

NORTHERN TERRITORY OF AUSTRALIA

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Regulations 1986, No.4\*

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Rules of Court under the Supreme Court Act

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

Dated this Fourteenth day of February, 1986.

K.F. O'LEARY C.J.  
JOHN NADER  
W. KEARNEY  
MICHAEL MAURICE  
PHILLIP RICE

Judges of the Supreme  
Court of the Northern  
Territory of Australia

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AMENDMENTS OF THE RULES OF THE  
SUPREME COURT OF THE NORTHERN  
TERRITORY OF AUSTRALIA

The Rules of the Supreme Court of the Northern Territory of Australia are amended -

- (a) by omitting Order 56 and substituting the following:

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\* Notified in the Northern Territory Government Gazette  
on 26 MAR , 1986.

ORDER 56Applications and proceedings in ChambersGeneral

Business  
in  
Chambers

1. The business to be disposed of by a Judge in Chambers shall consist of the following matters in addition to those which under any other Rule or by any Act may be disposed of in Chambers:

- (a) applications for time to plead, for leave to amend pleadings, and for discovery and production of documents; and generally all applications relating to the conduct of any cause or matter;

- (b) such other matters, the disposal of which is not expressly provided for by an Act or a Rule, as the Judge thinks fit to dispose of in Chambers.

When originating  
summons used

2. Every application in Chambers by which a matter is commenced shall be made by originating summons.

Form and  
issue of  
originating  
summons

3. An originating summons shall accord with Form 68, Form 68A or Form 68B in the First Schedule, or with such other form as is applicable in the circumstances. It shall be prepared by the applicant or his solicitor, sealed with the Seal of the Court and when so sealed shall be deemed to be issued. The person obtaining the summons shall file a copy thereof at the time it is issued.

Time for  
attendance -  
originating  
summons

4. The day and hour for attendance under an originating summons need not be inserted therein and, if it is not so inserted, notice of such

day and hour shall be served with the summons, or separately from the summons, but in such manner and within such time as the summons is required to be served.

Time for service of originating summons

5. Where service of an originating summons is necessary it shall be served 7 clear days before the day for attendance thereunder, unless a Judge otherwise directs.

Appearance to be entered to originating summons

6. A party served with an originating summons which requires an appearance shall, before he is heard in Chambers, enter an appearance and give notice thereof in the manner provided by Order 13.

When interlocutory summons used

7. Every application in Chambers in a pending cause or matter, not being an application which may be dealt with on a summons for directions, shall be made by interlocutory summons.

Form of interlocutory summons

8. An interlocutory summons shall accord with Form 69 in the First Schedule, or with such other form as is applicable in the circumstances, and shall be addressed to all the persons on whom it is to be served.

Issue of interlocutory summons

9. An interlocutory summons shall be prepared by the applicant or his solicitor, and shall be sealed with the Seal of the Court and when so sealed shall be deemed to be issued. The person obtaining the summons shall file a copy thereof at the time it is issued.

Time for attendance - interlocutory summons

- 10.(1) The day and hour for attendance under an interlocutory summons shall be as fixed by a Judge or the Master.

Stay of proceedings

- (2) Subject to sub-rule(3), from the time so fixed for attendance

from time for  
attendance

the summons shall operate as a stay  
of proceedings.

Stay of  
proceedings  
from time of  
service

- (3) A Judge may order that the summons operate as a stay of proceedings from the time of service, in which case it shall be drawn accordingly and signed by the Judge.

Time for  
service of  
interlocutory summons

11. Except in the case of an ex parte application, every interlocutory summons shall be served within a reasonable time before the hearing thereof, and in no case later than 2 o'clock in the afternoon of the day before the hearing thereof, or, if served on Saturday, not later than 12 o'clock noon.

Matters subject  
of application

12. (1) An application in Chambers may include all matters upon which the applicant then desires the order or directions of the Judge.

Orders and  
directions

- (2) The Judge hearing the application may make such orders and give such directions relating to or consequential on the subject matter of the application as he thinks fit.

Adjournment from  
and into Court

- (3) The application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

Proceeding  
ex parte on  
failure to  
attend

13. Where any of the parties to a summons fails to attend at the time and place appointed for the hearing or further hearing of the summons, the Judge may proceed ex parte if, considering the nature of the case, he thinks it expedient so to do. No affidavit of non-attendance shall be required, but the Judge may require such evidence of service as he thinks fit.

Reconsideration of  
proceedings heard  
ex parte

14. (1) A Judge who has proceeded ex parte under Rule 13 shall not reconsider those proceedings unless he is satisfied that the party

failing to attend was not guilty of wilful delay or negligence.

- Costs of non-attendance (2) Upon an application for reconsideration the costs occasioned by the non-attendance shall be in the discretion of the Judge, who may fix them at the time and direct that they be paid by the applicant or his solicitor before the proceedings are reconsidered, or make such other order as to those costs as he thinks fit.
- Costs on non-attendance 15. Where a proceeding in Chambers fails because a party does not attend and the Judge does not think it expedient to proceed ex parte, the Judge may order that such costs (if any) as he thinks reasonable be paid to the party attending by the absent party, or by his solicitor personally.
- Further attendances on summons 16. Where matters in respect of which a summons has been issued are not disposed of at the time and place fixed for the hearing of the summons, the parties shall attend from time to time without further summons at such time or times as are appointed for the consideration or further consideration of the matter.
- Consent order by Judge 17. In any cause or matter a Judge in Chambers may order that judgment be entered by consent of the parties and a judgment so entered shall be of the same force and validity and may be enforced against all persons bound thereby in the same manner as a judgment pronounced by a Judge in Court.
- Form of order 18. An order shall accord with Form 70 in the First Schedule, or with such other form as is applicable in the circumstances, and shall be prepared by the party entitled to the order and signed by the Judge or the Master.

Master's jurisdiction

Jurisdiction of  
the Master

19. The Master is authorized to hear and determine all applications and exercise any of the powers conferred on the Court or a Judge -
- (a) under any of the Orders or Rules mentioned in column 1 of Part 1 of the Fifth Schedule subject to the restrictions (if any) appearing in column 3 opposite the Order or Rule;
  - (b) under any Order or Rule for the purposes of which jurisdiction is not conferred on the Master by paragraph (a) of this Rule, where the application is made in interlocutory proceedings by summons inter partes;
  - (c) under the provisions of the Acts mentioned in column 1 of Part 2 of the Fifth Schedule subject to the restrictions (if any) appearing in column 3 opposite those provisions;
  - (d) under sections 11 or 16(1) of the Service and Execution of Process Act 1901 of the Commonwealth;
  - (e) under the inherent jurisdiction of the Court to -
    - (i) appoint, or remove and replace with another, a next friend or guardian ad litem of a party under a disability;
    - (ii) grant leave to effect service in accordance with Order 10 Rule 7 and grant leave to proceed where service has been effected under that Rule;
    - (iii) dismiss or stay an action (including a counterclaim) or strike out a defence in an action for

non-compliance with an order of the Master requiring the performance of an act (other than the payment of costs);

(iv) dismiss an action (including a counterclaim) for want of prosecution;

(v) dismiss an action (including a counterclaim) which is an abuse of the process of the Court;

(vi) strike out as an abuse of the process of the Court an indorsement or a pleading; and

(vii) make orders for the disposition of moneys paid into Court as security for costs and of any other moneys paid into Court to the disposition of which no Rule expressly relates.

Limitation on  
Master's jurisdiction

20. Nothing in Rule 19 shall confer on the Master authority to hear or determine -

(a) an application, proceeding or matter relating to criminal proceedings or to the liberty of the subject, including proceedings for attachment or committal;

(b) a proceeding on the Crown side of the Court, other than an application for an order nisi under Order 55 Rules 1 to 33 inclusive;

(c) subject to paragraph (g) an application or proceeding for an injunction, other than an injunction so far as it is ancillary or incidental to a charging order or an order for the appointment of a receiver by way of equitable execution;

- (d) an application for the review of taxation of costs;
- (e) a proceeding for a declaration of the rights of a person;
- (f) a question of construction arising under an instrument;
- (g) an application relating to the guardianship or custody of an infant, other than an application by consent, for an order for -
  - (i) interim custody or interim access either under the Guardianship of Infants Act or under the inherent jurisdiction of the Court; or
  - (ii) an injunction, in connection with an interim order under sub-paragraph (i);
- (h) an application in a matter pending in the Federal Court or High Court;
- (i) a proceeding in respect of which a Judge orders that Rule 19 shall not apply, as long as the order shall be in force; a Judge at any time may make any such order, and may rescind it;
- (j) a proceeding in which a question of law arises which, in the opinion of the Master, should be decided by a Judge;
- (k) a proceeding in which a party thereto requests, prior to the commencement of the hearing of the proceeding, that it be decided by a Judge; or
- (l) a proceeding or class of proceeding which the Chief Justice directs to be excepted from Rule 19.





at the hearing of the appeal to rely on any ground not so stated.

Appeal not a stay

- (4) An appeal from an order or decision of the Master shall not act as a stay of proceedings unless the Master or a Judge otherwise orders.

Hearing de novo

- (5) The appeal shall be heard by way of a hearing de novo of the application or matter.

References in Rules deemed to refer to Master

23. In relation to any matter which is authorized by these Rules to be dealt with by the Master any references in any of those Rules -

- (a) to a Judge's Chambers shall be deemed to be references to the office of the Master; and  
 (b) to a Judge or the Court shall be deemed to be references to the Master.

Consent judgment in interlocutory proceedings

24. (1) Upon application by a party and upon the written consent of all other parties affected thereby being filed, the Master may make an order or give judgment in any interlocutory proceedings.

Effect of consent judgment

- (2) Every such order or judgment shall state that it is made by consent and it shall be of the same force and validity as if it had been made by a Judge.

When matter allotted to Master may be brought before a Judge

25. No proceeding which is authorized by Rule 19 to be dealt with by the Master shall be brought before a Judge except -

- (a) where a party thereto requests prior to the commencement of a hearing before the Master that it be decided by a Judge;  
 (b) on a reference by or removal from the Master;  
 (c) on an appeal under this Order;

- (d) at Alice Springs when the Master is not sitting there; or
- (e) by leave of a Judge.

Application of certain Rules to exercise of jurisdiction by Master

26. In proceedings brought before the Master under these Rules the provisions of the Orders or Rules mentioned in column 1 of Part 3 of the Fifth Schedule shall, mutatis mutandis, apply; and the Master may, in addition to any other powers conferred upon him, exercise in those proceedings any of the powers conferred on a Judge or the Court by those Orders or Rules.

Definition

27. For the purposes of Rules 19 to 26 inclusive of this Order, the word "Master" shall not include the Deputy Master.

Effect of description in Fifth Schedule

28. The matter in column 2 of Parts 1, 2 and 3 of the Fifth Schedule is inserted for convenience of reference only and does not affect the operation of the Rules."

- (b) by inserting after the Fourth Schedule to the Rules the following:

FIFTH SCHEDULEJURISDICTION OF THE MASTERPART 1Jurisdiction under the Rules

Column 1	Column 2	Column 3
Provision of the Rules	Description	Restriction of jurisdiction
Order 3, Rule 1(3)	Issue of writ for service out of Australia	
Order 4, Rule 1	Defendant's application to set aside or amend writ, or for particulars	
Order 8	Disclosures by solicitor; removal or withdrawal of solicitor from the record	
Order 9	Renewal of writ	
Order 10	Service of writ	
Order 12, except Rules 3(1) & 11(1)	Service out of Australia	
Order 13	Appearance	
Order 14, Rules 1 and 10	Application to appoint guardian, where infant does not appear; to set aside judgment entered for default	
Order 19, except Rules, 11, 36 & 50	Parties	
Order 20, except Rules 6, 7(1)(a), 9 & 10	Third party procedure	

Column 1	Column 2	Column 3
Provision of the Rules	Description	Restriction of jurisdiction
Order 21	Change of parties by death etc.	
Order 22	Joinder of causes of action	
Order 23	Pleading generally	
Order 24, except Rule 4	Statement of Claim	
Order 25	Defence & Counter-claim	
Order 26	Payment into and out of Court, and tender	
Order 28	Matters arising pending the action	
Order 30	Discontinuance	
Order 31, except Rules 11 & 13	Default of pleading	
Order 32, except Rules 11 & 12	Amendment of endorsement	
Order 33, except Rule 1(2)	Summons for Directions	
Order 34, except Rules 28 & 33-36	Discovery and Inspection	
Order 38, Rules 1 & 3	Mode of entry for trial; dismissal for want of prosecution	
Order 40, Rules 5, 10, 25 & 26	Admission of defective affidavits; extension of time for filing affidavits	
Order 46, Rules 1(4) and 5	Manner of service on on judgment debtor; lien of third persons on debt of garnishee	

Column 1	Column 2	Column 3
Provision of the Rules	Description	Restriction of jurisdiction
Order 47, Rule 7	Substituted service, and service out of the jurisdiction on judgment debtor	
Order 50, Rules 1 and 8(2)	Details of co-partners; execution against a member of a firm	
Order 52, Rule 20	Fixing dates for receiver to pass accounts; dealing with neglect	
Order 53, Rule 2	Mode of carrying out sale etc when ordered by Court	
Order 55, Rules 1-33	Certiorari; mandamus; prohibition; quo warranto	As far only as concerns applications for orders nisi
Order 64, Rules 5-7, 9 & 44	Security for costs; costs improperly incurred etc; disallowance of costs of improper or vexatious pleadings or proceedings	
Order 66 Rule 6	Substituted service	

PART 2Jurisdiction under certain Acts

Column 1	Column 2	Column 3
Act and provision	Description	Restrictions on jurisdiction
Evidence Act - Section 46	Compelling production of banker's books	
Section 47	Inspection of banker's books	
Section 48	Costs of application	
Local Court Act Section 55	Stay of proceedings after appeal instituted	

PART 3Provisions of Rules which apply in proceedings before Master

Column 1	Column 2	Column 3
Provisions of the Rules	Description	Restriction of powers
Order 11, Rule 1	Mode of application for substituted service	
Order 32, Rules 11 & 12	Clerical mistakes in judgments or orders; amendment of defects or errors	
Order 39	Evidence	
Order 40, Rules 1, 11, 12, 14, 18, 19 and 21	Evidence by affidavit; striking out scandalous matter; alterations in affidavits; filing after time; affidavit founding ex parte order; use of affidavits already read in Court	
Order 41, Rule 1	Judgment to be on motion	
Order 42, Rule 10	Pre-conditions to judgment by consent	
Order 43, Rule 16(b)	Stay of execution on judgment	
Order 54 Rules 6 & 7	Application dismissed or adjourned, for notice to be given; hearing adjourned	
Order 56, Rules 7 to 18	Applications and proceedings in Chambers	



Column 1	Column 2	Column 3
Provisions of the Rules	Description	Restriction of powers

Order 64,  
Rules 1 & 4

Costs discretionary; when  
solicitor personally  
liable for costs.

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