSATION OF ATTACHMENT
OF EARNINGS ORDER

(Heading as in originating process)

To: (employer) of , the employer of
(judgment debtor).

The attachment of earnings order made on ,
19 which ordered you to make payments for or towards
the amount due and unpaid in respect of a judgment in
favour of judgment creditor) out of the earnings payable
to (judgment debtor), ceased to have effect on
, 19 because (state reason).

Dated: (e.g. 20 June 19)

Registrar

Note: The adjustments to the employee's salary must be
made within 7 days after receiving this notice.

Do not ignore this notice. If you do not understand this
notice or need help contact the Registrar of the Local
Court, a legal practitioner or your local legal aid
office.

FORM 29N

Rule 29.19(3)

NOTICE BY EMPLOYER THAT JUDGMENT DEBTOR
IS NOT IN HIS OR HER EMPLOY

(Heading as in originating process)

To the Registrar,

of (address)

And to (judgment creditor)

of (address)

Local Court Rules

I refer to the order made on 19 that I make payments to (judgment creditor) out of the earnings of (judgment debtor) and give notice that I am not the employer of (judgment debtor) (or I ceased to be the employer of (judgment debtor) on 19 .)

Dated

(signature of employer)

FORM 29P

Rule 29.30(3)

ORDER FOR GARNISHEE TO ATTEND

In the Local Court
at (place)

No. of 19

Between

A.B.
and
C.D.
and
E.F.

Judgment creditor

Judgment debtor

Garnishee

To (name of garnishee)
of (address).

You are summoned to attend before the Court on the hearing of an application by the judgment creditor for an order that you, the garnishee, pay to the judgment creditor the debt due from you to the judgment debtor (or the debt which will become due from you to the judgment debtor on 19) (or pay to the judgment creditor in such amount or amounts and at such time or times as the Court may direct the debt accruing from you to the judgment debtor) (or the debt which will accrue from you to the judgment debtor on 19) or so much of that debt as may be sufficient to satisfy a judgment recovered against the judgment debtor by the judgment creditor in the Court on (e.g. 20 June 19) for \$, interest accrued and accruing on the judgment and the costs of the judgment creditor of the garnishee proceedings. The sum required to satisfy the judgment, interest and costs is \$, and is made up as follows:

(a) \$, the amount due and unpaid under the judgment;

Local Court Rules

(b) \$, the amount of interest accrued and accruing;

(c) \$, the costs of the garnishee proceeding.

The debt in respect of which this summons is filed and served is as a result of judgment against (*judgment debtor*) in favour of (*judgment creditor*) in the Local Court dated .

This summons is filed and served by order of the Court made on 19, .

The application will be heard on (*continue as Form 20A*).

(*insert the following at end of summons*):

Note: Money owing under the debt to the extent of the judgment must not be paid to the judgment debtor unless the court so orders.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29Q

Rule 29.30(8)

GARNISHEE ORDER

(*where garnishee debt less than judgment debt, interest and judgment creditor's costs*)

(*Heading as in Form 4A*)

THE COURT ORDERS THAT:

1. The garnishee (*where appropriate insert here: (after deducting \$ for the costs of the garnishee application)*) pay immediately to the judgment creditor \$, the debt due from him or her to the judgment debtor and that in default of payment action may be taken against the garnishee.

(*or where the debt is not due but accruing*)

Local Court Rules

The garnishee pay to the judgment creditor \$, the debt accruing from him or her to the judgment debtor, as follows (*state the amount or amounts to be paid and the time or times of payment as directed by the Court*) and that in default of payment action may be taken against the garnishee.

2. The costs of the judgment creditor of the garnishee application, being on amount of \$, be added to the judgment debt and the interest accrued on that debt and be retained by the judgment creditor out of the money recovered by him or her under this order in priority to the judgment debt and interest.

Date authenticated:

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29R

Rule 29.30(8)

GARNISHEE ORDER

(*where garnishee debt greater than judgment debt,
interest and judgment creditor's costs*)

(*Heading as in Form 4A*)

THE COURT ORDERS THAT:

1. The garnishee pay immediately to the judgment creditor \$, being so much of the debt due from him or her to the judgment creditor as is sufficient to satisfy the judgment debt, the interest accrued on that debt and the costs of the judgment creditor of the garnishee proceedings and that in default of payment action may be taken against the garnishee.

(*or where the debt is not due but accruing*)

Local Court Rules

The garnishee pay immediately to the judgment creditor \$, being so much of the debt accruing from him or her to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued on that debt and the costs of the judgment creditor of the garnishee proceedings as follows (*state the amount or amounts to be paid and the time or times of payment as directed by the Court*) and that in default of payment action may be taken against the garnishee.

(where appropriate add)

2. The garnishee be at liberty to retain \$ for his or her costs of the garnishee proceedings out of the balance of the debt due (*or accruing*) from him or her to the judgment debtor.

Date authenticated:

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 29S

Rule 29.35

WARRANT OF POSSESSION

(Heading as in originating process)

TO THE BAILIFF:

In respect of the judgment dated (*e.g. 20 June 19*) by which it was decided that (*identify party or other person against whom judgment was entered or given*) recover possession of the land described below and that (*identify party or other person against whom judgment was ordered or given*) pay (*identify party or other person*) costs (*or pay \$ to the (identify party or other person) together with costs*), which have been taxed at \$, ENTER THE LAND and cause (*identify party or other person*) to have possession of it, AND LEVY on the property of (*identify party or other person*) which is authorised by law to be

Local Court Rules

taken in execution for (continue as in Form 29B according to whether the levy is for a judgment amount and costs or for costs only) AND INDORSE (continue as in Form 29B).

SCHEDULE

(describe land as in judgment)

Issued 19 .

BY THE COURT

Registrar

Issued at the request of (identify party or other person for whom judgment was entered or given).

The last known address of (continue as in Form 24A).

FORM 30A

Rule 30.02(1)

APPLICATION FOR ISSUE OF EXAMINATION SUMMONS

IN THE LOCAL COURT
AT

A.B.	Judgment creditor
and	
C.D.	Judgment debtor

I, _____ of
the judgment creditor make oath and say that:

1. By an order dated (e.g. 5 September 19) it was ordered that (judgment debtor) pay me the sum of \$ and \$ for costs.

2. The judgment debtor has defaulted in the payment of the order in the following way (set out details of default).

Local Court Rules

3. I seek the issue of a summons for the oral examination of the judgment debtor.

Sworn, &c.

FORM 30B

Rule 30.02(2)

SUMMONS TO ATTEND FOR ORAL EXAMINATION

(Heading as in originating process)

To *(judgment debtor)*

You are summoned to attend before the Court to be orally examined as to any matter related to your financial circumstances generally and your means and ability to satisfy the judgment against you in favour of *(judgment creditor)* dated *(e.g. 20 June, 19)* under which judgment \$ is owing.

Your examination is required with respect to an allegation made by *(judgment creditor)* that you have defaulted in the payment of money under an order made on , 19 that you pay the sum of \$ *(or by instalments of \$)* being the sum owing under a judgment against you in favour of *(judgment creditor)* dated *(e.g. 20 June 19)*.

You are required to produce to the Court on the examination the following documents: *(description of documents)*.

The examination will be held before the Registrar at the Local Court at *(address)* on , 19 at a.m. *(or p.m.)* or so soon afterwards as the business of the Court allows.

Issued 19 .

Registrar

Note: If you do not attend the Court as directed by this summons, the Court may issue a warrant for your arrest.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 30C

Rule 30.04(1)

WARRANT OF ARREST ON DISOBEDIENCE TO SUMMONS

(Heading as in originating process)

To all members of the Police Force of the Northern Territory.

Whereas *(name of judgment debtor)* of *(address)* has failed to attend before the Local Court at the time and place appointed by the summons issued on , 19 to be examined concerning his or her financial circumstances:

I do hereby authorise you to enter and search by day or by night any dwelling-house, ship or place whatsoever wherein the said person is suspected to be using all necessary force for that purpose and if necessary to break any outer door or window and to apprehend him or her and to bring him or her before the Court.

Issued 19 .

Registrar

FORM 31A

Rule 31.02(1)

APPLICATION FOR ORDER FOR PAYMENT OF JUDGMENT
DEBT BY INSTALMENTS

(Heading as in originating process)

This application is made to the Court by *(judgment creditor or judgment debtor)* of *(usual place of residence or of business or registered office)* with respect to the judgment for *(judgment creditor)* against *(judgment debtor)* in the Local Court dated the *(e.g. 20 June 19)* for \$ and costs.

\$ is now owing under the judgment, being -

(a) \$, the amount due under the judgment;

(b) \$, the amount of costs;

Local Court Rules

(c) \$, the amount of interest (if capable of calculation where the judgment debtor applies).

I apply to the Court for an order for the payment by instalments of the sum owing as follows: (state the amount of each instalment, weekly monthly or otherwise, the number of instalments and the date of the first and last instalment)

I am unable to pay the amount owing in one sum because (state briefly why). My address is

Dated 19 .

(Signature of applicant
or his or her legal
practitioner)

Note: You must attach a copy of Form 29F, STATEMENT OF FINANCIAL SITUATION. This form must be filed with the Court and a copy served on the plaintiff.

FORM 31B

Rule 31.02(2)

APPLICATION FOR VARIATION OR CANCELLATION OF
ORDER FOR PAYMENT OF JUDGMENT
DEBT BY INSTALMENTS

(Heading as in originating process)

This application is made to a Registrar by (judgment creditor or judgment debtor) of (usual place of residence or of business or registered office) with respect to the judgment for (judgment creditor) against (judgment debtor) in the Local Court dated (e.g. 20 June 19) for \$ and costs.

On , 19 an order was made that (judgment debtor) pay \$, the sum then owing under the judgment, by instalments as follows: (insert terms of order). (Judgment debtor) has duly paid the instalments in accordance with the order (or has failed to pay the instalments which under the order were due on and on the instalments are now in arrears in the sum of \$).

\$ is now owing under the judgment, being -

(a) \$, the amount due under the judgment;

(b) \$, the amount of costs;

Local Court Rules

(c) \$, the amount of interest (if capable of calculation where the judgment debtor applies).

(Judgment creditor or judgment debtor) hereby applies for an order that the order made on , 19 be varied as follows: (give particulars of variation sought stating amount of each instalment, weekly, monthly or other period for payment of first and last instalment, name and address of person, number of instalments, date or payment of first and last instalments, name and address of person to be paid under the order as varied) (or be cancelled).

The grounds on which the application is made are:

(where the judgment debtor applies, give particulars of any material change in the circumstances of the judgment debtor since the date of the order).

(where the judgment creditor applies, give particulars of any allegation that there has been a substantial increase in the property or means of the judgment debtor or that any information given by the judgment debtor in support of the application for the order for the payment of the judgment debt by instalments or in any agreement for the payment of the judgment debt by instalments or in any agreement for the payment of the judgment debt by instalments was inaccurate.)

The application will be heard before the Local Court, at (address) on , 19 at a.m. (or p.m.) or so soon afterwards as the business of Court allows.

The address for service of (judgment creditor or judgment debtor) is

The usual or last-known place of residence or of business or registered office of (judgment debtor or judgment creditor) is

Dated 19 .

(Signature of applicant
or legal practitioner)

(Note that where the application is made by a judgment debtor, the judgment debtor must file an affidavit of his or her financial situation which gives the information required by Form 29F.)

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 31C

Rule 31.03(2)

ORDER RELATING TO PAYMENT OF JUDGMENT
DEBT BY INSTALMENTS

THE COURT ORDERS THAT:

(Judgment debtor) pay to (judgment creditor) \$
, being the sum owing in respect of a judgment for
(judgment creditor) against (judgment debtor) dated (e.g.
20 June 19) by instalments as follows:

(state amount of each instalment, weekly, monthly or
other period for payment, number of instalments, dates of
payments of first and last instalments made and address of
person to be paid).

or

The following order be substituted for the order made
on , 19 that (judgment debtor) pay by instalments \$
which was then owing under a judgment for (judgment
creditor) against (judgment debtor) dated (e.g. 20 June
19):

(complete appropriately)

or

The order made on , 19 that (judgment debtor)
pay by instalments \$ which was then owing under a
judgment for (judgment creditor) against (judgment debtor)
dated (e.g. 20 June 19) be varied as follows:

(complete appropriately)

The order made on , 19 that (judgment debtor)
pay by instalments \$ which was then owing under a
judgment for (judgment creditor) against (judgment debtor)
dated (e.g. 20 June 19) be cancelled (or be confirmed
and the application dismissed).

Do not ignore this notice. If you do not understand this
notice or need help contact the Registrar of the Local
Court, a legal practitioner or your local legal aid
office.

Local Court Rules

FORM 31D

Rules 31.03(3) and 31.04

NOTICE OF ORDER OR REFUSAL OF ORDER FOR PAYMENT
OF JUDGMENT DEBT BY INSTALMENTS

(Heading as in originating process)

To (judgment creditor)

And to (judgment debtor)

TAKE NOTICE that on , 19 I made an order on the application of (judgment creditor or judgment debtor) that (judgment debtor) pay to (judgment creditor) \$, being the sum owing under a judgment for (judgment creditor) against (judgment debtor) dated (e.g. 20 June 19) by instalments as follows: (state amount of each instalment, weekly, monthly or other period of payment, number of instalments, dates of payments of first and last instalments and name and address of person to be paid).

or

that on , 19 I refused an application by (judgment creditor or judgment debtor) for an order that (judgment debtor) pay by instalments \$, being the sum owing under a judgment for (judgment creditor) against (judgment debtor) dated (e.g. 20 June 19).

Dated 19 .

Registrar

Note: If you are dissatisfied with the order or refusal referred to in this notice you may file a notice of objection with the Registrar within 14 days after receipt by you of this notice. The notice of objection should be in Form 31E.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

Local Court Rules

FORM 31E

Rule 31.04

NOTICE OF OBJECTION

(Heading as in originating process)

To Registrar

(Judgment creditor or judgment debtor) of (usual place of residence or of business or registered office) hereby objects

to the order made on , 19 that *(complete appropriately)*.

or

to the refusal on , 19 of an application by *(judgment creditor or judgment debtor)* for an order that *(complete appropriately)*.

The address for service of *(judgment creditor or judgment debtor)* is

Dated 19 .

*(Signature of objector
or his or her legal
representative)*

FORM 31F

Rule 31.04

NOTICE OF HEARING OF OBJECTION

(Heading as in originating process)

To *(judgment creditor)*

And to *(judgment debtor)*

(Judgment creditor or judgment debtor) has filed notice of objection to an order of the Registrar made on 19 on

Local Court Rules

the application of (*judgment creditor or judgment debtor*) that(*complete appropriately*). The Court will hear the objection on 19 at a.m. (or p.m.) or so soon afterwards as the business of the Court allows.

Dated 19 .

Registrar

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 31G

Rule 31.05(2)

INSTALMENT AGREEMENT

(*Heading as in originating process*)

1. This agreement is made between (*judgment creditor*) of (*usual place of residence or of business or registered office*) and (*judgment debtor*) of (*usual place of residence or of business or registered office*) with respect to the judgment for (*judgment creditor*) against (*judgment debtor*) in the Local Court dated (e.g. 20 June 19) for \$ and costs.

2. \$ is owing under the judgment, being -

- (a) \$, the amount due under the judgment;
- (b) \$, the amount of costs;
- (c) \$, the amount of interest.

3. The parties hereby agree that (*judgment debtor*) shall pay and (*judgment creditor*) will accept payment of \$, being the sum owing under the judgment, by instalments as follows:

- (a) Number of instalments.
- (b) Amount of each instalment.
- (c) Weekly, monthly or other period for payment.

Local Court Rules

(d) Date of payment of -

first instalment

last instalment.

(e) Name and address of person to whom payment to be made.

4. (*Judgment debtor*) acknowledges that he or she is aware that upon filing of this agreement an order will be made in the terms of this agreement and that for a breach thereof he or she may be required to attend before the Court.

Dated 19 .

Signed by the judgment creditor:

Witness:

Name:

Contract address or telephone number:

Signed by the judgment debtor:

Name:

Contract address or telephone number:

FORM 31H

Rule 31.05(5)

ORDER FOR INSTALMENT PAYMENT OF JUDGMENT
DEBT AFTER AGREEMENT

(*Heading as in originating process*)

THE COURT ORDERS THAT:

In accordance with an agreement dated , 19
made between (*judgment creditor*) and (*judgment debtor*) and
filed (*judgment debtor*) pay to (*judgment creditor*) \$,
being the sum owing under a judgment for (*judgment creditor*) against (*judgment debtor*) dated (e.g. 20 June 19), by instalments as follows: (*state amount of each instalment, weekly, monthly or other period for payment, number of instalments, dates of payments of first and last instalments, name and address of person to be paid*).

Local Court Rules

FORM 32A

Rule 32.02(2)

APPLICATION FOR RE-HEARING

(heading as in Form 4A)

To the Registrar
and to *(names and addresses of other parties to proceeding)*

I did not appear at the hearing of the above statement of claim. The Court on *(date)* in my absence made an order against me for *(set out terms of order)* and for \$ costs.

TAKE NOTICE that I intend to apply to the Court for an order that that order be set aside and the statement of claim be re-heard as soon as possible.

I did not appear at the hearing for the following reason(s) *(set out reasons)*

*I did not file a notice of defence for the following reason(s) *(set out reasons)*

My address for service is:

(Signed)

Filed: *(e.g. 5 September, 19)*

This application will be heard by the Court on *(date)* at *(time)*.

Registrar

* Delete if inapplicable.

Local Court Rules

FORM 33A

IRREVOCABLE BANK GUARANTEE

Rule 33.07

(heading as in Form 4A)

The *(name of bank)* of *(address)* undertakes to hold itself responsible for the payment into court of \$ ordered to be paid by the *plaintiff/*defendant in the above matter by order of the Court on *(date)*.

The bank acknowledges that this undertaking can be amended or revoked only with the leave of the Court or discharged by payment of \$ into court.

**(Sealed by the Bank
or*

**Signed by an officer of the
bank authorised in writing)*

FILED: *(e.g. 5 September, 19)*

* Delete if inapplicable.

FORM 33B

Rule 33.08

NOTICE OF DISCHARGE AND PAYMENT INTO COURT

(heading as in Form 4A)

The *(name of bank)* of *(address)* which guaranteed the payment of \$..... into court on behalf of the "plaintiff/"defendant in the above matter hereby discharges the guarantee and pays into Court the total sum of money so guaranteed.

*(*sealed by the Bank
or*

**Signed by an officer of
the bank authorised in
writing)*

Filed: *(e.g. 5 September, 19)*

*Delete if not applicable.

Local Court Rules

FORM 34A

Rule 34.01(1)

APPOINTMENT OF LITIGATION GUARDIAN

IN THE LOCAL COURT
AT

To the Registrar -

I, *(name of appointor)* of *(address)* give notice that I have appointed *(name)* or *(address)* as my litigation guardian for the purposes of *(set out brief details of proceeding for which litigation guardian is appointed)*.

(Signed)

FILED: *(e.g. 5 September 19)*.

FORM 35A

NOTICE OF APPEAL

Rule 35.03(2)

IN THE COURT 19 No.

AT

In the matter of an appeal pursuant to *(name of the Act and section of Act under which appeal is brought)*.

APPLICANT: *(Name and Address)*

RESPONDENT: *(Name and Address)*

The appellant appeals against *(set out briefly the substance of the order or decision appealed against)*.

Date of order or decision.

Grounds of appeal: *(set out specifically the grounds of appeal)*

Dated: *(e.g. 5 September, 19)*

(Signed by appellant)

Local Court Rules

FORM 35B

Local Court Act

Rule 35.10

Local Court
at (*place*)

Claim No.

NOTICE OF APPEAL UNDER SECTION 19
OF THE *TENANCY ACT*

Between the name
appellant address for
..... service

and the Commissioner of Tenancies

TO THE COMMISSIONER
and to the other party to the Commissioner's order

The plaintiff appeals against your order of (*date*)

Describe order:

(*Signature of applicant*)

The Registrar has fixed (*time*) on (*date*) as the hearing
time for this appeal.

Registrar

Filed:

Local Court Rules

FORM 35C

Local Court Act

Rules 35.14
and 35.17

Local Court
at (*place*)

Claim No.

APPLICATION FOR WARRANT OF POSSESSION
UNDER SECTIONS 48 AND 51A(3) OF THE *TENANCY ACT*

Between the name
applicant
(*person* address for
seeking service
warrant)

and

lessee name
(*tenant*) address
.....

TO THE LESSEE:

The applicant applies to the Court for a warrant
authorising an officer of the Court or a member of the
Police Force to evict the lessee from the following
premises:

(*describe premises*)

The applicant states:

1. *I am the lessor, or
*I am the agent of the lessor authorised in writing

and

- *2. I gave the lessee notice to quit on (*date*) on the
following grounds:

- (a) the notice required the lessee to quit the
premises by (*date*); and
- (b) the date in paragraph (a) is less than 60 days
ago.

OR

Local Court Rules

- *2. The Court made an order terminating the lease on (date) and the lessee has not given up possession.

(Signature of applicant)

The Registrar has fixed (time) on (date) as the hearing time for this application.

Registrar
Filed:

* Delete if inapplicable.

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.

FORM 35D

Local Court Act

Rule 35.15

Local Court
at (place)

Claim No.

APPLICATION FOR ORDER TERMINATING LEASE OF
DWELLING HOUSE UNDER SECTION 51 OF THE TENANCY ACT

Applicant	name
(person		
seeking	address for
warrant)	service

The applicant applies to the Court for an order terminating the lease and for the issue of a warrant authorising an officer of the Court or a member of the Police Force to evict the lessee (name and address) from the following premises:

(describe premises)

Local Court Rules

The applicant states:

1. *I am the lessor, or
 *I am the agent of the lessor authorised in writing
and
2. I gave the lessee notice of my intention to seek an
 order terminating the lease on (date)

(Signature of applicant)

The Registrar has fixed (time) on (date) as the hearing
time for this application.

Filed: Registrar

* Delete if inapplicable.

FORM 35E

Local Court Act

Rule 35.16

Local Court
at (place)

Claim No.

LESSEE'S APPLICATION FOR ORDER TERMINATING LEASE
UNDER SECTION 51A(1) OF THE TENANCY ACT

Between the name
applicant
(tenant) address for
..... service

and

lessor name
(landlord) address
.....

TO THE LESSOR:

The applicant applies to the Court for an order
terminating the lease over the following premises:

Local Court Rules

(describe premises)

On the following grounds:

(specify grounds)

(Signature of applicant)

The Registrar has fixed *(time)* on *(date)* as the hearing time for this application.

Registrar

Filed:

Do not ignore this notice. If you do not understand this notice or need help contact the Registrar of the Local Court, a legal practitioner or your local legal aid office.
