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Supreme Court (General Civil Procedure)
Rules 2005

S.R. No. 148/2005

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Version No. 027
Supreme Court (General Civil Procedure)
Rules 2005

S.R. No. 148/2005

Version incorporating amendments as at
1 January 2011

The Judges of the Supreme Court make the following Rules:

ORDER 1

PRELIMINARY

**PART 1—CITATION, COMMENCEMENT AND
REVOCATION**

1.01 Title and object

- (1) These Rules constitute Chapter I of the Rules of the Supreme Court and are entitled the Supreme Court (General Civil Procedure) Rules 2005.
- (2) The object of these Rules is re-make the general rules of procedure in civil proceedings to constitute a new Chapter I of the Rules of the Supreme Court.

1.02 Authorising provisions

These Rules are made under section 25 of the **Supreme Court Act 1986** and all other enabling powers.

1.03 Commencement and revocation

- (1) These Rules come into operation on 1 January 2006.
- (2) The Rules set out in the Schedule are **revoked**.

PART 2—APPLICATION OF RULES

1.04 Definitions

In this Part—

commencement date means 1 January 2006;

former Rules means the Supreme Court (General Civil Procedure) Rules 1996;

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

1.05 Application

- (1) Subject to this Rule, these Rules apply to every civil proceeding commenced in the Court whether before or after the commencement date.
- (2) These Rules do not apply to a civil proceeding to which any other Chapter of the Rules of the Supreme Court applies except as that Chapter provides.
- (3) The revocation of the former Rules shall not affect anything done or omitted to be done in a pending proceeding and, except as provided in this Part, anything so done or omitted shall be taken to have been done or omitted under these Rules.

1.06 Jurisdiction not affected

Nothing in these Rules shall limit the jurisdiction, power or authority which the Court had immediately before the commencement date.

1.07–1.11 * * * * *

1.12 Order to review

- (1) Unless the Court otherwise orders, subject to paragraph (2), these Rules shall, with any necessary modification, apply to an order for review under the **Administrative Law Act 1978**.

- (2) A proceeding of a kind referred to in paragraph (1) shall not be commenced by writ or originating motion.

PART 3—INTERPRETATION

1.13 Definitions

- (1) In these Rules, unless the context or subject matter otherwise requires—

Act includes any Act passed by the Parliament of the Commonwealth;

Australia has the meaning ascribed by the Service and Execution of Process Act 1992 of the Commonwealth;

bank means an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth;

bodily injury includes any impairment of mental condition or disease;

Convention, other than in Order 80, means a Convention with a foreign country, made with or made and extended to the Commonwealth of Australia or the State of Victoria, with respect to legal proceedings in civil or criminal matters;

Rule 1.13(1)
def. of
Convention
amended by
S.R. No.
60/2009
rule 5(a).

Convention country, other than in Order 80, means a foreign country to which a Convention applies;

Rule 1.13(1)
def. of
Convention country
amended by
S.R. No.
60/2009
rule 5(b).

corporation means any body corporate, whether formed within or out of Victoria;

defendant includes respondent;

discovery includes discovery and inspection of documents and discovery by written interrogatories or oral examination, and ***make discovery of documents*** means make an affidavit of documents complying with the requirements of these Rules, file the affidavit and serve a copy on the party or person entitled to the discovery;

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;

Rule 1.13(1)
def. of
Master
revoked by
S.R. No.
100/2008
rule 4(1)(a).

* * * * *

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

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 any 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 an indorsement of claim on a writ which constitutes a statement of claim, and includes particulars of any pleading;

proceeding means any matter in the Court commenced by writ or originating motion or as otherwise provided by or under any Act or these Rules;

Prothonotary, in relation to a proceeding commenced in an office of the Court outside Melbourne, means the Deputy Prothonotary at that office;

question means any 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 any party or by any person not a party who has a sufficient interest;

Registrar means the Registrar of the Court of Appeal and, if the duties and functions of the Registrar of the Court of Appeal are being carried out by an Associate Judge, means that Associate Judge;

Rule 1.13(1)
def. of
Registrar
amended by
S.R. No.
100/2008
rule 4(1)(b),
substituted by
S.R. No.
148/2010
rule 4(1).

solicitor means an Australian lawyer as defined in the **Legal Profession Act 2004**, other than a barrister as defined in that Act, and includes an incorporated legal practice as defined in that Act;

the Act means the **Supreme Court Act 1986**.

(2) In these Rules, unless the context or subject matter otherwise requires—

- (a) a reference to a Judge of the Court is a reference to the Court constituted by a Judge of the Court; and

Rule 1.13(2)(a)
amended by
S.R. No.
100/2008
rule 4(2)(a).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 1

r. 1.14

Rule 1.13(2)(b)
substituted by
S.R. No.
100/2008
rule 4(2)(b),
amended by
S.R. No.
97/2009
rule 5(a).

(b) a reference to an Associate Judge is a reference to the Court constituted by an Associate Judge;

Rule
1.13(2)(ba)
inserted by
S.R. No.
148/2010
rule 4(2).

(ba) a reference to a judicial registrar is a reference to the Court constituted by a judicial registrar;

Rule 1.13(2)(c)
inserted by
S.R. No.
97/2009
rule 5(b).

(c) a reference to the Costs Court is a reference to—

Rule
1.13(2)(c)(i)
amended by
S.R. No.
148/2010
rule 4(3)(a).

(i) the Costs Court constituted by a Costs Judge or by a judicial registrar; and

Rule
1.13(2)(c)(ii)
amended by
S.R. No.
148/2010
rule 4(3)(b).

(ii) the exercise of a power of the Costs Court by a judicial registrar, Costs Registrar or a Deputy Costs Registrar.

(3) Where by these Rules a form is prescribed for use, that form shall be used with any necessary variation or modification.

PART 4—MISCELLANEOUS

1.14 Exercise of power

(1) In exercising any power under these Rules the Court—

(a) shall endeavour to ensure that all questions in the proceeding are effectively, completely, promptly and economically determined;

- (b) may give any direction or impose any term or condition it thinks fit.
- (2) The Court may exercise any power under these Rules of its own motion or on the application of a party or of any person who has a sufficient interest.

1.14.1 Exercise of powers of Registrar by Associate Judge

Any Associate Judge may exercise any power or authority conferred on the Registrar by or under these Rules.

Rule 1.14.1
inserted by
S.R. No.
148/2010
rule 5.

1.15 Procedure wanting or in doubt

- (1) Where the manner or form of the procedure—
 - (a) for commencing, or for taking any step, in a proceeding; or
 - (b) by which the jurisdiction, power or authority of the Court is exercisable—is not prescribed by these Rules or by or under any Act, or for any other reason there is doubt as to the manner or form of that procedure, the Court shall determine what procedure is to be adopted and may give directions.
- (2) An act done in accordance with a determination or direction under paragraph (1) is regular and sufficient.
- (3) An application for directions with respect to the commencement of a proceeding shall be made by originating motion in which no person is named as defendant and an application for directions with respect to a proceeding already commenced shall be made by summons.

1.16 Act by corporation

Where the Court makes an order that a corporation do any act, it may order that the act be done by the corporation by its appropriate officer.

1.17 Corporation a party

- (1) Except where otherwise provided by or under any Act or these Rules, a corporation, whether or not a party, shall not take any step in a proceeding save by a solicitor.
- (2) If a corporation a party to a proceeding in the Court changes its name it shall—
 - (a) file written notice of the change of name in the Prothonotary's Office; and
 - (b) serve a copy of that notice on all other parties to the proceeding.
- (3) The notice shall—
 - (a) bear the title of the proceeding showing the name of the corporation before the change; and
 - (b) specify the new name of the corporation and the date on which the name was changed.
- (4) After a corporation has filed a notice of change of name, the corporation shall be given its new name in all documents filed in the proceeding followed by the phrase "(formerly [*old name*])".

1.18 Power to act by solicitor

Unless the context or subject matter otherwise requires, any 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 solicitor.

1.19 Continuation of address for service

Subject to these Rules, where in relation to a proceeding a party has an address for service under these Rules, that is the address for service of the party until the conclusion of the proceeding, whether at first instance or on appeal.

ORDER 2

NON-COMPLIANCE WITH THE 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 step taken, or any document, judgment or order therein 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 any step taken in the proceeding, or any document, judgment or order therein;
 - (c) exercise its powers under these Rules to allow amendments and to make orders dealing with the proceeding generally.

2.02 Originating process

The Court shall not wholly set aside any proceeding or the originating process 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 any proceeding or any step taken in any proceeding or any document, judgment or order therein on the ground of a failure to which Rule 2.01 applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

2.04 Dispensing with compliance

- (1) The Court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.
 - (2) Without limiting paragraph (1), the Registrar may dispense with compliance with any of the requirements of Order 64 or Order 65, either before or after the occasion for compliance arises.
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Rule 2.04
amended by
S.R. No.
148/2010
rule 6 (ILA
s. 39B(2)).

Rule 2.04(2)
inserted by
S.R. No.
148/2010
rule 6.

ORDER 3

TIME, SITTINGS AND COURT OFFICE

3.01 Calculating time

- (1) Any period of time fixed by these Rules or by any judgment or order or by any document in any proceeding shall be calculated in accordance with this Rule.
- (2) Where a time of one day or longer is to begin on, 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 five days or less would include a day on which the office of the Court is closed, that day shall be excluded.
- (5) Where the last day for doing any act at the office of the Court is a day on which the office is closed, the act may be done on the next day the office is open.

3.02 Extension and abridgement

- (1) The Court may extend or abridge any time fixed by these Rules or by any order fixing, extending or abridging time.
- (2) The Court may extend time under paragraph (1) before or after the time expires whether or not an application for the extension is made before the time expires.
- (3) Unless the Court otherwise orders, any time fixed by these Rules or by any order fixing, extending or abridging time may be extended by consent without an order of the Court.

3.03 Fixing time

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

3.04 Process in vacation

- (1) In calculating the time fixed by these Rules or by any order fixing, extending or abridging time, the period from 24 December to 9 January next following shall be excluded, unless the Court otherwise orders.
- (2) Where the Court makes an order under paragraph (1), the party on whose application the order was made shall serve a copy of the order—
 - (a) in the case of an order with respect to the time for appearance to originating process, with the originating process;
 - (b) in any other case, on every other party forthwith.

3.05 Time for service

- (1) In this Rule *document* does not include originating process.
- (2) In calculating the time fixed by these Rules or by any order fixing, extending or abridging time any document which is served after 4.00 p.m. or on any day the office of the Court is closed shall be taken to have been served on the next day the office is open.

3.06 Proceedings after a year

Where a year or more has elapsed since any party has taken any step in a proceeding, any party desiring the proceeding to continue shall give to every other party not less than one month's notice in writing of that party's desire.

r. 3.07

Rule 3.07
amended by
S.R. No.
100/2008
rule 5(a).

3.07 Sittings and vacation

The sittings and vacations of the Court shall be held at such times as the Judges of the Court shall direct.

3.08 Office

The office of the Court shall be open on every day of the year except Saturdays, Sundays, the Tuesday following Easter, and every day duly appointed as a general public holiday.

3.09 Office hours

The hours of the office of the Court shall be from 9.30 a.m. to 4.00 p.m.

ORDER 4

PROCESS IN THE COURT

PART 1—GENERAL

Order 4 Pt 1
(Heading)
inserted by
S.R. No.
143/2010
rule 5.

4.01 How proceeding commenced

Except where otherwise provided by or under any Act or these Rules a proceeding in the Court shall be commenced by writ or by originating motion.

4.02 Interlocutory application

An interlocutory or other application in a proceeding made on notice to any person shall be by summons.

4.03 Names of parties

- (1) Except as provided by this Rule, a person who commences a proceeding shall be called a plaintiff and a person against whom a proceeding is commenced shall be called a defendant.
- (2) A person who commences a proceeding under Rule 32.03, 32.05, 37.02 or 75.06(3) shall be called an applicant and the person against whom the proceeding is commenced shall be called a respondent.
- (3) A person who commences a proceeding referred to in Rule 1.12 shall be called an applicant and the person against whom the proceeding is commenced shall be called a respondent.
- (4) A person who appeals shall be called an appellant and any other party to the appeal shall be called a respondent.

- (5) Where any appellant or respondent on an appeal is a party to a proceeding, the appellant or respondent shall be so identified in any document in the appeal by the expression "(Plaintiff)", "(Defendant)", "(Applicant)" or other description of party after the word "Appellant" or "Respondent" in the title of the document.

4.04 When writ required

Except as provided by Rules 1.12, 4.05 and 4.06 and Order 58, every proceeding shall be commenced by writ.

4.05 When originating motion required

A proceeding shall be commenced by originating motion—

- (a) where there is no defendant to the proceeding;
- (b) where by or under any Act an application is authorised to be made to the Court; or
- (c) where required by these Rules.

4.06 Optional commencement by originating motion

A proceeding may be commenced by originating motion where—

- (a) it is unlikely that there will be any substantial dispute of fact; and
- (b) for that reason it is appropriate that there be no pleadings or discovery.

4.07 Continuance as writ of proceeding by originating motion

- (1) Where a proceeding in which there is a defendant is commenced by originating motion, but ought by or under any Act or these Rules to have been commenced by writ, or might in the opinion of the

Court more conveniently continue as if commenced by writ—

- (a) the Court may order that the proceeding continue as if it had been commenced by writ and may, in particular, order that any affidavits already filed in the proceeding shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof or that pleadings be served between the parties, and that the parties have discovery of each other; and
 - (b) by virtue of that order, the proceeding shall be taken to have been duly commenced for all purposes on the day the originating motion was filed.
- (2) Any reference in these Rules to a proceeding commenced by writ shall, unless the context otherwise requires, be taken to include a reference to a proceeding in respect of which an order has been made under paragraph (1).

4.08 Urgent case

In an urgent case, the Court may, on the application of a person who intends to commence a proceeding and upon that 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.

r. 4.09

Order 4 Pt 2
(Heading and
rules 4.09–
4.11)
inserted by
S.R. No.
143/2010
rule 6.

**PART 2—CERTIFICATION REQUIREMENTS ON
COMMENCEMENT OF PROCEEDINGS**

Rule 4.09
inserted by
S.R. No.
143/2010
rule 6.

4.09 Overarching obligations certification

For the purposes of section 41(2) of the **Civil
Procedure Act 2010** the overarching obligations
certification shall be in Form 4A.

Rule 4.10
inserted by
S.R. No.
143/2010
rule 6.

4.10 Proper basis certification

For the purposes of section 42(2) of the **Civil
Procedure Act 2010** the proper basis certification
shall be in Form 4B.

Rule 4.11
inserted by
S.R. No.
143/2010
rule 6.

4.11 Pre-litigation requirements compliance certification

For the purposes of section 43(3) of the **Civil
Procedure Act 2010** the pre-litigation
requirements compliance certification shall be in
Form 4C.

ORDER 5

**CONTENT, FILING AND DURATION OF ORIGINATING
PROCESS**

5.01 Definitions

In this Order—

originating process means writ, originating motion or other process by which a proceeding is commenced;

writ does not include writ of habeas corpus.

5.02 Form of originating process

- (1) A writ shall be in Form 5A.
- (2) An originating motion shall be in Form 5B, 5C, 5D or 5E, whichever is appropriate.

5.03 Appearance

- (1) A writ and, unless there is no defendant, an originating motion shall be indorsed with a statement to the effect that if the defendant does not file an appearance within the time stated in the originating process the plaintiff may obtain judgment against the defendant without further notice.
- (2) Except as provided in paragraph (3) the time for appearance to be stated in the originating process shall be as provided by Rule 8.04.
- (3) An originating motion under Order 53 which names a defendant shall state that the defendant may file an appearance on or before the day specified in the originating motion for application to the Associate Judge.

Rule 5.03(3)
amended by
S.R. No.
100/2008
rule 5(b).

5.04 Indorsement of claim on writ

- (1) A writ shall contain an indorsement of claim.
- (2) The indorsement of claim shall be—
 - (a) a statement of claim; or
 - (b) a statement sufficient to give with reasonable particularity notice of the nature of the claim and the cause thereof and of the relief or remedy sought in the proceeding.
- (3) An indorsement of claim on a writ shall constitute a statement of claim if, but only if, it is headed "Statement of Claim".

5.05 Indorsement of claim on motion

An originating motion shall specify the relief or remedy sought and the Act, if any, under which the claim is made, and, where it includes any question to be answered, the question shall be stated.

5.06 Indorsement as to capacity

Where a party sues or is sued in a representative capacity, the originating process shall be indorsed with a statement showing that capacity.

5.07 Address of parties

- (1) An originating process shall be indorsed with—
 - (a) the address of the plaintiff, and, where the plaintiff sues in person and that address is outside Victoria, also an address within Victoria for service in accordance with Rule 6.06;
 - (b) the address of any defendant;

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- (c) where the plaintiff sues by a solicitor, the name or firm and the business address within Victoria of the solicitor and also, if the solicitor is the agent of another, the name or firm and the business address of the principal.
 - (2) Where any originating process is indorsed with the name of a solicitor—
 - (a) the solicitor shall, on request in writing by a defendant, declare in writing whether the originating process was filed by the solicitor; and
 - (b) if the solicitor declares in writing that the originating process was not filed by the solicitor, the Court may stay the proceeding.

5.08 Place and mode of trial

- (1) A writ shall be indorsed with a statement of the place and mode of trial desired.
- (2) If the writ is not indorsed with a statement as to the place of trial, the plaintiff shall be taken to desire trial in Melbourne, and, if the writ is not indorsed with a statement as to the mode of trial, the plaintiff shall be taken to desire trial without a jury.
- (3) The plaintiff may indorse an originating motion with a statement of the place of trial desired, and, if the originating motion is not so indorsed, the plaintiff shall be taken to desire trial in Melbourne.

5.09 Stay on payment of costs

- (1) Where in a proceeding commenced by writ the plaintiff claims a debt only, the writ shall be indorsed with—
 - (a) a statement of the amount of the debt and the amount claimed for costs; and
 - (b) a statement that the proceeding will come to an end if, within the time limited for filing an appearance, the defendant pays the amounts so claimed to the plaintiff or the plaintiff's solicitor.
- (2) Where a writ is indorsed in accordance with paragraph (1), and the defendant pays the amounts claimed within the time limited for filing an appearance, then, except as provided by paragraph (3), the proceeding shall come to an end.
- (3) The defendant may, notwithstanding the payment, have the costs taxed, and, if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

5.10 Petition

A petition shall include at the end—

- (a) a statement of the person intended to be served, if any; or
- (b) if no person is intended to be served, a statement to that effect.

5.11 Filing of originating process

(1) A proceeding shall be commenced by filing the originating process.

(1A) An originating process is filed—

(a) when the Prothonotary receives the originating process and seals and dates it; or

(b) in the case of an originating process retrieved electronically by the Prothonotary, when it is taken to be accepted for filing under Rule 28.10(3) or (4).

(2) The originating process filed shall be signed by the solicitor for the plaintiff or by the plaintiff where the plaintiff sues in person, but need not be signed by the Prothonotary.

(3) Subject to Rule 28.12, upon an originating process being filed or at any later time, the Prothonotary, on the request of the plaintiff, shall seal a sufficient number of copies of the originating process for service and proof of service.

(4) In a proceeding commenced by originating motion, where the relief or remedy sought includes the construction of any instrument other than an Act, a copy of the instrument or, where it exceeds 25 pages, of the relevant parts shall be lodged with the Prothonotary at the time the originating motion is filed and, if the originating motion is filed electronically, Part 2 of Order 28 (with any necessary modification) shall apply for the purpose of lodging the copy.

(5) If the Prothonotary's office is closed and the plaintiff produces an originating process to the Court and undertakes that the originating process will be lodged in the Prothonotary's office on the day the office is next open—

Rule 5.11(1A)
inserted by
S.R. No.
5/2007
rule 5(1).

Rule 5.11(3)
amended by
S.R. No.
5/2007
rule 5(2).

Rule 5.11(4)
amended by
S.R. No.
5/2007
rule 5(3).

- (a) the Court may initial the originating process and such number of copies as are required for service or proof of service; and
- (b) upon such initialling the originating process shall be taken to have been filed.

5.12 Duration and renewal of originating process

- (1) A writ or an originating motion shall be valid for service for one year after the day it is filed.
- (2) Where a writ or originating motion has not been served on a defendant, the Court may from time to time by order extend the period of validity for such period from the day of the order as the Court directs, being not more than one year from that day.
- (3) An order may be made under paragraph (2) before or after expiry.
- (4) The plaintiff may apply under paragraph (2) without notice to the defendant, but if the Court considers that the defendant ought to be heard, the Court shall adjourn the further hearing and direct the plaintiff to give notice to the defendant by summons or otherwise.
- (5) Where an order is made under paragraph (2), the Prothonotary shall stamp any sealed copy originating process for service with the date of the order and the extended date of validity.

ORDER 6

SERVICE

6.01 When personal service necessary

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

6.02 Personal service of originating process

- (1) Except where otherwise provided by or under any Act or these Rules, originating process shall be served personally on each defendant.
- (2) Where a defendant to any originating process files an unconditional appearance, the originating process shall be taken to have been served on the defendant personally on the day on which the appearance is filed or on such earlier day as may be proved.

6.03 How personal service effected

- (1) Personal service of a document is effected by—
 - (a) leaving a copy of the document with the person to be served; or
 - (b) 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) In the case of originating process, the copy for service shall be sealed in accordance with Rule 5.11 and in the case of originating process filed electronically in accordance with Part 2 of Order 28, shall have attached to it a copy of the filing confirmation notice.
- (3) To effect personal service it shall not be necessary to show the original document.

Rule 6.03(2)
amended by
S.R. No.
5/2007 rule 6.

6.04 Service on particular defendants

Personal service of a document may be effected by serving the document in accordance with Rule 6.03, in the case of—

- (a) a corporation—
 - (i) on the mayor, chairman, president or other head officer of the corporation; or
 - (ii) on the town clerk, clerk, treasurer, manager, secretary or other similar officer of the corporation;
- (b) a minor, on a parent or guardian of the minor, and, if there is none, on the person with whom the minor resides or in whose care the minor is;
- (c) a handicapped person as defined in Rule 15.01, on—
 - (i) the person who, in accordance with Rule 15.03(2), would be entitled to be litigation guardian in any proceeding to which the handicapped person was party; or
 - (ii) if there is no such person, the person with whom the handicapped person resides or in whose care the handicapped person is;
- (d) the Crown in right of the Commonwealth or the Commonwealth—
 - (i) on the Secretary to the Attorney-General's Department; or
 - (ii) any person authorised under section 55E(4) of the Judiciary Act 1903 of the Commonwealth to act in the name of the Australian Government Solicitor;

(e) the Crown in right of Victoria or the State of Victoria, on the Victorian Government Solicitor.

6.05 Motor car death or bodily injury

- (1) In any proceeding in which the plaintiff claims damages in respect of death or bodily injury caused by or arising out of the use of a motor car, originating process shall not be taken to have been served on the defendant unless a copy of the originating process is served on the defendant in accordance with these Rules and also on the Transport Accident Commission.
- (2) Where in a proceeding to which paragraph (1) applies a copy of the originating process has been duly served on the defendant but not on the Transport Accident Commission, the Court, notwithstanding paragraph (1), may order that the originating process be taken to have been served on the defendant.

6.06 Address for service

- (1) The address for service of a plaintiff shall be—
 - (a) where the plaintiff sues by a solicitor, the business address of that solicitor indorsed on the originating process or, where the solicitor acts by an agent, the business address of the agent;
 - (b) where the plaintiff sues in person, the plaintiff's address in Victoria indorsed on the originating process.
- (2) The address for service of a defendant shall be as provided in Rule 8.06.

6.06.1 Solicitor changing address

- (1) Where the business address of a solicitor or of the agent of a solicitor given in accordance with Rule 6.06 or 8.06 is changed, the solicitor shall forthwith file notice of the change and serve a copy of the notice on every party.
- (2) Upon the filing and service of notice in accordance with paragraph (1), the address for service of the party for whom the solicitor acts shall be the new business address of the solicitor or, if the business address of the agent of the solicitor is changed, the new business address of the agent, stated in the notice.
- (3) If a solicitor required under paragraph (1) to file and serve notice does not do so, a document not required to be served personally on the party for whom the solicitor acts may, until notice is filed and served, be served on the party either at—
 - (a) the address given in accordance with Rule 6.06; or
 - (b) the new business address of the solicitor or of the agent, as the case may be.

6.07 How ordinary service effected

- (1) Where personal service of a document is not required, the document may be served—
 - (a) by leaving the document at the proper address of the person to be served on any day on which the Prothonotary's office is open;
 - (b) by posting the document to the person to be served at the person's proper address;
 - (c) where provision is made by or under any Act for service of a document on a corporation, by serving the document in accordance with that provision;

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- (d) where the solicitor for a party has facilities for the reception of documents in an exchange box in a document exchange, by leaving the document in that exchange box or in another exchange box for transmission to that exchange box; or
 - (e) where the solicitor for a party has facilities for the reception by telephone transmission of a facsimile of a document, by telephone transmission of the document in accordance with paragraph (2.1).
- (2) For the purpose of paragraph (1), the proper address of a person shall be the address for service of that person in the proceeding, but if at the time service is to be effected that person has no address for service, the proper address shall be—
- (a) in the case of an individual, his or her 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;
 - (c) in the case of a corporation, the registered or principal office of the corporation.
- (2.1) A document that is served by telephone transmission shall include a cover page stating—
- (a) the name, address and telephone number of the sender;
 - (b) the name of the solicitor to be served;
 - (c) the date and time of transmission;
 - (d) the total number of pages transmitted, including the cover page;
 - (e) the telephone number from which the document is transmitted;
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- (f) the name and telephone number of a person to contact in the event of any problem in transmission of the document;
 - (g) that the transmission is by way of service under Rule 6.07(1)(e).
- (3) Where no person can be found at the address for service of a plaintiff who sues or a defendant who has appeared in person, any document in the proceeding may be served on that plaintiff or defendant by filing it.
- (3.1) A party who serves a document by filing in accordance with paragraph (3) shall indorse upon a backsheet or on the back of the last sheet a statement that the document is filed as such service.
- (4) Service in accordance with paragraph (1)(a) or (1)(e) which is effected after 4.00 p.m. shall, for the purpose of calculating any period of time after that service, be taken to have been effected on the next day the Prothonotary's office is open.
- (5) The day of service of a document shall, where the document—
- (a) is sent by post in accordance with paragraph (1)(b)—be taken to be the day it would be delivered in the normal course of post;
 - (b) is delivered into the facilities of a document exchange in accordance with paragraph (1)(d)—be taken to be the day following the day upon which it is so delivered or, where a document is delivered on a Friday, be taken to be the following Monday—
- or on such other day as may be proved.
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- (6) In this Rule, *document exchange* means any document exchange for the time being approved by the Chief Justice on the recommendation of the Council of the Law Institute of Victoria.

6.08 Identity of person served

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

6.09 Acceptance of service by solicitor

- (1) This Rule applies to service of a document whether or not required to be served personally.
- (2) If a solicitor makes a note on a copy of a document that service of the document is accepted on behalf of a person, the document shall, unless the solicitor is shown not to have had authority to accept service, be taken to have been served on the person on the day the solicitor made the note.
- (3) Paragraph (2) does not limit other service of the document on the person or proof of such service.

6.10 Substituted service

- (1) Where for any reason it is impracticable to serve a document in the manner required by these Rules, the Court may order that, instead of service, such steps be taken as the Court 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 paragraph (1), the Court may order that the document be taken to have been served—
 - (a) on the happening of any specified event; or
 - (b) on the expiry of any specified time.

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

6.11 Confirmation of informal service

Where for any reason a document has not been served in the manner required by these Rules, but the document has come to the notice of the person to be served, the document shall be taken to have been served on the day it came to the person's notice.

6.12 Service by filing

- (1) Where the service of a document on a party to a proceeding is required or permitted, but personal service is not required, and that party is in default of appearance or has no address for service in the proceeding, the filing of the document shall, unless the Court otherwise orders, have effect as service of the document on that person.
- (2) A party who serves a document by filing in accordance with paragraph (1) shall indorse upon a backsheet or on the back of the last sheet a statement that the document is filed as such service.

6.13 Service on agent

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

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- (2) Where an order giving leave is made under paragraph (1)—
- (a) the order shall limit a time within which the defendant must file an appearance; and
 - (b) a copy of the order and of the originating process shall forthwith be sent by pre-paid post to the defendant at the defendant's address out of Victoria.

6.14 Service under contract

Where the parties to any proceeding have, before or after the commencement of the proceeding, agreed that originating process or any other document in the proceeding may be served on a party or on a person on behalf of a party in a manner or at a place (whether within or outside Victoria) specified in the agreement, service in accordance with the agreement shall be sufficient service.

6.15 Recovery of vacant land

- (1) In a proceeding for the recovery of land, the Court may—
- (a) if satisfied that no person appears to be in possession of the land and that service of originating process cannot be otherwise effected on any defendant without undue delay or expense, authorise service on that defendant to be effected by affixing a copy of the originating process to some conspicuous part of the land;
 - (b) if satisfied that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant without undue delay or expense, order that service already effected by affixing a copy of the originating process to

some conspicuous part of the land shall be taken to be good service on that defendant.

- (2) This Rule has effect notwithstanding that the defendant is outside Victoria at the time of affixing the copy of the originating process.

6.16 Service of notice by the Court

Unless the Rules otherwise provide or the Court otherwise orders, where under these Rules or under an order of the Court any notice or other document is to be given to or served on any person by the Court, the notice or document shall be sufficiently given or served in any manner in which a document not requiring personal service may be served under this Order.

6.17 Affidavit of service

- (1) In the case of personal service of a document, an affidavit of service of the document shall state—
- (a) by whom the document was served;
 - (b) the hour of the day, day of the week and date on which it was served;
 - (c) the place of the service; and
 - (d) the manner of identification of the person served.
- (2) In any other case of service of a document, an affidavit of service of the document shall state with relevant dates the facts constituting service.
- (3) An affidavit of service of originating process shall exhibit a sealed copy of the originating process.
- (4) In the case of originating process filed electronically in accordance with Part 2 of Order 28, an affidavit of service shall also exhibit a copy of the filing confirmation notice.

Rule 6.17(4)
inserted by
S.R. No.
5/2007 rule 7.

ORDER 7

SERVICE OUT OF AUSTRALIA

PART 1—WHEN SERVICE OUT IS ALLOWED

7.01 For what claims

- (1) Originating process may be served out of Australia without order of the Court where—
- (a) the whole subject matter of the proceeding is land situate within Victoria (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
 - (b) any act, deed, will, contract, obligation or liability affecting land situate within Victoria is sought to be construed, rectified, set aside or enforced in the proceeding;
 - (c) any relief is sought against a person domiciled or ordinarily resident within Victoria;
 - (d) the proceeding is for the administration of the estate of a person who died domiciled within Victoria or is for any relief or remedy which might be obtained in any such proceeding;
 - (e) the proceeding is for the execution, as to property situate within Victoria, of the trusts of a written instrument of which the person to be served is a trustee and which ought to be executed according to the law of Victoria;
 - (f) the proceeding is one brought to enforce, rescind, dissolve, rectify, annul or otherwise affect a contract, or to recover damages or other relief in respect of the breach of a contract, and the contract—
 - (i) was made within Victoria;

- (ii) was made by or through an agent carrying on business or residing within Victoria on behalf of a principal carrying on business or residing out of Victoria; or
 - (iii) is governed by the law of Victoria;
- (g) the proceeding is brought in respect of a breach committed within Victoria of a contract wherever made, even though that breach was preceded or accompanied by a breach out of Victoria that rendered impossible the performance of that part of the contract which ought to have been performed within Victoria;
- (h) the proceeding is founded on a contract the parties to which have agreed that the Court shall have jurisdiction to entertain a proceeding in respect of the contract;
- (i) the proceeding is founded on a tort committed within Victoria;
- (j) the proceeding is brought in respect of damage suffered wholly or partly in Victoria and caused by a tortious act or omission wherever occurring;
- (k) an injunction is sought ordering the defendant to do or refrain from doing anything within Victoria, whether or not damages are also claimed in respect of a failure to do or the doing of that thing;
- (l) the proceeding is properly brought against a person duly served within or out of Victoria and another person out of Australia is a necessary or proper party to the proceeding;

- (m) the proceeding is either brought by a mortgagee of property situate within Victoria (other than land) and seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property or brought by a mortgagor of property so situate (other than land) and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property, but does not seek, except so far as permissible under any other paragraph of this Rule, any personal judgment or order for the payment of any moneys due under the mortgage;
 - (n) the proceeding is brought under the Civil Aviation (Carriers' Liability) Act 1959 of the Commonwealth.
- (2) In paragraph (1)—
- mortgage* includes a charge or lien;
- mortgagee* means a person entitled to, or interested in, a mortgage;
- mortgagor* means a person entitled to, or interested in, property subject to a mortgage.

7.02 Indorsement on originating process

- (1) Originating process served on any defendant out of Australia in accordance with this Order shall, at the time of service on that defendant, contain an indorsement stating the facts and the particular paragraph of Rule 7.01 relied upon in support of such service.
- (1.1) The indorsement under paragraph (1) shall be distinct from the indorsement of claim on the originating process, but any fact in support of service out of Australia which is a fact alleged by the indorsement of claim may be incorporated by

Rule 7.02(1.1)
inserted by
S.R. No.
27/2007 rule 4.

specific reference in the indorsement under paragraph (1).

- (2) If the originating process does not contain the indorsement referred to in paragraph (1) at the time it is filed, the plaintiff, in accordance with paragraph (3), may amend the originating process to include the indorsement.
- (3) The originating process shall be taken to be amended upon the filing by the plaintiff of a copy of the originating process with the indorsement included.
- (4) Upon the filing of an amended copy of originating process under paragraph (3) or at any later time, the Prothonotary, on the request of the plaintiff, shall seal a sufficient number of copies of the originating process as amended for service and proof of service.

7.03 Mode of service out of Australia

Originating process which is to be served out of Australia need not be served personally as long as it is served in accordance with the law of the country in which service is effected.

7.04 Leave to proceed where no appearance

- (1) Where no appearance is filed by a party served with originating process out of Australia, the Court may order that the plaintiff shall be at liberty to proceed if satisfied—
 - (a) that the subject matter of the proceeding so far as it concerns that party is within Rule 7.01; and
 - (b) that the originating process was duly served on that party.

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- (2) An application for an order under paragraph (1) shall be supported by affidavit or other evidence showing the grounds on which the application is made.

7.05 Stay, setting aside service etc.

- (1) The Court may make an order of a kind referred to in Rule 8.09 on application by a party served with originating process out of Australia.
- (2) Without limiting paragraph (1), the Court may make an order under this Rule on the ground—
- (a) that service out of Australia is not authorised by these Rules; or
 - (b) that Victoria is not a convenient forum for the trial of the proceeding.
- (3) The Court may make an order under this Rule—
- (a) before an application is made under Rule 7.04; or
 - (b) before an order of the Court is made on such an application.

7.06 Service of other process by leave

The Court, by order, may allow service out of Australia of the following—

- (a) originating process in a proceeding in relation to—
 - (i) the wardship, custody, management or welfare of a minor; or
 - (ii) the custody, management or welfare of a person who is incapable of managing his or her affairs;
- (b) an originating motion in a proceeding brought under any Act;

- (c) any summons, order or notice in any proceeding.

7.07 Service of counterclaim or third party notice

- (1) This Rule applies to—
- (a) a counterclaim against the plaintiff and another person joined as defendant under Rule 10.03 where the person joined is not already a party to the proceeding; and
 - (b) a third party notice filed in accordance with Order 11.
- (2) A counterclaim or third party notice may be served out of Australia without leave where the claim made by the defendant in the counterclaim or third party notice is of such a kind that, if the claim were made by writ or other originating process, the originating process could be served out of Australia without order of the Court under Rule 7.01.
- (3) Where paragraph (2) does not apply, the Court may, by order, allow service out of Australia of a counterclaim or third party notice.

7.08 Application for leave

- (1) An application for leave under Rule 7.06 or 7.07 shall be supported by affidavit or other evidence showing the grounds upon which the application is made.
- (2) The Court may grant such leave if the case is a proper one for service out of Australia.
- (3) Upon making an order under Rule 7.06 or 7.07, the Court may give directions with respect to service and the time for filing an appearance or for attendance before the Court or otherwise.

- (4) Where any document is served out of Australia by order of the Court made under Rule 7.06 or 7.07—
- (a) a copy of the order, a copy of any affidavit made in support of the application for the order; and
 - (b) unless the Court otherwise orders, a copy of any exhibit referred to in the affidavit—
- shall be served with the document.

PART 2—SERVICE IN FOREIGN COUNTRY

7.09 Application

This Part applies to the service of any document for the purpose of a proceeding in the Court—

- (a) in a country that is not a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; or
- (b) in such other country as the Attorney-General, by instrument filed in the proceeding, specifies.

Rule 7.09(a)
substituted by
S.R. No.
100/2010
rule 5(1).

Note

Order 80 applies to countries to which the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters applies.

Note to
rule 7.09
inserted by
S.R. No.
100/2010
rule 5(2).

7.10 Documents required

A person (in this Part called *the applicant*) requiring a document to be served in another country under this Part shall—

- (a) lodge with the Prothonotary—
 - (i) the document to be served;

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- (ii) unless English is an official language in the country concerned, a translation of the document in accordance with Rule 7.11;
 - (iii) a copy of the document and of any translation;
 - (iv) such further copies of the document and of the translation as the Prothonotary directs; and
 - (v) if any special manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned, a translation of the request; and
- (b) file—
- (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) a request and undertaking in accordance with Rule 7.12.

7.11 Translation

A translation of a document lodged under Rule 7.10 shall—

- (a) be a translation into an official language of the country in which service is required; and
- (b) bear a certificate of the translator, in that language, stating that it is an accurate translation of the document.

7.12 Request and undertaking

(1) A request and undertaking filed under Rule 7.10 shall contain—

- (a) a request by the applicant to the Prothonotary that a sealed copy of the document to be served be transmitted to the country concerned for service on a specified person; and

Rule 7.12(1)(a)
amended by
S.R. No.
100/2010
rule 6(1).

* * * * *

Rule 7.12(1)(b)
revoked by
S.R. No.
100/2010
rule 6(2).

- (c) an undertaking by the solicitor for the applicant or, where there is no solicitor, by the applicant, to pay to the Prothonotary an amount equal to the expenses incurred in consequence of the request for service.

(2) The Prothonotary may require the applicant or the applicant's solicitor to give security to the Prothonotary's satisfaction for the expenses referred to in paragraph (1)(c).

7.13 Procedure on lodgment and filing

(1) Where documents are lodged and filed in accordance with Rule 7.10, the Prothonotary shall seal the documents lodged with the seal of the Court and shall send them to the Attorney-General for transmission for service, together with such letter of request, if any, as may be necessary.

(2) A letter of request shall be in Form 7A.

7.14 Evidence of service

Where the Prothonotary has sent documents to the Attorney-General in accordance with Rule 7.13, and afterwards a certificate purporting to be a certificate of a judicial authority or other responsible person in the country concerned or of

a British or Australian consular authority in that country as to service or attempted service or non-service is filed, the certificate shall be evidence of the matters stated in the certificate.

7.15 Order for payment of expenses

Where a person has given an undertaking in accordance with Rules 7.10 and 7.12, and does not within 14 days after service on that person of an account of expenses incurred in consequence of the request for service pay to the Prothonotary the amount of the expenses, the Court, on application by the Prothonotary, may—

- (a) order the applicant or the applicant's solicitor (where the undertaking was given by the solicitor) or both of them to pay the amount of the expenses to the Prothonotary; and
 - (b) stay the proceeding until payment so far as concerns the whole or any part of any claim for relief by the applicant.
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ORDER 8

APPEARANCE

8.01 Application

This Order applies to a proceeding commenced by writ or originating motion.

8.02 Appearance before taking step

Except as provided by Rule 8.08 or 8.09 or by leave of the Court, a defendant shall not take any step in a proceeding unless the defendant has first filed an appearance.

8.03 Who to file appearance

- (1) Except as provided in Rule 15.02, a defendant may file an appearance by a solicitor or in person.
- (2) A corporation may file an appearance by any person duly authorised by it to so act.

8.04 Time for appearance

Unless the Court otherwise orders, the time stated in the writ or originating motion for the defendant to file an appearance shall be—

- (a) where the originating process is to be served in Victoria, not less than 10 days after service;
- (b) where the originating process is to be served out of Victoria and in another part of Australia, 21 days after service;
- (c) where the originating process is to be served in New Zealand or in Papua New Guinea, not less than 28 days after service;
- (d) in any other case, not less than 42 days after service.

8.05 Mode of filing appearance

- (1) An appearance shall be filed by filing a notice of appearance in Form 8A.
- (2) Upon the filing of a notice of appearance the Prothonotary shall seal with the seal of the Court a sufficient number of copies of the notice for service.
- (3) The defendant shall, on the day the defendant files a notice of appearance, take an appropriate step in accordance with Rule 6.07(1) to serve a sealed copy of the notice on the plaintiff.
- (4) The Court may order the defendant to pay any costs of the plaintiff occasioned by the failure of the defendant to comply with paragraph (3).

8.06 Address for service of defendant

- (1) A notice of appearance shall state—
 - (a) if the defendant appears by a solicitor, the address of the defendant and the name or firm and the business address within Victoria of the solicitor and also, if the solicitor is an agent of another, the name or firm and the business address of the principal;
 - (b) if the defendant appears in person, the address of the defendant and, if that address is out of Victoria, an address of the defendant within Victoria.
- (2) The address for service of a defendant shall be—
 - (a) where the defendant appears by a solicitor, the business address of the solicitor stated in the notice of appearance or, where the solicitor acts by an agent, the business address of the agent;

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- (b) where the defendant appears in person, the address of the defendant in Victoria stated in the notice of appearance.
 - (3) Notwithstanding paragraphs (1) and (2), the address for service of the defendant duly stated in a notice of appearance to which the Service and Execution of Process Act 1992 of the Commonwealth applies shall be such address for service.
 - (4) Where the address of a defendant stated in a notice of appearance is not genuine, the Court may set aside the appearance and allow the plaintiff to continue the proceeding as if the appearance had not been filed.

8.07 Late appearance

- (1) A defendant may file an appearance at any time, but after judgment an appearance shall not be filed without the leave of the Court.
- (2) A defendant who files an appearance after the time for appearance stated in the writ or originating motion shall, unless the Court otherwise orders, have the same time for serving a defence or for any other purpose as if the defendant had filed an appearance on the last day so stated.

8.08 Conditional appearance

- (1) A defendant may file a conditional appearance.
- (2) A notice of conditional appearance shall be in Form 8B.
- (3) A conditional appearance shall have effect for all purposes as an unconditional appearance, unless on application by the defendant the Court otherwise orders.

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- (4) Application under paragraph (3) shall be made by summons within 14 days after the day the conditional appearance is filed.

8.09 Setting aside writ or originating motion

Notwithstanding Rule 8.08, the Court may exercise its jurisdiction to—

- (a) set aside a writ or originating motion or its service;
- (b) make an order under Rule 46.08;
- (c) stay a proceeding—

on application made by the defendant before filing an appearance, whether conditional or not.

ORDER 9

JOINDER OF CLAIMS AND PARTIES

9.01 Joinder of claims

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

9.02 Permissive joinder of parties

Two or more persons may be joined as plaintiffs or defendants in any proceeding—

(a) where—

- (i) if separate proceedings were brought by or against each of them, some common question of law or fact would arise in all the proceedings; and
- (ii) all rights to relief claimed in the proceeding (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions; or

(b) where the Court, before or after the joinder, gives leave to do so.

9.03 Joinder of necessary parties

(1) Except by order of the Court or as provided by or under any Act, where the plaintiff claims any relief to which any other person is entitled jointly with the plaintiff—

- (a) all persons so entitled shall be parties to the proceeding; and
- (b) any person who does not consent to being joined as a plaintiff shall be made a defendant.

- (2) Where the plaintiff claims relief against a defendant who is liable jointly with some other person and also liable severally, that other person need not be made a defendant to the proceeding.
- (3) Where persons are liable jointly, but not severally, under a contract, and the plaintiff in respect of that contract claims against some but not all of those persons, the Court may stay the proceeding until the other persons so liable are added as defendants.
- (4) The Court may make an order under paragraph (1) before or after the non-joinder.

9.04 Joinder inconvenient

Notwithstanding Rules 9.01 and 9.02, where any joinder of claims or of parties may embarrass or delay the trial of the proceeding or cause prejudice to any party or is otherwise inconvenient, the Court may order that—

- (a) there be separate trials;
- (b) any claim be excluded;
- (c) any party be compensated by an award of costs or otherwise for being required to attend, or be relieved from attending, any part of a trial in which that party has no interest;
- (d) any person made a party cease to be a party on condition that that party be bound by the determination of the questions in the proceeding or without any such condition.

9.05 Effect of misjoinder or non-joinder of party

A proceeding shall not be defeated by reason of the misjoinder or non-joinder of any party or person, and the Court may determine all questions in the proceeding so far as they affect the rights and interests of the parties.

9.06 Addition, removal, substitution of party

At any stage of a proceeding the Court may order that—

- (a) any person who is not a proper or necessary party, whether or not that person was one originally, cease to be a party;
- (b) any of the following persons be added as a party, namely—
 - (i) a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all questions in the proceeding are effectually and completely determined and adjudicated upon; or
 - (ii) a person between whom and any party to the proceeding there may exist a question arising out of, or relating to, or connected with, any claim in the proceeding which it is just and convenient to determine as between that person and that party as well as between the parties to the proceeding;
- (c) a person to whom paragraph (b) applies be substituted for one to whom paragraph (a) applies.

9.07 Procedure for addition of party

- (1) A person shall not be added as a plaintiff without that person's consent signified in writing or in such other manner as the Court orders.
- (2) Unless the Court otherwise orders, an application by a person for an order adding the person as a party shall be supported by an affidavit showing the person's interest in the questions in the proceeding or the question to be determined as

Rule 9.07(3)
amended by
S.R. No.
27/2007
rule 5(a).

between that person and any party to the proceeding.

- (3) Without limiting Rule 9.06(b), where a person not a party to a proceeding for the recovery of land is in possession by himself or herself or by a tenant of the whole or any part of the land, the Court may order that the person be added as a defendant.

9.08 Defendant dead at commencement of proceeding

- (1) Where a cause of action survives against the estate of a deceased person, a person wishing to obtain a judgment in respect of that cause of action may, if no grant of representation has been made, bring a proceeding against the estate of the deceased.
- (2) Without limiting paragraph (1), a proceeding brought against "the estate of A.B. deceased" shall be taken to have been brought against the deceased's estate in accordance with that paragraph.
- (3) A proceeding commenced naming as defendant a person who was dead when the proceeding commenced shall, if the cause of action survives and no grant of representation had been made at the time the proceeding commenced, be taken to have been commenced against the estate of the deceased in accordance with paragraph (1).
- (4) A proceeding naming as defendant a person who was dead when the proceeding commenced shall, if the cause of action survives and a grant of representation had been made at the time the proceeding commenced, be taken to have been commenced against the personal representative of the deceased as representing the estate of the deceased.

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- (5) In a proceeding within paragraph (1) or (3), the Court—
- (a) may—
 - (i) appoint a person to represent the estate of the deceased for the purpose of the proceeding; or
 - (ii) if a grant of representation has been made since the commencement of the proceeding, order that the personal representative of the deceased be made a party to the proceeding; and
 - (b) may order that the proceeding be carried on against the person so appointed or against the personal representative, as if that person or representative had been substituted for the estate.
- (6) Where, after the commencement of a proceeding within paragraph (1) or (3), the Incorporated Nominal Defendant has been appointed administrator ad litem of the estate of the deceased person under section 158 of the **Transport Accident Act 1986**, the Court may for the purpose of paragraph (5), if the cause of action falls within section 158 of that Act, order that the Incorporated Nominal Defendant be appointed to represent the estate of the deceased.
- (7) In any proceeding within paragraph (4), the Court may order that the personal representative of the deceased be made a party, and that the proceeding be carried on against the personal representative as representing the estate of the deceased.
- (8) An application for an order under paragraph (5) or (7) shall be made during the period of validity for service of the writ or other originating process, unless the Court otherwise orders.
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- (9) Before making an order under paragraph (5) or (6) the Court may require notice to be given to—
- (a) any insurer of the deceased who has an interest in the proceeding; and
 - (b) any person having an interest in the estate.
- (10) Where no grant of representation has been made any judgment or order given or made in the proceeding shall bind the estate of the deceased to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceeding.
- (11) In this Rule *grant of representation* means a grant of probate or administration in Victoria or the resealing of a foreign grant in Victoria.

9.09 Change of party on death, bankruptcy

- (1) Where a party to a proceeding dies, but the cause of action survives, or where a party becomes bankrupt, the proceeding shall not abate by reason of the death or bankruptcy, but may be carried on in accordance with paragraph (2).
- (2) Where at any stage of a proceeding the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may order that the other person be added as a party to the proceeding or made a party in substitution for the original party and that the proceeding be carried on as so constituted.
- (3) Unless the Court otherwise directs, the person on whose application an order is made under paragraph (2) shall serve the order on every party to the proceeding and on every person who ceases to be a party or becomes a party as plaintiff by virtue of the order, and in the case of a person who becomes a defendant, shall serve that person personally with the order and with the writ or

other originating process sealed in accordance with Rule 5.11.

- (4) A person upon whom originating process is served in accordance with paragraph (3) shall file an appearance in the proceeding within such time as the Court directs.
- (5) Where an order is made without notice to a person on whom the order is served, an application by that person to set aside or vary the order shall be made within 10 days after service.

9.10 Failure to proceed after death of party

- (1) Where a party dies, and a cause of action in the proceeding survives, but no order is made under Rule 9.09(2) substituting a personal representative of the deceased party as party, the Court, on application by a party or by a person to whom liability on the cause of action survives on the death, may order that unless an order for substitution is made within a specified time the proceeding be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability thereon survives on the death.
- (2) On making an order under paragraph (1), the Court may, whether or not a grant of representation within the meaning of Rule 9.08(11) has been made, direct that if the proceeding is dismissed by virtue of the order, costs of the proceeding be awarded as follows—
 - (i) if the plaintiff dies, to the defendant against the personal representative of the deceased out of the estate of the deceased;
 - (ii) if the defendant dies, to the personal representative of the deceased against the plaintiff.

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- (3) Where the plaintiff dies, the Court shall not make an order under paragraph (1) unless due notice of the application for it has been given to—
- (a) the personal representative, if any, of the deceased; and
 - (b) any other person having an interest in the estate of the deceased who, in the opinion of the Court, should be notified.
- (4) Where a defendant serves a counterclaim, this Rule shall apply, with any necessary modification, as if the plaintiff were the defendant and the defendant were the plaintiff.

9.11 Amendment of proceedings after change of party

- (1) Where an order is made under Rule 9.06 or 9.08, the writ or other originating process filed in the Court shall, subject to Rule 27.02(5) and (6), be amended accordingly within the time specified in the order, and otherwise within 10 days after the making of the order, and a reference to the order, the date of the order and the date on which the amendment is made shall be indorsed upon such originating process.
- (2) The filing of a copy of the originating process amended and indorsed as required by paragraph (1) shall be a sufficient compliance with that paragraph.
- (3) Where an order is made under Rule 9.06 or 9.08 adding or substituting a person as defendant—
- (a) the proceeding against the new defendant commences upon the amendment of the filed originating process in accordance with paragraph (1) or (2);

- (b) the plaintiff shall serve the amended originating process on that defendant within such time as the Court directs, and, unless the Court otherwise orders, it shall be served personally;
- (c) unless otherwise ordered, where the new defendant is an added defendant, the proceeding shall be continued as if the new defendant were an original defendant, and where the new defendant is a substituted defendant, all things done in the course of the proceeding before it was commenced against the new defendant shall have effect in relation to the new defendant as they had in relation to the old defendant, except that the filing of appearance by the old defendant shall not dispense with the filing of appearance by the new.

9.12 Consolidation or trial together

- (1) Where two 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 therein are in respect of or arise out of the same transaction or series of transactions; or
 - (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 tried 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.

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- (2) Any order for the trial together of two or more proceedings or for the trial of one immediately after the other, shall be subject to the discretion of the trial Judge.

9.13 Conduct of proceeding

The Court may give the conduct of the whole or any part of a proceeding to such person as it thinks fit.

ORDER 10

COUNTERCLAIM

10.01 Application of Order

This Order applies only to a proceeding commenced by writ and to a proceeding in respect of which an order has been made under Rule 4.07(1).

10.02 When counterclaim allowed

- (1) A defendant who has a claim against the plaintiff may counterclaim in the proceeding.
- (2) Rule 9.01 applies to a counterclaim as if the plaintiff were the defendant and the defendant were the plaintiff.
- (3) A defendant who counterclaims shall plead the defendant's defence and the counterclaim in one document called a defence and counterclaim.

10.03 Counterclaim against plaintiff and another person

A defendant may join with the plaintiff as defendant to the counterclaim any other person, whether a party to the proceeding or not, who, if the defendant were to bring a separate proceeding, could be properly joined with the plaintiff as a party in accordance with Rule 9.02.

10.04 Procedure after counterclaim against another person

- (1) Where a defendant joins a person as defendant to the counterclaim under Rule 10.03, the defence and counterclaim shall contain a second title of the proceeding showing who is plaintiff to the counterclaim and who are defendants to the counterclaim.

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- (2) The defendant shall serve on the person joined as defendant to the counterclaim a copy of the defence and counterclaim as follows—
- (a) where the person so joined is already a party to the proceeding, the copy shall be served within the time fixed by Rule 14.04 for serving a defence;
 - (b) where the person joined is not already a party, the copy shall be served personally and, unless the Court otherwise orders, shall be served within 30 days after the expiration of the time fixed by Rule 14.04 for serving a defence.
- (3) The person joined as a defendant to the counterclaim shall, upon service of a copy of the defence and counterclaim, if not already a party, become a party and be in the same position as if that person had been sued as defendant in the ordinary way by the defendant making the counterclaim.
- (4) Without limiting paragraph (3), where the person joined as defendant to the counterclaim is not already a party to the proceeding, Orders 8, 11, 14 and 21 shall apply as if—
- (a) the counterclaim were a writ the indorsement of claim on which constituted a statement of claim in accordance with Rule 5.04;
 - (b) the defendant making the counterclaim were a plaintiff in the party; and
 - (c) the person joined were a defendant in the proceeding.
- (5) A counterclaim served on a defendant to the counterclaim who is not already a party shall commence with a notice in Form 10A.
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- (6) A notice of appearance by a defendant to a counterclaim who is not already a party shall be in Form 10B.

10.05 Trial of counterclaim

A counterclaim shall be tried at the trial of the claim of the plaintiff unless the Court otherwise orders.

10.06 Counterclaim inconvenient

Notwithstanding Rules 10.02 and 10.03, where a counterclaim may embarrass or delay the trial of the claim of the plaintiff or cause prejudice to any party or otherwise cannot conveniently be tried with that claim, the Court may—

- (a) order separate trials of the counterclaim and the claim of the plaintiff;
- (b) order that any claim included in the counterclaim be excluded;
- (c) strike out the counterclaim without prejudice to the right of the defendant to assert the claim in a separate proceeding;
- (d) order that any person joined as defendant to the counterclaim cease to be a party to the counterclaim.

10.07 Stay of claim

Where the defendant by the defendant's defence admits the claim of the plaintiff and counterclaims, the Court may stay the original proceeding until the counterclaim is disposed of.

10.08 Counterclaim on stay etc., of original proceeding

A counterclaim may be prosecuted notwithstanding—

- (a) that judgment is given for the plaintiff in the original proceeding; or
- (b) that the original proceeding is stayed, discontinued or dismissed.

10.09 Judgment for balance

Where the plaintiff succeeds on the claim and the defendant succeeds on the counterclaim and a balance in favour of one of them results, the Court may give judgment for the balance.

ORDER 11

THIRD PARTY PROCEDURE

11.01 Claim by third party notice

Where a defendant claims as against a person not already a party to the proceeding (in this Order called *the third party*)—

- (a) any contribution or indemnity;
- (b) any 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; or
- (c) that any 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 that third party by filing and serving a third party notice.

11.02 Statement of claim on third party notice

A third party notice shall be in Form 11A and shall be indorsed with a statement of claim.

11.03 Time for appearance

- (1) A third party notice shall state a time within which the third party may file an appearance in the proceeding.
- (2) The time under paragraph (1) shall be—
 - (a) where the notice is to be served within Victoria—not less than 10 days after service;

- (b) where the notice is to be served out of Victoria—within the time limited by Rule 8.04(b), (c) or (d) in the case of appearance by a defendant to a writ, whichever is appropriate, or within the time limited by any order of the Court authorising service of the notice.

11.04 Filing and service of third party notice

- (1) A claim by third party notice shall be commenced by filing a third party notice in the Court whereupon the third party shall become a party to the proceeding.
- (2) A third party notice shall be filed and served on the third party in the same manner as originating process is filed and served on a defendant.

11.05 Time for third party notice

- (1) In a proceeding commenced by writ or a proceeding in respect of which an order has been made under Rule 4.07(1) a defendant may not file a third party notice until the defendant has first served a defence.
- (2) A defendant may file a third party notice—
 - (a) within 30 days after the time limited for the service of a defence; or
 - (b) at any time with the leave of the Court or the consent in writing of the plaintiff and any other party who has appeared.

11.06 Leave to file third party notice

An application for leave to file a third party notice shall be made on notice to the plaintiff but the Court may direct notice to be given to any other party who has appeared.

11.07 Other requirements for service

- (1) A third party notice shall be served on the third party within 60 days after it is filed.
- (2) Notwithstanding paragraph (1), the Court may fix another period for the service of a third party notice either—
 - (a) before the notice is filed; or
 - (b) at the time it grants leave under Rule 11.05(2) to file the notice.
- (3) Where a third party notice has not been served on the third party, the Court from time to time by order may extend the period for service of the notice for such further period it thinks fit.
- (4) An order may be made under paragraph (3) before or after expiry of the period for service.
- (5) At the time of service of a third party notice on a third party there shall also be served a copy of—
 - (a) any order or consent under Rule 11.05(2);
 - (ab) any order under paragraph (2) of this Rule made before the third party notice was filed fixing a period for service of the notice;
 - (ac) any order under paragraph (3) of this Rule;
 - (b) the writ or other originating process;
 - (c) any pleadings or affidavits filed and served in the proceeding.
- (6) Within the period for service of the third party notice on the third party a copy of the notice shall be served—
 - (a) on the plaintiff; and
 - (b) on any other party who has appeared.

- (7) If a copy of the third party notice is not served in accordance with paragraph (6), the Court, on application by the plaintiff or the third party, may order that the questions between the plaintiff and the defendant be tried before and separately from the questions between the defendant and the third party.

11.08 Appearance by third party

- (1) A third party may file an appearance—
- (a) within the time limited for appearance; or
 - (b) within such further time as the Court may allow.
- (2) A third party who files an appearance shall, on the same day, serve a sealed copy of the notice of appearance on the plaintiff.
- (3) Rules 8.05 and 8.06 shall apply, with any necessary modification, to an appearance by a third party under this Rule.

11.09 Defence of third party

- (1) A third party who files an appearance shall serve a defence to the statement of claim indorsed on the third party notice within 30 days after filing the appearance.
- (2) The third party may serve a defence to the statement of claim of the plaintiff by which the third party disputes the liability to the plaintiff of the defendant by whom the third party was joined on any ground not raised by that defendant in the defendant's defence.
- (3) Rules 14.05 to 14.10 shall apply, with any necessary modification, as if the claim by third party notice were a proceeding commenced by writ.

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- (4) Where a third party files an appearance, the defendant by whom the third party was joined shall serve on the third party a copy of any pleading that may from time to time thereafter be served between the plaintiff and that defendant.

11.10 Counterclaim by third party

- (1) A third party who has a claim against the defendant may assert the claim in the proceeding by way of counterclaim and Rule 10.02 shall apply as if the claim by third party notice were a proceeding commenced by writ.
- (2) A third party who counterclaims may join the plaintiff as defendant to the counterclaim along with the defendant if the plaintiff and defendant could be joined properly as defendants in accordance with Rule 9.02 in a separate proceeding brought against them by the third party.

11.11 Default by third party

- (1) Where at the time any judgment is entered or given for the plaintiff against the defendant by whom the third party was joined the third party has not filed an appearance or after appearance has not served a defence, and the time limited for filing an appearance or serving a defence has expired—
- (a) the third party—
- (i) shall be taken to admit any claim stated in the third party notice; and
 - (ii) shall be bound by the judgment between the plaintiff and the defendant insofar as it is relevant to any claim or question stated in the notice;

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- (b) the defendant may at any time after satisfaction of that judgment or, with the leave of the Court, before satisfaction, enter judgment against the third party—
 - (i) for any contribution or indemnity claimed in the notice; and
 - (ii) with the leave of the Court, for any other relief or remedy claimed therein.
 - (2) If a third party or the defendant by whom the third party was joined fails to serve any pleading within the time limited, the Court may give such judgment for the party not in default or make such order it thinks fit.
 - (3) The Court may set aside or vary any judgment or order under paragraph (1)(b) or (2).

11.12 Discovery and trial

Where the third party files an appearance—

- (a) the third party and the defendant by whom the third party was joined may have discovery of one another; and
- (b) unless the Court otherwise orders—
 - (i) the third party may attend and take part at the trial of the proceeding;
 - (ii) at the trial the questions between the defendant and the third party shall be tried concurrently with the questions between the plaintiff and the defendant; and
 - (iii) the third party shall be bound by the result of the trial.

11.13 Third party directions

- (1) Where the third party files an appearance, the Court may make any order or give any direction as follows—
 - (a) where the liability of the third party to the defendant by whom the third party was joined as third party is established, give judgment for that defendant against the third party;
 - (b) order that any claim or question stated in the third party notice be tried in such manner as it directs;
 - (c) give the third party leave—
 - (i) to defend the proceeding, either alone or jointly with any defendant; or
 - (ii) to attend and take part at the trial;
 - (d) generally make such orders and give such directions—
 - (i) as are necessary to ensure that all questions in the proceeding are effectually and completely determined and adjudicated upon; and
 - (ii) as to the extent to which the third party is to be bound by any judgment or decision in the proceeding.
- (2) The Court—
 - (a) may make any order or give any direction under paragraph (1) either before or after any judgment in the proceeding has been entered or given for the plaintiff against the defendant; and
 - (b) may at any time vary or rescind any such order or direction.

11.14 Judgment between defendant and third party

- (1) Where a third party has been joined under this Order, the Court, at or after the trial of the proceeding or on its determination otherwise than by trial, may give judgment for the defendant by whom the third party was joined against the third party or for the third party against that defendant.
- (2) Unless the Court otherwise orders, where judgment is given for the plaintiff against the defendant and judgment is given for that defendant against a third party, the judgment against the third party shall not be enforced until the judgment against the defendant has been satisfied.

11.15 Claim against another party

- (1) Where a party claims as against another party to the proceeding any relief of the kind described in Rule 11.01, the party may make the claim against the other party by filing and serving a notice in accordance with this Rule—
 - (a) within 60 days after the service on the party of the document in the proceeding by which the claim in respect of which the notice is served was made; or
 - (b) if when the document was served the other party was not a party, then within 60 days after the party became a party.
- (2) Paragraph (1) shall not apply where the claim could be made by counterclaim in the proceeding.
- (3) No appearance to a notice under paragraph (1) shall be necessary if the party on whom it is served has filed an appearance in the proceeding or is a plaintiff, but otherwise this Order shall apply, with any necessary modification, as if—

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- (a) the defendant had filed and served a third party notice under Rule 11.01; and
 - (b) the party on whom the notice is served were a third party joined under that Rule.
- (4) Except as provided by paragraph (5), a notice under paragraph (1) shall, with any necessary modification—
- (a) be in accordance with Form 11A; and
 - (b) be indorsed with a statement of claim.
- (5) Where a party claims against another party to the proceeding contribution pursuant to Part IV of the **Wrongs Act 1958**, a notice under paragraph (1) shall be in accordance with Form 11B.

11.16 Fourth and subsequent parties

- (1) Where a third party has filed an appearance this Order shall apply, with any necessary modification, as if the third party were a defendant.
- (2) Where a person joined as a party (in this Order called a *fourth party*) by a third party under this Order has filed an appearance, this Order as applied by this Rule shall have effect as regards such further person and any other further person or persons so joined and so on successively.
- (3) A third or subsequent party may not make a claim against another person whether that person is a party to the proceeding or not by notice under this Order without the leave of the Court.

11.17 Counterclaim

Where a defendant has served a counterclaim, this Order shall apply, with any necessary modification, as if the defendant were the plaintiff and the plaintiff were the defendant.

ORDER 12

INTERPLEADER

12.01 Definitions

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

claimant means a person making a claim to or in respect of property in dispute;

execution creditor means a person for whom a warrant is issued;

property in dispute means any debt or other property which is the subject of proceedings under this Order;

sheriff includes a person to whom a warrant of execution is directed;

stakeholder means an applicant under Rule 12.02;

warrant means warrant of execution under these Rules.

12.02 Stakeholder's interpleader

(1) Where—

- (a) a person is under a liability (otherwise than as a sheriff) in respect of a debt or other personal property; and
- (b) the person is sued or expects to be sued in any court for or in respect of the debt or property by two or more persons making adverse claims to or in respect of the debt or property—

the Court may, on application by that person, grant relief by way of interpleader.

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- (2) Where a stakeholder is sued in a proceeding in the Court for or in respect of the property in dispute, an application under paragraph (1) shall be made by summons in the proceeding.
 - (3) A summons under paragraph (2)—
 - (a) shall be served on each party to the proceeding who is a claimant; and
 - (b) shall be served personally on each claimant who is not a party.
 - (4) Where paragraph (2) does not apply, an application under paragraph (1) shall be commenced by originating motion in which all claimants are joined as defendants.

12.03 Sheriff's interpleader

- (1) Where a sheriff takes or intends to take any personal property under a warrant, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice in writing of that person's claim to the sheriff.
- (2) A notice of claim under paragraph (1) shall—
 - (a) state the name and address of the claimant, which address shall be the address for service;
 - (b) identify each item of personal property the subject of the claim; and
 - (c) state the grounds of the claim.

12.04 Sheriff's summons to state claim

- (1) Where a person who is entitled to give notice under Rule 12.03 does not, within a reasonable time after having knowledge of the facts, give notice under that Rule, the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance

by that person of proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the warrant after the time when that person might reasonably have given notice under the Rule.

- (2) A sheriff may apply for an order under paragraph (1) by summons in the proceeding in which the warrant is issued and, if a sheriff so applies, the sheriff shall serve the summons personally on the person against whom the order is sought.

12.05 Notice to execution creditor

Rule 12.05(1)
amended by
S.R. No.
27/2007
rule 5(b).

- (1) On being given a notice of claim under Rule 12.03, a sheriff shall serve forthwith—
- (a) a copy of the notice; and
 - (b) a notice in accordance with Form 12A on the execution creditor.
- (2) The execution creditor may serve on the sheriff notice in writing that the execution creditor admits or disputes the claim.

12.06 Admission of claim

Where an execution creditor admits a claim by notice under Rule 12.05(2)—

- (a) the execution creditor shall not be liable for any fees or expenses incurred by the sheriff under the warrant after the notice is given;
- (b) the sheriff shall withdraw from possession of the property claimed;

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- (c) the Court, on application by the sheriff, may restrain the commencement or stay or may restrain the continuance by the person whose claim is admitted of proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the warrant.

12.07 Interpleader summons

- (1) Where under Rule 12.05 a sheriff has served a notice of claim and a notice in accordance with Form 12A on the execution creditor, the sheriff, by summons in the proceeding in which the warrant is issued may apply to the Court for relief by way of interpleader if the execution creditor—
- (a) does not within five days after the service of the notices under Rule 12.05 serve on the sheriff notice in writing that the execution creditor admits the claim; or
 - (b) within that period of five days serves on the sheriff notice in writing that the execution creditor disputes the claim—
- and the Court may, if the claim has not been withdrawn, grant relief by way of interpleader.
- (2) A summons under paragraph (1)—
- (a) shall be served on each party to the proceeding who claims an interest in the property in dispute; and
 - (b) shall be served personally on each claimant who is not a party.

12.08 Powers of Court

On application for relief by way of interpleader the Court may—

- (a) where a proceeding in the Court is pending in which the applicant is sued for or in respect of any of the property in dispute—
 - (i) order that any claimant be added as a defendant in that proceeding in addition to or in substitution for the applicant; or
 - (ii) order that the proceeding be stayed or dismissed;
- (b) order that a question between the claimants be stated and tried and direct which of the claimants is to be plaintiff and which defendant;
- (c) where proceedings in any other court are pending in which the applicant is sued for or in respect of any of the property in dispute, restrain the further continuance of those proceedings;
- (d) order the applicant—
 - (i) to pay or transfer any of the property in dispute into court; or
 - (ii) otherwise to dispose of any of the property;
- (e) where a claimant claims to be entitled by way of security for debt to any of the property in dispute, make orders for the sale of any of the property and for the application of the proceeds of sale;
- (f) summarily determine any question of fact or law arising on the application; and
- (g) make such order or give such judgment it thinks fit.

12.09 Default by claimant

- (1) Where—
- (a) a claimant has been given due notice of the hearing of an application for relief by way of interpleader and does not attend on the hearing; or
 - (b) a claimant does not comply with an order made on such an application—
- the Court may order that the claimant and all persons claiming under the claimant be barred from prosecuting the claimant's claim against the applicant and all persons claiming under the applicant.
- (2) An order under paragraph (1) shall not affect the rights of the claimants as between themselves.

12.10 Neutrality of applicant

- (1) Where a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or give judgment against the applicant unless the Court is satisfied that the applicant—
- (a) claims no interest in the property in dispute except for charges or costs; and
 - (b) does not collude with any claimant.
- (2) Where a sheriff applies for relief by way of interpleader, the Court—
- (a) may require the sheriff to satisfy the Court on the matters mentioned in paragraph (1); and
 - (b) may, if not satisfied on those matters, dismiss the application.
- (3) Nothing in this Rule shall affect the power of the Court in other cases to dismiss the application or to give judgment against the applicant.

12.11 Order in several proceedings

- (1) Where an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any of the property in dispute, the Court may make an order in any two or more of those proceedings.
- (2) An order made under paragraph (1) shall be entitled in all the proceedings in which it is made and shall be binding on all the parties to them.

12.12 Trial of interpleader question

- (1) Order 49 shall apply, with any necessary modification, to the trial of an interpleader question.
- (2) On the trial of an interpleader question the Court may finally determine all questions arising on the application for relief by way of interpleader.
- (3) An interpleader question, including any other question arising on the application for relief, may, with the consent of all parties, be tried by an Associate Judge.

Rule 12.12(3)
amended by
S.R. No.
100/2008
rule 5(c).

ORDER 13

PLEADINGS

13.01 Formal requirements

- (1) Every pleading shall bear on its face—
 - (a) the description of the pleading; and
 - (b) the date on which it is served.
- (2) A pleading shall be divided into paragraphs numbered consecutively, and each allegation so far as practicable shall be contained in a separate paragraph.
- (3) A pleading which is settled by counsel shall be signed by that counsel, and if it is not so settled, it shall be signed by the solicitor for the party, or if there is none, by the party.

13.02 Content of pleading

- (1) Every pleading shall—
 - (a) contain in a summary form a statement of all the material facts on which the party relies, but not the evidence by which those facts are to be proved;
 - (b) where any claim, defence or answer of the party arises by or under any Act, identify the specific provision relied on;
 - (c) state specifically any relief or remedy claimed.
- (2) A party may by that party's pleading—
 - (a) raise a point of law;
 - (b) plead a conclusion of law if the material facts supporting the conclusion are pleaded.

13.03 Document or conversation

The effect of any document or the purport of any conversation, if material, shall be pleaded as briefly as possible, and the precise words of the document or conversation shall not be pleaded unless those words are themselves material.

13.04 Fact presumed true

A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the opposite party unless the other party has specifically denied it in that party's pleading.

13.05 Condition precedent

An allegation of the performance or occurrence of any condition precedent necessary for the claim or defence of a party shall be implied in that party's pleading.

13.06 Implied contract or relation

Where it is alleged that a contract or relation between any persons is to be implied from a series of letters or conversations or other circumstances, it shall be sufficient to allege the contract or relation as a fact, and to refer generally to the letters, conversations or circumstances without setting them out in detail.

13.07 Matter which must be pleaded

- (1) A party shall in any pleading subsequent to a statement of claim plead specifically any fact or matter which—
 - (a) the party alleges makes any claim or defence of the opposite party not maintainable; or
 - (b) if not pleaded specifically, might take the opposite party by surprise; or
 - (c) raises questions of fact not arising out of the preceding pleading.

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- (2) In a proceeding for the recovery of land—
- (a) the indorsement of claim on the writ or, if that indorsement does not constitute a statement of claim, the statement of claim shall describe the land so that it is physically identifiable;
 - (b) the defendant shall plead specifically every ground of defence on which he relies and a plea that he is in possession of the land by himself or herself or his tenant is not sufficient.
- (3) A claim for exemplary damages shall be specifically pleaded together with the facts on which the party pleading relies.

13.08 Subsequent fact

A party may plead any fact or matter which has arisen at any time, whether before or since the commencement of the proceeding.

13.09 Inconsistent pleading

- (1) A party may in any pleading make inconsistent allegations of fact if the pleading makes it clear that the allegations are pleaded in the alternative.
- (2) A party shall not in any pleading make any allegation of fact, or raise any new claim, inconsistent with any allegation made or claim raised in a previous pleading by that party.
- (3) Paragraph (2) shall not affect the right of a party to amend, or apply for leave to amend, that party's previous pleading so as to plead the allegations or claims in the alternative.

13.10 Particulars of pleading

- (1) Every pleading shall contain the necessary particulars of any fact or matter pleaded.
- (2) Without limiting paragraph (1), particulars shall be given if they are necessary—
 - (a) to enable the opposite party to plead; or
 - (b) to define the questions for trial; or
 - (c) to avoid surprise at trial.
- (3) Without limiting paragraph (1), every pleading shall contain particulars of any—
 - (a) misrepresentation, fraud, breach of trust, wilful default or undue influence; or
 - (b) disorder or disability of the mind, malice, fraudulent intention or other condition of the mind, including knowledge or notice—which is alleged.
- (4) The pleading 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 any loss of earning capacity resulting from the injury;
 - (c) the date of the party's birth;
 - (d) the name and address of each of the party's employers commencing from the day being 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 tax, that was earned in each employment.

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- (5) In a proceeding for libel the indorsement of claim on the writ or, if that indorsement does not constitute a statement of claim, the statement of claim shall state sufficient particulars to identify the publication in respect of which the proceeding is commenced.
 - (6) Particulars of debt, damages or expenses which exceed three folios shall be set out in a separate document referred to in the pleading and the pleading shall state whether the document has already been served and, if so, when, or is to be served with the pleading.

13.11 Order for particulars

- (1) The Court may order a party to serve on any other party particulars or further and better particulars of any fact or matter stated in the party's pleading or in an affidavit filed on that party's behalf ordered to stand as a pleading.
- (2) The Court shall not make an order under paragraph (1) before service of the defence unless the order is necessary or desirable—
 - (a) to enable the defendant to plead; or
 - (b) for some other special reason.
- (3) The Court may refuse to make an order under paragraph (1) if the party applying for the order did not first apply by letter for the particulars the party requires.

13.12 Admission and denials

- (1) Except as provided in paragraph (4), every allegation of fact in any pleading shall be taken to be admitted unless it is denied specifically or by necessary implication or is stated to be not admitted in the pleading of the opposite party, or unless a joinder of issue under Rule 13.13 operates as a denial of it, and a general denial of

the allegations, or a general statement that they are not admitted, shall not be sufficient.

* * * * *

- (3) Where the party pleading intends to prove facts which are different to those pleaded by the opposite party, it shall not be sufficient for the party merely to deny or not to admit the facts so pleaded, but the party shall plead the facts the party intends to prove.
- (4) Any allegation that a party has suffered damage and any allegation as to the amount of damages shall be taken to be denied unless specifically admitted.

13.13 Denial by joinder of issue

- (1) No reply or subsequent pleading merely joining issue shall be served.
- (2) At the close of pleadings a joinder of issue on the pleading last served shall be implied.
- (3) No joinder of issue, express or implied, shall be made on a statement of claim or counterclaim.
- (4) A joinder of issue shall operate as a denial of every material allegation of fact made in the pleading upon which issue is joined unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the joinder of issue shall operate as a denial of every other allegation.

13.14 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 that debt or damages.

13.15 Counterclaim

This Order shall apply, with any necessary modification—

- (a) to a counterclaim as if it were a statement of claim; and
 - (b) to a defence to counterclaim as if it were a defence.
-

ORDER 14

SERVICE OF PLEADINGS

14.01 Statement of claim indorsed on writ

Where the indorsement of claim on a writ constitutes a statement of claim in accordance with Rule 5.04, no statement of claim shall be served.

14.02 Statement of claim not indorsed on writ

Where the indorsement of claim on a writ does not constitute a statement of claim in accordance with Rule 5.04 and a defendant files an appearance, the plaintiff shall serve a statement of claim on that defendant within 30 days after the defendant's appearance, unless the Court otherwise orders.

14.03 Alteration of claim as indorsed on writ

- (1) Where a statement of claim is served in a proceeding commenced by writ, the plaintiff may therein alter, modify or extend the claim as indorsed on the writ without amendment of the indorsement.
- (2) The Court may, by order, allow the plaintiff to serve a statement of claim the effect of which will be to add a new cause of action to or substitute a new cause of action for a cause of action disclosed in the writ.
- (3) Where the Court makes an order under paragraph (2), it may further order that the plaintiff shall amend the indorsement of claim on the writ to make it conform to the statement of claim.

14.04 Service of defence

In a proceeding commenced by writ, a defendant who files an appearance shall serve a defence as follows—

- (a) where the indorsement of claim on the writ constitutes a statement of claim in accordance with Rule 5.04, within 30 days after filing the appearance;
- (b) where the plaintiff serves a statement of claim, within 30 days after service of the statement of claim; or
- (c) within such time as the Court directs.

14.05 Reply

Where the plaintiff is required to serve a reply, it shall be served within 30 days after service of the defence, unless the Court otherwise orders.

14.06 Pleading after reply

No pleading subsequent to reply shall be served without an order of the Court.

14.07 Defence to counterclaim

Where the defendant sets up a counterclaim in the defence, the plaintiff or any person joined as defendant to the counterclaim who is already a party to the proceeding shall serve a reply and defence to counterclaim or a defence to counterclaim within 30 days after service of the defence and counterclaim, unless the Court otherwise orders.

14.08 Close of pleadings

Unless the Court otherwise orders, pleadings shall be closed—

- (a) where no pleading beyond a defence is ordered or served, at the expiration of 30 days after service of the defence;
- (b) where pleadings beyond a defence are ordered or served, at the expiration of 30 days after service of the last of those pleadings.

14.09 Order as to pleadings

Notwithstanding anything contained in this Order, in a proceeding commenced by writ, the Court may order that—

- (a) any party serve any pleading;
- (b) the service of any pleading be dispensed with; or
- (c) the proceeding be tried without pleadings.

14.10 Filing of pleadings

A party who serves a pleading on another party shall forthwith after service file a copy of the pleading.

ORDER 15

PERSON UNDER DISABILITY

15.01 Definitions

In this Order—

handicapped person means a person who is incapable by reason of injury, disease, senility, illness or physical or mental infirmity of managing his or her affairs in relation to the proceeding;

person under disability means minor or handicapped person.

15.02 Litigation guardian of person under disability

- (1) Except where otherwise provided by or under any Act, a person under disability shall commence or defend a proceeding by his or her litigation guardian.
- (2) Except where otherwise provided by these Rules, anything in a proceeding that is required or permitted by the Rules to be done by a party shall or may, if the party is a person under disability, be done by his or her litigation guardian.
- (3) A litigation guardian of a person under disability shall act by a solicitor.

15.03 Appointment of litigation guardian

- (1) A person may be a litigation guardian of a person under disability if—
 - (a) that person is not himself or herself a person under disability; and
 - (b) he or she has no interest in the proceeding adverse to that of the person under disability.

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- (2) Where a person is authorised by or under any Act to conduct legal proceedings in the name of or on behalf of a handicapped person, that person shall, unless the Court otherwise orders, be entitled to be litigation guardian of the handicapped person in any proceeding to which that person's authority extends.
 - (3) Where after a proceeding is commenced a party to the proceeding becomes a handicapped person, the Court shall appoint a litigation guardian of that party.
 - (4) Where the interests of a party who is a person under disability so require, the Court may—
 - (a) appoint or remove a litigation guardian; or
 - (b) substitute another person as litigation guardian.
 - (5) Where a party has a litigation guardian in a proceeding, no other person shall act as litigation guardian, unless the Court otherwise orders.
 - (6) Except where a litigation guardian has been appointed by the Court, the name of a person shall not be used in a proceeding as litigation guardian of a person under disability unless there is first filed in the office of the Prothonotary—
 - (a) the written consent of the person to be the litigation guardian; and
 - (b) a certificate by the solicitor for the person under disability certifying that the solicitor knows or believes that—
 - (i) the person to whom the certificate relates is a minor or is a handicapped person, giving the grounds of the solicitor's knowledge or belief; and
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- (ii) the litigation guardian of the person under disability has signed the said written consent and has no interest in the proceeding adverse to that person.

15.04 No appearance by person under disability

Where a defendant who is a person under disability does not file an appearance within the time limited, the plaintiff shall not continue the proceeding unless a person—

- (a) is made litigation guardian of the defendant in accordance with Rule 15.03(6); or
- (b) is appointed litigation guardian by order of the Court.

15.05 Application to discharge or vary certain orders

An application to the Court on behalf of a person under disability served with an order made without notice under Rule 9.09 for the discharge or variation of the order shall be made—

- (a) if a litigation guardian is acting for that person in the proceeding in which the order is made, within 10 days after the service of the order on that person;
- (b) if no litigation guardian is acting for that person in that proceeding, within 10 days after the appointment of a litigation guardian to act for the person under disability.

15.06 Pleading admission by person under disability

Notwithstanding Rule 13.12(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party unless in his or her pleading the person under disability states that the allegation is admitted.

15.07 Discovery

- (1) Subject to paragraph (2), a party shall be entitled to have discovery of a person under disability as if that person were not under disability.
- (2) The discovery shall be given by the person under disability or his or her litigation guardian, whichever is appropriate.

15.08 Compromise of claim by a person under disability

- (1) Where in a proceeding a claim is made by or on behalf of or against a person under disability, no compromise, payment of money or acceptance of an offer of compromise under Order 26, whenever entered into or made, shall so far as it relates to that claim be valid without the approval of the Court.
- (2) Application for approval shall be by summons filed not later than 30 days after the compromise, payment or acceptance.
- (2.1) A copy of an affidavit in support of the application shall not be served.
- (3) The Court may dispense with the requirement of a summons where application for approval is made at the trial of the proceeding.
- (4) On the application, evidence shall be given of the date of the compromise, payment or acceptance and the date of birth of the person under disability, and the dates shall be stated in any order approving the compromise, payment or acceptance.
- (5) Where the acceptance of an offer of compromise is approved, the person under disability shall be taken to have made or accepted the offer at the time of approval.

- (6) Where an order is made approving a compromise by which money is to be paid to a person under disability, the forms of order in Forms 15A and 15B shall, where appropriate, be used.

15.09 Execution against money in court

- (1) This Rule applies where—
- (a) a person under disability is required by a judgment to pay money;
 - (b) money stands in court to the credit of that person or that person has a beneficial interest in money or funds in court; and
 - (c) under these Rules, the Court may, on the application of the person entitled to enforce the judgment, order that the money in court or so much thereof as is sufficient to satisfy the judgment be paid to that person or, as the case may be, make an order imposing a charge on the beneficial interest of the person under disability in the money or funds in court to secure the payment of the sum due under the judgment.
- (2) In determining whether to make an order for payment or an order imposing a charge, as the case may be, the Court shall have regard to—
- (a) the fact that the person liable under the judgment is a person under disability;
 - (b) the purpose for which payment of the money or funds into court was made; and
 - (c) the purpose for which the money or funds are held.
- (3) In this Rule—
- judgment* includes order;
- funds in court* has the same meaning as it has in Rule 73.01.

15.10 Counterclaim and claim by third party notice

This Order shall apply, with any necessary modification—

- (a) to a counterclaim against a person under disability who is joined as defendant to the counterclaim under Rule 10.03; and
 - (b) to a claim by third party notice by or on behalf of or against a person under disability.
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ORDER 16

EXECUTORS, ADMINISTRATORS AND TRUSTEES

16.01 Representation of unascertained persons

- (1) This Rule applies to a proceeding relating to—
 - (a) the administration of the estate of a deceased person;
 - (b) property subject to a trust; or
 - (c) the construction of an instrument, including an Act.
- (2) The Court may appoint one or more persons to represent any person (including an unborn person) who or class which is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceeding where—
 - (a) the person, the class or some members of the class cannot be ascertained or cannot readily be ascertained;
 - (b) the person, class or some member of the class, though ascertained, cannot be found; or
 - (c) though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient, regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined, to make the order for the purpose of saving expense.
- (3) Where the Court makes an order under paragraph (2), a judgment or order in the proceeding shall bind the person or class represented as if the person or class were parties.

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- (4) Where a compromise of a proceeding is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties (including unborn or unascertained persons) but—
- (a) there is a party in the same interest—
 - (i) who assents to the compromise; or
 - (ii) on whose behalf the Court sanctions the compromise; or
 - (b) the absent persons are represented by a person appointed under paragraph (2) and the appointed person so assents—

the Court, if satisfied that the compromise is for the benefit of the absent persons, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order is obtained by fraud or non-disclosure of material facts.

16.02 Beneficiaries

- (1) Where a party sues or is sued as executor, administrator or trustee—
 - (a) it shall not be necessary to join as a party any of the persons having a beneficial interest in the estate or under the trust;
 - (b) a judgment or order in the proceeding shall bind those persons as it does the executor, administrator or trustee.
- (2) Paragraph (1) does not limit the power of the Court—
 - (a) to order the addition of a party under Rule 9.06; or
 - (b) to make an order under Rule 16.01(2).

16.03 Deceased person

- (1) Where a deceased person was interested, or the estate of a deceased person is interested, in any question in a proceeding and the deceased person has no personal representative, the Court may—
 - (a) proceed in the absence of a person to represent the estate of the deceased; or
 - (b) by order (with the consent of the person appointed) appoint a person to represent the estate for the purpose of the proceeding.
 - (2) An order under paragraph (1), and any judgment or order subsequently given or made in the proceeding, shall bind the estate of the deceased person as it would had a personal representative of the deceased been a party.
 - (3) Before making an order under this Rule, the Court may require notice of the application for the order to be given to any person having an interest in the estate.
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ORDER 17

PARTNERS AND SOLE PROPRIETORS

17.01 Partners

- (1) Where two or more persons carry on business as partners within Victoria, a proceeding may be commenced by or against them in the name of the firm (if any) of which they were partners when the cause of action accrued.
- (2) Paragraph (1) applies where partners sue or are sued by—
 - (a) any partner of the same firm;
 - (b) partners of another firm, and any partner of the one firm is a partner of the other.

17.02 Disclosure of partners

- (1) Where a proceeding is commenced by or against partners in the firm name under Rule 17.01, any other party may by notice served at the address for service of the partners in the proceeding require the partners to disclose in writing within 14 days of service—
 - (a) the name and the address of the usual or last known place of residence or of business of each person constituting the firm at the time when the cause of action accrued; and
 - (b) whether since that time there has been any and what change in the membership of the firm.
- (2) Where partners fail to comply with a notice under paragraph (1), the Court may order—
 - (a) if the partners are plaintiffs, that the proceeding be dismissed;
 - (b) if the partners are defendants, that their defence be struck out.

17.03 Service of originating process

- (1) Originating process in a proceeding commenced against partners in the firm name under Rule 17.01 may be served on—
 - (a) any one or more of the partners; or
 - (b) any person at the principal place of business of the partnership within Victoria who appears to have control or management of the partnership business there.
- (2) Originating process served under paragraph (1) shall be taken to have been duly served on the partners whether or not any partner is out of Victoria.
- (3) Where a partnership has to the knowledge of the plaintiff been dissolved before the proceeding against the partners has commenced, the originating process shall be served on every person sought to be made liable in the proceeding.
- (4) Every person upon whom originating process is served under paragraph (1) shall be informed by notice in writing given at the time of service whether that person is served as a partner or as a person having the control or management of the partnership business or in both characters and, in default of such notice, the person served shall be taken to be served as a partner.

17.04 Appearance by partners

Partners sued in the name of their firm shall appear individually in their own names, but the proceeding shall, nevertheless, continue in the name of the firm.

17.05 No appearance except by partners

A person served with originating process as a person having the control or management of the partnership business may not file an appearance unless that person is a partner.

17.06 Appearance under objection of person sued as partner

- (1) A person served with originating process as a partner may file an appearance stating that—
 - (a) he or she does so as a person served as a partner; and
 - (b) that he or she denies that he or she was a partner at any material time or is liable as such.
- (2) An appearance filed under paragraph (1) shall not preclude the plaintiff from otherwise serving the partners, and, if no party has filed an appearance in the ordinary form, obtaining judgment against the partners in the name of the firm in default of appearance.
- (3) Where an appearance is filed under paragraph (1)—
 - (a) the plaintiff may either—
 - (i) apply to set it aside on the ground that the person filing it was a partner or is liable as a partner; or
 - (ii) leave that question to be determined at a later stage of the proceeding;
 - (b) the person filing the appearance may either—
 - (i) apply to set aside the service on that person on the ground that he or she was not a partner at a material time or liable as such; or

- (ii) at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either that his or her liability as a partner or the liability of the partners or both;
- (c) the Court may give directions as to the mode and time of trial of any question of the liability of the person who filed the appearance or of the liability of the partners.
- (4) Rule 8.08 does not apply to an appearance filed under this Rule.

17.07 Enforcement of judgment

- (1) Subject to paragraph (2) and Rule 17.08, a judgment given or order made against partners suing or sued in the name of their firm may be enforced against—
 - (a) any property of the partnership; and
 - (b) any person who—
 - (i) filed an appearance as a partner;
 - (ii) having been served as a partner with originating process, failed to file an appearance;
 - (iii) admitted in his or her pleading that he or she is a partner; or
 - (iv) was served with originating process as a partner and was adjudged to be a partner.
- (2) Where a party who has obtained a judgment or order against partners suing or sued in the name of their firm claims that a person is liable to satisfy the judgment or order as a partner, and paragraph (1) does not apply in relation to that person, the Court—

- (a) if liability is not disputed, may order that the judgment or order be enforced against that person; or
 - (b) if the liability is disputed, may give directions for the trial of the question of liability.
- (3) An application under paragraph (2) shall be made by summons served personally on the person against whom enforcement of the judgment or order is sought.

17.08 Enforcement between partners

A judgment given or order made against partners suing or being sued in the name of their firm in a proceeding of the kind referred to in Rule 17.01(2)(a) or (b)—

- (a) shall not be enforced without the leave of the Court; and
- (b) on application for leave, the Court may make an order that any necessary accounts and inquiries be taken and made.

17.09 Attachment of debts

- (1) A debt due or accruing due from partners may be attached under these Rules notwithstanding that any partner is resident out of Victoria, if a partner or some person apparently having the control or management of the partnership business within Victoria is served with the garnishee summons.
- (2) The attendance of a partner before the Court on the hearing of a garnishee summons is a sufficient attendance by the partners.

17.10 Person using the business name

Any person carrying on business within Victoria in a name or style other than that person's own may be sued in that name or style as if it were the

name of a firm, and Rules 17.02 to 17.09 shall apply, with any necessary modification, as if that person were a partner and the name in which the person carries on business were the name of that person's firm.

17.11 Charge on partner's interest

- (1) An application to the Court by a judgment creditor of a partner for an order charging that person's interest in the partnership property and profits under section 27 of the **Partnership Act 1958**, and for such other orders as are thereby authorised to be made, and every application to the Court by a partner of a judgment debtor made in consequence of the first mentioned application shall be made by summons.
 - (2) A summons filed by the judgment creditor under this Rule and an order made on the summons shall be served on the judgment debtor and on such of that person's partners as are within Victoria.
 - (3) A summons filed by a partner of a judgment debtor under this Rule and an order made on the summons shall be served—
 - (a) on the judgment creditor;
 - (b) on the judgment debtor; and
 - (c) on such of the other partners of the judgment debtor as do not join in the application and are within Victoria.
 - (4) A summons or order served under this Rule on some only of the partners of the judgment debtor shall be taken to have been served on all of the partners.
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ORDER 18

REPRESENTATIVE PROCEEDING

18.01 Application

This Order applies where numerous persons have the same interest in any proceeding, but does not apply to—

- (a) a proceeding under Part 4A of the Act;
- (b) a proceeding concerning—
 - (i) the administration of the estate of a deceased person; or
 - (ii) property subject to a trust.

18.02 Proceeding by or against representative

A proceeding may be commenced, and, unless the Court otherwise orders, continued, by or against any one or more persons having the same interest as representing some or all of them.

18.03 Order for representation by defendant

- (1) At any stage of a proceeding under Rule 18.02 against one or more persons having the same interest, the Court may appoint any one or more of the defendants or the persons as representing whom the defendants are sued to represent some or all of those persons in the proceeding.
- (2) Where the Court appoints a person who is not a defendant, the Court shall make an order under Rule 9.06 adding that person as a defendant.

18.04 Effect of judgment

- (1) A judgment given or order made in a proceeding to which this Order applies shall bind the parties and all persons as representing whom the parties sue or are sued, as the case may be.

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- (2) The judgment or order shall not be enforced against a person not a party except by leave of the Court.
 - (3) An application for leave shall be made by summons served personally on the person against whom enforcement of the judgment or order is sought.
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ORDER 18A

GROUP PROCEEDING

18A.01 Application

This Order applies to a group proceeding within the meaning of section 33A of the Act.

18A.02 Consent to be group member

A consent in writing under section 33E(2) of the Act shall be in Form 18AA.

Rule 18A.03
revoked by
S.R. No.
147/2010
rule 5.

* * * * *

18A.04 Opting out

A notice in writing under section 33J(2) of the Act shall be in Form 18AB.

18A.05 Order involving notice

- (1) This Rule applies to an application for an order under section 33K, 33W, 33X or 33ZA of the Act in relation to which the Court may require notice to be given to group members.
- (2) The application shall be supported by an affidavit setting out to the best of the applicant's knowledge, information and belief—
 - (a) the identity or description of the group members;
 - (b) the whereabouts of the group members; and
 - (c) the means by which a notice ordered by the Court is most likely to come to the attention of the group members.

ORDER 19

NOTICE OF CONSTITUTIONAL MATTER

19.01 Definitions

In this Order—

the Act means the Judiciary Act 1903 of the Commonwealth;

State has the meaning given in section 78AA of the Act.

19.02 Notice

- (1) Where a proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the Act, the party whose case raises the matter shall, unless the Court directs another party to do so, forthwith file a notice of a constitutional matter.
- (2) A notice under paragraph (1) shall state—
 - (a) specifically the nature of the matter; and
 - (b) the facts showing that the matter is one to which paragraph (1) applies.
- (3) The notice shall be in Form 19A.

19.03 Filing and service

- (1) Subject to paragraph (3), the party required or directed under Rule 19.02 to file the notice shall serve a copy on—
 - (a) every other party; and
 - (b) the Attorney-General for the Commonwealth, if the Attorney-General or the Commonwealth is not a party; and
 - (c) the Attorney-General of each State, if the Attorney-General or that State is not a party.

- (2) Unless the Court otherwise orders, the copy shall be served forthwith after the notice is filed.
 - (3) Service of a copy of the notice need not be effected on an Attorney-General if steps have been taken that could reasonably be expected to cause the matters to be notified to be brought to the attention of that Attorney-General.
 - (4) The party serving a copy of the notice shall forthwith file an affidavit of service.
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ORDER 20

CHANGE OF SOLICITOR

20.01 Notice of change

Where a solicitor acts for a party in a proceeding and the party changes that party's solicitor, the party shall forthwith—

- (a) file notice of the change; and
- (b) serve a copy of the notice on the other parties and, where practicable, the party's former solicitor.

20.02 Party appointing solicitor

Where a party who has no solicitor in a proceeding appoints a solicitor to act for that party in the proceeding, the solicitor shall forthwith—

- (a) file notice of the appointment; and
- (b) serve a copy of the notice on the other parties.

20.03 Solicitor ceasing to act

- (1) Where a solicitor ceases to act for a party in a proceeding, unless a notice of change is filed and served under Rule 20.01, the solicitor shall forthwith—
 - (a) file notice that the solicitor has ceased to act; and
 - (b) serve a copy on all parties.
- (2) A notice under paragraph (1) shall state the address of the party last known to the solicitor.
- (3) Except by leave of the Court, a solicitor shall not file a notice under paragraph (1)—
 - (a) where the address of the party in the notice is outside Victoria;

- (b) after a proceeding has been set down for trial;
- (c) within 28 days after a proceeding has been finally determined subject only to an appeal, if any, to the Court of Appeal.
- (4) Except by leave of the Court of Appeal, a solicitor shall not file a notice under paragraph (1) where in the proceeding—
 - (a) a summons for leave to appeal to the Court of Appeal has been filed; or
 - (b) notice of appeal to the Court of Appeal has been served.

20.04 Removal of solicitor from record

- (1) Where—
 - (a) a solicitor who has acted for a party in a proceeding—
 - (i) has died or become bankrupt or cannot be found; or
 - (ii) has ceased to have the right of practising in the Court; or
 - (iii) for any other reason has ceased to practise; and
 - (b) the party has not given notice under Rule 20.01 or the solicitor has not given notice under Rule 20.03—

the Court, on application made by any other party to the proceeding, may by order declare that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the proceeding.

- (2) An application under paragraph (1) shall be made by summons supported by affidavit stating the facts on which the application is made and, unless the Court otherwise orders, the summons and a

copy of the affidavit shall be served on the party to whose solicitor the application relates.

- (3) Where an order is made under paragraph (1), the party on whose application it was made shall forthwith—
- (a) serve a copy of the order on every other party to the proceeding; and
 - (b) file an affidavit of service.

20.05 Address for service

- (1) The address for service of a party—
- (a) who changes the party's solicitor and files and serves notice under Rule 20.01, shall be the business address of the new solicitor;
 - (b) who appoints a solicitor in the circumstances referred to in Rule 20.02, shall be the business address of the solicitor;
 - (c) for whom a solicitor has ceased to act, where notice is filed and served by the solicitor under Rule 20.03 without leave, shall be the address stated in the notice.
- (2) Where the Court under—
- (a) paragraph (3) or (4) of Rule 20.03 gives a solicitor leave to file notice that he or she has ceased to act;
 - (b) Rule 20.04(1) by order declares that a solicitor has ceased to act—

the Court may by order direct what address shall be the address for service of the party for whom the solicitor has ceased to act.

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- (3) Where the Court makes no order under paragraph (2), any document in the proceeding which is not required to be served personally may be served on the party for whom the solicitor has ceased to act by filing it.
- (4) A party who serves a document by filing in accordance with paragraph (3) shall indorse upon a backsheet or on the back of the last sheet a statement that the document is filed as such service.

20.06 Death, retirement etc., of Victorian Government Solicitor etc.

Where the person who occupies or acts in the office of Victorian Government Solicitor or the Australian Government Solicitor acts as solicitor for a party in a proceeding and the person so acting dies or retires or otherwise ceases to occupy or act in that office, it shall not be necessary to file and serve notice under Rule 20.01.

ORDER 21

JUDGMENT IN DEFAULT OF APPEARANCE OR PLEADING

21.01 Default of appearance

- (1) This Rule applies only to a proceeding commenced by writ.
- (2) Where a defendant does not file an appearance within the time limited, the plaintiff may enter or apply for judgment against that defendant in accordance with this Order.
- (3) Judgment shall not be entered or given for the plaintiff unless there is filed—
 - (a) a notice to the Prothonotary requesting the Prothonotary to search for an appearance by the defendant;
 - (b) an affidavit proving service of the writ on the defendant; and
 - (c) where the plaintiff applies for judgment in accordance with Rule 21.04 and the indorsement of claim on the writ does not constitute a statement of claim in accordance with Rule 5.04, a statement of claim.

21.02 Default of defence

- (1) Where any defendant, being required to serve a defence, does not do so within the time limited, the plaintiff may enter or apply for judgment against that defendant in accordance with this Order.
- (2) Judgment shall not be entered or given for the plaintiff unless an affidavit proving the default is filed.
- (3) Paragraphs (1) and (2) shall apply, with any necessary modification, where—
 - (a) the defendant has served a defence; and

- (b) by or under an order of the Court the defence is struck out.

21.03 Judgment for recovery of debt, damages or property

- (1) Where a claim is made for the recovery of a debt, damages or any property, whether or not another claim is also made in the proceeding, and the plaintiff is entitled to judgment on that claim against any defendant in accordance with Rule 21.01 or Rule 21.02, the plaintiff may—
- (a) for the recovery of a debt, enter final judgment against that defendant for an amount not exceeding the amount claimed in the writ or, if the plaintiff has served a statement of claim, the amount claimed in the statement of claim, together with interest from the commencement of the proceeding to the date of the judgment—
 - (i) on any debt which carries interest, at the rate it carries;
 - (ii) on any other debt, at the rates payable on judgment debts during that time;
 - (b) for the recovery of damages, enter interlocutory judgment against that defendant for the damages to be assessed;
 - (c) for the recovery of land, enter judgment for possession of the land against that defendant;
 - (d) for the detention of goods, enter interlocutory judgment against that defendant—
 - (i) either for the delivery of goods or their value to be assessed or for the value of the goods to be assessed; and
 - (ii) if a claim is made for the recovery of damages for the detention of the goods, for the damages to be assessed.

- (1.1) Where a claim is made for the recovery of land, and the plaintiff also claims mesne profits, if the indorsement of claim on the writ or statement of claim shows that the amount claimed for mesne profits is calculated according to rent which had been payable by the defendant to the plaintiff in respect of the land, the claim for mesne profits shall, for the purpose of paragraph (1), be taken to be a claim for the recovery of a debt.
- (1.2) Paragraph (1) shall not apply to a claim for the recovery of a debt or damages in a currency not Australian dollars, and if the plaintiff is entitled to judgment on the claim against any defendant in accordance with Rule 21.01 or Rule 21.02, the Court may give judgment for the plaintiff under Rule 21.04 as if the claim were a claim to which that Rule applies.
- (2) Upon entering judgment under paragraph (1) the plaintiff may also enter judgment for costs.
- (3) Where under paragraph (1) damages or the value of goods are to be assessed, the assessment shall, unless the Court otherwise orders, be made by an Associate Judge in accordance with Order 51.

Rule 21.03(3)
amended by
S.R. No.
100/2008
rule 5(d).

21.04 Judgment other than for recovery of debt, damages or property

- (1) Where a claim is made other than for the recovery of a debt, damages or any property, whether or not a claim for such recovery is also made in the proceeding, and the plaintiff is entitled to judgment on that claim against any defendant in accordance with Rule 21.01 or 21.02, the Court may give judgment for the plaintiff upon the statement of claim.
- (2) An application for judgment under paragraph (1) may be made without notice to the defendant.

21.05 Proceeding continued against other defendants

A plaintiff who enters or obtains judgment against a defendant in accordance with this Order may enforce the judgment and continue the proceeding against any other defendant, but in a proceeding for the recovery of land against more than one defendant a judgment for possession of the land shall not be enforced against any defendant unless judgment for possession has been entered or given against all the defendants.

21.06 Default of defence to counterclaim

Where a defendant serves a counterclaim, Rule 21.02 shall apply as if—

- (a) the defendant were the plaintiff;
- (b) the defence were the defence to counterclaim; and
- (c) the plaintiff were the defendant.

21.07 Setting aside judgment

The Court may set aside or vary any judgment entered or given in accordance with this Order.

ORDER 22

SUMMARY JUDGMENT FOR PLAINTIFF

22.01 Scope of Order

This Order applies only to a proceeding commenced by writ.

22.02 Application for judgment

- (1) Where the defendant has filed an appearance, the plaintiff may at any time apply to the Court for judgment against that defendant on the ground that the defendant has no defence to the whole or part of a claim included in the writ or statement of claim, or no defence except as to the amount of a claim.
- (2) Paragraph (1) shall not apply to a claim for libel, slander, malicious prosecution, false imprisonment or seduction or to a claim based on an allegation of fraud.
- (3) Where the writ or statement of claim includes a claim within paragraph (2), the plaintiff may apply for judgment in respect of any other claim and continue the proceeding for the first-mentioned claim.
- (4) Except by order of the Court, the plaintiff shall make only one application for judgment under this Order.

22.03 Affidavit in support

- (1) An application for judgment shall be made by summons supported by an affidavit—
 - (a) verifying the facts on which the claim or the part of the claim to which the application relates is based; and

Rule 22.03(2)
amended by
S.R. No.
146/2009
rule 4.

- (b) stating that in the belief of the deponent there is no defence to that claim or part, or no defence except as to the amount claimed.
- (2) Where a statement in a document tends to establish a fact within paragraph (1) and at the trial of the proceeding the document would be admissible by or under the **Evidence (Miscellaneous Provisions) Act 1958**, the **Evidence Act 2008** or any other Act to verify the fact, the affidavit under paragraph (1) may set forth the statement.
- (3) An affidavit under paragraph (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) The plaintiff shall serve the summons and a copy of the affidavit or affidavits in support and of any exhibit referred to therein on the defendant not less than 14 days before the day for hearing named in the summons.

22.04 Defendant to show cause

- (1) The defendant may show cause against the application by affidavit or otherwise to the satisfaction of the Court.
- (2) An affidavit under paragraph (1) may contain a statement of fact based on information and belief if the grounds are set out.
- (3) Unless the Court otherwise orders, the defendant shall serve a copy of any affidavit and of any exhibit referred to therein on the plaintiff not less than three days before the day for hearing named in the summons.

22.05 Affidavit in reply

Where the defendant serves an affidavit under Rule 22.04, the Court may by order allow the plaintiff to rely upon an affidavit in reply.

22.06 Hearing of application

- (1) On the hearing of the 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 that claim or part a question ought to be tried or that there ought for some other reason be a trial of that 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 as to giving security, paying money into court, time, the mode of trial or otherwise; or
 - (d) with consent of all parties, and notwithstanding Rule 77.03(1), dispose of the proceeding finally in a summary manner.
- (2) The Court may stay execution of any judgment given under paragraph (1)(b) until after the trial of any counterclaim made by the defendant in the proceeding.

22.07 Cross-examination on affidavit

- (1) The Court may order any party or the maker of any affidavit—
 - (a) to attend and be examined and cross-examined; or
 - (b) to produce any papers, books or documents, or copies of or extracts therefrom.
- (2) Where a party is a corporation, the Court may make an order under paragraph (1) in respect of any director, manager, secretary or other similar officer thereof or any person purporting to act in any such capacity.

22.08 Judgment on counterclaim

- (1) Where a defendant serves a counterclaim, the defendant may at any time after service, on the ground that the plaintiff has no defence to the whole or part of a claim made in the counterclaim, or no defence except as to the amount of a claim, apply to the Court for judgment against the plaintiff.
- (2) This Order shall, with any necessary modification, apply to an application under paragraph (1) as if the plaintiff were the defendant and the defendant the plaintiff.

22.09 Assessment of damages

Where judgment is given under this Order for damages or the value of goods to be assessed, the assessment shall be made in accordance with Order 51.

22.10 Judgment where debt amount unascertained

Where on an application under this Order for judgment on a claim for a debt the amount of the debt is not established to the satisfaction of the Court, and where if the amount were established the Court would give judgment on the claim, the Court may—

- (a) make a declaration as to liability for the debt and order that its amount be ascertained in such manner as the Court directs; and
- (b) give leave to enter judgment for the debt once the amount is ascertained.

22.11 Directions

- (1) Where leave is given to defend, or where judgment is given on a claim or part of a claim but execution of the judgment is stayed pending the trial of a counterclaim or of the proceeding, as the case may be, the Court may give directions as to the further conduct of the proceeding.
- (2) The Court may direct that an affidavit made under this Order shall serve as a defence or defence and counterclaim, and may order the proceeding to be forthwith set down for trial, and may define the questions to be tried.

22.12 Continuing for other claim or against other defendant

Where the plaintiff obtains judgment on a claim or part of a claim against any defendant, the plaintiff may continue with the proceeding for any other claim or for the remainder of the claim or against any other defendant.

22.13 Judgment for delivery up of chattel

Where the Court gives judgment under this Order for the delivery up of a specific chattel, it may order the party against whom judgment is given to deliver up the chattel without giving the party an option to retain it on paying the assessed value thereof.

22.14 Relief against forfeiture

A tenant may apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment were given after trial.

22.15 Setting aside judgment

The Court may set aside or vary any judgment given against a party who does not attend on the hearing of an application under Rule 22.02 or 22.08.

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 any 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 any claim or give judgment in the proceeding generally or in relation to any claim.
- (2) Where the defence to any claim in a proceeding—
 - (a) does not disclose an answer; or
 - (b) is scandalous, frivolous or vexatious—the Court may give judgment in the proceeding generally or in relation to any claim.
- (3) In this Rule—
 - (a) a claim in a proceeding includes a claim by counterclaim and a claim by third party notice; and
 - (b) a defence includes a defence to a counterclaim and a defence to a claim by third party notice.

23.02 Striking out pleading

Where an indorsement of claim on a writ or originating motion or a pleading or any part of an indorsement of claim or 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 indorsement or pleading be struck out or amended.

23.03 Summary judgment for defendant

On application by a defendant who has filed an appearance, the Court at any time may give judgment for that defendant against the plaintiff if the defendant has a good defence on the merits.

23.04 Affidavit evidence

- (1) On an application under Rule 23.01 or 23.03 evidence shall be admissible for any party by affidavit or, if the Court thinks fit, orally.
- (2) On an application under Rule 23.02 no evidence shall be admissible on the question whether an indorsement of claim or pleading offends against that Rule.
- (3) Rule 22.07 applies to an affidavit under paragraph (1).

23.05 Declaratory judgment

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

ORDER 24

**JUDGMENT ON FAILURE TO PROSECUTE OR OBEY
ORDER FOR PARTICULARS OR DISCOVERY**

24.01 Judgment on dismissal

Where the plaintiff—

- (a) being required to serve a statement of claim, fails to do so within the time limited; or
- (b) does not within a reasonable time after the commencement of the proceeding file and serve notice of trial or apply to have a date fixed for the trial of the proceeding; or
- (c) fails to file and serve notice of trial within the time allowed to the plaintiff by the Court when fixing a date for the trial of the proceeding under Rule 48.02(b)—

Rule 24.01(c)
amended by
S.R. No.
32/2008
rule 5(a).

the Court may order that the proceeding be dismissed for want of prosecution.

24.02 Failure to obey order

- (1) Where a party fails to comply with an order to give particulars of any pleading or with an order for the discovery or inspection of documents or for answers to interrogatories, the Court may order—
 - (a) if the party is the plaintiff, that the proceeding be dismissed;
 - (b) if the party is a defendant, that the defendant's defence, if any, be struck out.
- (2) A defendant whose defence is struck out in accordance with paragraph (1)(b) shall, for the purpose of Rule 21.02(1), be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.

24.03 Stay on non-payment of costs

Where—

- (a) a proceeding is dismissed for want of prosecution and the plaintiff is liable to pay the costs of the defendant of the proceeding; and
- (b) the plaintiff, before paying those costs commences another proceeding for the same, or substantially the same, cause of action—

the Court may by order stay the proceeding until those costs are paid.

24.04 Counterclaim and third party claim

This Order shall apply, with any necessary modification, to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.

24.05 Inherent jurisdiction

Nothing in this Order shall affect the inherent power of the Court to dismiss any proceeding for want of prosecution or to order that upon the failure of a party to do any act or take any step which under these Rules the party is required to do or take or to comply with an order that the party do any such act or take any such step the proceeding shall be dismissed or the defence struck out and that judgment may be entered or that there be judgment accordingly.

24.06 Setting aside judgment

The Court may set aside or vary—

- (a) an order under this Order or an order referred to in Rule 24.05;
- (b) a judgment entered or given upon the failure of a party to do any act or take any step which under these Rules the party is required

Supreme Court (General Civil Procedure) Rules 2005
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r. 24.06

to do or take or to comply with an order that
the party do any such act or take any such
step.

ORDER 25

DISCONTINUANCE AND WITHDRAWAL

25.01 Withdrawal of appearance

A party who has filed an appearance in a proceeding may withdraw the appearance at any time with the leave of the Court.

25.02 Discontinuance or withdrawal of proceeding or claim

- (1) This Rule applies only to a proceeding commenced by writ.
- (2) A plaintiff may discontinue a proceeding or withdraw any part of it—
 - (a) before the close of pleadings; or
 - (b) at any time, by leave of the Court or with the consent of all other parties.
- (3) A defendant may discontinue a counterclaim or withdraw any part of it—
 - (a) before the close of pleadings; or
 - (b) at any time, by leave of the Court or with the consent of all other parties to the counterclaim.
- (4) At any time the plaintiff may withdraw a defence to counterclaim or any part of it and a defendant may withdraw the defendant's defence or any part of it.
- (5) Paragraph (4) does not enable a party to withdraw an admission or any other matter operating for the benefit of another party without the consent of that party or the leave of the Court.

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- (6) A defendant who has joined a third party may discontinue the claim made against the third party by the third party notice or withdraw any part of the claim at any time by leave of the Court or with the consent of the third party.

25.03 Proceeding not commenced by writ

A proceeding not commenced by writ may be discontinued and any part of a proceeding not commenced by writ may be withdrawn at any time by leave of the Court or with the consent of all other parties.

25.04 Notice of discontinuance or withdrawal

- (1) A discontinuance or withdrawal without the leave of the Court shall be made by filing a notice stating the extent of the discontinuance or withdrawal.
- (2) When the discontinuance or withdrawal is with the consent of other parties the notice under paragraph (1) shall be indorsed with the consent of each party who consents.
- (3) On the day the notice is filed a copy shall be served on each other party.

25.05 Costs

Where a proceeding, counterclaim or claim by third party notice is discontinued, or where part of a proceeding, counterclaim or third party notice is withdrawn, liability for costs shall be determined in accordance with Rule 63.15.

25.06 Discontinuance or withdrawal no defence

The discontinuance of a proceeding, counterclaim or claim by third party notice or the withdrawal of any part of a proceeding, counterclaim or claim by third party notice shall not be a defence to a subsequent proceeding for the same, or substantially the same, cause of action, unless the Court otherwise provides by any order granting leave to discontinue or withdraw.

25.07 Stay on non-payment of costs

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

ORDER 26

**OFFER OF COMPROMISE AND OFFERS TO COMPROMISE
ON APPEAL**

Order 26
(Heading)
amended by
S.R. No.
43/2006 rule 5.

PART 1—INTERPRETATION

26.01 Definitions

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

claim includes a counterclaim and any claim made in accordance with Order 11;

defendant includes a defendant by counterclaim and a party against whom a claim is made in accordance with Order 11;

plaintiff includes a defendant who serves a counterclaim and a party who makes a claim in accordance with Order 11.

PART 2—OFFER OF COMPROMISE

26.02 Application

- (1) The plaintiff and the defendant may in respect of any claim in a proceeding serve on one another an offer of compromise on the terms specified in the offer.
- (2) An offer of compromise in respect of a claim may be on terms that take into account any other claim between the plaintiff and the defendant made in the proceeding.
- (3) An offer of compromise shall—
 - (a) be in writing and prepared in accordance with Rules 27.02 to 27.04; and
 - (b) contain a statement to the effect that it is served in accordance with this Order.

26.03 Time for making, accepting etc. offer

- (1) An offer of compromise may be served at any time before verdict or judgment in respect of the claim to which it relates.
- (2) A party may serve more than one offer of compromise.
- (3) An offer of compromise may be expressed to be limited as to the time the offer is open to be accepted after service on the party to whom it is made, but the time expressed shall not be less than 14 days after such service.
- (3.1) A party on whom an offer of compromise is served shall within three days after service serve a written acknowledgement of service on the party serving the offer.
- (4) A party on whom an offer of compromise is served may accept the offer by serving notice of acceptance in writing on the party who made the offer before—
 - (a) the expiration of the time specified in accordance with paragraph (3) or, if no time is specified, the expiration of 14 days after service of the offer; or
 - (b) verdict or judgment in respect of the claim to which the offer relates—whichever event is the sooner.
- (5) An offer of compromise shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.
- (6) An offer of compromise is open to be accepted within the period referred to in paragraph (4) notwithstanding that during that period the party on whom the offer is served makes an offer of compromise to the party who served the offer of

compromise, whether or not the offer made by the party served is made in accordance with this Part.

- (7) Upon the acceptance of an offer of compromise in accordance with paragraph (4), unless the Court otherwise orders, the defendant shall pay the costs of the plaintiff in respect of the claim up to and including the day the offer was served.
- (8) If an offer of compromise contains a term which purports to negative or limit the operation of paragraph (7), that term shall be of no effect for any purpose under this Part.

26.03.1 Time for payment

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

26.04 Effect of offer

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

26.05 Disclosure of offer to Court

- (1) No statement of the fact that an offer of compromise has been made shall be contained in any pleading or affidavit.
- (2) Where an offer of compromise has not been accepted, then, except as provided by Rule 26.08(6), 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) Paragraphs (1) and (2) shall not apply where an offer of compromise provides that the offer is not made without prejudice.

26.06 Party under disability

A person under disability may make or accept an offer of compromise, but no acceptance of an offer made by him or her and no acceptance by that person of an offer shall be binding until the Court has approved the compromise.

26.07 Failure to comply with accepted offer

- (1) Where a party to an accepted offer of compromise fails to comply with the terms of the offer, then, unless for special cause the Court shall otherwise order, the other party shall be entitled, as that other party may elect, to—

(a) judgment in the terms of the accepted offer;
or

(b) where the party in default is—

(i) the plaintiff, an order that the proceeding be dismissed; and

(ii) the defendant, an order that the defendant's defence be struck out—

and in either case to judgment accordingly.

- (2) Where a party to an accepted offer of compromise fails to comply with the terms of the offer, and a defendant in the proceeding has made a claim by counterclaim or third party notice which is not the subject of the accepted offer, the Court may make such order or give such judgment under paragraph (1) and make such order that the proceeding, counterclaim or claim by third party notice be continued as it thinks fit.

26.08 Costs consequences of failure to accept

- (1) This Rule applies to an offer of compromise which has not been accepted at the time of verdict or judgment.

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- (2) Where an offer of compromise is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains a judgment on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled—
- (a) if the claim of the plaintiff is for damages for or arising out of death or bodily injury, to an order against the defendant for the plaintiff's costs in respect of the claim taxed on an indemnity basis;
 - (b) in the case of any other claim of the plaintiff, to an order against the defendant for the plaintiff's costs in respect of the claim up to and including the day the offer was served taxed on a party and party basis and for the plaintiff's costs thereafter taxed on an indemnity basis.
- (3) Where an offer of compromise is made by a defendant and not accepted by the 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—
- (a) the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim up to and including the day the offer was served taxed on a party and party basis; and
 - (b) 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 party and party basis.
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- (4) For the purpose of paragraph (3), where the offer of compromise was served on the first or a later day of the trial of the proceeding, then, unless the Court otherwise orders—
- (a) the plaintiff shall be entitled to the plaintiff's costs in respect of the claim to the opening of the court next after the day on which the offer was served taxed on a party and party basis; and
 - (b) the defendant shall be entitled to the defendant's costs in respect of the claim thereafter taxed on a party and party basis.
- (5) Where a plaintiff obtains judgment for the recovery of a debt or damages and—
- (a) the amount for which the Court pronounces judgment includes an amount for interest or damages in the nature of interest; or
 - (b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the judgment amount—
- for the purpose of determining the consequences as to costs referred to in paragraphs (2) and (3) the Court shall disregard so much of the amount recovered by or awarded to the plaintiff for interest or damages in the nature of interest as relates to the period after the day the offer of compromise was served.
- (6) For the purpose only of paragraph (5), the Court may be informed of the fact that the offer of compromise was served, and of the date of service, but shall not be informed of its terms.
- (7) Paragraphs (2) and (3) shall not apply unless the Court is satisfied by the party serving the offer of compromise that that party was at all material times willing and able to carry out the party's part of what was proposed in the offer.
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- (8) Where the plaintiff obtains judgment for the recovery of a debt or damages, and the amount of the debt or the damages was not in dispute, but only the question of liability, paragraph (2) shall not apply unless the Court is satisfied that the plaintiff's offer was of a genuine compromise.

26.09 Multiple defendants

Where two or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a debt or damages and rights of contribution or indemnity appear to exist between the defendants, the consequences as to costs referred to in Rule 26.08 shall not apply to an offer of compromise unless—

- (a) in the case of an offer made by the plaintiff, the offer is made to all the defendants, and is an offer of compromise of the claim against all of them;
- (b) in the case of an offer made to the plaintiff—
 - (i) the offer is to compromise the claim against all defendants; and
 - (ii) where the offer is made by two or more defendants, by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the plaintiff for the whole amount of the offer.

26.10 Offer to contribute

- (1) Where in any proceeding a defendant makes a claim (in this Rule called *a contribution claim*) to recover contribution or indemnity against any person, whether a defendant to the proceeding or not, in respect of any claim for a debt or damages made by the plaintiff in the proceeding, any 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.

- (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;
 - (b) any costs which that party is liable to pay to the plaintiff.
- (3) Rules 26.04 and 26.05, with any necessary modification, shall apply to an offer to contribute as if it were an offer of compromise.

26.11 Transitional

This Order as in force immediately before 1 September 1999 continues to apply to—

- (a) an offer of compromise served under Part 2 of this Order; and
- (b) an offer to compromise served under Part 3 of this Order—

before that date.

PART 3—OFFER TO COMPROMISE ON APPEAL

* * * * *

26.12 Appeal to Court of Appeal

- (1) Where notice of appeal to the Court of Appeal has been served, a party may serve on another party an offer to compromise the appeal on the terms specified in the offer.
- (2) The offer to compromise the appeal may be on terms that take into account any cross-appeal.

Rule 26.12(2)
amended by
S.R. No.
43/2006
rule 6(1).

(3) Where on an appeal—

- (a) a party has made an offer in writing to the other party (whether or not expressed to be without prejudice) to compromise the appeal on the terms specified in the offer;
- (b) the offer was open to be accepted for a reasonable time, but was not accepted; and
- (c) the party making the offer obtains an order on the appeal no less favourable to that party than the terms of the offer—

Rule 26.12(3)
amended by
S.R. No.
43/2006
rule 6(2).

the Court of Appeal shall take those matters, and also the stage of the appeal at which the offer was made, into account in determining what order for costs to make in respect of the appeal or in respect of the appeal and the proceeding more generally.

- (4) The Court of Appeal, in exercising its discretion as to costs in accordance with paragraph (3), may order that the party on whom the offer to compromise the appeal was served pay the costs of the party who made the offer, taxed on a basis other than a party and party basis, from the commencement of the appeal, from the day the offer was served or from any other time that the Court thinks fit.

Rule 26.12(4)
amended by
S.R. No.
43/2006
rule 6(3)(a)(b).

- (5) Unless the offer to compromise the appeal provides that the offer is not made without prejudice, no statement of the fact that an offer to compromise has been made shall be contained in any affidavit and no communication with respect to the offer shall be made to the Court of Appeal until the appeal has been determined save as to costs.

Rule 26.12(5)
amended by
S.R. No.
43/2006
rule 6(4).

ORDER 27

CONTENT AND FORM OF COURT DOCUMENTS

27.01 Conformity with Rules

Except to the extent that the nature of the document renders compliance impracticable, a document prepared by a party for use in the Court shall be prepared in accordance with these Rules.

27.02 Heading and title of document

- (1) A document shall—
 - (a) be headed "In the Supreme Court of Victoria at", stating in which office of the Court the proceeding commenced; and
 - (b) show any identifying number assigned by the Court to the proceeding.
- (2) Where a proceeding is commenced by originating motion and the claim of the plaintiff arises under any Act, the heading of a document shall also state "In the matter of", identifying the specific provision relied on.
- (3) Subject to paragraphs (5) and (6), the heading of a document shall include the title to the proceeding and the title to the proceeding shall name all the parties.
- (4) Except where otherwise provided by these Rules, a document in a proceeding in which there is no defendant shall be entitled "The application of", naming the plaintiff.
- (5) Where there are more than two plaintiffs, the heading of a document shall state the full name of the first plaintiff followed by the words "and others" and similarly with respect to defendants and other parties.

- (6) In the case of a document which is originating process or a judgment or order authenticated in accordance with Order 60 or process of execution, if the heading of the document is in accordance with paragraph (5)—
- (a) immediately after the words "and others" in the title to the document there shall follow the words "according to the schedule"; and
 - (b) a schedule stating the full names of all the parties to the proceeding, and dated, shall be part of the document.

27.03 Form of document

- (1) A document shall—
- (a) be of durable white paper 297 millimetres by 210 millimetres, the size known as International Paper Size A4; and
 - (b) be capable of receiving writing in ink.
- (2) Subject to the Rules—
- (a) a document may be printed single-sided or double-sided, but not partly single-sided and partly double-sided;
 - (b) the sheets of a document shall be securely fastened—
 - (i) if the document is single-sided, at the top left hand corner;
 - (ii) if the document is double-sided, along the left hand side; and
 - (iii) without obscuring the writing or the margin;
 - (c) a left hand margin of at least 25 millimetres and a top margin of 30 millimetres shall be kept clear on each sheet of a document that bears writing;

Rule 27.03(2)
substituted by
S.R. No.
32/2008 rule 4.

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- (d) the pages of a document shall be consecutively numbered; and
 - (e) a document shall have double spacing between the lines.
- (3) The text of a document shall be printed or typewritten and shall be clear, sharp, legible and permanent.
 - (4) A document shall not bear any erasure or alteration that causes material disfigurement.
 - (5) Subject to Rule 27.02(5) and (6), the heading of the document shall be indorsed on the first sheet of the document and shall be followed immediately by a short description of the document.
 - (6) The heading shall occupy a space at the top of the first sheet of the document not exceeding 100 millimetres in depth.
 - (7) The description of the document shall, in the case of an affidavit, include the name of the deponent.
 - (8) A document shall also be indorsed on the first sheet with—
 - (a) the date of the document;
 - (b) the party or other person on whose behalf it is filed;
 - (c) if a solicitor prepares the document, particulars in accordance with paragraph (11); and
 - (d) if the party or person on whose behalf the document is filed is acting without a solicitor, particulars in accordance with paragraph (12).
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- (9) The indorsements referred to in paragraph (8) shall occupy a space immediately following the description of the document and not exceeding 50 millimetres in depth.
- (10) Paragraph (8)(a) is satisfied by indorsement with—
- (a) in the case of originating process or a summons, the date of filing;
 - (b) in the case of a pleading, the date the document was made;
 - (c) in the case of an affidavit, the date of swearing.
- (11) The particulars referred to in paragraph (8)(c) are—
- (a) the name, address, telephone number, document exchange number and code reference of the solicitor's firm; and
 - (b) the name and e-mail address (if any) of an individual in the firm to whom reference can be made in respect of the proceeding.
- (12) The particulars referred to in paragraph (8)(d) are the name, address and telephone number of the party or other person on whose behalf the document is filed.
- (13) A document or copy document which is to be filed shall not be folded and, if comprising more than one sheet, shall be fastened only at the top left hand corner.
- (14) The Court may require any document to be prepared in any manner it thinks fit.

**Rule 27.03
(11)(b)
amended by
S.R. No.
102/2006
rule 8.**

27.04 Numbers

Dates, amounts and other numbers shall be expressed in figures and not in words.

27.05 Copies on request

- (1) A party who prepares a document for use in the Court shall, on the request of any other party entitled to a copy of the document and on payment of a charge at the rate set forth in Appendix A for photocopying a document, supply that party with a photocopy of the document.
- (2) A person against whom an order is made without notice shall be entitled to a copy of any document used in support of the application for the order, and paragraph (1) shall apply accordingly.

27.06 Prothonotary refusing to seal or accept document

- (1) The Prothonotary may refuse to seal an originating process without the direction of the Court where the Prothonotary considers that the form or contents of the document show that were the document to be sealed 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 any order of the Court—
 - (a) the Prothonotary may refuse to accept it for filing without the direction of the Court;
 - (b) the Court may order that the party responsible shall not be entitled to rely upon it in any manner in the proceeding until a document which is duly prepared is made available.
 - (3) The Court may direct the Prothonotary to seal an originating process or accept a document for filing.
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27.07 Scandalous matter

Where a document for use in the Court contains scandalous, irrelevant or otherwise oppressive matter, the Court may order—

- (a) that the matter be struck out; or
- (b) if the document has been filed, that it be taken off the file.

ORDER 28

FILING AND SEALING OF COURT DOCUMENTS

PART 1—GENERAL

Order 28 Pt 1
(Heading)
inserted by
S.R. No.
5/2007 rule 8.

28.01 How document filed

- (1) Subject to paragraph (2), a document in a proceeding is filed by filing it—
 - (a) in the office of the Prothonotary or, where a proceeding is commenced in an office of the Court outside Melbourne, in that office; or
 - (b) with the proper officer in court.
- (2) A summons in respect of an application to an Associate Judge or the Costs Court shall be filed in accordance with Rule 46.04.

Rule 28.01(2)
amended by
S.R. Nos
100/2008
rule 5(e),
97/2009 rule 6.

28.02 Proceedings commenced outside Melbourne

Unless the Court otherwise orders or the Prothonotary or a Deputy Prothonotary, as the case requires, allows—

- (a) a document filed in an office of the Court outside Melbourne shall remain in the custody of the Deputy Prothonotary at that office;
- (b) a document in a proceeding commenced in an office of the Court outside Melbourne shall not be filed in any other office.

28.03 Date of filing

The Prothonotary or Deputy Prothonotary, as the case requires, shall indorse the date and time of filing on every document filed.

28.04 Seal of Court

- (1) The Associate Judge who is the Senior Master, an Associate Judge who is a Costs Judge, every other Associate Judge, the Registrar of the Court of Appeal, the Registrar of Criminal Appeals, any other judicial registrar, the Prothonotary, every Associate of a Judge of the Court, every Associate of an Associate Judge, any Registrar of a list, any Costs Registrar and any Deputy Costs Registrar shall each have in his or her custody a stamp, the design of which shall as near as practicable be the same as the design of the seal of the Court, with the addition of, in the case of—

Rule 28.04(1) substituted by S.R. No. 100/2008 rule 6, amended by S.R. Nos 97/2009 rule 7(a)(b), 148/2010 rule 7(1)(a).

- (a) the Associate Judge who is the Senior Master, the words "Senior Master";
- (b) an Associate Judge who is a Costs Judge, the words "Costs Judge";

Rule 28.04 (1)(b) substituted by S.R. No. 97/2009 rule 7(c).

- (c) any other Associate Judge, the words "Associate Judge";

- (ca) the Registrar of the Court of Appeal, the words "Registrar of the Court of Appeal";

Rule 28.04 (1)(ca) inserted by S.R. No. 148/2010 rule 7(1)(b).

- (cb) the Registrar of Criminal Appeals, the words "Registrar of Criminal Appeals";

Rule 28.04 (1)(cb) inserted by S.R. No. 148/2010 rule 7(1)(b).

- (cc) any other judicial registrar, the words "Judicial Registrar";

Rule 28.04 (1)(cc) inserted by S.R. No. 148/2010 rule 7(1)(b).

Rule 28.04(1)(g)
amended by
S.R. No.
97/2009
rule 7(d).

Rule 28.04(1)(h)
inserted by S.R.
No. 97/2009
rule 7(e).

Rule 28.04(1)(i)
inserted by S.R.
No. 97/2009
rule 7(e).

- (d) the Prothonotary, the word "Prothonotary";
 - (e) an Associate of a Judge of the Court, the words "Associate of a Judge of the Court";
 - (f) an Associate of an Associate Judge, the words "Associate of an Associate Judge";
 - (g) a Registrar of a list, the words "Registrar" and the name of the list;
 - (h) a Costs Registrar, the words "Costs Registrar";
 - (i) a Deputy Costs Registrar, the words "Deputy Costs Registrar".
- (2) Each Deputy Prothonotary of an office of the Court outside Melbourne 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 seal of the Court with the addition of the words "Deputy Prothonotary" and the name of the place where that office is situated.
- (3) Marking a document or a copy of a document with a stamp referred to in paragraph (1) or (2) is sufficient compliance with any requirement of these Rules or an order of the Court that the document or copy be sealed with the seal of the Court.

28.05 Inspection of documents

- (1) When the office of the Court is open, any person may, on payment of the proper fee, inspect and obtain a copy of any document filed in a proceeding.

(2) Notwithstanding paragraph (1)—

- (a) no person may inspect or obtain a copy of a document which the Court has ordered remain confidential;
- (b) a person not a party may not, without leave of the Court, inspect or obtain a copy of a document which in the opinion of the Prothonotary ought to remain confidential to the parties.

28.06 Production of Court document

Production to the Court of a document in a proceeding shall be obtained—

- (a) on the resumed hearing of an application which has been adjourned otherwise than to a fixed date; or
- (b) on an application without notice—

by filing a notice to produce the document in the office of the Prothonotary or, where the document is in an office of the Court outside Melbourne, in that office.

PART 2—ELECTRONIC FILING

Order 28 Pt 2
(Heading and
rules 28.07–
28.17)
inserted by
S.R. No.
5/2007 rule 9.

28.07 Application of Part

This Part applies to the electronic filing of documents in the Court.

Rule 28.07
inserted by
S.R. No.
5/2007 rule 9.

28.08 Definitions

In this Part—

authorised provider means a person or body listed in Rule 28.17;

Rule 28.08
inserted by
S.R. No.
5/2007 rule 9.

authorised user means a person or body who has arranged for an authorised provider to make documents available for electronic retrieval by the Prothonotary in accordance with the provisions of this Part.

Rule 28.09
inserted by
S.R. No.
5/2007 rule 9.

28.09 Authorised provider may make documents available

An authorised provider may, on behalf of an authorised user, make available for electronic retrieval by the Prothonotary a document for filing in the Court.

Rule 28.10
inserted by
S.R. No.
5/2007 rule 9.

28.10 Prothonotary may accept a document for filing

- (1) If satisfied that a document which is retrieved electronically in the Court from an authorised provider complies with the requirements of the Rules, the Prothonotary shall—
 - (a) accept the document;
 - (b) make a copy of the document and endorse on it the date and time it is taken to be filed; and
 - (c) in the case of a document which, if filed personally would be required to be sealed and dated by the Prothonotary, send a filing confirmation notice by electronic communication to the authorised provider.
- (2) A filing confirmation notice shall—
 - (a) be in Form 28A; and
 - (b) contain a facsimile of the seal of the Court.
- (3) Subject to paragraph (4), a document which is accepted by the Prothonotary is taken to have been filed in the Court on the date and at the time the authorised provider made it available for retrieval by the Prothonotary.
- (4) Subject to Rule 28.11, if the authorised provider makes a document available for retrieval by the Prothonotary after 4.00 p.m. on a day the office of

the Court is open or at any time on a day that the office of the Court is not open and the Prothonotary subsequently accepts the document for filing, the document shall be taken to have been filed at 9.30 a.m. on the next day the office of the Court is open after the date the document was made available for retrieval.

28.11 Prothonotary may reject a document

Rule 28.11
inserted by
S.R. No.
5/2007 rule 9.

If the Prothonotary is not satisfied that a document sought to be filed in the Court electronically complies with the requirements of the Rules, the Prothonotary shall send an electronic communication to the authorised provider advising—

- (a) that the document has not been accepted for filing in the Court; and
- (b) the reason it was not accepted for filing.

28.12 Authorised user may make copies

Rule 28.12
inserted by
S.R. No.
5/2007 rule 9.

In the case of any document of a kind referred to in Rule 28.10(1)(c) in respect of which a filing confirmation notice has been sent to the authorised provider, the authorised user may make a sufficient number of copies of the filing confirmation notice for service and proof of service.

28.13 Documents that may not be filed electronically

Rule 28.13
inserted by
S.R. No.
5/2007 rule 9.

- (1) Subject to paragraph (2) and any order of the Court, the following documents may not be filed in accordance with this Part—
 - (a) any appeal book;
 - (b) any court book;
 - (c) any documents produced in answer to a subpoena;
 - (d) any exhibit to an affidavit; and

- (e) any document under the **Adoption Act 1984** or any regulations under that Act.
- (2) Paragraph (1)(d) does not apply to an exhibit in an application under—
 - (a) Rule 5.12 (leave to extend the period of validity of a writ);
 - (b) Rule 6.10 (for substituted service);
 - (c) Order 7 (for leave to proceed);
 - (d) Order 21 (for judgment in default of appearance or pleading);
 - (e) Rule 24.02 (where a party fails to comply with an order);
 - (f) Rule 68.02 (for leave to issue a warrant).

Rule 28.14
inserted by
S.R. No.
5/2007 rule 9.

28.14 Evidence of filing

Subject to any order of the Court, Rule 40.08 applies to a document referred to in a filing confirmation notice as if the document were a document purporting to be sealed with the seal of the Court.

Rule 28.15
inserted by
S.R. No.
5/2007 rule 9.

28.15 Production of original document

- (1) At the request of the Court or the Prothonotary, an authorised user shall produce the original paper version of a document that has been electronically filed in the Court.
- (2) If, subsequent to a request under paragraph (1), the authorised user cannot produce the paper version of the document, the Court may order or the Prothonotary may direct that the filing of the document be set aside or be of no effect.

Rule 28.16
inserted by
S.R. No.
5/2007 rule 9.

28.16 Retention of original documents

- (1) The possession of a filing confirmation notice does not relieve an authorised user from any obligation to retain an original document.

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- (2) Without limiting any other obligation to retain any document, a party who has filed an affidavit electronically under this Order shall retain the original paper version of the affidavit until the later of—
- (a) the expiry of any period within which, without any extension of time, an application for leave to appeal may be made or an appeal brought in the proceeding; or
 - (b) the determination of any application for leave to appeal made or appeal brought—
 - (i) within the period referred to in paragraph (a); or
 - (ii) after that period, if the party still retains the original paper version of the affidavit.

28.17 Authorised provider

The STATE OF QUEENSLAND through CITEC,
a commercial business of the Queensland
Government—ABN 52 566 829 700.

Rule 28.17
inserted by
S.R. No.
5/2007 rule 9.

ORDER 29

DISCOVERY AND INSPECTION OF DOCUMENTS

29.01 Application and definition

- (1) Except where the Rules of this Order otherwise provide, the Order applies only—
 - (a) to a proceeding commenced by writ; and
 - (b) to a proceeding in respect of which an order has been made under Rule 4.07(1).
- (2) In this Order *possession* means possession, custody or power.

Rule 29.01.1
inserted by
S.R. No.
53/2010 rule 5.

29.01.1 Scope of discovery

Rule 29.01.1(2)
amended by
S.R. No.
100/2010
rule 8.

- (1) Unless the Court otherwise orders, discovery of documents pursuant to this Order is limited to the documents referred to in paragraph (3).
- (2) Paragraph (1) applies despite any other rule of law to the contrary.
- (3) Without limiting Rules 29.05 and 29.07, for the purposes of this Order, the documents required to be discovered are any of the following documents of which the party giving discovery is, after a reasonable search, aware at the time discovery is given—
 - (a) documents on which the party relies;
 - (b) documents that adversely affect the party's own case;
 - (c) documents that adversely affect another party's case;
 - (d) documents that support another party's case.

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- (4) Notwithstanding paragraph (3)—
- (a) if a party giving discovery reasonably believes that a document is already in the possession of the party to which discovery is given, the party giving discovery is not required to discover that document;
 - (b) a party required to give discovery who has, or has had in his, her or its possession more than one copy, however made, of a particular document is not required to give discovery of additional copies by reason only of the fact that the original or any other copy is discoverable.
- (5) For the purposes of paragraph (3), in making a reasonable search a party may take into account—
- (a) the nature and complexity of the proceeding;
 - (b) the number of documents involved;
 - (c) the ease and cost of retrieving a document;
 - (d) the significance of any document to be found; and
 - (e) any other relevant matter.

29.02 Notice for discovery

- (1) Where the pleadings between any parties are closed, any of those parties may, by notice for discovery served on any other of those parties, require the party served to make discovery of all documents which are or have been in that party's possession and which, in accordance with Rule 29.01.1, are required to be discovered.
- (2) A notice for discovery shall be in Form 29A.
- (3) A notice for discovery served before the pleadings are closed shall be taken to have been served on the day after the pleadings close.

Rule 29.02(1)
amended by
S.R. No.
53/2010 rule 6.

29.03 Discovery after notice

A party upon whom a notice for discovery is served shall make discovery of documents within 42 days after—

- (a) service of the notice; or
- (b) the day upon which the notice is taken by virtue of Rule 29.02(3) to have been served—

whichever is the later.

Rule 29.04
amended by
S.R. No.
53/2010 rule 7
(ILA s. 39B(2)).

29.04 Affidavit of documents

- (1) An affidavit of documents for the purpose of making discovery of documents shall be in Form 29B and shall—
 - (a) identify the documents which are or have been in the possession of the party making the affidavit;
 - (b) enumerate the documents in convenient order and shall describe each document or, in the case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified;
 - (c) distinguish those documents which are in the possession of the party making the affidavit from those that have been but are no longer in that party's possession, and shall as to any document which has been but is no longer in the possession of the party—
 - (i) state when the party parted with the document; and
 - (ii) the party's belief as to what has become of it;

- (d) where the party making the affidavit claims that any document in that party's possession is privileged from production, state sufficiently the grounds of the privilege.
- (2) If a party required to give discovery in accordance with Rule 29.01.1 does not, in making a reasonable search as required by Rule 29.01.1, search for a category or class of document, the party must include in the affidavit of documents a statement of—
 - (a) the category or class of document not searched for; and
 - (b) the reason why.

Rule 29.04(2)
inserted by
S.R. No.
53/2010 rule 7.

29.05 Order limiting discovery

In order to prevent unnecessary discovery, the Court may, before or after any party is required to make discovery by virtue of a notice for discovery served in accordance with Rule 29.02, order that discovery by any party shall not be required or shall be limited to such documents or classes of document, or to such of the questions in the proceeding, as are specified in the order.

29.05.1 Order for general discovery

At any stage of a proceeding, the Court may order any party to give discovery in accordance with Rule 29.01.1.

Rule 29.05.1
inserted by
S.R. No.
53/2010 rule 8.

29.05.2 Order for expanded discovery

- (1) At any stage of a proceeding, the Court may, by order, expand a party's obligation to give discovery beyond that required by Rule 29.01.1.
- (2) Without limiting any power of the Court, an order under paragraph (1) may specify any document or class of document to which the expanded obligation relates.

Rule 29.05.2
inserted by
S.R. No.
53/2010 rule 8.

29.06 Co-defendants and third party

- (1) A defendant who has pleaded shall be entitled to obtain from the party making discovery a copy of any affidavit of documents served on—
 - (a) the plaintiff by any other defendant to the proceeding;
 - (b) any other defendant by the plaintiff.
- (2) Where the defendant has served a counter-claim joining another person with the plaintiff as defendant to the counter-claim in accordance with Rule 10.03, paragraph (1), with any necessary modification, shall apply as if—
 - (a) the defendant were the plaintiff; and
 - (b) the plaintiff and the other person were the defendants.
- (3) A third party who has pleaded shall be entitled to obtain from the party making discovery a copy of any affidavit of documents served—
 - (a) by the plaintiff on the defendant by whom the third party was joined;
 - (b) on the plaintiff by that defendant.

29.07 Order for discovery

- (1) In a proceeding within Rule 29.01, notwithstanding that the pleadings between any parties are not closed, the Court may order that any of those parties make discovery of documents to any other of those parties.
- (2) In a proceeding not within Rule 29.01, the Court may at any stage order any party to make discovery of documents.

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- (3) An order under paragraph (1) or (2) may be limited to such documents or classes of document, or to such questions in the proceeding, as the Court thinks fit.

29.08 Order for particular discovery

- (1) This Rule applies to any proceeding in the Court.
- (2) Where, at any stage of a proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that some document or class of document relating to any question in the proceeding may be or may have been in the possession of a party, the Court may order that party to make and serve on any other party an affidavit stating—
- (a) whether that document or any, and if so what, document or documents of that class is or has been in that party's possession; and
 - (b) if it has been but is no longer in that party's possession, when the party parted with it and that party's belief as to what has become of it.
- (3) An order may be made against a party under paragraph (2) notwithstanding that the party has already made or been required to make an affidavit of documents.

29.09 Inspection of documents referred to in affidavit of documents

- (1) A party upon whom an affidavit of documents is served in accordance with Rule 29.03 or in accordance with an order made under Rule 29.07 or 29.08 and a party to whom an affidavit of documents is supplied in accordance with Rule 29.06 may, by notice to produce served on the party making the affidavit, require that the party produce the documents in that party's

possession referred to in the affidavit (other than any which that party objects to produce) for inspection.

- (2) A party upon whom a notice to produce is served in accordance with paragraph (1) shall, within seven days after that service, serve on the party requiring production a notice appointing a time within seven days after service of the notice under this paragraph when, and a place where, the documents may be inspected.
- (3) A notice to produce under paragraph (1) shall be in Form 29C.
- (4) A party to whom documents are produced for inspection under this Rule may take copies of the documents.
- (5) For the purpose of paragraph (4), taking a copy of a document includes photocopying the document, and if the party to whom a document is produced states that the party wishes to have it photocopied, the party producing the document shall at that party's option either—
 - (a) allow the other party to photocopy the document at such place as the parties agree; or
 - (b) supply the other party with a photocopy of the document.
- (6) Unless the Court otherwise orders, the cost of a photocopy of a document supplied to a party in accordance with paragraph (5) shall—
 - (a) be borne by that party in the first instance and be ultimately a cost in the proceeding; and
 - (b) be in the amount allowed in Appendix A for copy documents.

29.10 Inspection of documents referred to in pleadings and affidavits

- (1) This Rule applies to any proceeding.
- (2) Where, in the originating process filed by a party or in any pleading, interrogatories or answers, affidavit, or notice filed by a party, reference is made to a document, any other party may, by notice to produce served on that party, require that party to produce the document for inspection.
- (3) Except as provided by paragraph (4), Rule 29.09, with any necessary modification, shall apply to the production and inspection of a document under this Rule.
- (4) A party upon whom a notice to produce is served under paragraph (2) shall not be required to produce a document for inspection where—
 - (a) the party claims that the document is privileged from production, and that party makes and serves on the other party an affidavit in which the party—
 - (i) makes that claim; and
 - (ii) states sufficiently the grounds of the privilege;
 - (b) the document is not in that party's possession, and the party makes and serves on the other party an affidavit in which the party—
 - (i) states that fact; and
 - (ii) states to the best of the party's knowledge, information and belief where the document is and in whose possession it is; and

(iii) where the document has been but is no longer in the party's possession, when the party parted with it and the party's belief as to what has become of it.

(5) A notice to produce under paragraph (2) shall be in Form 29C.

29.11 Order for discovery

Where a party—

- (a) fails to make discovery of documents in accordance with Rules 29.03 and 29.04;
- (b) fails to serve a notice appointing a time for inspection of documents as required by Rule 29.09 or 29.10;
- (c) objects to produce any document for inspection;
- (d) offers inspection unreasonable as to time or place; or
- (e) objects to allow any document to be photocopied or to supply a photocopy of the document—

the Court may order the party to do such act as the case requires.

29.12 Direction as to documents

- (1) Where a party is entitled under this Order to inspect a document which consists of—
 - (a) a video tape, audio tape, disc, film or other means of recording, the Court may give directions—
 - (i) for the screening or playing thereof;

and

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- (ii) for the making by or supply to the party of a transcript of the recording (insofar as it can be transcribed) or a copy of the recording;
 - (b) information which has been processed by or is stored in a computer, the Court may give directions for making the information available.
 - (2) On an application under paragraph (1) the Court may make an order for the costs and expenses of the party against whom an order giving directions is sought.
 - (3) The Court may make an order giving directions on condition that the party applying give security for the costs and expenses of the party against whom the order is made.

29.12.1 Default notice

- (1) This Rule shall not limit the power of the Court under Rule 24.02.
- (2) If a party required to make discovery of documents fails to make discovery within the time limited by these Rules or fixed by any order of the Court, the party entitled to the discovery may serve on that party a notice in Form 29D.
- (3) If, within seven days after service of a notice under paragraph (2), the party on whom the notice is served does not make discovery, the Court may order—
 - (a) if the party required to make discovery is the plaintiff, that the proceeding be dismissed;
 - (b) if the party required to make discovery is a defendant, that the defendant's defence, if any, be struck out.

- (4) This Rule, with any necessary modification, shall apply to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.
- (5) For the purpose of Rule 21.02(1), a defendant whose defence is struck out in accordance with paragraph (3) shall be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.
- (6) The Court may set aside or vary an order made under paragraph (3).

29.13 Inspection of document by Court

Where an application is made for an order under Rule 29.11 and a claim is made that the document is privileged from production or objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.

29.14 Default on discovery

- (1) Without limiting Rule 24.02, a party who does not within the time limited comply with an order under Rule 29.08(2) or 29.11, or an order under Rule 29.12(1) giving directions shall be liable to committal.
- (2) Service on the solicitor for a party of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order but the party may show in answer to the application that that party had no notice or knowledge of the order.
- (3) A solicitor on whom such an order made against the solicitor's client is served and who fails without reasonable excuse to give notice thereof to the solicitor's client shall be liable to committal.

29.15 Continuing obligation to make discovery

A party who has made an affidavit of documents is under a continuing obligation to make discovery of documents with respect to documents of which the party obtains possession after making the affidavit.

29.16 Discovery after directions

If the Court gives directions about discovery or inspection of documents, no party may, without further order, serve notice for discovery on any other party except in accordance with those directions.

29.17 Transitional provision—Supreme Court (Chapter I Amendment No. 18) Rules 2010

The amendments made to this Order by the Supreme Court (Chapter I Amendment No. 18) Rules 2010 apply to any proceeding commenced on or after 1 January 2011.

Rule 29.17
inserted by
S.R. No.
53/2010 rule 9.

ORDER 30

INTERROGATORIES

30.01 Definitions

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

interrogating party means a party who serves interrogatories;

party interrogated means a party on whom interrogatories are served;

servant or agent, in relation to a corporation, includes officer and member.

30.02 When interrogatories allowed

- (1) Subject to the other paragraphs of this Rule, any party may serve interrogatories on another party relating to any question between them in the proceeding.
- (2) Where the pleadings between any parties are closed, interrogatories may be served without leave of the Court by any of those parties on any other of them.
- (3) Where paragraph (2) does not apply, the Court may order that any party may serve interrogatories on any other party.
- (4) By leave of the Court an interrogating party may serve further interrogatories.
- (5) For the purpose of Rule 63.70, an interrogatory served without reasonable cause is work which is not necessary.

30.03 Statement as to who to answer

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

30.04 Filing interrogatories and time for answers

Where interrogatories are served—

- (a) the interrogating party shall forthwith file a copy;
- (b) the party interrogated shall within 42 days after service answer by affidavit, file it and serve a copy on the interrogating party.

30.05 Source for answers to interrogatories

- (1) A party interrogated shall answer each interrogatory insofar as it is not objectionable in accordance with the following provisions—
 - (a) the party shall answer from the party's own knowledge of the fact or matter which is inquired after by the interrogatory, and, if the party has no such knowledge, from any belief the party has as to that fact or matter;
 - (b) a party who has no knowledge of the fact or matter inquired after shall be taken not to have a belief as to the fact or matter where the party has no information relating to the fact or matter on which to form a belief or where, if the party has such information, for reasonable cause the party has no belief that the information is true;
 - (c) except as provided by paragraph (d), the party shall answer from any belief the party has as to the fact or matter inquired after irrespective of the source of the information on which the belief is formed;

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- (d) the party shall not be required to answer from the party's belief as to any fact or matter where the belief is formed on information that was given to the party in a communication the contents of which the party could not, on the ground of privilege, be compelled to disclose;
 - (e) where the party has no personal knowledge of the fact or matter inquired after, the party shall, for the purpose of enabling the party to form a belief as to the fact or matter (so far as the party can), make all reasonable inquiries to determine—
 - (i) whether any person has knowledge of the fact or matter which was acquired by that person in the capacity of that party's servant or agent; and
 - (ii) if that is the case, what that knowledge is;
 - (f) the party shall make the inquiries referred to in paragraph (e) notwithstanding that at the time the party is required to answer the interrogatory any person having the relevant knowledge has ceased to be that person's servant or agent;
 - (g) where the party is a corporation, this Rule shall apply, with any necessary modification, as if—
 - (i) the person who answers the interrogatories on behalf of the corporation were that party; and
 - (ii) in particular, as if the reference in paragraph (e) to a servant or agent of the party were a reference to a servant or agent of the corporation.
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- (2) Where an interrogatory relates to a fact or matter alleged in the pleading of the party interrogated, nothing in paragraph (1)(d) shall affect the right of the interrogating party to obtain information as to that fact or matter pursuant to an application of the kind referred to in Rule 13.11.

30.06 How interrogatories to be answered

- (1) A party interrogated shall answer each interrogatory specifically by answering the substance of the interrogatory without evasion except insofar as it is objectionable on any of the grounds referred to in Rule 30.07.
- (2) Where the party objects to answer an interrogatory the party shall state briefly—
- (a) the ground of objection; and
 - (b) the facts, if any, on which it is based.

30.07 Ground of objection to answer

- (1) A party interrogated shall answer each interrogatory except to the extent that it may be objected to on any of the following grounds—
- (a) the interrogatory does not relate to any question between the party and the interrogating party;
 - (b) the interrogatory is unclear or vague or is too wide;
 - (c) the interrogatory is oppressive;
 - (d) the interrogatory requires the party to express an opinion which the party is not qualified to give;
 - (e) privilege.

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- (2) Without limiting paragraph (1)(a), an interrogatory that does not relate to any question includes an interrogatory the sole purpose of which is to—
- (a) impeach the credit of the party interrogated;
 - (b) enable the interrogating party to ascertain whether the party has a claim or defence other than that which the party has raised in the proceeding;
 - (c) enable the interrogating party to ascertain the evidence by which the party interrogated intends to prove the person's case, including the identity of witnesses.
- (3) A party may not object to answer an interrogatory on the ground that the party cannot answer without going to a place which is not the party's usual place of residence or business if the interrogating party undertakes to pay the reasonable cost of the person going there, unless the Court otherwise orders.

30.08 Who to answer interrogatories

- (1) Interrogatories shall be answered—
- (a) where the party interrogated is—
 - (i) a natural person, by the party;
 - (ii) a person under disability, by that person or his or her litigation guardian, whichever is appropriate;
 - (iii) a corporation, by an officer of the corporation or by any person duly authorised by it to answer; or
 - (b) by such person as the Court may direct.

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- (2) The answers of a person made in accordance with a direction given under paragraph (1)(b) shall be as effective and binding in all respects as if made by the party interrogated.

30.09 Failure to answer interrogatories

Where a party interrogated fails to answer the interrogatories within the time limited or does not answer the interrogatories sufficiently, the Court may order that the party answer or answer further, as the case may be, within such time as it directs.

30.09.1 Default notice

- (1) This Rule shall not limit the power of the Court under Rule 24.02.
- (2) If a party interrogated fails to answer interrogatories within the time limited by the Rules or fixed by any order of the Court, the interrogating party may serve on that party a notice in Form 30A.
- (3) If, within seven days after service of a notice under paragraph (2), the party interrogated does not answer the interrogatories, the Court may order—
- (a) if the party interrogated is the plaintiff, that the proceeding be dismissed;
 - (b) if the party interrogated is a defendant, that the defendant's defence, if any, be struck out.
- (4) This Rule, with any necessary modification, shall apply to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.

- (5) For the purpose of Rule 21.02(1), a defendant whose defence is struck out in accordance with paragraph (3) shall be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.
- (6) The Court may set aside or vary an order made under paragraph (3).

30.10 Non-compliance with order

- (1) Without limiting Rule 24.02, a party who does not within the time limited comply with an order made under Rule 30.09 shall be liable to committal.
- (2) Service on the solicitor for a party of an order made against that party under Rule 30.09 shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that the party had no notice or knowledge of the order.
- (3) A solicitor on whom such an order made against the solicitor's client is served and who fails without reasonable excuse to give notice thereof to the solicitor's client shall be liable to committal.

30.11 Answers as evidence

- (1) On an application in or at the trial of a proceeding a party may tender as evidence—
 - (a) one or more answers to interrogatories given by another party without tendering the others;
 - (b) part of an answer to an interrogatory without tendering the whole of the answer.

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- (2) Upon 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 any other answer or any 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 part, the Court may reject the tender unless that other answer or part is also tendered.
- (3) Where the answer of a party interrogated is stated to be given on the basis of belief, and the answer is received into evidence, the Court or the jury, as the case may be, shall give the answer such weight as the circumstances require.

Rule 30.11(3)
amended by
S.R. No.
100/2008
rule 7(1)(a).

30.12 Interrogatories after directions

If the Court gives directions about interrogatories or answers to interrogatories, no party may, without further order, serve interrogatories on any other party except in accordance with those directions.

ORDER 31

DISCOVERY BY ORAL EXAMINATION

31.01 Definitions

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

examining party means a party who orally examines or is to examine orally another party in accordance with this Order;

examiner means examiner appointed under this Order;

party examined means a party orally examined or to be orally examined by another party in accordance with this Order, and includes, where the party is a corporation, the officer of the corporation or other person attending to be examined in accordance with Rule 31.08(1).

31.02 When available

- (1) Where under these Rules a party may serve interrogatories on another party relating to any question between them in the proceeding, that party may, subject to this Rule, orally examine the other party in relation to that question.
- (2) A party shall not be orally examined by another except with the party's consent given in accordance with Rule 31.04.
- (3) A party who has consented to be orally examined by another shall not be required to answer written interrogatories served by the other unless that party has undertaken to do so.

31.03 Party a corporation

A party which is a corporation may be orally examined under this Order.

31.04 How consent given

The consent of a party to be orally examined shall—

- (a) be in writing;
- (b) state the name of the examiner; and
- (c) be filed.

31.05 Effect of consent

Where the consent of a party to be orally examined is filed under Rule 31.04—

- (a) the party shall be liable to be examined in accordance with this Order;
- (b) if the party fails to comply with an order of the Court to attend an examination or answer a question, Rule 24.02, with any necessary modification, shall apply as if the failure were a failure of a kind referred to in that Rule;
- (c) at the trial of or on the hearing of an application in the proceeding—
 - (i) the examining party may, in accordance with Rule 30.11, use in evidence the answers given under this Order by the party examined; and
 - (ii) that Rule, with any necessary modification, shall apply as if the answers were answers of the party examined to written interrogatories served by the examining party.

31.06 Appointment of examiner

- (1) An examination shall be held before an examiner who has been appointed by agreement of the parties and who consents to be appointed.

- (2) The consent of the examiner shall be in writing and be filed.

31.07 Attendance on examination

- (1) The time and place of the examination shall be determined by the examiner.
- (2) The party examined shall attend the examination to be examined by the examining party.
- (3) Counsel and solicitor for each party may attend the examination.
- (4) If the party examined fails to attend an examination, the Court may order that the party attend to be examined in accordance with this Order at such time and place as it directs.

31.08 Party a corporation

- (1) Where the party examined is a corporation—
- (a) an officer of the corporation; or
- (b) by agreement of the party examined and the examining party, a person who is not an officer—
- shall be examined and any answer given shall be taken to be the answer of the corporation.
- (2) Unless the party examined and the examining party otherwise agree, nothing in paragraph (1) shall be taken to authorise the examination of more than one person.

31.09 Powers of examiner

The examiner—

- (a) may administer oaths and receive affirmations; and
- (b) may adjourn the examination from time to time and from place to place.

31.10 Record of examination

- (1) A deposition of the examination of the party examined shall be made.
- (2) Where objection is taken to any question, proceedings before the examiner with respect to the objection shall be recorded in the deposition.
- (3) The deposition shall be authenticated by the signature of the examiner, and forthwith after signing the deposition the examiner shall give notice in writing to the party examined and the examining party of the authentication.

31.11 How party to be examined

- (1) On the examination the party examined shall be questioned by or on behalf of the examining party and no questions shall be asked of the party examined by that party's own counsel or solicitor.
- (2) The examination shall be in the nature of an examination-in-chief of the party examined by the examining party.
- (3) The party examined shall answer each question asked of that party unless it may be objected to on any of the grounds referred to in Rule 30.07, and that Rule, with any necessary modification, shall apply as if the examination were an examination of the party by written interrogatories.
- (4) Where the party examined answers a question, the party shall answer in accordance with Rules 30.05 and 30.06(1), and those Rules, with any necessary modification, shall apply as if the examination were an examination of the party by written interrogatories.
- (5) A question may be answered by the counsel or solicitor for the party examined, and the answer shall be taken to be the answer of the party.

- (6) Where Rule 30.05(1)(e) applies, the examiner may adjourn the examination to enable the party examined to make the inquiries referred to in that Rule.

31.12 Procedure on objection to question

- (1) This Rule applies where objection is taken to answering a question on the examination.
- (2) The party examined shall state each ground of objection to answering, but, unless the Court otherwise orders, shall not be required to answer the question.
- (3) The examining party may apply to the Court under Rule 31.13 for an order that the party examined answer the question.

31.13 Order to answer question

Rule 31.13(1)
amended by
S.R. No.
100/2008
rule 7(1)(b)(i).

- (1) An application by the examining party under Rule 31.12(3) shall be made to an Associate Judge by summons identifying each question to which the application relates.

Rule 31.13(2)
amended by
S.R. No.
100/2008
rule 7(1)(b)(ii).

- (2) The Associate Judge may order that the party examined shall answer any question in respect of which the application is made.

Rule 31.13(3)
amended by
S.R. No.
100/2008
rule 7(1)(b)(iii).

- (3) If an order is made under paragraph (2), unless the Associate Judge otherwise orders, the party shall answer the question before the examiner, and the Associate Judge may direct that the examining party be at liberty to ask such further questions of the party examined as the case requires.

Rule 31.13(4)
amended by
S.R. No.
100/2008
rule 7(1)(b)(ii).

- (4) The Associate Judge—
- (a) may order that the party examined shall answer the question in writing; and
- (b) may direct whether that answer shall be given on oath or not.

31.14 Costs

The costs of an examination shall be costs in the proceeding, unless the Court otherwise orders.

ORDER 32

**PRELIMINARY DISCOVERY AND DISCOVERY FROM
NON-PARTY**

32.01 Definitions

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

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 that person is an individual or a corporation;

possession means possession, custody or power.

32.02 Privilege

An order made under this Order shall not operate to require the person against whom the order is made to produce any document or answer any question which, on the ground of privilege, that person is not required to produce or answer.

32.03 Discovery to identify a defendant

- (1) The Court may make an order under paragraph (2) where—
 - (a) an applicant, having made reasonable inquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this Rule called *the person concerned*); and

- (b) 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 that person's possession any document or thing, tending to assist in such ascertainment.
- (2) The Court may order that the person, 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;
 - (b) make discovery to the applicant of all documents which are or have been in his, her or its possession relating to the description of the person concerned.
- (3) Where the Court makes an order under paragraph (2)(a), it may—
 - (a) order that the person or corporation against whom or which the order is made shall produce to the Court on the examination any document or thing in his, her or its possession relating to the description of the person concerned;
 - (b) direct that the examination be held before an Associate Judge.

Rule 32.03
(3)(b)
amended by
S.R. No.
100/2008
rule 7(1)(c).

32.04 Party an applicant

Rule 32.03, with any necessary modification, shall apply 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 which the applicant could properly have made in the proceeding had the person been a party.

32.05 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 inquiries, the applicant has not sufficient information to enable the applicant to decide whether to commence a proceeding in the Court to obtain that relief; and
- (c) there is reasonable cause to believe that that person has or is likely to have or has had or is likely to have had in that person's possession any 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 that person shall make discovery to the applicant of any document of the kind described in paragraph (c).

32.06 Party an applicant

Rule 32.05, with any necessary modification, shall apply 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 which the applicant could properly have claimed in the proceeding had the person been a party.

32.07 Discovery from non-party

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

32.08 Procedure

- (1) An application under Rule 32.03 or 32.05 shall be made by originating motion to which the person against whom the order is sought shall be made respondent.
- (2) An application under Rule 32.04, 32.06 or 32.07 shall be made by summons served on every party to the proceeding and served personally on the person against whom the order is sought.
- (3) An order may be made by an Associate Judge under any of the Rules referred to in paragraphs (1) and (2).
- (4) An originating motion under paragraph (1) or a summons under paragraph (2) shall be supported by an affidavit—
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the documents or any class of documents in respect of which the order is sought.
- (5) A copy of the supporting affidavit shall be served on every person on whom the originating motion or the summons is served.

Rule 32.08(3)
amended by
S.R. No.
100/2008
rule 7(1)(d).

32.09 Inspection of documents

Rule 29.09, with any necessary modification, shall apply 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 29.09(1).

32.10 Directions as to documents

Rule 29.12, with any necessary modification, shall apply to the inspection of a document under this Order.

32.11 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 any party to the proceeding, including the costs of—
 - (a) making and serving any affidavit of documents;
 - (b) producing any document for inspection in accordance with Rule 32.09; or
 - (c) of complying with any direction given under Rule 32.10.
- (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 33

**MEDICAL EXAMINATION AND SERVICE OF HOSPITAL
AND MEDICAL REPORTS**

33.01 Application

This Order applies to a proceeding in which the plaintiff claims damages for, or otherwise claims in respect of, bodily injury.

33.02 Counterclaim

This Order, with any necessary modification, shall apply to a counterclaim by which the defendant makes a claim of the kind referred to in Rule 33.01.

33.03 Definitions

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

dentist means—

- (a) a registered dentist within the meaning of the **Dental Practice Act 1999** or a person qualified to be registered in the dentists' division of the register kept under Part 2 of that Act;
- (b) a person registered or qualified to be registered as a dentist under an enactment of a State or a Territory of the Commonwealth which corresponds to the **Dental Practice Act 1999**;
- (c) a person entitled to practise dentistry in a place outside Australia under an enactment of that place corresponding to the **Dental Practice Act 1999**, whether or not the person does so practise;

examination means an examination for medical, dental, or psychological purposes as the case requires;

hospital report means a statement in writing concerning the plaintiff made by or on behalf of a hospital, rehabilitation centre or other like institution;

medical expert means medical practitioner, dentist or psychologist as the case requires;

medical matters includes dental matters and psychological matters;

medical practitioner means—

- (a) a person registered or qualified to be registered as a medical practitioner under the **Medical Practice Act 1994** or any corresponding enactment of another State or a Territory of the Commonwealth;
- (b) a person entitled to practise medicine in a place out of Australia under an enactment of that place corresponding to the **Medical Practice Act 1994**, whether or not the person does so practise;

medical report—

- (a) means a statement on medical matters concerning the plaintiff whether in writing or oral made by a medical expert; and
- (b) includes any document which the medical expert intends should be read with the statement whether the document was in existence at the time the statement was made or was a document which the expert obtained or

caused to be brought into existence
subsequently;

psychologist means—

- (a) a registered psychologist within the meaning of the **Psychologists Registration Act 2000**; or
- (b) a person qualified to be registered under Part 2 of the **Psychologists Registration Act 2000**; or
- (c) a person who practises psychology in a place outside Victoria;

serve, in relation to the service of a medical report, means—

- (a) where the medical report was in writing, serve a copy; and
- (b) where the medical report was oral, serve notice in writing of its substance.

33.04 Notice for examination

- (1) The defendant may request the plaintiff in writing to submit to appropriate examinations by a medical expert or experts at specified times and places.
- (2) Where a plaintiff refuses or neglects, without reasonable cause, to comply with a request under paragraph (1), the Court may, if the request was on reasonable terms, stay the proceeding.

33.05 Expenses

- (1) The costs of and incidental to the examination shall be costs in the proceeding.
- (2) Without limiting paragraph (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.

33.06 Report of examination of plaintiff

- (1) A defendant for whom a plaintiff is examined under Rule 33.04 shall as soon as practicable after the examination obtain from the medical expert a medical report.
- (2) Upon obtaining the medical report the defendant shall forthwith serve the medical report on the plaintiff.
- (3) If the defendant later obtains another medical report from the medical expert concerning the plaintiff, whether or not the other report is consequent upon a further examination by the medical expert of the plaintiff, the defendant shall forthwith serve the medical report on the plaintiff.

33.07 Service of reports by plaintiff

- (1) A plaintiff shall serve on each other party who has an address for service in the proceeding any hospital or medical report (other than a hospital or medical report served on or supplied to the plaintiff by another party)—
 - (a) which the plaintiff intends to tender or the substance of which the plaintiff intends to adduce in evidence; or
 - (b) which otherwise the plaintiff intends to use at the trial.

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- (2) The plaintiff shall serve the hospital report or medical report—
- (a) within seven days after notice of trial under Order 48 is filed and served; and
 - (b) in the case of a hospital report or medical report made to or obtained by or for the plaintiff after the time referred to in paragraph (a), forthwith—
- or at such other time as the Court directs.

33.08 Service of reports by defendant

- (1) A defendant shall serve on each other party who has an address for service in the proceeding any hospital report or medical report (other than a hospital report or medical report served on or supplied to the defendant by another party)—
 - (a) which the defendant intends to tender or the substance of which the defendant intends to adduce in evidence; or
 - (b) which otherwise the defendant intends to use at the trial.
- (2) Paragraph (1) does not require the defendant to serve on the plaintiff a medical report served on the plaintiff under Rule 33.06, but the defendant shall by notice to the plaintiff in writing identify any medical report so served—
 - (a) which the defendant intends to tender or the substance of which the defendant intends to adduce in evidence; or
 - (b) which otherwise the defendant intends to use at the trial.

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- (3) The defendant shall serve the hospital report or medical report and give any notice under paragraph (2)—
- (a) within 14 days after notice of trial under Order 48 is filed and served; and
 - (b) in the case of a hospital report or medical report made to or obtained by or for the defendant after the time referred to in paragraph (a), forthwith—
- or at such other time as the Court directs.
- (4) In this Rule *defendant* includes a third or subsequent party.

33.08.1 Other medical reports to be served

Where after a party has served a medical report under Rule 33.07 or Rule 33.08 the medical expert who made the report makes another medical report to the party, then, notwithstanding that the party—

- (a) no longer intends to tender the medical report so served or to adduce its substance in evidence or to otherwise use it at the trial; or
- (b) does not intend to tender the other medical report or to adduce its substance in evidence or to otherwise use it at the trial—

the party shall serve the other medical report forthwith on each other party who has an address for service in the proceeding.

33.09 Opinion on liability

* * * * *

- (2) Unless the Court otherwise orders, a party who is required to serve a copy of a hospital report or medical report under this Order may exclude from the copy served—
- (a) any expression of opinion in the original report on the question of liability; and
 - (b) if the original report contains any statement with respect to the facts on which the opinion is based, any statement with respect to a fact that relates only to the question of liability.

33.10 Material for Court

- (1) This Rule applies only to a proceeding which is to be tried without a jury.
- (2) If, for the purpose of evidence at the trial a party intends to—
- (a) use a medical report or a hospital report a copy of which was served under this Order;
 - (b) call the maker of a medical report or a hospital report a copy of which was served under this Order—
- the party shall deliver a copy of the report for the use of the Court.
- (3) Copies or reports shall be delivered by delivering them in a sealed envelope bearing the title of the proceeding and stating "Reports delivered by [*identify party*] pursuant to Rule 33.10"—
- (a) where Melbourne is the place of trial, to the Prothonotary not less than two days before the day fixed for trial;

Rule 33.10(1)
amended by
S.R. No.
100/2008
rule 7(1)(e)(i).

Rule 33.10(3)(a)
amended by
S.R. No.
100/2008
rule 7(1)(e)(ii).

- (b) where the place of trial is a place other than Melbourne, to the Deputy Prothonotary not less than two days before the commencement of the sittings at that place.

33.11 Medical report admissible

Rule 33.11(1)
amended by
S.R. No.
100/2008
rule 7(1)(f).

- (1) This Rule does not apply in the case of the trial of a proceeding with a jury.
- (2) A medical report which was served under this Order is admissible as evidence of the opinion of the medical expert who gave the report and, where the medical expert's oral evidence of a fact upon which the opinion was based would be admissible, as evidence of that fact.
- (3) Subject to paragraphs (4) and (5), a medical report may be used in evidence—
- (a) by the party who served the report; or
- (b) by any party on whom it was served.
- (4) If a medical report is tendered by the party who served the report—
- (a) that party shall cause the medical expert who gave the report 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 any other party not later than five days before the commencement of the trial; and
- (b) if the medical expert does not attend for cross-examination, the Court may order that the medical report be not received in evidence.

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- (5) If a medical report is tendered by a party on whom the report was served—
- (a) that party shall cause the medical expert who gave the report to attend at the trial of the proceeding to be cross-examined, and if the medical expert does not attend the Court may order that the medical report be not received in evidence;
 - (b) if the report is received in evidence and the medical expert is cross-examined by any party against whom the report is received, at the conclusion of the cross-examination the party who tendered the report may examine the expert as if by re-examination.

33.12 No evidence unless disclosed in report

Save with the leave of the Court or by consent of the parties, a party shall not, except in cross-examination, adduce evidence from a medical expert on medical matters concerning the plaintiff unless that evidence is disclosed by a medical report served in accordance with this Order.

ORDER 34

DIRECTIONS

34.01 Powers of Court

- (1) At any stage of a proceeding the Court may give any direction for the conduct of the proceeding which it thinks conducive to its effective, complete, prompt and economical determination.
- (2) A party may apply for directions on the hearing either of a summons filed for the purpose or of a summons for other relief.

34.02 Nature of directions

Without limiting Rule 34.01(1), the Court may give directions relating to—

- (a) amendment of a document, under Rule 36.01;
- (b) evidence under Order 40.

Rule 34.02(b)
amended by
S.R. No.
146/2009
rule 5.

34.03 Admissions and agreements

- (1) On an application for directions the Court—
 - (a) may take steps with a view to securing that the parties make all admissions and all agreements as to the conduct of the proceeding which ought reasonably to be made by them; and
 - (b) may, by order, record any admission or agreement so made.
- (2) The Court may, by order, record any refusal to make an admission or an agreement as to the conduct of the proceeding so that the refusal may later, if the Court thinks fit, be taken into account on any question of costs.

34.04 Duty to obtain directions

Where a party applies for directions any other party who attends on the application shall apply at the same time for any direction which that other party requires and which may be given before trial.

ORDER 35

ADMISSIONS

35.01 Definition

In this Order *authenticity of a document* means that a document—

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

35.02 Voluntary admission of facts

- (1) A party, by notice served on another party, may 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 paragraph (1).

35.03 Notice for admission of facts

- (1) A party may serve on another party a notice stating that unless that party, within a time to be expressed in the notice (which shall not be less than 14 days after service), disputes the facts specified in the notice, that party shall, for the purpose of the proceeding only, be taken to admit those facts.
- (2) If the party served with the notice does not dispute any fact specified by serving notice that that party disputes the fact within the time allowed for that purpose, that party shall, for the purpose of the proceeding only, be taken to admit that fact.

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- (3) By leave of the Court, a party may withdraw an admission which is taken to have been made under paragraph (2).
 - (4) A notice under paragraph (1) shall be in Form 35A and a notice under paragraph (2) shall be in Form 35B.

35.04 Judgment on admissions

- (1) Where a party makes admissions of fact in a proceeding, whether by that party's pleading or otherwise, the Court may, on the application of any other party, give the judgment or make the order to which the applicant is entitled on those admissions.
- (2) The Court may exercise its powers under paragraph (1) without waiting for the determination of any other question in the proceeding.

35.05 Notice for admission of documents

- (1) A party may serve on another party a notice stating that unless that party, within a time to be expressed in the notice (which shall not be 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 those documents.
- (2) If the party served with the notice does not dispute the authenticity of any document mentioned by serving notice that the party disputes its authenticity within the time allowed for that purpose, that party shall, for the purpose of the proceeding only, be taken to admit its authenticity.
- (3) By leave of the Court a party may, withdraw an admission which is taken to have been made under paragraph (2).

- (4) A notice under paragraph (1) shall be in Form 35A and a notice under paragraph (2) shall be in Form 35B.

35.06 Cost of non-admission of fact or document

Where a party serves a notice under Rule 35.03(2) or 35.05(2) disputing a fact or the authenticity of a document, and afterwards that fact or document is proved in the proceeding, liability for costs shall be determined in accordance with Rule 63.18.

35.07 Restrictive effect of admission

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

35.08 Notice to produce documents

- (1) A party to a proceeding may serve on any other party a notice requiring that other party to produce the documents mentioned in the notice on any application in or at the trial of the proceeding.
- (2) Unless the Court otherwise orders, the party on whom the notice is served shall produce on the application or at the trial such of the documents mentioned in the notice—
- (a) as are in that party's possession, custody or power; and
 - (b) which that party does not object to produce on the ground of privilege.
- (3) Where the party on whom the notice is served fails to comply with the notice, the Court may order that the party produce the document or give such directions for the proof of any matter in relation to the document, including the contents of the document and its making, delivery or receipt, as it thinks fit.

ORDER 36

AMENDMENT

36.01 General

- (1) For the purpose of—
 - (a) determining the real question in controversy between the parties to any proceeding; or
 - (b) correcting any defect or error in any proceeding; or
 - (c) avoiding multiplicity of proceedings—the Court may, at any stage order that any document in the proceeding be amended or that any party have leave to amend any document in the proceeding.
- (2) In this Order *document* includes originating process, an indorsement of claim on originating process and a pleading.
- (3) An indorsement of claim or pleading may be amended under paragraph (1) notwithstanding that the effect is to add or substitute a cause of action arising after the commencement of the proceeding.
- (4) A mistake in the name of a party may be corrected under paragraph (1), whether or not the effect is to substitute another person as a party.
- (5) Where an order to correct a mistake in the name of a party has the effect of substituting another person as a party, the proceeding shall be taken to have commenced with respect to that person on the day the proceeding commenced.
- (6) The Court may, notwithstanding the expiry of any relevant limitation period after the day a proceeding is commenced, make an order under paragraph (1) where it is satisfied that any other

party to the proceeding would not by reason of the order be prejudiced in the conduct of that party's claim or defence in a way that could not be fairly met by an adjournment, an award of costs or otherwise.

- (7) For the purpose of paragraph (6) *any other party to the proceeding* includes a person who is substituted as a party by virtue of an order made to correct a mistake in the name of a party.
- (8) Paragraph (6), with any necessary modification, shall apply to an application under Rule 14.03(2).
- (9) Paragraph (1) shall not apply to the amendment of a judgment or order.

36.02 Failure to amend within time limited

An order giving a party leave to amend a document shall cease to have effect if the party has not amended the document in accordance with the order at the expiration of—

- (a) the time limited by the order for making the amendment; or
- (b) if no time was limited, 21 days from the date of the order.

36.03 Amendment of pleading

A party may amend any pleading served by that party—

- (a) once before the close of pleadings; or
- (b) at any time, by leave of the Court or with the consent of all other parties.

36.04 Disallowance of pleading amendment

Where a party amends a pleading in accordance with Rule 36.03(a), the Court may, on application by any other party made within 21 days after service of the amended pleading on that party,

disallow the amendment or allow it either wholly or in part.

36.05 How pleading amendment made

- (1) Unless the Court otherwise orders, an amendment to a pleading shall be made by—
 - (a) amending the copy of the pleading filed in the Court or filing a copy of that pleading as amended; and
 - (b) serving a copy of the amended pleading on all parties.
- (2) A party who files an amended copy of a pleading in accordance with paragraph (1)(a) shall indorse the copy pleading previously filed with a statement to the effect that the amended copy has been substituted.
- (3) Where either of the requirements of paragraph (1)(a) is complied with, the Prothonotary shall, as the case requires, indorse the copy of the pleading filed in the Court with the date it is amended or the copy of the pleading as amended with the date it is filed.
- (4) Each amendment to a pleading shall be made in such a way as to distinguish the amendment from the original pleading and from any previous amendment to the original.

36.06 Pleading to an amended pleading

- (1) A party shall plead to an amended pleading within 30 days after it is served on that party.
- (2) Where a party has pleaded to a pleading which is subsequently amended, the party shall be taken to rely on that party's original pleading in answer to the amended pleading unless the party pleads to it within the time limited for so doing.

36.07 Amendment of judgment or order

The Court may at any time correct a clerical mistake in a judgment or order or an error arising in a judgment or order from any accidental slip or omission.

ORDER 37

**INSPECTION, DETENTION AND PRESERVATION OF
PROPERTY**

37.01 Inspection, detention etc. of property

- (1) In any proceeding the Court may make an order for the inspection, detention, custody or preservation of any property, whether or not in the possession, custody or power of a party.
- (2) An order under paragraph (1) may authorise any person to—
 - (a) enter any land or do any other thing for the purpose of obtaining access to the property;
 - (b) take samples of the property;
 - (c) make observations (including the photographing) of the property;
 - (d) conduct any experiment on or with the property;
 - (e) observe any process.
- (3) On an application under paragraph (1), the Court may make an order for the costs and expenses of any person not being a party where—
 - (a) that person attends on the hearing of the application pursuant to a summons served under Rule 37.03(1); or
 - (b) the Court makes an order under paragraph (1) which will affect that person.
- (4) The Court may make an order under this Rule on condition that the party applying for the order give security for the costs and expenses of any person, whether or not a party, who will be affected by the order.

37.02 Inspection from prospective defendant

- (1) This Rule applies to any property not being a document.
- (2) In this Rule *applicant* means an applicant for an order under the Rule.
- (3) Where—
 - (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from an identified person;
 - (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 that relief; and
 - (c) there is reasonable cause to believe that that person has or is likely to have in that person's possession, custody or power any property relating to the question whether the applicant has the right to obtain the relief and that inspection of the property by the applicant would assist the applicant to make the decision—the Court may make an order for the inspection, detention, custody or preservation of the property.
- (4) An order under paragraph (3) may authorise any person to do any of the things referred to in Rule 37.01(2).
- (5) On an application under this Rule, the Court may make an order for the costs and expenses of the applicant and the person against whom the order is sought.
- (6) The Court may make an order under this Rule on condition that the applicant give security for the costs and expenses of the person against whom the order is made.

37.03 Procedure

- (1) An application for an order under Rule 37.01 shall be made by summons served on all parties to the proceeding and served personally on each person who would be affected by the order if made.
- (2) The Court may make an order under Rule 37.01 notwithstanding that any person not being a party who will be affected by the order has not been served with the summons personally or at all.
- (3) An application under Rule 37.02 shall be made by originating motion to which the person against whom the order is sought shall be made respondent.
- (4) An order shall not be made under Rule 37.02 except by a Judge of the Court.
- (5) A summons under paragraph (1) or an originating motion under paragraph (3) shall be supported by an affidavit—
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the property in respect of which the order is sought.
- (6) A copy of the supporting affidavit shall be served on every person on whom the summons or originating motion is served.

Rule 37.03(4)
amended by
S.R. No.
100/2008
rule 7(1)(g).

37.04 Disposal of perishable property

Where, in a proceeding concerning any property (other than land) or in a proceeding in which any question may arise as to any property (other than land), the property is of a perishable nature or is likely to deteriorate or diminish in value if kept, the Court may make an order for the sale or other disposal of the whole or any part of the property.

37.05 Payment into Court in discharge of lien

- (1) Where in any proceeding—
- (a) the plaintiff claims the recovery of specific property (other than land); and
 - (b) it appears from the pleadings or otherwise that the defendant does not dispute the title of the plaintiff but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money—

the Court may order that the plaintiff be at liberty to pay into court, to abide the event of the proceeding, the amount of money in respect of which the security is claimed and such further amount, if any, for interest and costs as the Court may direct and that, upon the making of such payments, the property claimed be given up to the plaintiff.

- (2) This Rule, with any necessary modification, shall apply to a counterclaim.

37.06 Interim distribution of property or income

Where in a proceeding concerning any property the property will be more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court—

- (a) may by order allow the whole or part of the annual income of the property or any part thereof to be paid, during such period as the Court may determine, to all or any of the persons having an interest in the income; or
- (b) may direct that any part of the property be conveyed, transferred or delivered to any person having an interest in the property.

37.07 Jurisdiction of Court not affected

The provisions of this Order shall not affect the exercise by the Court of any power to make orders with respect to the inspection, detention, custody or preservation of property which is exercisable apart from those provisions.

Order 37A
(Heading and
rules 37A.01–
37A.09)
inserted by
S.R. No.
102/2006
rule 6.

ORDER 37A

FREEZING ORDERS

Rule 37A.01
inserted by
S.R. No.
102/2006
rule 6.

37A.01 Definitions

In this Order, unless the contrary intention appears—

ancillary order has the meaning given by Rule 37A.03(1);

another court means a court outside Australia or a court in Australia other than the Court;

applicant means a person who applies for a freezing order or an ancillary order;

freezing order has the meaning given by Rule 37A.02(1);

respondent means a person against whom a freezing order or an ancillary order is sought or made.

Rule 37A.02
inserted by
S.R. No.
102/2006
rule 6.

37A.02 Freezing order

- (1) The Court may make an order (a *freezing order*), upon or without notice to the respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied.
- (2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.
- (3) A freezing order may be in Form 37AA.

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- (4) In making a freezing order or an ancillary order, the Court shall have regard to the practice note concerning freezing orders.
- (5) The affidavits relied on in support of an application for a freezing order or an ancillary order shall, as far as possible, address the following—
- (a) information about the judgment that has been obtained, or if no judgment has been obtained, the following information about the cause of action—
 - (i) the basis of the claim for substantive relief;
 - (ii) the amount of the claim; and
 - (iii) if the application is made without notice to the respondent, the applicant's knowledge of any possible defence;
 - (b) the nature and value of the respondent's assets, so far as they are known to the applicant, within and outside Australia;
 - (c) the matters referred to in Rule 37A.05; and
 - (d) the identity of any person, other than the respondent, who the applicant believes may be affected by the freezing order and how that person may be affected by it.

37A.03 Ancillary order

- (1) The Court may make an order (an *ancillary order*) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.

Rule 37A.03
inserted by
S.R. No.
102/2006
rule 6.

(2) Without limiting the generality of paragraph (1), an ancillary order may be made for either or both of the following purposes—

- (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
- (b) determining whether the freezing order should be made.

Rule 37A.04
inserted by
S.R. No.
102/2006
rule 6.

37A.04 Respondent need not be party to proceeding

The Court may make a freezing order or an ancillary order against a respondent, whether or not the respondent is a party to a proceeding in which substantive relief is sought against the respondent.

Rule 37A.05
inserted by
S.R. No.
102/2006
rule 6.

37A.05 Order against judgment debtor or prospective judgment debtor or third party

- (1) This Rule applies if—
- (a) judgment has been given in favour of an applicant by—
 - (i) the Court; or
 - (ii) in the case of a judgment to which paragraph (2) applies, another court; or
 - (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—
 - (i) the Court; or
 - (ii) in the case of a cause of action to which paragraph (3) applies, another court.
- (2) This paragraph applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

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- (3) This paragraph applies to a cause of action if—
- (a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and
 - (b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.
- (4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied because any of the following might occur—
- (a) the judgment debtor, prospective judgment debtor or another person absconds; or
 - (b) the assets of the judgment debtor, prospective judgment debtor or another person are—
 - (i) removed from Australia or from a place inside or outside Australia; or
 - (ii) disposed of, dealt with or diminished in value.
- (5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a *third party*) if the Court is satisfied, having regard to all the circumstances, that—
- (a) there is a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied because—
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- (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
 - (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
 - (b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment of the Court, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.
 - (6) Nothing in this Rule affects the power of the Court to make a freezing order or an ancillary order if the Court considers it is in the interests of justice to do so.

Rule 37A.06
inserted by
S.R. No.
102/2006
rule 6.

37A.06 Jurisdiction of Court not limited

Nothing in this Order limits the inherent, implied or statutory jurisdiction of the Court to make a freezing order or an ancillary order.

Rule 37A.07
inserted by
S.R. No.
102/2006
rule 6.

37A.07 Service

- (1) An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.

(2) A freezing order—

- (a) shall be authenticated pursuant to Rule 60.02(1)(b);

Rule
37A.07(2)(a)
amended by
S.R. No.
22/2010
rule 7(a).

- (b) when served, shall be served together with a copy of—

- (i) the summons, or, if none was filed, any draft summons produced to the Court;
- (ii) the material (other than material excepted by the Court as confidential) that was relied on by the applicant at the hearing when the order was made;
- (iii) a transcript or, if none is available, a note, of any oral allegation of fact that was made and of any oral submission that was put, to the Court; and
- (iv) the originating motion, or, if none was filed, any draft originating motion produced to the Court.

37A.08 Costs

- (1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of paragraph (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or an ancillary order.

Rule 37A.08
inserted by
S.R. No.
102/2006
rule 6.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 37A

r. 37A.09

Rule 37A.09
(Heading)
amended by
S.R. No.
100/2008
rule 7(1)(h).
Rule 37A.09
inserted by
S.R. No.
102/2006
rule 6,
amended by
S.R. No.
100/2008
rule 7(1)(i).

37A.09 Application to be heard by Judge of the Court

An application under this Order shall be heard by
a Judge of the Court.

ORDER 37B
SEARCH ORDERS

Order 37B
(Heading and
rules 37B.01–
37B.09)
inserted by
S.R. No.
102/2006
rule 6.

37B.01 Definitions

Rule 37B.01
inserted by
S.R. No.
102/2006
rule 6.

In this Order, unless the contrary intention
appears—

applicant means an applicant for a search order;

described includes described generally, whether
by reference to a class or otherwise;

premises includes a vehicle or vessel of any kind;

respondent means a person against whom a search
order is sought or made;

search order has the meaning given in
Rule 37B.02(1);

thing includes document.

37B.02 Search order

Rule 37B.02
inserted by
S.R. No.
102/2006
rule 6.

- (1) The Court may make an order (a *search order*), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is, or may be, relevant to an issue in the proceeding or anticipated proceeding.
- (2) A search order may be in Form 37BA.
- (3) In making a search order, the Court shall have regard to the practice note concerning search orders.

Rule 37B.03
inserted by
S.R. No.
102/2006
rule 6.

37B.03 Requirements for grant of search order

- (1) The Court may make a search order if the Court is satisfied that—
 - (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action;
 - (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
 - (c) there is sufficient evidence in relation to the respondent that—
 - (i) the respondent possesses important evidentiary material; and
 - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or an anticipated proceeding before the Court.
- (2) An application for a search order shall be supported by an affidavit or affidavits which, unless the Court otherwise orders, shall include the following information—
 - (a) a description of the things or the categories of things, in relation to which the search order is sought;
 - (b) the address or location of any premises in relation to which the search order is sought and whether they are private or business premises;

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- (c) why the search order is sought, including whether there is a real possibility that the things to be searched for will be destroyed or otherwise made unavailable for use in evidence before the Court unless the search order is made;
 - (d) the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;
 - (e) the name, address, firm and commercial litigation experience of an independent solicitor, who consents to being appointed to serve the search order, supervise its execution and do such other things as the Court considers appropriate;
 - (f) if the premises to be searched are or include residential premises, whether or not the applicant believes that the only occupant of the premises is likely to be—
 - (i) a female;
 - (ii) a child under the age of 18 years;
 - (iii) any other person (***vulnerable person***) that a reasonable person would consider to be in a position of vulnerability on the grounds of that person's age, mental incapacity, infirmity or English language ability; or
 - (iv) any combination of subparagraphs (i) to (iii) and any one or more of such persons.
- (3) The applicant must give the usual undertakings as to damages and must undertake to pay the independent solicitor's reasonable costs and disbursements.
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- (4) The applicant's solicitor and the independent solicitor must give such undertakings to the Court as the Court considers appropriate.

Rule 37B.04
inserted by
S.R. No.
102/2006
rule 6.

37B.04 Jurisdiction of Court not limited

Nothing in this Order limits the inherent, implied or statutory jurisdiction of the Court to make a search order.

Rule 37B.05
inserted by
S.R. No.
102/2006
rule 6.

37B.05 Terms of search order

- (1) A search order may direct each person who is named or described in the order—
- (a) to permit, or arrange to permit, such other persons as are named or described in the order—
 - (i) to enter premises specified in the order; and
 - (ii) to take any steps that are in accordance with the terms of the order;
 - (b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order;
 - (c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order;
 - (d) not to disclose any information about the order, for such period as is specified in the order (not exceeding three days) after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
 - (e) to do or refrain from doing any act as the Court considers appropriate.

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- (2) Without limiting the generality of paragraph (1)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include—
- (a) searching premises for, inspecting or removing the thing; and
 - (b) making or obtaining a copy, photograph, film, sample, test or other record of any such thing or any information it may contain.
- (3) A search order—
- (a) must not authorise a search of a natural person;
 - (b) must not be executed at the same time as the execution by the police or other proper authority of a search warrant; and
 - (c) may contain such other provisions as the Court considers appropriate.

37B.06 Independent solicitors

- (1) If the Court makes a search order, the Court must appoint one or more solicitors, each of whom is independent of the applicant's solicitors (the *independent solicitors*) and each of whom is prepared to give such undertakings as the Court requires, to supervise the execution of the search order and to do such other things in relation to the search order as the Court considers appropriate.
- (2) The Court may appoint an independent solicitor to supervise execution of the search order at any one or more premises, and a different independent solicitor or solicitors to supervise execution of the search order at other premises, with each independent solicitor having power to do such other things in relation to the order as the Court considers appropriate.

Rule 37B.06
inserted by
S.R. No.
102/2006
rule 6.

r. 37B.07

Rule 37B.07
inserted by
S.R. No.
102/2006
rule 6.

37B.07 Costs

- (1) The Court may make any order as to costs it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of paragraph (1), an order as to costs includes an order as to the costs of any person affected by a search order.

Rule 37B.08
inserted by
S.R. No.
102/2006
rule 6.

37B.08 Service

- (1) A search order—

Rule 37B.08
(1)(a)
amended by
S.R. No.
22/2010
rule 7(b).

- (a) shall be authenticated pursuant to Rule 60.02(1)(b);

- (b) when served, shall be served together with a copy of—

- (i) the summons, or, if none was filed, any draft summons produced to the Court;
 - (ii) the material (other than material excepted by the Court as confidential) that was relied on by the applicant at the hearing when the order was made;
 - (iii) a transcript or, if none is available, a note, of any oral allegation of fact that was made and of any oral submission that was put, to the Court; and
 - (iv) the originating motion, or, if none was filed, any draft originating motion produced to the Court.
 - (2) Service of the documents referred to in paragraph (1) upon any person who appears to the independent solicitor to be responsible and in charge of the premises or any of the premises at

which the search order is to be executed, is taken
to be service on the respondent.

37B.09 Application to be heard by Judge of the Court

An application under this Order shall be heard by
a Judge of the Court.

Rule 37B.09
(Heading)
amended by
S.R. No.
100/2008
rule 7(1)(j).
Rule 37B.09
inserted by
S.R. No.
102/2006
rule 6,
amended by
S.R. No.
100/2008
rule 7(1)(k).

ORDER 38

INJUNCTIONS

38.01 When Court may grant

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.

38.02 Application before trial

- (1) In an urgent case, the Court may grant an injunction on application made without notice.
- (2) Where a plaintiff applies for an injunction against a defendant, service of notice of application on that defendant may be made at the time of service of originating process in the proceeding.

38.03 Costs and expenses of non-party

- (1) This Rule applies where an application for an injunction is made before the trial of a proceeding.
- (2) The Court may grant an injunction on condition that the party applying for the injunction give security for the costs and expenses of any person who might be affected.
- (3) The Court may make such order as it thinks fit for the payment, either in the first instance or finally, of the costs and expenses of any person not being a party who might be affected by the grant of an injunction.

38.04 Ouster of office

- (1) Informations in the nature of quo warranto are abolished.
 - (2) Where any person acts in an office in which he or she is not entitled to act and an information in the nature of quo warranto would, but for paragraph (1), lie against him or her, the Court—
 - (a) may grant an injunction restraining him or her from so acting; and
 - (b) may, if the case so requires, declare the office to be vacant.
-

ORDER 39

RECEIVERS

39.01 Application and definitions

- (1) This Order applies in relation to the appointment of a receiver by the Court.
- (2) In this Order—

insurer means a body corporate authorised under the Insurance Act 1973 of the Commonwealth, to carry on insurance business or an underwriting member of Lloyd's so authorised;

Lloyd's means the society of that name incorporated by the Imperial Act known as Lloyd's Act 1871;

receiver means a receiver or receiver and manager.

39.02 Appointment of receiver

- (1) The Court may appoint a receiver at any stage of a proceeding or, in the circumstances referred to in Rule 4.08, before the commencement of a proceeding.
- (2) In an urgent case, the Court may appoint a receiver on application made without notice.

39.03 Service of order

The party obtaining the appointment of a receiver, or such other party as the Court may direct, shall serve a copy of the order on the receiver.

39.04 Consent of receiver

Before a person is appointed receiver the person's written consent to the appointment shall, unless the Court otherwise orders, be filed.

39.05 Security by receiver

Unless the Court otherwise orders—

- (a) a receiver shall give security approved by the Court that the receiver will account for what the receiver receives as receiver and deal with it as the Court directs;
- (b) the security shall be given by guarantee in Form 39A and filed;
- (c) the guarantee shall be given by a bank or an insurer.

Note

bank is defined in Rule 1.13(1).

39.06 Remuneration of receiver

The Court may provide for the remuneration of a receiver.

39.07 Receiver's accounts

- (1) Unless the Court otherwise orders, a receiver shall submit accounts in accordance with this Rule.
- (2) A receiver shall submit accounts to such parties and at such intervals or on such dates as the Court may direct.
- (3) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the documents or things on which the accounts are based.
- (4) Any party who objects to the accounts may serve notice in writing on the receiver specifying the items to which objection is taken and requiring the receiver within not less than 14 days to lodge the receiver's accounts with the Court, and upon such service the party shall file a copy of the notice.

-
- (5) The Court may examine the items to which objection is taken.
 - (6) The Court—
 - (a) shall by order declare what is the result of an examination under paragraph (5); and
 - (b) may make an order for the costs and expenses of any party or the receiver.

39.08 Default by receiver

- (1) Where a receiver fails to submit any account, provide access to any books or papers or do any other thing which as receiver the receiver ought to do, or fails to attend for the examination of any account of, the receiver's and any party to the proceeding in which the receiver was appointed may be required to attend before the Court to show cause for the failure, and the Court may give such directions as it thinks fit, including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
- (2) Without limiting paragraph (1), where a receiver fails to submit any account or fails to attend for the examination of any account of the receiver's or fails to pay into court on the date fixed by the Court any amount required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where the receiver has failed to pay any such amount into court, charge the receiver with interest at the rate currently payable in respect of judgment debts in the Court on that amount while in the receiver's possession as receiver.

39.09 Directions to receivers

- (1) A receiver may apply to the Court for directions by summons stating the matters on which directions are required.
 - (2) Unless the Court otherwise orders, the receiver shall serve a copy of the summons and of any affidavit in support on any person who may be affected.
- _____

ORDER 40

EVIDENCE GENERALLY

40.01 Definition

In this Order, unless the context or subject matter otherwise requires, *a proceeding commenced by writ* includes—

- (a) a proceeding in respect to which an order has been made under Rule 4.07(1);
- (b) a trial or inquiry under Order 50;
- (c) an assessment of damages or value under Order 51.

40.02 Evidence of witness

Except where otherwise provided by any Act or these Rules, and subject to any agreement between the parties, evidence shall be given—

- (a) on an interlocutory or other application in any proceeding, by affidavit;
- (b) at the trial of a proceeding commenced by writ, orally;
- (c) at the trial of a proceeding commenced by originating motion, by affidavit.

40.03 Contrary direction as to evidence

- (1) Notwithstanding Rule 40.02, the Court may order that evidence be given—
 - (a) orally on the hearing of an interlocutory or other application in any proceeding or at the trial of a proceeding commenced by originating motion;
 - (b) by affidavit at the trial of a proceeding commenced by writ.

- (2) Where the Court makes an order under paragraph (1)(a), it may direct that the party on whose application the order is made give such notice as it thinks fit to the other parties of the oral evidence the party proposes to adduce.
- (3) Where the Court makes an order under paragraph (1)(b), it may order that the deponent shall attend at the trial to be examined or that the deponent's attendance be dispensed with.

40.04 Examination on affidavit

- (1) Where an affidavit is filed in any proceeding, the Court may—
 - (a) order that the deponent be examined before the Court; and
 - (b) may order that the deponent attend for that purpose at such time and place as it directs.
- (2) Unless the Court otherwise orders, a party to a proceeding commenced by originating motion on whose behalf an affidavit is filed in the proceeding shall cause the deponent to attend at the trial of the proceeding to be examined if notice that such attendance is required is served on the party by any other party a reasonable time before the commencement of the trial.
- (3) Where a deponent in respect of whom an order is made under paragraph (1) or a notice is served under paragraph (2) does not attend for examination the Court may order that the affidavit be not received into evidence.

40.05 Evidence of particular facts

- (1) The Court may order that evidence of any particular fact shall be given at the trial or at any other stage of a proceeding in such manner as it directs.

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- (2) Without limiting paragraph (1), the Court may order that evidence of any particular fact be given—
- (a) by statement on oath of information and belief;
 - (b) by the production of documents or entries in books;
 - (c) by the production of copies of documents or entries in books.

40.06 Revocation or variation of order

The Court may, at or before the trial of any proceeding, revoke or vary any order made under Rules 40.03 to 40.05.

40.07 Deposition as evidence

- (1) No deposition taken in a proceeding shall be admissible as evidence at the trial of the proceeding unless—
- (a) the deposition was taken pursuant to an order made under Rule 41.01(1)(a) or (b);
 - (b) either—
 - (i) the person against whom the evidence is offered consents; or
 - (ii) the deponent is dead or is unfit by reason of his or her bodily or mental condition to attend the trial and testify as a witness; or
 - (iii) the deponent is out of Victoria and it is not reasonably practicable to secure the deponent's attendance; or
 - (iv) the deponent cannot with reasonable diligence be found; and

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- (c) the party who applies to have the deposition received into evidence has given reasonable notice of the application to the other party.
 - (2) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature of that person.
 - (3) Unless the Court otherwise orders—
 - (a) evidence of facts within paragraph (1)(b) may be given by affidavit; and
 - (b) the affidavit may be made from belief as to those facts, if the grounds for the belief are given.

40.08 Proof of Court documents

- (1) A document purporting to be sealed with the seal of the Court shall be admissible in evidence without further proof.
- (2) An office copy of a document filed in or issued out of the Court shall be admissible in evidence in any proceeding between all parties to the same extent as the original would be admissible.
- (3) A document purporting to be sealed with the seal of the Court and to be a copy of a document filed in or issued out of the Court shall be admissible as an office copy of the latter document without further proof.

40.09 Evidence of consent

The consent of a person to act in a particular capacity, whether as trustee, receiver or otherwise, or to be added as a plaintiff shall be sufficiently evidenced by a written consent signed by that person, dated and verified by the indorsed certificate of a solicitor.

40.10 Defamation

A defendant in a proceeding for libel or slander who has not by the defendant's defence alleged the truth of the statement complained of shall not, except by leave of the Court at the trial, give evidence in chief at the trial with respect to—

- (a) mitigation of damages;
- (b) the circumstances of publication; or
- (c) the character of the plaintiff—

unless the defendant gives particulars of the evidence to the plaintiff by notice served not less than seven days before the trial.

40.11 Subsequent use of evidence at trial

The Court may order that any evidence that has been taken at the trial of a proceeding may be used at any subsequent stage of that proceeding.

40.12 Attendance and production

- (1) The Court may in any proceeding make an order for—
 - (a) the attendance of any person for the purpose of being examined;
 - (b) the attendance of any person and production by him or her of any document or thing specified or described in the order; or
 - (c) the production by any corporation of any document or thing specified or described in the order.
- (2) An order under paragraph (1) may be made for attendance before or production to the Court or any officer of the Court, examiner, special referee, arbitrator or other person authorised to take evidence.

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

40.13 View

The Court may inspect, or, on a trial with a jury, may authorise the jury to inspect any place, process or thing.

ORDER 41

EVIDENCE BEFORE TRIAL

PART 1—EVIDENCE BY DEPOSITION

41.01 Order for witness examination

- (1) The Court may, for the purpose of any proceeding, make an order for—
 - (a) the examination of any person before a Judge of the Court or an Associate Judge or such other person as the Court appoints as examiner at any place whether within or out of Victoria; or
 - (b) the sending of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.
- (2) An order under paragraph (1)(a) shall be in Form 41A or 41B as the case requires.
- (3) An order under paragraph (1)(b) shall be in Form 41C.

Rule 41.01
(1)(a)
amended by
S.R. No.
100/2008
rule 7(1)(l).

41.02 Documents for examiner

The party obtaining an order for examination under Rule 41.01(1)(a) shall furnish the examiner with copies of such of the documents in the proceeding as are necessary to inform the examiner of the question in the proceeding to which the examination is to relate.

41.03 Appointment for examination

- (1) The examiner shall appoint a place and time for the examination.
- (2) The time appointed shall be as soon as practicable after the making of the order.

- (3) The examiner shall give notice of an appointment under this Rule to the party obtaining the order not less than seven days before the time of the appointment, and that party shall forthwith serve notice of the appointment on each other party.

41.04 Conduct of examination

- (1) The examiner shall permit each party, that party's counsel and that party's solicitor to attend the examination.
- (2) Unless the Court otherwise orders, the person examined shall be examined, cross-examined and re-examined in like manner as at trial.
- (3) The examiner may put any question to the person examined—
- (a) as to the meaning of any answer made by that person; or
- (b) as to any matter arising in the course of the examination.
- (4) The examiner may adjourn the examination from time to time and from place to place.

41.05 Examination of additional persons

- (1) Where the examiner is a Judge of the Court or an Associate Judge, the examiner may, on the application of a party to the proceeding, take the examination of any person not named or described in the order for examination.
- (2) Where the examiner is not a Judge of the Court or an Associate Judge, the examiner may, with the consent in writing of each party to the proceeding, take the examination of any person not named or described in the order for examination and, if the examiner does so, the examiner shall annex to the deposition of that person the consent of each of the parties.

Rule 41.05(1)
amended by
S.R. No.
100/2008
rule 7(1)(m).

Rule 41.05(2)
amended by
S.R. No.
100/2008
rule 7(1)(m).

Rule 41.06
amended by
S.R. No.
100/2008
rule 7(1)(n).

41.06 Objection

Where a person being examined before an examiner, not being a Judge of the Court or an Associate Judge, objects to answer any question put to that person or to produce any document or thing, or objection is taken to any such question or production, the following provisions shall apply—

- (a) where the objection is taken to a question—
 - (i) unless the question is objected to on the ground of privilege, the person being examined shall answer the question;
 - (ii) the question, the ground for the objection and the answer, if any, shall be set out in the deposition;
- (b) where the objection is taken to the production of a document or thing, the ground for the objection shall be set out in the deposition and, where the objection is to the production of a document, unless production is objected to on the ground of privilege, the document or a copy shall be attached to the deposition;
- (c) the validity of the objection shall be decided by the Court;
- (d) if the Court disallows the objection, the Court may order that the costs occasioned by the objection be paid by the person being examined or the party taking the objection or by both of them as the case requires.

41.07 Taking of depositions

- (1) The deposition of a person examined before an examiner shall be—
 - (a) taken down by the examiner;
 - (b) taken down by a shorthand writer or some other person in the presence of the examiner; or
 - (c) recorded by mechanical means in accordance with Part VI of the **Evidence (Miscellaneous Provisions) Act 1958** in the presence of the examiner.
- (2) Subject to paragraph (3) and Rule 41.06(a), the deposition need not set out every question and answer if it contains as nearly as may be the statement of the person examined.
- (3) The examiner may direct that the words of any question and the answer to the question be set out in the deposition.

Rule 41.07
(1)(c)
amended by
S.R. No.
146/2009
rule 6.

41.08 Authentication and filing

- (1) Except where the deposition is taken down by a shorthand writer or is recorded by mechanical means the examiner shall, if any party so requests, ask the person examined to sign that person's deposition.
- (2) The examiner shall authenticate and sign the deposition.
- (3) The examiner shall indorse on the deposition a statement signed by him or her of the time occupied in taking the examination and the fees received by the examiner in respect of the examination.
- (4) The examiner shall send the deposition to the Prothonotary and the Prothonotary shall file it in the proceeding.

r. 41.08.1

Rule 41.08(6)
amended by
S.R. No.
100/2008
rule 7(1)(o).

- (5) The examiner shall, unless the Court otherwise orders, send any exhibits to the Prothonotary and the Prothonotary shall deal with them as the Court directs.
- (6) Paragraphs (3), (4) and (5) shall not apply where the examiner is a Judge of the Court or an Associate Judge.

41.08.1 Confidentiality of deposition

Unless the Court gives leave, a deposition taken or recorded under this Part shall not be disclosed to any person not a party before it has been admitted into evidence.

41.09 Report of examiner

- (1) The examiner may make to the Court a report upon the examination before him or her or with regard to the absence of any person from the examination.
- (2) The Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

41.10 Default of witness

Rule 41.10(1)
amended by
S.R. No.
100/2008
rule 7(1)(p).

- (1) Where a person has been required by subpoena to attend before an examiner not being a Judge of the Court or an Associate Judge and the person fails or refuses to attend or the person refuses to be sworn for the purposes of the examination or to answer any lawful question or to produce any document or thing, the examiner shall, at the request of any party, give to that party a certificate, signed by the examiner, of the failure or refusal.

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- (2) Upon the filing of the certificate the Court may order that person—
- (a) to attend before the examiner, or to be sworn, or to answer the question or to produce the document or thing as the case may be; and
 - (b) to pay any costs occasioned by the person's failure or refusal.
- (3) An application for an order under paragraph (2) may be made without notice to the person against whom the order is sought, unless the Court otherwise orders.

41.11 Witness allowance

A person required to attend before an examiner shall be entitled to payment for expenses and loss of time as upon attendance at trial.

41.12 Perpetuation of testimony

- (1) Witnesses shall not be examined to perpetuate testimony unless a proceeding has been commenced for that purpose.
- (2) Any person who would, in the circumstances alleged by the person to exist, become entitled, upon the happening of any future event, to any property, the right or claim to which cannot be brought to trial by the person before the happening of the future event, may commence a proceeding to perpetuate any testimony which may be material for establishing the right or claim.
- (3) No proceeding to perpetuate the testimony of witnesses shall be set down for trial.

41.13 Letter of request

- (1) Where an order is made under Rule 41.01(1)(b) for the sending of a letter of request, the party obtaining the order (in this Order called ***the applicant***) shall when the letter of request has been signed—
 - (a) lodge with the Prothonotary—
 - (i) the letter of request;
 - (ii) any interrogatories and cross-interrogatories to accompany the letter of request; and
 - (iii) a translation of each of the documents mentioned in subparagraphs (i) and (ii) in accordance with Rule 41.14, unless the Senior Master has given a general direction in relation to the country to whose judicial authorities the letter of request is to be sent that no translation need be provided or the official language or one of the official languages of that country is English;
 - (b) file—
 - (i) a copy of each of the documents mentioned in paragraph (a); and
 - (ii) an undertaking in accordance with Rule 41.15;
 - (c) unless the Court otherwise orders, serve a copy of each of the documents mentioned in paragraph (a) on all other parties.
- (2) A letter of request shall be in Form 41D.

41.14 Translation

A translation of a document lodged under Rule 41.13 shall—

- (a) be a translation into an official language of the country to whose judicial authorities the letter of request is to be sent; and
- (b) bear a certificate of the translator, in that language, stating that it is an accurate translation of the document.

41.15 Undertaking

- (1) An undertaking filed under Rule 41.13 shall consist of an undertaking by the solicitor for the applicant or, where there is no solicitor, by the applicant, to pay to the Prothonotary an amount equal to the expenses incurred in consequence of the letter of request.
- (2) The Prothonotary may require the applicant or the applicant's solicitor to give security to the Prothonotary's satisfaction for the expenses referred to in paragraph (1).

41.16 Order for payment of expenses

Where a person has given an undertaking in accordance with Rules 41.13 and 41.15, and does not within 14 days after service on that person of an account of expenses incurred in consequence of the letter of request pay to the Prothonotary the amount of the expenses, the Court may, on application by the Prothonotary—

- (a) order the applicant or the applicant's solicitor (where the undertaking was given by the solicitor) or both of them to pay the amount of the expenses to the Prothonotary; and

(b) where—

- (i) the applicant is plaintiff, stay the proceeding until payment so far as concerns the whole or any part of any claim for relief by the applicant;
- (ii) the applicant is defendant, make such order as it thinks fit, including an order that until payment the defendant be taken not to have filed an appearance or be not permitted to use in evidence any deposition of a witness obtained pursuant to the letter of request.

**PART 2—APPLICATIONS FOR TAKING EVIDENCE
ABROAD UNDER PART 2 OF THE FOREIGN EVIDENCE
ACT 1994 OF THE COMMONWEALTH**

41.17 Definition

In this Part—

Act means the Foreign Evidence Act 1994 of the Commonwealth.

41.18 Application

This Part applies to any application to the Court under Part 2 of the Act.

41.19 How application made

- (1) An application under section 7(1) of the Act shall be made by summons.
- (2) An application under section 10(1) of the Act shall be made by originating motion in Form 5C.
- (3) An application referred to in paragraph (1) or (2) shall be made to an Associate Judge.

Rule 41.19(3)
amended by
S.R. No.
100/2008
rule 7(1)(q).

41.20 Directions

Directions under section 8(1) of the Act may be given by an Associate Judge.

Rule 41.20
amended by
S.R. No.
100/2008
rule 7(1)(r).

41.21 Notice of application

On the hearing of an application the Court may order that the person making the application give notice of it to any person having a sufficient interest.

ORDER 41A

Order 41A
(Heading)
amended by
S.R. No.
146/2009
rule 7(1).

**APPLICATION UNDER SECTION 42E(1) OF THE EVIDENCE
(MISCELLANEOUS PROVISIONS) ACT 1958**

Rule 41A.01
amended by
S.R. No.
146/2009
rule 7(2).

41A.01 Application of Order

This Order applies to an application for a direction under section 42E(1) of the **Evidence (Miscellaneous Provisions) Act 1958**.

41A.02 Form of application

Notice of an application shall be in Form 41AA.

41A.03 Filing

The applicant shall file the notice at least 14 days before the person the subject of the application is due to appear before or give evidence or make a submission to the Court.

41A.04 Service

As soon as practicable after the filing of the notice the applicant shall serve a copy on every other party.

41A.05 Duty of applicant

If, whether before or after a direction has been given, an applicant no longer requires the person the subject of the application to appear before or give evidence or make a submission to the Court by audio visual link or audio link, the applicant shall notify the Prothonotary forthwith.

41A.06 Payment of costs

Unless the Court otherwise orders, the appropriate amount prescribed by the regulations under section 42H(1) of the **Evidence (Miscellaneous Provisions) Act 1958** shall be paid in the first instance by the applicant.

Rule 41A.06
amended by
S.R. No.
146/2009
rule 7(3).

Order 42
(Heading and
rules 42.01–
42.11)
substituted as
Order 42
(Heading and
rules 42.01–
42.13) by
S.R. No.
169/2006
rule 5.

ORDER 42
SUBPOENAS

Rule 42.01
substituted by
S.R. No.
169/2006
rule 5.

42.01 Definitions

In this Order and in Order 42A, unless the contrary intention appears—

addressee means the person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

issuing party means the party at whose request a subpoena is issued;

subpoena means an order in writing requiring the addressee—

- (a) to attend to give evidence;
- (b) to produce the subpoena or a copy of it and a document or thing; or
- (c) to do both of those things;

subpoena to attend to give evidence means a subpoena requiring the addressee to attend to give evidence;

subpoena to produce means a subpoena requiring the addressee to produce the subpoena or a copy of it and a document or thing.

42.02 Issuing of subpoena

Rule 42.02
substituted by
S.R. No.
169/2006
rule 5.

- (1) The Court may, in any proceeding, by subpoena order the addressee—
 - (a) to attend to give evidence as directed by the subpoena;
 - (b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
 - (c) to do both of those things.
- (2) The Prothonotary shall not issue a subpoena—
 - (a) if the Court has made an order, or there is a Rule of the Court, having the effect of requiring that the proposed subpoena—
 - (i) not be issued; or
 - (ii) not be issued without the leave of the Court and that leave has not been given; or
 - (b) requiring the production of a document or thing in the custody of the Court or another court.
- (3) The Prothonotary shall seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.
- (4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in accordance with paragraph (3).

Rule 42.03
substituted by
S.R. No.
169/2006
rule 5.

42.03 Form of subpoena

- (1) A subpoena shall be in accordance with Form 42A.
- (2) A subpoena shall not be addressed to more than one person.
- (3) Unless the Court otherwise orders, a subpoena shall identify the addressee by name or by description of office or position.
- (4) A subpoena to produce shall—
 - (a) identify the document or thing to be produced; and
 - (b) specify the date, time and place for production.
- (5) A subpoena to attend to give evidence shall specify the date, time and place for attendance.
- (6) The date specified in a subpoena shall be the date of trial or any other date as ordered by the Court.
- (7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as ordered by the Court.
- (8) The last date for service of a subpoena—
 - (a) is the date falling 5 days before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by the Court; and
 - (b) shall be specified in the subpoena.

- (9) If the addressee is a corporation, the corporation shall comply with the subpoena by its appropriate or proper officer.

Note

See also Rule 42.10(3) regarding notice and declaration in Form 42B to accompany a subpoena to produce dealing with copies and disposal of documents.

Note to rule 42.03(9) inserted by S.R. No. 23/2010 rule 5.

42.03.1 Alteration of date for attendance or production

Rule 42.03.1 inserted by S.R. No. 149/2008 rule 5.

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time that is specified in a subpoena as the date or time for attendance or for production or for both.
- (2) If notice is given under paragraph (1), the subpoena has effect as if the date or time notified appears in the subpoena instead of the date or time that is specified in the subpoena.

42.04 Setting aside or other relief

Rule 42.04 substituted by S.R. No. 169/2006 rule 5.

- (1) The Court may, of its own motion or on the application of a party or of any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in respect of it.
- (2) An application under paragraph (1) shall be made on notice to the issuing party.
- (3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

42.05 Service

Rule 42.05 substituted by S.R. No. 169/2006 rule 5.

- (1) A subpoena shall be served personally on the addressee.
- (2) The issuing party shall serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee, but it shall not be necessary that the copy served be sealed or be served personally.

Rule 42.06
substituted by
S.R. No.
169/2006
rule 5.

42.06 Compliance with subpoena

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the day on which attendance is required.
- (2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the day specified in the subpoena as the last day for service of the subpoena.
- (3) Despite Rule 42.05(1), an addressee shall comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (4) The addressee shall comply with a subpoena to produce—

Rule 42.06
(4)(a)
amended by
S.R. No.
149/2008
rule 6(1).

- (a) by attending at the date, time and place specified for production or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time, and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or

Rule 42.06
(4)(b)
amended by
S.R. No.
149/2008
rule 6(2).

- (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Prothonotary at the address specified for the purpose in the subpoena, so that they are received not less than three days before the day specified in the subpoena for attendance and production or, if the addressee has received notice of a later day from the issuing party, before that later day.

(5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by paragraph (4) does not discharge the addressee from the obligation to attend to give evidence.

(6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.

Rule 42.06(6)
inserted by
S.R. No.
23/2010 rule 6.

(7) The copy of a document may be—
(a) a photocopy; or
(b) in PDF format on a CD-Rom.

Rule 42.06(7)
inserted by
S.R. No.
23/2010 rule 6.

42.07 Production otherwise than upon attendance

Rule 42.07
substituted by
S.R. No.
169/2006
rule 5.

- (1) This Rule applies if an addressee produces a document or thing in accordance with Rule 42.06(4)(b).
- (2) The Prothonotary shall, if requested by the addressee, give a receipt for the document or thing to the addressee.
- (3) If the addressee produces more than one document or thing, the addressee shall, if requested by the Prothonotary, provide a list of the documents or things produced.
- (4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

Rule 42.08
substituted by
S.R. No.
169/2006
rule 5.

42.08 Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

Rule 42.09
substituted by
S.R. No.
169/2006
rule 5.

42.09 Inspection of, and dealing with, documents and things produced otherwise than on attendance

- (1) This Rule applies if an addressee produces a document or thing in accordance with Rule 42.06(4)(b).
- (2) On the request in writing of a party, the Prothonotary shall inform the party whether production in response to a subpoena has occurred, and, if so, include a description, in general terms, of the document and thing produced.
- (3) Subject to this Rule, no person may inspect a document or thing produced unless the Court has granted leave and the inspection is in accordance with that leave.
- (4) Unless the Court otherwise orders, the Prothonotary may permit the parties to inspect at the office of the Prothonotary any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this Rule.
- (5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee shall, at the time of production, notify the Prothonotary in writing of the objection and of the grounds of the objection.
- (6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify

the Prothonotary in writing of the objection and of the grounds of the objection.

- (7) On receiving a notice of an objection under this Rule, the Prothonotary—
- (a) shall not permit any, or any further, inspection of the document or thing the subject of the objection; and
 - (b) shall refer the objection to the Court for hearing and determination.
- (8) The Prothonotary shall notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party shall notify the addressee, the objector and each other party accordingly.
- (9) The Prothonotary shall not permit any document or thing produced to be removed from the office of the Prothonotary except on application in writing signed by the solicitor for a party.
- (10) A solicitor who signs an application under paragraph (9) and removes a document or thing from the office of the Prothonotary, undertakes to the Court by force of this Rule that—
- (a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and
 - (b) the document or thing will be returned to the office of the Prothonotary in the same condition, order and packaging in which it was removed, as and when directed by the Prothonotary.
- (11) The Prothonotary may, in the Prothonotary's discretion, grant an application under paragraph (9) subject to conditions or refuse to grant the application.
-

42.10 Disposal of documents and things produced

Rule 42.10
substituted by
S.R. No.
169/2006
rule 5.

(1) Unless the Court otherwise orders, the Prothonotary may, in the Prothonotary's discretion, return to the addressee any document or thing produced to him in response to the subpoena.

(2) Unless the Court otherwise orders, the Prothonotary shall not return any document or thing under paragraph (1) unless the Prothonotary has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

Rule 42.10(3)
inserted by
S.R. No.
23/2010 rule 7.

(3) The issuing party must attach to the front of a subpoena to produce to be served on the addressee a notice and declaration in accordance with Form 42B.

Rule 42.10(4)
inserted by
S.R. No.
23/2010 rule 7.

(4) The addressee must—
(a) complete the notice and declaration referred to in paragraph (3); and
(b) attach it to the subpoena or copy of the subpoena which accompanies the documents produced to the Court under the subpoena.

Rule 42.10(5)
inserted by
S.R. No.
23/2010 rule 7.

(5) Subject to paragraph (6), the Prothonotary may, upon the expiry of four months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena which were declared by the addressee to be copies.

Rule 42.10(6)
inserted by
S.R. No.
23/2010 rule 7.

(6) The Prothonotary may cause to be destroyed those documents declared by the addressee to be copies which have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

42.11 Costs and expenses of compliance

Rule 42.11
substituted by
S.R. No.
169/2006
rule 5.

- (1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.
- (2) If an order is made under paragraph (1), the Court shall fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.
- (3) An amount fixed under this Rule is separate from and in addition to—
 - (a) any conduct money paid to the addressee;
 - (b) any witness expenses payable to the addressee.

42.12 Failure to comply with subpoena—contempt of court

Rule 42.12
inserted by
S.R. No.
169/2006
rule 5.

- (1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.
- (2) Despite Rule 42.05(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.
- (3) Paragraphs (1) and (2) are without prejudice to any power of the Court under any Rules of the Court (including any Rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Rule 42.13
inserted by
S.R. No.
169/2006
rule 5.

42.13 Documents and things in the custody of a court

- (1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Prothonotary in writing accordingly, identifying the document or thing.
 - (2) If the document or thing is in the custody of the Court, the Prothonotary shall produce the document or thing—
 - (a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (b) as the Court directs.
 - (3) If the document or thing is in the custody of another court, the Prothonotary shall, unless the Court has otherwise ordered—
 - (a) request the other court to send the document or thing to the Prothonotary; and
 - (b) after receiving it, produce the document or thing—
 - (i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or
 - (ii) as the Court directs.
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ORDER 42A
SUBPOENA FOR PRODUCTION TO PROTHONOTARY

Order 42A
(Heading and
rules 42A.01–
42A.14)
inserted by
S.R. No.
169/2006
rule 5.

42A.01 Application

Rule 42A.01
inserted by
S.R. No.
169/2006
rule 5.

- (1) This Rule applies where a party who has a solicitor in the proceeding seeks to require a person not a party to produce any document for evidence before—
 - (a) the hearing of an interlocutory or other application in the proceeding; or
 - (b) the trial of the proceeding.
- (2) Order 42 applies so far as is practicable to a subpoena to produce under this Order.

42A.02 Issuing subpoena

Rule 42A.02
inserted by
S.R. No.
169/2006
rule 5.

A subpoena issued under this Order shall require the addressee to produce to the Prothonotary on or before a day specified by the Prothonotary in the subpoena the document identified in the subpoena.

42A.03 Form of subpoena

Rule 42A.03
inserted by
S.R. No.
169/2006
rule 5.

A subpoena under this Order shall be in Form 42AA.

42A.04 Affidavit of service

Rule 42A.04
inserted by
S.R. No.
169/2006
rule 5.

- (1) A subpoena under this Order shall be served personally on the addressee.
- (2) The issuing party shall serve a copy of a subpoena to produce under this Order on each other party as soon as practicable after the subpoena has been served on the addressee, but it shall not be necessary that the copy served be sealed or be served personally.

r. 42A.05

- (3) A party who serves a copy of a subpoena under this Order shall forthwith file an affidavit of service.

Rule 42A.05
inserted by
S.R. No.
169/2006
rule 5.

42A.05 Compliance with subpoena

- (1) The addressee shall comply with the subpoena under this Order by producing the document to the Prothonotary by delivering or sending it and, if sent, the document shall be sent so that the Prothonotary receives it on or before the day specified in the subpoena.
- (2) If the document is not in writing, then, provided the original is held by the person named until trial, a copy only need be produced to the Prothonotary and, if a copy is produced, it shall be clearly marked as such and may be used by the Prothonotary for the purposes of inspection and, if necessary, copying.

Rule 42A.06
inserted by
S.R. No.
169/2006
rule 5.

42A.06 Receipt for document

Where a document is produced in compliance with a subpoena under this Order the Prothonotary shall, if requested to do so, give a receipt to the person producing the document.

Rule 42A.07
inserted by
S.R. No.
169/2006
rule 5.

42A.07 Objection by addressee or other person

If—

- (a) the addressee has any objection to producing a document identified in the subpoena or to its being inspected by any one or more of the parties to the proceeding; or
- (b) a person having a sufficient interest, other than a party, has any objection to the production of a document identified in the subpoena or to its being inspected by any one or more of the parties to the proceeding—

that person shall notify the Prothonotary in writing of that objection and state the grounds of that objection before the day specified in the subpoena.

42A.08 Objection by party to inspection by other party

Rule 42A.08
inserted by
S.R. No.
169/2006
rule 5.

- (1) Subject to paragraph (2), if a party has any objection to the inspection by another party of a document identified in the subpoena, the party having the objection shall notify the Prothonotary in writing of that objection and state the grounds of that objection before the day specified in the subpoena.
- (2) If a party other than the plaintiff seeks by subpoena the production of any hospital or medical file or record concerning the plaintiff or his or her condition, the plaintiff may, before taking objection under paragraph (1), inspect the file or record produced to the Prothonotary and notify the Prothonotary thereafter of any objection the plaintiff has to inspection by any other party, provided that the plaintiff makes that inspection and notifies that objection and the grounds of that objection in writing within seven days after the day specified in the subpoena for production of the file or record to the Prothonotary.

42A.09 Procedure after objection

Rule 42A.09
inserted by
S.R. No.
169/2006
rule 5.

- (1) Upon receiving notice under Rule 42A.07 or 42A.08, the Prothonotary shall refer the subpoena to a Judge of the Court or an Associate Judge for the hearing and determination of the objection.
- (2) The Prothonotary shall notify the issuing party in writing of the objection and the grounds of that objection and the time and place at which the

Rule 42A.09(1)
amended by
S.R. No.
100/2008
rule 7(1)(s).

objection will be heard and that party shall notify the addressee and all other parties accordingly.

Rule 42A.10
inserted by
S.R. No.
169/2006
rule 5,
amended by
S.R. No.
100/2008
rule 7(1)(t).

42A.10 Inspection of document produced

If no objection is notified under Rule 42A.07 or 42A.08 or to the extent that any such objection is disallowed, each party, unless a Judge of the Court or an Associate Judge otherwise orders, may by appointment with the Prothonotary inspect and take copies of a document produced in compliance with a subpoena under this Order.

Rule 42A.11
inserted by
S.R. No.
169/2006
rule 5.

42A.11 Removal of document

- (1) The Prothonotary shall not permit any document produced in compliance with a subpoena under this Order to be removed from the office of the Prothonotary except upon application in writing signed by the solicitor for a party.
- (2) A solicitor who signs an application under paragraph (1) and removes a document from the office of the Prothonotary, undertakes to the Court by force of this Rule that—
 - (a) the document will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and
 - (b) the document will be returned to the office of the Prothonotary in the same condition, order and packaging in which it was removed, as and when directed by the Prothonotary.
- (3) The Prothonotary may, in his or her discretion, decline to accede to any application under paragraph (1).

42A.12 Return of document

- (1) Subject to any order of the Court, the Prothonotary—

Rule 42A.12
inserted by
S.R. No.
169/2006
rule 5.

- (a) may in his or her discretion return to the addressee any document produced to the Prothonotary in compliance with the subpoena;
- (b) shall, upon returning the document, inform the addressee that the subpoena to produce remains in force until the trial or other determination of the proceeding; and
- (c) may specify a date by which the document is to be produced again to the Prothonotary in compliance with the subpoena.
- (2) Subject to paragraph (3), the Prothonotary shall not return any document under paragraph (1) until after the Prothonotary has given to the issuing party 14 days' notice in writing of his or her intention to do so.
- (3) In an urgent case and at the request of—
- (a) the addressee; or
- (b) in the case of any hospital or medical file or record concerning the plaintiff or his or her condition, the plaintiff—

Rule 42A.12
(1)(a)
amended by
S.R. No.
32/2008
rule 5(b).

the Prothonotary may return a document under paragraph (1) without first giving notice under paragraph (2), but in such a case, after returning the document, the Prothonotary shall give notice to the issuing party that the document has been returned.

r. 42A.13

Rule 42A.13
inserted by
S.R. No.
169/2006
rule 5.

42A.13 Production of document at trial

Subject to Rule 42A.12, the Prothonotary shall, unless otherwise ordered, produce or hand to the Associate of the trial Judge for production at the trial of the proceeding each document produced to the Prothonotary in compliance with a subpoena under this Order.

Rule 42A.14
inserted by
S.R. No.
169/2006
rule 5.

42A.14 Subpoena for trial not affected

The issuing of a subpoena under this Order shall not preclude the issuing of a subpoena otherwise than under this Order.

ORDER 43

AFFIDAVITS

43.01 Form of affidavit

- (1) An affidavit shall be made in the first person.
- (2) Unless the Court otherwise orders, an affidavit shall state the place of residence of the deponent and the deponent's occupation or, if the deponent has none, his or her description, and that he or she is a party to the proceeding or employed by a party, if such be the case.
- (3) Notwithstanding paragraph (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 he or she holds and the name of his or her 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) Every affidavit shall be signed by the deponent, except as provided by Rule 43.02(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 person before whom an affidavit is sworn shall legibly write, type or stamp below his or her signature in the jurat his or her name and address and a statement of the capacity in which the person has authority to take the affidavit.

43.02 Affidavit by illiterate or blind person

- (1) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, he or she shall certify in or below the jurat that—
 - (a) the affidavit was read in his or her presence to the deponent;
 - (b) the deponent seemed to him or her perfectly to understand it; and
 - (c) the deponent made his or her signature or mark in the presence of the person before whom the affidavit is sworn.
- (2) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with paragraph (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 perfectly to understand it.

43.03 Content of affidavit

- (1) Except where otherwise provided by or under these Rules, an affidavit shall be confined to facts which the deponent is able to state of the deponent's own knowledge.
- (2) On an interlocutory application an affidavit may contain a statement of fact based on information and belief if the grounds are set out.

43.04 Affidavit by two or more deponents

Where an affidavit is made by two 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 the deponents at one time before the same person, it shall be sufficient to state that it was sworn by "each of the abovenamed" deponents.

43.05 Alterations

- (1) Notwithstanding any interlineation, erasure or other alteration in the jurat or body, an affidavit—
 - (a) may be filed, unless the Court otherwise orders; but
 - (b) may not be used without the leave of the Court unless the person before whom it is sworn has initialled the alteration.
- (2) Paragraph (1) shall apply to an account verified by affidavit as if the account were part of the affidavit.

43.06 Annexures and exhibits

- (1) A document referred to in an affidavit shall not be annexed to the affidavit but may be referred to as an exhibit.
- (2) An exhibit to an affidavit shall be identified by a separate certificate annexed to it bearing the same heading as the affidavit and signed by the person before whom the affidavit is sworn.
- (3) The certificate shall be in Form 43A and shall contain in the bottom right hand corner of the page in bold type and in a font size not less than 20 points the distinguishing mark of the exhibit and a brief and specific description of the exhibit.

43.07 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.

43.08 Irregularity

Notwithstanding any irregularity of form an affidavit may with the leave of the Court, be used in evidence.

43.09 Filing

- (1) Unless the Court otherwise orders, an affidavit—
 - (a) which has not been filed; or
 - (b) which has not been served or filed in compliance with an order in respect of its service or filing—shall not be used by the party by or on whose behalf it was made.
- (2) An affidavit may be filed with the Prothonotary or with the proper officer in court.
- (3) If an affidavit is sought to be filed electronically in the Court under Part 2 of Order 28, the image of the affidavit made available for electronic retrieval must contain the particulars required by Rule 43.01(5) or, if applicable, Rule 43.02(1).

Rule 43.09(3)
inserted by
S.R. No.
5/2007 rule 10.

ORDER 44

EXPERT EVIDENCE

44.01 Definitions

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

expert means a person who has specialised knowledge based on the person's training, study or experience;

opinion includes more than one opinion;

the code means the expert witness code of conduct in Form 44A.

44.02 Application

- (1) This Order applies to a proceeding however commenced.
- (2) This Order does not apply—
 - (a) to the evidence of a party who would, if called as a witness at the trial, be qualified to give evidence as an expert in respect of any question in the proceeding; or
 - (b) to a person engaged as an expert before 1 November 2003 and Order 44, as in force immediately before 1 August 2003, continues to apply to that person.
- (3) With respect to the opinion of a medical practitioner, in a proceeding for medical negligence in which the plaintiff claims damages for or in respect of bodily injury, this Order applies to an opinion on the liability of the defendant but does not otherwise apply to a medical report to which Order 33 applies.

44.03 Report of expert

- (1) Unless otherwise ordered, a party who intends at trial to adduce the evidence of a person as an expert shall—
 - (a) as soon as practicable after the engagement of the expert and before the expert makes a report under this Rule, provide the expert with a copy of the code; and
 - (b) not later than 30 days before the day fixed for trial, serve on each other party, a report by the expert in accordance with paragraph (2) and deliver a copy for the use of the Court.
- (2) The report shall state the opinion of the expert and shall state, specify or provide—
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read the code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which the opinion is based (a letter of instructions may be annexed);
 - (e)
 - (i) the reasons for;
 - (ii) any literature or other materials utilised in support of;
 - (iii) a summary of—
the opinion;
 - (f) if applicable, that a particular question, issue or matter falls outside the expert's field of expertise;

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- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration—
 - (i) that the expert has made all the enquiries which the expert believes are desirable and appropriate; and
 - (ii) that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
 - (j) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
- (3) If the expert provides to a party a supplementary report, including a report indicating that the expert has changed his or her opinion on a material matter expressed in an earlier report—
- (a) that party shall forthwith serve the supplementary report on all other parties; and
 - (b) in default of such service, the party and any other party having a like interest shall not use the earlier report or the supplementary report at trial without the leave of the Court.

(4) Any report provided by the expert pursuant to this Rule—

- (a) shall be signed by the expert; and
- (b) shall be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.

44.04 Other party's report as evidence

Unless otherwise ordered, a party may put in evidence a report served on that party by another party under this Order.

44.05 No evidence unless disclosed in report

Save with the leave of the Court or by consent of the parties affected, a party shall not, except in cross-examination, adduce any evidence from a person as an expert at the trial of a proceeding unless the substance of the evidence is contained within a report or reports which the party has served under this Order.

44.06 Conference between experts

- (1) The Court may direct expert witnesses—
 - (a) to confer; and
 - (b) to provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for their not agreeing.
- (2) The Court may specify the matters on which the experts are to confer.
- (3) An expert witness may apply to the Court for further directions.

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- (4) The Court may direct the legal representatives of a party—
- (a) to attend the conference;
 - (b) not to attend the conference;
 - (c) to attend or not to attend at the option of the party whom they represent.
- (5) Subject to paragraph (1)(b), except as the parties affected agree in writing, no evidence shall be admitted of anything said or done by any person at the conference.
- (6) An agreement reached during the conference shall not bind a party except in so far as the party agrees in writing.
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ORDER 45

ORIGINATING MOTION

45.01 Definitions

In this Order—

judgment includes order;

proceeding means proceeding commenced by
originating motion.

45.02 Evidence by affidavit

- (1) Except where otherwise provided by any Act or these Rules, and subject to paragraph (2), evidence at the trial of a proceeding shall be given by affidavit.
- (2) By agreement of the parties, evidence at the trial of the proceeding may be given orally, unless the Court otherwise orders.

45.03 Judgment where no appearance

- (1) Where a defendant fails to file an appearance within the time limited, the Court may—
 - (a) on application made by the plaintiff without notice to the defendant; and
 - (b) on proof of service of the originating motion and of the failure—give judgment against that defendant for the relief or remedy sought in the originating motion.
- (2) For the purpose of these Rules, the hearing of the application is the trial of the proceeding.
- (3) Except for the purpose of proof of service of the originating motion and of the failure of the defendant to appear, the plaintiff shall not, unless the Court otherwise orders, use in evidence on the application any affidavit made by the plaintiff or

on the plaintiff's behalf and not served on the defendant with the originating motion.

45.04 Proceedings after appearance

- (1) Where a defendant has filed an appearance, no judgment shall be given for the relief or remedy sought except on application by the plaintiff in accordance with this Rule.
- (2) Except as provided in paragraph (3), application shall be made to an Associate Judge by summons in Form 45A served on the defendant.
- (3) In a proceeding commenced by originating motion under Order 53, the plaintiff may apply for judgment on the day specified in the originating motion for application to the Associate Judge.
- (4) On an application under paragraph (2) or (3), the Associate Judge may, as appropriate—
 - (a) where he or she has authority to give the judgment sought by the plaintiff, hear and determine the application or refer it to another Associate Judge for hearing and determination;
 - (b) by consent of the defendant, give the judgment;
 - (c) refer the application to a Judge of the Court for hearing and determination;
 - (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.

Rule 45.04(2)
amended by
S.R. No.
100/2008
rule 7(1)(u)(i).

Rule 45.04(3)
amended by
S.R. No.
100/2008
rule 7(1)(u)(ii).

Rule 45.04(4)
amended by
S.R. No.
100/2008
rule 7(1)(u)(iii).

Rule 45.04
(4)(a)
amended by
S.R. No.
100/2008
rule 7(1)(u)(iii).

Rule 45.04
(4)(c)
amended by
S.R. No.
100/2008
rule 7(1)(u)(iv).

45.05 Special procedure

- (1) In this Rule *plaintiff* includes a person who proposes to commence a proceeding by originating motion.
- (2) The Court may by order—
 - (a) dispense with the requirements of Rules 5.03(1) and 8.02; and
 - (b) authorise the plaintiff to commence a proceeding by originating motion in Form 5C.
- (3) Without limiting paragraph (2), an order may be made—
 - (a) in an urgent case;
 - (b) to save time and expense for the parties; or
 - (c) where the defendant consents.
- (4) An order may be made on application by the plaintiff before or after the proceeding is commenced and, except where the originating motion has been served on the defendant, application may be made without notice to the defendant.
- (5) An application made before the proceeding is commenced shall not constitute a proceeding for the purpose of any requirement of these Rules with respect to originating process.
- (6) Judgment shall not be given for the plaintiff for the relief or remedy sought in the originating motion or otherwise except on application made to an Associate Judge on notice to the defendant in Form 45A.
- (7) On application to an Associate Judge under paragraph (6) the Associate Judge may, as appropriate—

Rule 45.05(6)
amended by
S.R. No.
100/2008
rule 7(1)(v)(i).

Rule 45.05(7)
amended by
S.R. No.
100/2008 rule
7(1)(v)(ii)(iii).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 45

r. 45.05

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- (a) where the Associate Judge has authority to give the judgment sought by the plaintiff, hear and determine the application or refer it to another Associate Judge for hearing and determination;
- (b) by consent of the defendant, give the judgment;
- (c) refer the application to a Judge of the Court for hearing and determination;
- (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.
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Rule 45.05
(7)(a)
amended by
S.R. No.
100/2008 rule
7(1)(v)(iii)(iv).

Rule 45.05
(7)(c)
amended by
S.R. No.
100/2008
rule 7(1)(v)(v).

ORDER 46

APPLICATIONS

46.01 Application

This Order applies to an interlocutory or other application in a proceeding.

46.02 Application by summons

- (1) An application made on notice to any person shall be by summons, unless the Court otherwise orders.
- (2) An application by summons is made when the summons is filed in accordance with Rule 46.04.
- (3) An application not by summons is made when it comes on for hearing.

46.03 Notice of application

On the hearing of an application the Court may order that the person making the application give notice of it to any person having a sufficient interest.

46.04 Form and filing of summons

- (1) A summons shall be in Form 46A.
- (2) A summons shall be filed—
 - (a) where application is made to a Judge of the Court, or the Costs Court, with the Prothonotary;

Rule 46.04
(2)(a)
amended by
S.R. Nos
100/2008
rule 7(1)(w)(i),
97/2009
rule 8(1)(a).

- (b) where application is made to an Associate Judge, other than an Associate Judge who is a Costs Judge, with the appropriate Associate Judge's Associate or the Prothonotary.

Rule 46.04
(2)(b)
amended by
S.R. Nos
100/2008 rule
7(1)(w)(ii)(iii),
97/2009
rule 8(1)(b).

Note

See also Rules 28.01 and 63.38(1).

Note to
rule 46.04(2)
inserted by
S.R. No.
97/2009
rule 8(2).

- (3) Upon the filing of a summons, or at any later time on the request of the applicant, a sufficient number of copies of the summons for service and proof of service shall be sealed with the seal of the Court.

46.05 Service

- (1) The applicant shall serve a sealed copy of a summons and, except where these Rules otherwise provide, a copy of any affidavit in support on every person to whom notice of the application is to be given.
- (2) Service under paragraph (1) shall be made within a reasonable time before the day for hearing named in the summons, and in no case later than 2.00 p.m. on the previous day or, where the Prothonotary's office was closed on the day before the day for hearing, not later than 2.00 p.m. on the day the office was last open.
- (3) A plaintiff may serve any summons on a defendant personally before appearance.

46.05.1 Day for hearing

- (1) A summons which has not been served may, at the request of the party who filed it, be amended on or before the day for hearing named in the summons to name another day.

Rule 46.05.1
(2)(a)
amended by
S.R. No.
100/2008
rule 7(1)(x)(i).

(2) The summons may be amended—

(a) if the summons is to be heard by the Court constituted by a Judge of the Court, by the Prothonotary or a Judge's Associate;

Rule 46.05.1
(2)(b)
amended by
S.R. No.
100/2008
rule 7(1)(x)(ii).

(b) if the summons is to be heard by the Court constituted by an Associate Judge, by an Associate Judge's Associate or the Prothonotary.

(3) A summons shall not be amended under this Rule more than once.

(4) This Rule does not limit the power of the Court under Rule 36.01.

46.06 Adjournment

Rule 46.06(2)
amended by
S.R. No.
100/2008
rule 7(1)(y).

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

(2) The Associate of the Judge of the Court or, where an application is to be heard by an Associate Judge, the Associate Judge's Associate—

(a) may by consent adjourn the hearing of an application to a particular date or for a particular time or generally, and reserve the costs of the adjournment; and

(b) shall record the adjournment and any reservation of the costs by indorsement on the court file.

(3) If the hearing of an application is adjourned under paragraph (2), the Court may thereafter, whether the costs of the adjournment were reserved or not, make an order in relation to the costs of or occasioned by the adjournment as it thinks fit.

(4) Rule 63.22 shall apply to costs reserved under paragraph (2) as if the costs were reserved by order of the Court.

46.07 Absence of party to summons

- (1) Where any person to whom a summons is addressed fails to attend, the Court may hear the application if satisfied that the summons was duly served.
- (2) Where on an application by summons the applicant fails to attend, the Court may dismiss the application or make such other order as it thinks fit.

46.08 Setting aside

The Court may set aside or vary an order which affects a person where the application for the order—

- (a) was made on notice to that person, but the person did not attend the hearing of the application; or
 - (b) was not made on notice to that person.
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ORDER 47

PLACE AND MODE OF TRIAL

47.01 Place of trial

Unless the Court otherwise orders, the place of trial of a proceeding shall be determined in accordance with Rule 5.08.

47.02 Mode of trial

- (1) A proceeding commenced by writ and founded on contract (including contract implied by law) or on tort (including a proceeding for damages for breach of statutory duty) shall be tried with a jury if—
 - (a) the plaintiff in the writ or the defendant by notice in writing to the plaintiff and to the Prothonotary within 10 days after the last appearance signifies that the plaintiff or the defendant (as the case requires) desires to have the proceeding so tried; and
 - (b) the proper jury fees are paid.
- (2) Any other proceeding shall be tried without a jury, unless the Court otherwise orders.
- (3) Notwithstanding any signification under paragraph (1), the Court may direct trial without a jury if in its opinion the proceeding should not in all the circumstances be tried before a jury.
- (4) Trial with a jury shall be with a jury of six.

47.03 Payment of jury fees

- (1) If a proceeding is to be tried with a jury, the proper jury fees shall be paid by the plaintiff.

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- (2) If a proceeding is to be tried with a jury because the defendant so signified by notice in writing, the proper jury fees shall be paid by the defendant to the plaintiff within 14 days after a date is fixed for the trial of the proceeding.
 - (3) In case of default under paragraph (1) or (2), the Court may order that the proceeding be tried without a jury.

47.04 Separate trial of question

The Court may order that—

- (a) any question in a proceeding be tried before, at or after the trial of the proceeding, and may state the question or give directions as to the manner in which it shall be stated;
- (b) different questions be tried at different times or places or by different modes of trial.

47.05 Judgment after determination of preliminary question

If the determination of any question in a proceeding and tried separately from the proceeding substantially disposes of the proceeding or renders the trial of the proceeding unnecessary, the Court may dismiss the proceeding or make such other order or give such judgment as it thinks fit.

ORDER 48

FIXING A DATE FOR TRIAL

48.01 Application

- (1) Subject to this Rule, this Order applies to a proceeding in the Court commenced by writ or originating motion.
- (2) This Order does not apply to a proceeding in any of the following lists—
 - (a) Admiralty List;
 - (b) Technology, Engineering and Construction List (TEC List);
 - (c) Commercial List;
 - (d) Corporations List;
 - (e) Intellectual Property List;
 - (f) Valuation, Compensation and Planning List.

Rule 48.01
(2)(b)
substituted by
S.R. No.
30/2009 rule 5.

48.02 Fixing a date

The Court may fix a date for the trial of a proceeding—

- (a) after notice of trial has been filed and served;
or
- (b) subject to the plaintiff's filing and serving notice of trial.

48.03 Notice of trial

Notice of trial shall be in Form 48A or, if the Court so orders, Form 48B.

48.04 Default by plaintiff

- (1) If the plaintiff does not within a reasonable time after the commencement of the proceeding file and serve notice of trial or apply to have a date fixed for the trial of the proceeding, the defendant may file and serve notice of trial or may apply to the Court under Rule 24.01 to dismiss the proceeding for want of prosecution.
- (2) If the Court fixes a date for the trial of the proceeding subject to the plaintiff's filing and serving notice of trial within a certain time and the plaintiff fails to file and serve notice of trial within that time, the defendant within seven days thereafter—
 - (a) may file and serve notice of trial; or
 - (b) may apply to the Court under Rule 24.01 to dismiss the proceeding for want of prosecution.

48.05 Subsequent interlocutory steps

- (1) After notice of trial—
 - (a) has been filed, the party filing the notice; and
 - (b) has been served, the party so served—shall not seek—
 - (c) amendment to a pleading;
 - (d) particulars or further particulars;
 - (e) answers to interrogatories or further answers;
or
 - (f) discovery or inspection of documents or
further discovery or inspection—without the leave of the Court.

(2) Nothing in paragraph (1) shall—

- (a) in a proceeding for damages for or arising out of death or bodily injury affect the obligation of the plaintiff to give particulars of the damages claimed or the obligation of the parties under Order 33 with respect to the medical examination of the plaintiff and the service of hospital and medical reports;
- (b) prevent the service of an offer in writing in accordance with Part 2 of Order 26; or
- (c) limit the power of the Court at the trial to make an order for amendment or otherwise.

48.06 Vacating date for trial

At any time after a date has been fixed for the trial of a proceeding, the Court may vacate the date so fixed and give further directions for the conduct of the proceeding.

48.07 Pre-trial conferences

- (1) Where a date for the trial of a proceeding has been fixed or the proceeding has otherwise been entered into a list for trial, the Court may direct, or the Prothonotary may give notice, that the parties and their solicitors or counsel attend before a person named in the notice for the purpose of a pre-trial conference.
- (2) At the time and place designated for the pre-trial conference or at any stage of the pre-trial conference the person conducting the pre-trial conference may, if it appears to that person to be necessary or desirable, refer the proceeding to an Associate Judge.

Rule 48.07(2)
amended by
S.R. No.
100/2008
rule 7(1)(z)(i).

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- (3) Upon a reference under paragraph (2), the Associate Judge may make any order or give any direction—

**Rule 48.07(3)
amended by
S.R. No.
100/2008
rule 7(1)(z)(ii).**

- (a) to ensure that a party or the party's solicitor or counsel attend before a nominated person for the purpose of the pre-trial conference;
 - (b) to ensure that the proceeding is ready for trial.
- (4) Except as all the parties who attend the conference agree in writing, no evidence shall be admitted of anything said or done by any person at the conference.
- (5) The agreement may be made at the conference or later.
-

ORDER 49

TRIAL

49.01 Order of evidence and addresses

- (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the trial.
- (2) Subject to any direction given under paragraph (1)—
 - (a) where the burden of proof on any question lies on the plaintiff, the plaintiff shall begin;
 - (b) where the burden of proof on all the questions lies on the defendant, the defendant shall begin.
- (3) Subject to any direction given under paragraph (1)—
 - (a) where the only parties are one plaintiff and one defendant, and there is no counterclaim, the order of evidence and addresses shall be as provided by the following paragraphs of this Rule; and
 - (b) in any other case, the order of evidence and addresses shall be as provided by those paragraphs with such modifications as the nature of the case requires.
- (4) The party who begins may make an address opening the party's case and may then adduce that party's evidence.
- (5) When, in the course of the case for the party who begins, no document or thing is admitted in evidence on tender by the opposite party, and at the conclusion of that case—

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- (a) the opposite party adduces evidence, the opposite party may first make an opening address and after adducing that party's evidence, the opposite party may make a closing address and thereafter the party who began may make a closing address;
 - (b) the opposite party does not adduce evidence, the party who began may make a closing address and then the opposite party may make an address.
- (6) When, in the course of the case for the party who begins, any document or thing is admitted in evidence on tender by the opposite party, and at the conclusion of that case—
- (a) the opposite party adduces evidence, the order of proceedings shall be as provided by paragraph (5)(a);
 - (b) the opposite party does not adduce evidence, the opposite party may make an address and then the party who began may make a closing address.

49.02 Absence of party

- (1) If, when the trial of a proceeding is called on, any party is absent, the Court may—
 - (a) order that the trial be not had unless the proceeding is again set down for trial, or unless such other steps are taken as the Court directs;
 - (b) proceed with the trial generally or so far as concerns any claim for relief in the proceeding; or
 - (c) adjourn the trial.

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- (2) The Court may set aside or vary any judgment, order or verdict obtained where a party is absent at the trial.
 - (3) An application under paragraph (2) shall be made within 14 days after the trial.

49.03 Adjournment of trial

The Court may adjourn a trial on such terms as it thinks fit.

49.04 Death before judgment

- (1) Where a party to a proceeding dies after the verdict or finding on the questions of fact, the Court may give judgment notwithstanding the death.
 - (2) Paragraph (1) does not affect the power of the Court under Rules 9.08 and 9.09.
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ORDER 50

REFERENCES

50.01 Reference to special referee

- (1) In any proceeding the Court may, subject to any right to a trial with a jury, refer any question to a special referee for the referee to—
 - (a) decide the question; or
 - (b) give the referee's opinion with respect to it.
- (2) Where an order is made under paragraph (1), the Court—
 - (a) shall state the question referred;
 - (b) shall direct that the special referee make a report in writing to the Court on the question referred to the referee stating, with reasons, the referee's decision or opinion;
 - (c) may direct that the special referee give such further information in the referee's report as it thinks fit.
- (3) The Court may upon application by a party or by the special referee set aside or vary an order made under this Rule.

50.02 Directions as to procedure

Where an order is made under Rule 50.01, the Court may give directions for the conduct of the reference, and in particular may direct that—

- (a) the special referee have the same authority with respect to discovery of documents and interrogatories as the Court;
- (b) evidence be taken by the referee and the attendance of witnesses and the production of documents be compelled by subpoena.

50.03 Report on reference

- (1) The special referee may in the referee's report—
 - (a) submit any question arising on the reference for the decision of the Court; or
 - (b) make a statement of facts found by the referee from which the Court may draw such inferences as it thinks fit.
- (2) On the receipt of the special referee's report, the Court—
 - (a) shall give notice thereof to the parties; and
 - (b) may by order—
 - (i) require the special referee to provide a further report explaining any matter mentioned or not mentioned in the report;
 - (ii) remit the whole or any part of the question originally referred to the special referee for further consideration by that referee or any other special referee;
 - (iii) vary the report.
- (3) An application by a party for an order under paragraph (2)(b) shall be made on not less than three days' notice to the other party or parties.

50.04 Use of report

The Court may as the interests of justice require adopt the report of a special referee or decline to adopt the report in whole or in part, and make such order or give such judgement as it thinks fit.

50.05 Committal

Nothing in this Order shall authorise any special referee to make an order of committal.

50.06 Remuneration of special referee

- (1) The Court may determine the remuneration of a special referee, and by what party or parties and in what proportion the remuneration is to be paid either in the first instance or finally.
- (2) The Court may order any party to give security for the remuneration of a special referee.
- (3) The Court may order that the proceeding be stayed until an order made under paragraph (2) is complied with.

50.07 Reference to mediator

- (1) At any stage of a proceeding the Court may, with or without the consent of any party, order that the proceeding or any part of the proceeding be referred to a mediator.
- (2) Except so far as the Court otherwise orders, an order for reference to mediation shall not operate as a stay of the proceeding.
- (2.1) At any stage of a proceeding in the Costs Court, a Costs Judge or a Costs Registrar may, with or without the consent of any party, order that the proceeding or any part of the proceeding be referred to a mediator.
- (2.2) Unless the Costs Court otherwise orders, an order for reference to mediation shall not operate as a stay of the proceeding.
- (3) Where a reference is made under paragraph (1) or paragraph (2.1) the mediator shall endeavour to assist the parties to reach a settlement of the proceeding or settlement of that part of the proceeding referred to the mediator.

Rule 50.07(2.1)
inserted by
S.R. No.
97/2009
rule 9(1).

Rule 50.07(2.2)
inserted by
S.R. No.
97/2009
rule 9(1).

Rule 50.07(3)
amended by
S.R. No.
97/2009
rule 9(2)(a).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 50

r. 50.07

Rule 50.07(4)
amended by
S.R. No.
97/2009
rule 9(2)(b).

- (4) The mediator may and shall if so ordered report to the Court or the Costs Court, as the case requires, whether the mediation is finished.

Rule 50.07(5)
amended by
S.R. No.
97/2009
rule 9(2)(c).

- (5) The mediator shall not make any report to the Court or the Costs Court, as the case requires, other than a report under paragraph (4).

- (6) Except as all the parties who attend the mediation in writing agree, no evidence shall be admitted of anything said or done by any person at the mediation.

- (7) The agreement may be made at the mediation or later.

Rule 50.07(8)
amended by
S.R. No.
97/2009
rule 9(2)(d).

- (8) The Court or the Costs Court, as the case requires, may determine the remuneration of the mediator, and by what party or parties and in what proportion the remuneration is to be paid either in the first instance or finally.

Rule 50.07(9)
amended by
S.R. No.
97/2009
rule 9(3).

- (9) The Court or the Costs Court, as the case requires, may order any party to give security for the remuneration of the mediator.

Rule 50.07(10)
amended by
S.R. Nos
100/2008
rule 7(2)(a),
97/2009
rule 9(4).

- (10) This Rule does not apply to the reference of a proceeding or any part of a proceeding to mediation by an Associate Judge under Rule 50.07.1 or a Costs Registrar under Rule 50.07.2.

50.07.1 Mediation by Associate Judge

Rule 50.07.1
(Heading)
amended by
S.R. No.
100/2008
rule 7(2)(b).

- (1) Without limiting Rule 50.07(1), at any stage of a proceeding an Associate Judge may, with or without the consent of any party—

Rule 50.07.1(1)
amended by
S.R. Nos
100/2008
rule 7(2)(c)(i)(ii),
97/2009 rule 10.

(a) of his or her own motion; or

(b) on the reference of a Judge of the Court—

Rule 50.07.1
(1)(b)
amended by
S.R. No.
100/2008
rule 7(2)(c)(iii).

order that the proceeding or any part of the proceeding be mediated by an Associate Judge.

- (2) If an Associate Judge undertakes a mediation, the Associate Judge may give any direction with respect to the conduct of the mediation as the Associate Judge thinks fit.

Rule 50.07.1
(2)
amended by
S.R. No.
100/2008 rule
7(2)(c)(i)(ii).

- (3) Except so far as the Associate Judge otherwise orders, an order for mediation under this Rule shall not operate as a stay of the proceeding.

Rule 50.07.1
(3)
amended by
S.R. No.
100/2008 rule
7(2)(c)(ii).

- (4) Except as all the parties who attend the mediation in writing agree, no evidence shall be admitted of anything said or done by any person at the mediation.

- (5) An agreement referred to in paragraph (4) may be made at the mediation or later.

Rule 50.07.2
inserted by
S.R. No.
97/2009
rule 11.

50.07.2 Mediation by Costs Registrars

- (1) Without limiting Rule 50.07(2.1), at any stage of a proceeding in the Costs Court, a Costs Registrar may, with or without the consent of any party—
 - (a) of his or her own motion; or
 - (b) on the reference of a Costs Judge—order that the proceeding or any part of the proceeding be mediated by a Costs Registrar.
- (2) If a Costs Registrar undertakes a mediation, the Costs Registrar may give any direction with respect to the conduct of the mediation as the Costs Registrar thinks fit.
- (3) Except so far as the Costs Registrar otherwise orders, an order for mediation under this Rule shall not operate as a stay of the proceeding.
- (4) Except as all the parties who attend the mediation in writing agree, no evidence shall be admitted of anything said or done by any person at the mediation.
- (5) An agreement referred to in paragraph (4) may be made at the mediation or later.

50.08 Reference to arbitration

- (1) At any stage of a proceeding the Court may, with the consent of all parties, order that the proceeding or a question be referred to arbitration.
- (2) An arbitration ordered under paragraph (1) shall be conducted in accordance with and subject to the provisions of the **Commercial Arbitration Act 1984**.

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- (3) The Court may subject to the provisions of the **Commercial Arbitration Act 1984** by order made under paragraph (1) or at any time—
- (a) give such directions and make such orders for the conduct of the arbitration as the parties may agree or as they might have agreed had the arbitration been made pursuant to an arbitration agreement;
 - (b) make such orders as to the remuneration of the arbitrator and the giving of security for such remuneration as it thinks fit.
-

ORDER 51

ASSESSMENT OF DAMAGES OR VALUE

Rule 51.01
amended by
S.R. No.
100/2008
rule 7(2)(d).

51.01 Mode of assessment

Subject to Rule 51.05, damages under any judgment or order for damages to be assessed shall, unless the Court otherwise orders, be assessed by an Associate Judge.

51.02 Notice to other party

- (1) The party against whom the damages are to be assessed may take part in the assessment.
- (2) The party for whom the damages are to be assessed shall, not less than 10 days before the assessment is due, serve notice of the day, time and place of the assessment on the other party to the assessment.
- (3) Notice under paragraph (2) may be served at the address for service, but, if there is no address for service, the notice shall be served personally, unless the Court otherwise orders.

51.03 Procedure on assessment

The attendance of witnesses and production of documents may be compelled by subpoena in accordance with Order 42, and Order 49 shall, with any necessary modification, apply as if the assessment were a trial of the proceeding.

Rule 51.04
amended by
S.R. No.
100/2008
rule 7(2)(e).

51.04 Order for damages

Where damages are assessed by an Associate Judge, the Associate Judge shall by order state the amount at which they are assessed.

51.05 Default judgment against some defendants

Where judgment for damages to be assessed is entered or given in default of appearance or pleading, and the proceeding is continued against other defendants, the damages shall be assessed at the trial, unless the Court otherwise orders.

51.06 Continuing cause of action

Where damages are assessed, whether under this Order or otherwise, in respect of any continuing cause of action, they shall be assessed down to the time of assessment.

51.07 Value of goods

This Order shall, with any necessary modification, apply to a judgment or order for the value of goods to be assessed, with or without damages to be assessed.

ORDER 52

ACCOUNTS AND INQUIRIES

52.01 Account or inquiry at any stage

- (1) Except as provided in paragraph (3), the Court may at any stage of a proceeding make an order for—
 - (a) the taking of any account; or
 - (b) the making of any inquiry.
- (2) Where the Court makes an order for the taking of an account, it may order payment of any amount found to be due on taking the account.
- (3) The Court shall not order that an account be taken—
 - (a) as against a defendant who has not filed an appearance unless the defendant is in default of appearance; or
 - (b) if it appears that there is some preliminary question to be tried.
- (4) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as possible, each distinct account and inquiry is designated by a number.

52.02 Directions for account

Where the Court makes an order for the taking of an account, the Court, by the same or later order—

- (a) may give directions concerning the manner of taking or verifying the account; and

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- (b) without limiting paragraph (a), may direct that in taking the account the relevant books of account shall be evidence of the matters contained in them with liberty to the parties interested to take objections thereto.

52.03 Form and verification of account

- (1) The items on each side of an account shall be numbered consecutively.
- (2) Unless the Court otherwise orders, an accounting party shall verify that party's account by affidavit and the account shall be made an exhibit to the affidavit.

52.04 Filing and service of account

An accounting party shall, unless the Court otherwise orders—

- (a) file that party's account and verifying affidavit; and
- (b) forthwith serve a copy of the account and affidavit on each other party.

52.05 Notice of charge, error in account

- (1) A party who seeks to charge an accounting party with an amount beyond what the accounting party by the accounting party's account admits receiving shall give to the accounting party notice of the charge, stating, so far as the party is able, the amount which that party seeks to charge, with brief particulars.
- (2) A party who alleges that any item in the account of an accounting party is erroneous in amount or otherwise shall give to the accounting party notice of the allegation, stating the grounds.

52.06 Allowances

In taking an account under a judgment or order all just allowances shall be made.

52.07 Delay

Where there is delay in the prosecution of any account, inquiry or other matter under a judgment or order, the Court may make orders for staying or expediting the proceeding or for the conduct of the proceeding as it thinks fit.

52.08 Fund distribution before all entitled ascertained

Where some of the persons entitled to share in a fund are ascertained, and the ascertainment of the other persons so entitled may be delayed, the Court may by order allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

52.09 Restrictive covenant

- (1) This Rule applies where on an application under section 84 of the **Property Law Act 1958** an order is made under subsection (3) of that section directing the plaintiff to make inquiries or give notices.
- (2) Whether the plaintiff has made inquiries and given notices in accordance with the order and what the results of the inquiries are shall be determined by an Associate Judge after inquiry.
- (3) The Associate Judge shall by order declare what he or she has determined under paragraph (2) and the application shall not proceed until the order is made.

Rule 52.09(2)
amended by
S.R. No.
100/2008
rule 7(2)(f)(i).

Rule 52.09(3)
amended by
S.R. No.
100/2008
rule 7(2)(f)(ii).

ORDER 53

SUMMARY PROCEEDING FOR RECOVERY OF LAND

53.01 Application

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

53.02 Originating process

- (1) The plaintiff may make the claim in a proceeding in accordance with this Order.
- (2) The proceeding shall be commenced by originating motion.
- (3) The originating motion shall be in Form 5E.

53.03 Who to be defendant

- (1) Each person in occupation of the land whose name the plaintiff knows shall be a defendant.
- (2) If the plaintiff does not know the name of any person in occupation the proceeding may be commenced without naming any person as defendant.

53.04 Affidavit in support

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

53.05 Service

- (1) The originating motion and a copy of the affidavit and of any exhibit referred to therein shall be served—
 - (a) on each defendant, if any; and
 - (b) on any person occupying the land who is not a defendant.
- (2) Service on a defendant shall be personal.
- (3) Service on a person occupying the land who is not a defendant shall be effected—
 - (a) by—
 - (i) affixing a copy of the originating motion and a copy of the affidavit to some conspicuous part of the land; and
 - (ii) if practicable, leaving in the letter-box or other receptacle for mail on the land a copy of the originating motion 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.

53.06 Occupier made a party

The Court may order that a person occupying the land who is not a defendant be made defendant or added as a defendant, as the case requires, and that the person file an appearance.

53.07 Judgment for possession

In a proceeding under this Order, a judgment for possession shall be in Form 53A.

Rule 53.07
amended by
S.R. No.
100/2008
rule 7(2)(g),
substituted by
S.R. No.
44/2009 rule 4.

53.08 Warrant of possession

- (1) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall not be issued without the leave of the Court where three months have elapsed since the judgment took effect.
 - (2) An application for leave under paragraph (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 Form 53B.
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Rule 53.08(1)
amended by
S.R. Nos
100/2008
rule 7(2)(h),
44/2009 rule 5.

ORDER 54

ADMINISTRATION OF ESTATES AND EXECUTION OF TRUSTS

54.01 Definitions

In this Order—

administration proceeding means a proceeding for the administration of an estate or the execution of a trust under the direction of the Court;

estate means the estate of a deceased person.

54.02 Relief without general administration

- (1) A proceeding may be brought for any relief which could be granted in an administration proceeding and a claim need not be made for the administration or execution under the direction of the Court of the estate or trust in respect of which the relief is sought.
- (2) Without limiting paragraph (1), a proceeding may be brought for—
 - (a) the determination of any question which could be determined in an administration proceeding, including any question—
 - (i) arising in the administration of an estate or in the execution of a trust;
 - (ii) as to the composition of any class of persons having a claim against an estate or a beneficial interest in an estate or in property subject to a trust; or

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- (iii) as to the rights or interests of a person claiming to be a creditor of an estate or to be entitled under the will or on the intestacy of a deceased person or to be beneficially entitled under a trust;
 - (b) an order directing an executor, administrator or trustee to—
 - (i) furnish and, if necessary, verify accounts;
 - (ii) pay funds of the estate or trust into court; or
 - (iii) do or abstain from doing any act;
 - (c) an order—
 - (i) approving any sale, purchase, compromise or other transaction by an executor, administrator or trustee; or
 - (ii) directing any act to be done in the administration of an estate or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed under the direction of the Court.

54.03 Parties

In an administration proceeding or a proceeding within Rule 54.02—

- (a) all the executors of the will of the deceased or administrators of the estate or trustees of the trust, as the case may be, shall be parties;
- (b) where the proceeding is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff shall be made a defendant;

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- (c) notwithstanding anything in Rule 9.03(1), and without limiting the powers of the Court under Order 9, all persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, need not be parties, and the plaintiff may make such of those persons parties as the plaintiff thinks fit;
 - (d) where in the taking of an account of debts or liabilities under a judgment or order in the proceeding, a person not a party makes a claim—
 - (i) a party other than the executors or administrators or trustees shall not be entitled to attend before the Court in relation to that claim except by leave of the Court; and
 - (ii) the Court may direct or allow any party to attend before the Court either in addition to or in substitution for the executors, administrators or trustees.

54.04 Notice of proceeding and judgment

- (1) In an administration proceeding or a proceeding within Rule 54.02, notwithstanding Rule 54.03, the Court may order that any person not a party be given notice of the proceeding and of any judgment in the proceeding.
- (2) On the application of a person given notice under paragraph (1), the Court may, in accordance with Rule 9.06(b), order that the person be added as a party.

54.05 Relief in proceeding by originating motion

- (1) In an administration proceeding or a proceeding within Rule 54.02 the Court may make any order and grant any relief to which the plaintiff is entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the proceeding was commenced by originating motion.
- (2) Paragraph (1) does not limit the power of the Court under Rule 4.07(1).

54.06 Judgment in administration proceeding

- (1) The Court need not give judgment or make an order for the administration of an estate or the execution of a trust under the direction of the Court unless the judgment or order is necessary for the determination of the questions arising between the parties.
- (2) Where an administration proceeding is brought by a creditor of the estate or by a person claiming to be entitled under the will or on the intestacy of the deceased or to be beneficially entitled under the trust, the Court may—
 - (a) if it is alleged that no or no sufficient accounts have been furnished by the executors, administrators or trustees, order that the proceeding be stayed for a period specified in the order and that the executors, administrators or trustees shall within that period furnish the plaintiff with proper accounts;

- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate or the execution of the trust under the direction of the Court and order that no steps be taken under the judgment or order, or under any account or inquiry directed, without the leave of the Court.

54.07 Conduct of sale

Where the Court makes an order for the sale of property comprised in an estate, or trust property, the executors or administrators, or the trustees, as the case requires, shall, unless the Court otherwise orders, have the conduct of the sale.

ORDER 55

SALE OF LAND BY ORDER OF COURT

55.01 Definition

In this Order *land* includes any interest in or right over land.

55.02 Power to order sale

In any proceeding relating to land, where it is necessary or expedient for the purposes of the proceeding, the Court at any stage of the proceeding—

- (a) may order that the whole or any part of the land be sold; and
- (b) may further order that any party in receipt of the rents or profits of the land or otherwise in possession of the land deliver possession to such person as the Court directs.

55.03 Notice of application

- (1) Except for special reason an order for the sale of land under Rule 55.02 shall not be made unless notice in writing has been given to every person interested in the land, whether or not a party.
- (2) An order for sale—
 - (a) shall state whether notice has been given to every person interested in the land; and
 - (b) if it has not, shall state what special reason exists for making the order notwithstanding.

55.04 Manner of sale

- (1) This Rule applies where the Court makes an order under Rule 55.02 that land be sold.
- (2) The Court may appoint a party or other person to have the conduct of the sale.

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- (3) The Court may permit the person having the conduct of the sale to sell the land in such manner as that person thinks fit.
 - (4) The Court may direct any party to join in the sale and conveyance or transfer or in any other matter relating to the sale.
 - (5) The Court may give further directions for the purpose of the sale including directions—
 - (a) fixing the manner of sale, whether by contract conditional on approval of the Court, private treaty, public auction or tender or otherwise;
 - (b) fixing a reserve or minimum price;
 - (c) requiring payment of the purchase money into court or to a trustee or other person;
 - (d) for settling the particulars and conditions of sale;
 - (e) for obtaining evidence of value; or
 - (f) fixing the remuneration to be allowed to any auctioneer, estate agent or other person.

55.05 Certifying result of sale

- (1) Where the Court has directed payment of the purchase money into court or the Court so orders, the result of a sale by order of the Court shall be certified—
 - (a) in the case of a sale by public auction, by the auctioneer who conducted the sale;
 - (b) in any other case, by the person having the conduct of the sale or that person's solicitor—

and the Court may require that the certificate be verified by affidavit.

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- (2) The person having the conduct of the sale shall file the certificate and affidavit.
 - (3) Unless the Court otherwise orders, the certificate and affidavit shall be filed within 21 days after the sale.

55.06 Mortgage, exchange or partition

This Order shall, with any necessary modification, apply to the mortgage, exchange or partition of any land under an order of the Court.

ORDER 56

JUDICIAL REVIEW

56.01 Judgment or order instead of writ

- (1) Subject to any Act, the jurisdiction of the Court to grant any relief or remedy in the nature of certiorari, mandamus, prohibition or quo warranto shall be exercised only by way of judgment or order (including interlocutory order) and in a proceeding commenced in accordance with these Rules.
- (2) The proceeding shall be commenced by originating motion naming as defendant—
 - (a) a person, if any, having an interest to oppose the claim of the plaintiff; and
 - (b) the court, tribunal or person in respect of whose exercise of jurisdiction or failure or refusal to exercise jurisdiction the plaintiff brings the proceeding.
- (3) A person named as defendant in accordance with paragraph (2)(b) who is sued in the capacity of a judicial or public authority or as the holder of a public office shall be described in the originating motion by the name of that authority or the name of that office.
- (4) In addition to complying with the requirements of Rule 5.05, the originating motion—
 - (a) shall state the grounds upon which the relief or remedy specified in the originating motion is sought; and
 - (b) where any mistake or omission in any judgment, order or other proceeding in respect of which relief or remedy is sought is a ground, shall specify the mistake or omission.

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- (5) The Court shall not grant any relief or remedy in the nature of certiorari unless—
- (a) a copy of the warrant, order, conviction, inquisition or record in respect of which the relief is sought, verified by affidavit, is produced; or
 - (b) if a copy is not produced, the non-production is accounted for to the satisfaction of the Court.

56.02 Time for commencement of proceeding

- (1) A proceeding under this Order shall be commenced within 60 days after the date when grounds for the grant of the relief or remedy claimed first arose.
 - (2) Where the relief or remedy claimed is in respect of any judgment, order, conviction, determination or proceeding, the date when the grounds for the grant of the relief or remedy first arose shall be taken to be the date of the judgment, order, conviction, determination or proceeding.
 - (3) The Court shall not extend the time fixed by paragraph (1) except in special circumstances.
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ORDER 57

HABEAS CORPUS

57.01 Definition

In this Order *writ* means writ of habeas corpus ad subjiciendum.

57.02 Application for writ

- (1) A writ shall not issue except by order of the Court.
- (2) An application for a writ shall be made to a Judge of the Court.
- (3) The person making the application, whether or not that person is the person restrained, shall be plaintiff and the person against whom the issue of the writ is sought shall be defendant in the proceeding.
- (4) The application shall be made on notice to the defendant.
- (5) Notice shall be by summons and, subject to Rule 57.05, service of the summons shall be personal.
- (6) The application shall be supported by an affidavit by the person restrained showing that it is made at his or her instance and stating the nature of the restraint.
- (7) Where the person restrained is unable for any reason to make the affidavit referred to in paragraph (6), the affidavit may be made by another person and that affidavit shall show that the person restrained is unable to make the affidavit.

Rule 57.02(2)
amended by
S.R. No.
100/2008
rule 7(2)(i).

- (8) In an urgent case the Court may dispense with compliance with any of the requirements of paragraphs (4) to (7).
- (9) Order 46 shall, with any necessary modification, apply to an application under this Rule.

57.03 Order on application

- (1) On an application under Rule 57.02 the Court may—
 - (a) order that a writ shall issue; or
 - (b) order that the person restrained be released.
- (2) Where an order is made under paragraph (1)(a), the Court shall give directions as to the Judge of the Court before whom, and the date on which, the writ is returnable.
- (3) A writ shall be in Form 57A.
- (4) Subject to Rule 57.05, a writ shall be served personally on each defendant.
- (5) An order that the person restrained be released shall be a sufficient warrant to any governor of a prison, member of the police force or other person for the release of that person from restraint.
- (6) The Court may make an order under paragraph (1) notwithstanding that the application is not made on notice to the defendant.

Rule 57.03(2)
amended by
S.R. No.
100/2008
rule 7(2)(j).

57.04 Further application for writ

Where an order for a writ is refused, an application for a writ shall not be made again in respect of the same person on the same grounds, whether to the same Judge of the Court or to any other Judge of the Court, unless fresh evidence is adduced.

Rule 57.04
amended by
S.R. No.
100/2008
rule 7(2)(k).

57.05 Service

Where the governor of a prison, a member of the police force or other public official is a defendant, in an urgent case, the summons or writ may be served on that defendant by leaving it for the defendant at the defendant's office or other place of employment with some person apparently employed there and apparently not less than 18 years of age.

57.06 Disobedience

- (1) A writ may be enforced by one or more of the following means—
 - (a) committal of the defendant;
 - (b) sequestration of the property of the defendant;
 - (c) where the defendant is a corporation, without limiting paragraph (1)(b)—
 - (i) committal of any officer of the corporation;
 - (ii) sequestration of the property of any officer of the corporation.
- (2) Nothing in paragraph (1) shall affect the power of the Court to punish for contempt.

57.07 Return to the writ

- (1) The defendant shall make a return to the writ by filing a notice stating the grounds of detention of the person restrained and serving a copy on the plaintiff at or before the time the writ is returnable.
- (2) By leave of the Court the defendant may amend the notice or file and serve another notice in substitution therefor.

57.08 Person detained before Court

Where a person detained is brought before the Court pursuant to a writ, the Court shall make such order concerning that person's custody as it thinks fit.

57.09 Other habeas corpus

- (1) An application for the issue of a writ of habeas corpus other than habeas corpus ad subjiciendum or for an order for the production of a person in confinement to give evidence in any proceeding, civil or criminal, before any court or tribunal shall be made to a Judge of the Court by summons.
- (2) Order 46 shall, with any necessary modification, apply to an application under this Rule.
- (3) Nothing in paragraph (1) shall limit the power of the Court under any Act to make an order otherwise than on application by summons that an accused person committed to prison be brought before the Court.

Rule 57.09(1)
amended by
S.R. No.
100/2008
rule 7(2)(l).

57.10 Departing debtor

- (1) The jurisdiction of the Court to grant relief or remedy in the nature of that formerly given by writ of ne exeat colonia shall be exercised only by way of order and in a proceeding commenced in accordance with these Rules.
 - (2) The proceeding shall be commenced by originating motion in which no person is named as defendant.
 - (3) The Court may make an order granting the relief or remedy if it is just and convenient to do so.
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ORDER 58

APPEALS FROM INFERIOR JURISDICTIONS

PART 1—APPEALS FROM THE COUNTY COURT

58.01 Procedure

- (1) Subject to paragraph (3), an appeal from the County Court constituted by a Judge shall be in accordance with Order 64, with any necessary modification, and section 74 of the **County Court Act 1958**.
- (2) Subject to this Order and any Act, any other appeal from the County Court, or against a determination of any court or tribunal as if it were a determination of the County Court, shall be heard by a Judge of the Court and shall be in accordance with Order 4 of Chapter II, with any necessary modification.
- (3) An appeal on a question of law under section 52 of the **Accident Compensation Act 1985** shall be in accordance with Order 64, with any necessary modification, and that section.

Rule 58.01(2)
amended by
S.R. No.
100/2008
rule 7(2)(m).

Order 58 Pt 2
(Heading)
amended by
S.R. No.
100/2008
rule 7(2)(n).

**PART 2—APPEALS FROM AN ASSOCIATE JUDGE OF THE
COUNTY COURT**

**58.02 Appeal from associate judge of the County Court by
leave**

- (1) Any person affected by any judgment given or order made by an associate judge of the County Court may, by leave of a Judge of the Court, appeal to a Judge of the Court.

Rule 58.02
(Heading)
amended by
S.R. No.
100/2008
rule 7(2)(o).

Rule 58.02(1)
amended by
S.R. No.
100/2008
rule 7(2)(p).

- (2) Leave shall be sought in accordance with Rule 58.03.

58.03 Application for leave

- (1) Where the application on which the associate judge of the County Court gave the judgment or made the order was not made on notice, application for leave shall be brought on for hearing within five days of the judgment or order and shall be supported by an affidavit complying with paragraph (3).
- (2) Where the application for the judgment or order was made on notice, application for leave shall be by notice in writing to attend before a Judge on the day and at the time named in the notice, and the notice, together with an affidavit complying with paragraph (3), shall be filed within five days after the judgment or order and served on every person interested not less than two days before the day named.
- (3) The affidavit shall—
- (a) set out the facts, matters and circumstances relating to the judgment given or order made, as the case may be, and the grounds upon which it is proposed to appeal; and
 - (b) exhibit a copy of any affidavit filed in the County Court and identify any other evidence to be relied upon on the hearing of the appeal.
- (4) An order extending the time fixed by paragraph (1) or (2) may be made by a Judge of the Court or an associate judge of the County Court.

Rule 58.03(1)
amended by
S.R. No.
100/2008
rule 7(2)(q)(i).

Rule 58.03(4)
amended by
S.R. No.
100/2008
rule 7(2)(q)(ii).

r. 58.04

58.04 Hearing of appeal

Rule 58.04(1)
amended by
S.R. No.
100/2008
rule 7(2)(r)(i).

- (1) If leave to appeal under Rule 58.02 is given, the appeal may be heard forthwith or otherwise as the Judge of the Court who gives leave directs.

Rule 58.04(2)
amended by
S.R. No.
100/2008
rule 7(2)(r)(ii).

- (2) An appeal under Rule 58.02 shall be by a re-hearing de novo of the application to the associate judge of the County Court but each party may, subject to any proper objections to admissibility—

Rule 58.04
(2)(a)
amended by
S.R. No.
100/2008
rule 7(2)(r)(ii).

- (a) rely upon any affidavit used before the associate judge of the County Court and upon any evidence given orally before him or her;

Rule 58.04
(2)(b)
amended by
S.R. No.
100/2008 rule
7(2)(r)(ii)(iii).

- (b) by special leave of the Judge of the Court hearing the appeal, rely upon an affidavit or oral evidence not used or given before the associate judge of the County Court.

Rule 58.05
amended by
S.R. No.
100/2008
rule 7(2)(s).

58.05 Stay

Except so far as a Judge of the Court or an associate judge of the County Court otherwise orders, an appeal under Rule 58.02 shall not operate as a stay of execution under the judgment or order.

PART 3—APPEALS ON A QUESTION OF LAW

58.06 Application of Part

This Part applies to any appeal and to any application for leave to appeal—

Rule 58.06(a)
amended by
S.R. No.
132/2009
rule 20.

- (a) under section 109 of the **Magistrates' Court Act 1989**;

(b) under section 329 of the **Children, Youth and Families Act 2005**;

Rule 58.06(b)
substituted by
S.R. No.
91/2007 rule 5,
amended by
S.R. No.
55/2010
rule 22.

(c) to which by another Act section 109 of the **Magistrates' Court Act 1989** applies.

Rule 58.06(c)
amended by
S.R. No.
132/2009
rule 20.

58.07 Commencement of appeal

An appeal under this Part is instituted by filing a notice of appeal in the Trial Division.

58.08 Notice of appeal

(1) A notice of appeal under this Part shall—

- (a) be in writing signed by the appellant or the appellant's solicitor;
- (b) set out or state—
 - (i) the order which is the subject of appeal;
 - (ii) whether the appeal is from the whole or part only of the order and, if so, what part;
 - (iii) the question of law upon which the appeal is brought;
 - (iv) concisely the grounds of appeal;
 - (v) the order sought in place of that from which the appeal is brought; and
- (c) at its end, name all the persons on whom it is proposed to serve the notice of appeal.

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- (2) As soon as practicable after filing the notice of appeal, the appellant shall—
- (a) deliver a copy to the registrar or other proper officer of the court that made the order the subject of the appeal;
 - (b) unless the Court otherwise orders, serve a copy of the notice on all persons directly affected by the appeal.
- (3) The Court may give leave to amend the grounds of appeal or make any other order to ensure the proper determination of the appeal.

58.09 Appellant to file affidavit

- (1) Within seven days after filing notice of appeal, the appellant shall file an affidavit stating the acts, facts, matters and circumstances relating to—
- (a) the order under appeal;
 - (b) the grounds set out in the notice of appeal; and
 - (c) if leave to appeal is needed, why leave to appeal should be given.
- (2) There shall be included as exhibits to the affidavit—
- (a) a copy of the order under appeal; and
 - (b) a copy of any reasons given for the order—
- or their absence as exhibits shall be accounted for in the affidavit.

58.10 Directions

- (1) Within seven days after filing notice of appeal, the appellant shall apply on summons to an Associate Judge for directions and, if necessary, for leave to appeal.

Rule 58.10(1)
amended by
S.R. No.
100/2008
rule 7(2)(t)(i).

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- (2) The application is taken to be made when the summons is filed.
- (3) Not less than 14 days before the day for hearing named in the summons, the appellant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 58.09 and any exhibit.
- (4) Not less than five days before the day for hearing named in the summons the respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit.
- (5) If at any time the Associate Judge is satisfied that the hearing of the summons should be expedited, the Associate Judge may of his or her own motion or on application bring the summons on for hearing.
- (6) Subject to paragraphs (7) and (8), the Associate Judge shall give directions with respect to the appeal.
- (7) If leave to appeal is required—
- (a) the Associate Judge shall determine whether leave to appeal is given; and
- (b) if leave to appeal is refused, the Associate Judge shall dismiss the appeal.

Rule 58.10(5)
amended by
S.R. No.
100/2008
rule 7(2)(t)(ii).

Rule 58.10(6)
amended by
S.R. No.
100/2008
rule 7(2)(t)(ii).

Rule 58.10
(7)(a)
amended by
S.R. No.
100/2008
rule 7(2)(t)(ii).

Rule 58.10
(7)(b)
amended by
S.R. No.
100/2008
rule 7(2)(t)(ii).

r. 58.11

Rule 58.10(8)
amended by
S.R. No.
100/2008
rule 7(2)(t)(ii).

- (8) The Associate Judge may dismiss the appeal if satisfied that—
- (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal may be brought;
 - (b) the appellant does not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court.

58.11 Leave to appeal

Rule 58.11(2)
amended by
S.R. No.
100/2008
rule 7(2)(u).

- (1) An appeal instituted more than 30 days after the day on which the order under appeal was made is to be taken to be an application for leave to appeal.
- (2) An application for leave to appeal shall be heard and determined by the Associate Judge under Rule 58.10.

58.12 Stay

The Court may grant any stay necessary for the proper hearing and determination of the application or the appeal.

58.13 Expedition

- (1) Where it is satisfied that the delay caused by proceeding in accordance with this Part would or might entail injustice, the Court may make an order under this Part without notice to any party upon such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.
- (2) The Court may set aside any order made under paragraph (1) on the application of any person affected.

- (3) Where it is satisfied that the justice of the case requires, the Court may order that, subject to any order otherwise, an application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal and may give directions accordingly.

58.14 Report

The Court may call for a report from the Court that made the order from which the appeal is brought and, if the contents of that report have first been made available to the parties to the appeal, the Court may act upon the report.

**PART 4—APPEALS UNDER SECTION 271 OF OR CLAUSE 13
OR 18 OF SCHEDULE 1 TO THE CHILDREN, YOUTH AND
FAMILIES ACT 2005**

Order 58 Pt 4
(Heading)
substituted by
S.R. No.
91/2007 rule 6.

58.17 Application of Part

This Part applies to an appeal to the Court under section 271 of, or clause 13 or 18 of Schedule 1 to, the **Children, Youth and Families Act 2005**.

Rule 58.17
substituted by
S.R. No.
91/2007 rule 7.

58.18 Institution of appeal

- (1) An appeal to which this Part applies shall be instituted by filing in the Court a notice of appeal in Form 58A.
- (2) As soon as practicable after filing the notice of appeal, the appellant shall serve a copy on—
- (a) the registrar or other proper officer of the court from which the appeal is brought; and
 - (b) unless a Judge of the Court otherwise orders, all parties to the proceeding in which the order appealed from was made who are directly affected by the appeal.

Rule 58.18
(2)(b)
amended by
S.R. No.
100/2008
rule 7(2)(v).

r. 58.19

Rule 58.18(3)
amended by
S.R. No.
100/2008
rule 7(2)(v).

- (3) A Judge of the Court may give leave to amend the grounds of appeal or make any other order to ensure the proper determination of the appeal.

58.19 Affidavit in support

Rule 58.19(1)
amended by
S.R. No.
100/2008
rule 7(2)(w).

- (1) As soon as practicable after filing the notice of appeal the appellant shall, unless a Judge of the Court otherwise orders, file in the Court and serve on each respondent an affidavit in support of the appeal.
- (2) The affidavit shall refer so far as necessary to the proceeding in which the order appealed from was made and any reasons given for the order and shall exhibit a copy of the order.

58.20 Hearing

Rule 58.20(1)
amended by
S.R. No.
100/2008
rule 7(2)(x).

- (1) The appeal shall be heard and determined by a Judge of the Court.

Rule 58.20(2)
amended by
S.R. No.
100/2008
rule 7(2)(x).

- (2) The appeal shall be heard forthwith or otherwise at such time and in such manner as a Judge of the Court directs.

58.21 Stay

Rule 58.21
amended by
S.R. No.
100/2008
rule 7(2)(y).

Except so far as a Judge of the Court otherwise orders, an appeal under this Part shall not operate as a stay of the order appealed from.

**PART 5—APPEALS UNDER SECTION 328 OF THE
CHILDREN, YOUTH AND FAMILIES ACT 2005**

Order 58 Pt 5
(Heading)
substituted by
S.R. No.
91/2007 rule 8,
amended by
S.R. No.
55/2010
rule 23(1).

58.22 Application of Part

This Part applies to an appeal to the Trial Division under section 328 of the **Children, Youth and Families Act 2005** from the Children's Court constituted by the President of that Court.

Rule 58.22
substituted by
S.R. No.
91/2007 rule 9,
amended by
S.R. No.
55/2010
rule 23(2).

58.23 Definitions

In this Part—

appeal means an appeal to which this Part applies;

appellant has a corresponding meaning.

58.24 Notice of appeal and undertaking to prosecute

A notice of appeal and undertaking to prosecute an appeal shall be in Form 58B.

58.25 Solicitor to notify that he or she acts

- (1) If a solicitor is engaged to act on behalf of an appellant or a respondent to an appeal, the solicitor shall without delay notify the Prothonotary in writing that he or she so acts and furnish an address for service.
- (2) If a solicitor ceases to act on behalf of an appellant or a respondent or the address for service is changed, the solicitor shall without delay so notify the Prothonotary in writing.

58.26 Prothonotary to fix hearing

- (1) The Prothonotary shall—
 - (a) fix the date and place for hearing of the appeal; and

r. 58.27

- (b) notify in writing each party and each solicitor who has given notice under Rule 58.25 of the date and place of hearing a reasonable time before the hearing.
- (2) Notification in writing under paragraph (1)(b) may be—
- (a) by pre-paid ordinary mail; or
- (b) where a solicitor for a party has facilities for the reception of documents in a document exchange, by delivering the notification into those facilities.

58.27 Abandonment of appeal

Rule 58.27(1)
revoked by
S.R. No.
55/2010
rule 24(1).

* * * * *

Rule 58.27(2)
amended by
S.R. No.
55/2010
rule 24(2).

- (2) A notice of abandonment of any appeal shall be in Form 58D.
- (3) When a notice of abandonment of appeal is filed, the Prothonotary shall make the order striking out the appeal.

Rule 58.28
revoked by
S.R. No.
132/2009
rule 21(1).

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Rule 58.29
amended by
S.R. Nos
91/2007
rule 10,
100/2008
rule 7(2)(z),
revoked by
S.R. No.
55/2010
rule 25.

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58.30 Application to set aside order striking out appeal for failure to appear

An application to set aside an order striking out an appeal because of the failure of the appellant to appear shall be in Form 58G.

58.31 Application for rehearing of appeal under section 328

Rule 58.31
(Heading)
amended by
S.R. No.
91/2007
rule 11(1).

- (1) An application for the rehearing of an appeal under section 328 of the **Children, Youth and Families Act 2005** which has been heard and determined in the appellant's absence shall be in Form 58H.
- (2) An application for leave to apply out of time for the rehearing of such an appeal shall be in Form 58J.

Rule 58.31(1)
amended by
S.R. No.
91/2007
rule 11(2).

PART 6—APPEALS UNDER SECTIONS 20 AND 21 OF THE CRIMES (FAMILY VIOLENCE) ACT 1987

58.32 Appeals to the Trial Division from the Children's Court

On an appeal to the Trial Division under section 20 or 21 of the **Crimes (Family Violence) Act 1987** from the Children's Court constituted by the President of that Court, Part 5 of this Order shall apply with any necessary modification.

r. 58.33

Order 58 Pt 7
(Heading and
rules 58.33–
58.41)
inserted by
S.R. No.
109/2009
rule 5.

**PART 7—APPEALS UNDER PART 7 OF THE CORONERS
ACT 2008**

Rule 58.33
inserted by
S.R. No.
109/2009
rule 5.

58.33 Definitions

In this Part—

determination includes a refusal, direction or
authorisation which is subject to appeal
under Part 7 of the **Coroners Act 2008**.

Rule 58.34
inserted by
S.R. No.
109/2009
rule 5.

58.34 Commencement of appeal

An appeal under Part 7 of the **Coroners Act 2008**
is brought by filing a notice of appeal in the Trial
Division.

Rule 58.35
inserted by
S.R. No.
109/2009
rule 5.

58.35 Notice of appeal

(1) A notice of appeal under this Part shall—

- (a) be in writing signed by the appellant or the
appellant's solicitor;
- (b) set out or state—
 - (i) the determination which is the subject
of appeal;
 - (ii) whether the appeal is from the whole or
part only of the determination and, if
so, what part;
 - (iii) the question of law upon which the
appeal is brought;
 - (iv) concisely the grounds of appeal;
 - (v) the order sought in place of the
determination from which the appeal is
brought;

- (c) where applicable, identify the person who was given leave to appear at the inquest as an interested party under section 56 of the **Coroners Act 2008**; and
 - (d) at its end, name all the persons on whom it is proposed to serve the notice of appeal.
- (2) As soon as practicable after filing the notice of appeal, the appellant shall—
- (a) deliver a copy to the registrar or other proper officer of the Coroners Court;
 - (b) unless the Court otherwise orders, serve a copy of the notice on all persons directly affected by the appeal.
- (3) The Court may give leave to amend the grounds of appeal or make any other order to ensure the proper determination of the appeal.

58.36 Appeal out time taken to be application for leave to appeal

An appeal brought out of time is taken to be an application for leave to appeal out of time under section 86 of the **Coroners Act 2008**.

Rule 58.36
inserted by
S.R. No.
109/2009
rule 5.

58.37 Appellant to file affidavit

- (1) The appellant shall file an affidavit stating the acts, facts, matters and circumstances relating to—
- (a) the determination under appeal;
 - (b) the grounds set out in the notice of appeal;
 - (c) if leave is sought under section 86 of the **Coroners Act 2008** to appeal out of time, the grounds on which the leave is sought.

Rule 58.37
inserted by
S.R. No.
109/2009
rule 5.

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- (2) There shall be included as exhibits to the affidavit—
- (a) a copy of the determination under appeal; and
 - (b) a copy of any reasons given for the determination—
- or their absence as exhibits shall be accounted for in the affidavit.
- (3) An affidavit under paragraph (1) shall be filed—
- (a) in the case of an appeal under section 79(1), 79(3), 81(1) or 85 of the **Coroners Act 2008**, within 24 hours after filing notice of appeal; or
 - (b) in the case of any other appeal under Part 7 of the **Coroners Act 2008**, within seven days after filing notice of appeal.

Rule 58.38
inserted by
S.R. No.
109/2009
rule 5.

58.38 Certain appeals do not require directions

An appeal under section 79(1), 79(3), 81(1) or 85 of the **Coroners Act 2008** shall be heard and determined by a Judge of the Court and Rule 58.39 does not apply to such an appeal.

Rule 58.39
inserted by
S.R. No.
109/2009
rule 5.

58.39 Directions

- (1) In the case of an appeal under Part 7 of the **Coroners Act 2008**, other than appeal under section 79(1), 79(3), 81(1) or 85, within seven days after filing notice of appeal, the appellant shall apply on summons to an Associate Judge—
- (a) for directions; and
 - (b) if necessary, for leave to appeal out of time in accordance with section 86 of the **Coroners Act 2008**.
- (2) The application is taken to be made when the summons is filed.
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- (3) Not less than 14 days before the day for hearing named in the summons, the appellant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 58.37 and any exhibit.
 - (4) Not less than five days before the day for hearing named in the summons the respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit.
 - (5) If at any time the Associate Judge is satisfied that the hearing of the summons should be expedited, the Associate Judge may of his or her own motion or on application bring the summons on for hearing.
 - (6) Subject to paragraphs (7) and (8), the Associate Judge shall give directions with respect to the appeal.
 - (7) If leave to appeal out of time is required—
 - (a) the Associate Judge shall determine whether leave to appeal is given; and
 - (b) if leave to appeal is refused, the Associate Judge shall dismiss the appeal.
 - (8) The Associate Judge may dismiss the appeal if satisfied that—
 - (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal may be brought;
 - (b) the appellant does not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
 - (c) the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court.
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Rule 58.40
inserted by
S.R. No.
109/2009
rule 5.

58.40 Expedition

- (1) Where it is satisfied that the delay caused by proceeding in accordance with this Part would or might entail injustice, the Court may make an order under this Part without notice to any party upon such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.
- (2) The Court may set aside any order made under paragraph (1) on the application of any person affected.
- (3) Where it is satisfied that the justice of the case requires, the Court may order that, subject to any order otherwise, an application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal and may give directions accordingly.

Rule 58.41
inserted by
S.R. No.
109/2009
rule 5.

58.41 Report from Coroners Court

The Court may call for a report from the Coroners Court and, if the contents of that report have first been made available to the parties to the appeal, the Court may act upon the report.

ORDER 59

JUDGMENTS AND ORDERS

59.01 General relief

The Court may, at any stage of a proceeding, on the application of any party, give such judgment or make such order as the case requires notwithstanding that the judgment or order had not been sought in the originating process or other document of the party in the proceeding.

59.02 Date of effect

- (1) A judgment given or order made by the Court shall bear the date of and shall take effect on and from the day it is given or made, unless the Court otherwise orders.
- (2) Any other judgment shall bear the date of and shall take effect on and from the day it is authenticated in accordance with Order 60.

59.03 Time for compliance

- (1) Subject to paragraph (3), a judgment or 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 a copy of the judgment or order on the person.
- (2) Where a judgment or order requires a person to do an act within a fixed time, the Court may, by order, fix another time.
- (3) Paragraph (1) does not apply to—
 - (a) so much of a judgment as requires a person to pay money otherwise than into court;
 - (b) a judgment for possession of land; or
 - (c) a judgment for the delivery of goods.

- (4) Where a judgment or order requires a person to do an act but does not fix a time within which the person is required to do the act, the Court may, by order, fix a time.
- (5) Where the Court fixes a time under paragraph (4), the Court may, by subsequent order, fix another time.

59.04 Statement of reasons for judgment

Where the Court gives any judgment or makes any order the reasons for which have been reduced to writing, it shall be sufficient to state the result orally without reasons, but the written reasons shall then and there be published by delivery to the Associate.

59.05 Notice of judgment to non-party

- (1) This Rule applies where the Court gives judgment or makes an order for—
 - (a) the administration of the estate of a deceased person;
 - (b) the execution of a trust; or
 - (c) the sale of property.
- (2) Where the judgment or order—
 - (a) affects the rights of any person not a party;
or
 - (b) directs the taking of an account or the making of an inquiry—the Court may by the judgment or order, or by subsequent order, direct that notice of the judgment be served on any person interested.
- (3) The Court may direct that notice under paragraph (2) be served personally or in some other manner, and, where it appears that service is impracticable, may dispense with service.

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- (4) A notice of judgment served under paragraph (2) shall be endorsed in accordance with Form 59A.
 - (5) Where under this Rule notice of a judgment is served on a person, or the Court dispenses with service of notice of judgment on a person—
 - (a) subject to paragraph (6), that person shall be bound by the judgment to the same extent as if the person were a party at the time the judgment or order was given or made, except where the judgment or order has been obtained by fraud or non-disclosure of material facts;
 - (b) that person may, after filing an appearance, attend on the taking of the account or the making of the inquiry under the judgment or order.
 - (6) The Court may set aside or vary the judgment or order on the application of any person referred to in paragraph (2).
 - (7) An application under paragraph (6) shall be made by summons, which shall be filed—
 - (a) if notice of the judgment or order has been served on the applicant, within 28 days after service;
 - (b) if the Court has dispensed with service of notice, within 28 days after the day the order dispensing with service was made.

59.06 Consent judgment or order by filing

- (1) Unless the Court constituted by a Judge of the Court otherwise orders, if all the parties to a proceeding are agreed upon the terms in which a judgment should be given, or an order made, in the proceeding, a judgment or order in those terms may be sought in accordance with this Rule.

Rule 59.06(1)
amended by
S.R. No.
100/2008
rule 7(3).

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- (2) A party may file with the Prothonotary a draft of the judgment or order sought in the terms agreed and expressed as being by consent, and signed by the solicitor on the record for each party.
 - (3) The Prothonotary shall, if satisfied that the judgment or order sought is one proper to be made under this Rule, draw up a form of the judgment or order in accordance with the draft and seal the form with the seal of the Court.
 - (4) A judgment or order in the terms of the form drawn up by the Prothonotary is authenticated when the Prothonotary seals the form with the seal of the Court.
 - (5) A judgment or order so authenticated shall be taken to be a judgment given or order made by the Court on the day the draft of the judgment or order was filed with the Prothonotary.
 - (6) The judgment or order—
 - (a) shall state that it is given or made under this Rule; and
 - (b) shall show as the date it was given or made the day on which the draft was filed with the Prothonotary.
 - (7) This Rule applies only—
 - (a) where a claim is made for the recovery of a debt, damages or any property, and judgment is sought for any of the following—
 - (i) the payment of a debt, where the amount of the debt is agreed;
 - (ii) the payment of damages, or the value of goods, where the amount of the damages or the value is agreed;
 - (iii) the payment of damages to be assessed, or the value of goods to be assessed;
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- (iv) the possession of land;
 - (v) the delivery of goods;
 - (vi) the delivery of goods or their value to be assessed;
 - (b) to an order sought for any of the following—
 - (i) the dismissal of a proceeding;
 - (ii) the dismissal of an application in a proceeding;
 - (iii) that a party be at liberty to discontinue or withdraw any part of a proceeding, or to discontinue a counterclaim or withdraw any part of it;
 - (iv) the stay of a proceeding, either conditionally or upon terms;
 - (v) to set aside or vary any judgment or order to which Rule 21.07, 24.06 or 46.08 applies;
 - (vi) that a person cease to be a party;
 - (vii) for or with respect to costs including the giving of security for costs;
 - (viii) to stay execution of a judgment or order, either conditionally or upon terms.
 - (8) This Rule shall not apply to any judgment or order in a proceeding—
 - (a) in which any party has no solicitor in the proceeding or is a person under disability;
 - (b) to which any Chapter of the Rules of the Supreme Court other than Chapter I applies.
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59.07 Consent to judgment or order by parties not in attendance

- (1) Where parties to a proceeding are agreed upon the terms in which a judgment should be given, or an order made, in the proceeding, the Court may, if satisfied that the parties who are to be bound consent, give judgment or make an order in those terms without requiring the attendance of the parties.
- (2) As evidence of the consent of a party not in attendance, the Court may accept a document or facsimile copy of a document signed by the solicitor on the record for that party.
- (3) Any document accepted under paragraph (2) shall be placed on the Court file.
- (4) Notwithstanding paragraph (1), the Court may require a party to attend upon the giving of a judgment or the making of an order in the proceeding.

Rule 59.08
inserted by
S.R. No.
100/2008
rule 8.

59.08 Powers of Prothonotary

- (1) Except where federal jurisdiction is being exercised, the Prothonotary, in addition to performing the duties and exercising the powers and authorities imposed or conferred upon the Prothonotary by the Chief Justice or the Rules of the Supreme Court, may in any proceeding—
 - (a) make an order for the payment or taxation and payment of costs, including any reserved costs; and
 - (b) by consent of the parties—
 - (i) give judgment for the recovery of any debt or damages together with interest or damages in the nature of interest;
 - (ii) strike out or dismiss any proceeding;

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- (iii) make an order for the payment out of court of money paid into court (other than money paid into court for the benefit of a person under disability);
 - (iv) make an order for the stay of execution.
- (2) Any person affected by any order made by the Prothonotary under paragraph (1)(a) may appeal to a Judge of the Court, and Rule 77.06 shall, with any necessary modification, apply as if the appeal were an appeal from an Associate Judge to a Judge of the Court.
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ORDER 60

**AUTHENTICATION AND FILING OF JUDGMENTS AND
ORDERS**

60.01 When authentication required

- (1) Unless the Court otherwise orders, a judgment or an order shall not be enforced under any of these Rules and an appeal which has been instituted from a judgment or an order shall not be heard until the judgment or order has been authenticated in accordance with this Order and filed.
- (2) Except where the Court otherwise orders—
 - (a) no judgment shall be entered or other step taken; and
 - (b) no judgment shall be given—

pursuant to an order or in consequence of the failure of a party to comply with an order unless beforehand the order is authenticated in accordance with this Order and filed.

Rule 60.02
amended by
S.R. No.
100/2008
rule 9(1)(a),
substituted by
S.R. No.
22/2010 rule 5.

60.02 Mode of authentication

- (1) Subject to paragraph (4), a judgment or order is authenticated when a form of the judgment or a form of the order, as the case requires—
 - (a) drawn up and settled in accordance with this Order, is sealed by the Prothonotary with the seal of the Court; or
 - (b) is signed by the Judge of the Court or the Associate Judge giving the judgment or making the order.
- (2) A Judge of the Court or an Associate Judge who gives a judgment or makes an order may direct that the form of judgment or form of order be drawn up by a party and signed by the Judge of the Court or the Associate Judge.

- (3) Where a Judge of the Court or an Associate Judge is unable for sufficient cause to sign a judgment or an order, it may be signed by another Judge of the Court or Associate Judge, as the case requires.
- (4) A judgment or an order under Rule 59.06 is authenticated as provided in that Rule.

60.03 Drawing up of judgment or order

- (1) The Prothonotary shall, upon the request of a party, draw up and settle the form of a judgment given or an order.
- (1.1) The form of a judgment or order under Rule 59.06 shall be drawn up by the Prothonotary as provided in that Rule.
- (2) The form of any other judgment shall be drawn up by the party requiring it to be authenticated and lodged by that party with the Prothonotary to be settled.
- (3) Notwithstanding paragraph (1), a party may, by leave of the Judge of the Court or the Associate Judge who gave the judgment or made the order, lodge with the Prothonotary a draft of the judgment or order in a particular form, and where a draft is so lodged the Prothonotary shall settle the judgment or order in accordance with that form.

Rule 60.03(3)
amended by
S.R. No.
100/2008
rule 9(1)(b).

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Rule 60.04
amended by
S.R. No.
100/2008
rule 9(1)(c)(d),
revoked by
S.R. No.
22/2010 rule 6.

60.05 Recitals in judgments and orders

- (1) A judgment or order shall not include by way of recital any matter not provided for in paragraph (2).
- (2) A judgment or order shall by way of recital specify—
 - (a) the originating or other process upon which the judgment or order was obtained;
 - (b) whether any party who was entitled to attend on the hearing of the application to which the judgment or order relates did or did not attend, and, if that party did, whether in person or by counsel or solicitor;
 - (c) any finding by the Court of fact essential to ground jurisdiction;
 - (d) the terms of any undertaking given by a party;
 - (e) such other matters as the Court may direct.
- (3) Where the Court so orders or any party so requires, a judgment or order shall by way of annexure identify the evidence before the Court.

60.06 Drawing up and settling

- (1) Where the Prothonotary is requested to draw up and settle the form of a judgment or order, the Prothonotary may appoint a time and place for the attendance of any party to settle the draft.
- (2) Where a draft form of a judgment or order is lodged by a party with the Prothonotary to be settled, the Prothonotary may—
 - (a) settle the draft without an appointment for the attendance of any party; or
 - (b) appoint a time and place for the attendance of any party to settle the draft.

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- (3) Where the Prothonotary makes an appointment to settle the draft of a judgment or order, the Prothonotary shall give notice of the appointment to the party requesting that the form of the judgment or order be drawn up and settled or to the party lodging a draft form of the judgment or order to be settled, as the case may be.
 - (4) That party shall serve notice of the appointment on the other party, unless the Prothonotary otherwise directs.
 - (5) The notice shall be served not less than two days before the appointed day.
 - (6) On the appointment to settle the Prothonotary may proceed in the absence of any party.
 - (7) The Prothonotary shall, on or after the appointment, settle the draft.

60.07 Copy of judgment or order

The Prothonotary, on the request of a party, shall seal a reasonable number of copies of a judgment or order.

60.08 Form of judgment or order

The forms of judgments and orders in Forms 60A to 60L shall, where appropriate, be used.

60.09 Interpretation

In this Order, *party* includes a person having a sufficient interest.

ORDER 61

JUDGMENT DEBT INSTALMENT ORDERS

61.01 Definitions

- (1) In this Order, unless the context or subject matter otherwise requires—

judgment includes a judgment or order for the payment of money into court;

the Act means the **Judgment Debt Recovery Act 1984**;

references to an order that a judgment debt be paid by instalments include references to an order that any part of the judgment debt be so paid.

- (2) An Associate Judge shall be the proper officer of the Court for the purpose of the Act.

Rule 61.01(2)
amended by
S.R. No.
100/2008
rule 9(1)(e).

61.02 Application under section 6 or 8

- (1) An application to an Associate Judge under section 6 of the Act for—
- (a) an order that a judgment debt be paid by instalments shall be in Form 61A;
 - (b) an order in substitution for an order made under section 5 of the Act shall be in Form 61B.
- (2) An application to the Court under section 8 of the Act for the variation or cancellation of an order that a judgment debt be paid by instalments shall be in Form 61C.
- (3) Where an application is made under section 6 or section 8 of the Act by a judgment debtor, the judgment debtor shall—

Rule 61.02(1)
amended by
S.R. No.
100/2008
rule 9(1)(f)(i).

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- (a) where the judgment debtor is—
- (i) a natural person, file an affidavit of his or her financial situation which gives the information required by Form 72C;
 - (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.
- (3.1) Where an application is made under section 6 of the Act by a judgment creditor, the judgment creditor shall—
- (a) file an affidavit stating the facts on which the application is based; and
 - (b) serve a copy of the affidavit on the judgment debtor.
- (4) A copy of the affidavit in support of an application made under section 8 of the Act by a judgment creditor shall be served on the judgment debtor at the time of service of a copy of the application.
- (5) An order under section 6 or section 8 of the Act shall be in Form 61D.
- (6) A notice by an Associate Judge under section 6(4) of the Act shall be in Form 61E.
- (7) A notice of objection by a judgment creditor or judgment debtor under section 6(5) of the Act—
- (a) shall be in Form 61F; and
 - (b) shall be filed within 14 days after the judgment creditor or judgment debtor receives notice from an Associate Judge under section 6(4) of the Act.
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Rule 61.02(6)
amended by
S.R. No.
100/2008
rule 9(1)(f)(i).

Rule 61.02
(7)(b)
amended by
S.R. No.
100/2008
rule 9(1)(f)(i).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 61

r. 61.03

Rule 61.02(8)
amended by
S.R. No.
100/2008 rule
9(1)(f).

(8) Where a notice of objection under section 6(5) of the Act is filed, an Associate Judge shall set the matter down for hearing before a Judge of the Court.

Rule 61.02(9)
amended by
S.R. No.
100/2008
rule 9(1)(f)(i).

(9) A notice by an Associate Judge under section 6(6) of the Act shall be in Form 61G.

(10) A notice by the Court under section 6(7) of the Act shall be in Form 61H.

61.03 Instalment agreement under section 7

(1) An instalment agreement entered into between a judgment creditor and a judgment debtor under section 7(1) of the Act—

(a) shall be in Form 61J; and

(b) shall be filed with the Associate to an Associate Judge.

Rule 61.03
(1)(b)
amended by
S.R. No.
100/2008
rule 9(1)(g).

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

(3) An affidavit or affidavits verifying compliance with paragraph (2) shall be filed with the Associate to an Associate Judge.

Rule 61.03(3)
amended by
S.R. No.
100/2008
rule 9(1)(g).

(4) An order under section 7(3) of the Act for the payment of a judgment debt by instalments shall be in Form 61K.

(5) A notice by an Associate Judge under section 7(4) of the Act shall be in Form 61L.

Rule 61.03(5)
amended by
S.R. No.
100/2008
rule 9(1)(g).

61.04 Summons for oral examination of judgment debtor

- (1) A summons under section 14(1) or 17(1) of the Act requiring a judgment debtor to attend before the Court to be orally examined shall be in Form 61M.
- (2) Where the judgment debtor is a corporation the summons may require an officer of the corporation to attend to be orally examined.
- (3) An application to an Associate Judge for the issue of a summons under section 17(1) of the Act shall be supported by affidavit evidence of—

Rule 61.04(3)
amended by
S.R. No.
100/2008
rule 9(1)(g).

- (a) the making of the instalment order; and
- (b) default in payment of any instalment under that order.

- (4) A warrant under section 14(2) or section 17(2) of the Act for the apprehension of a judgment debtor shall be in Form 61N.

- (5) An application to the Court or an Associate Judge for the issue of a warrant for the apprehension of a judgment debtor shall be supported by affidavit evidence of—

Rule 61.04(5)
amended by
S.R. No.
100/2008
rule 9(1)(g).

- (a) the making of an application for the making or variation or cancellation of an instalment order;
- (b) the service of notice of any application of the kind referred to in paragraph (a), where service is necessary;
- (c) the service of the summons requiring the judgment debtor to attend before the Court and, where necessary, of the judgment or a copy;
- (d) the failure of the judgment debtor to attend as required by that summons; and

(e) the usual or last known place of residence or business of the judgment debtor or, where the judgment debtor is a corporation, its last known registered office.

(6) A notice under section 14(6) or 17(5) of the Act shall be in Form 61P.

61.05 Notice of instalment order confirmed, varied or cancelled

A notice under section 18(2) of the Act shall be in Form 61Q.

61.06 Order for imprisonment

An order for imprisonment made under section 19(1) of the Act shall specify the instalments in the payment of which default has been made.

61.07 Certificate of payment

Rule 61.07(1)
amended by
S.R. No.
100/2008
rule 9(1)(g).

- (1) An application to an Associate Judge for a certificate of payment under section 19(3) of the Act shall be supported by affidavit evidence of—
 - (a) the making of an order for imprisonment;
and
 - (b) the payment of the instalments specified in that order.
- (2) A certificate of payment issued under section 19(3) of the Act shall be in Form 61R.

61.08 Notices

Where under the Act the Court or the proper officer of the Court is required to cause the judgment debtor or judgment creditor to be notified of any matter, the notification may be effected by the Court or the proper officer of the Court causing notice in writing of the matter to be—

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- (a) served personally on the judgment debtor or judgment creditor;
 - (b) left at the usual or last known place of residence or of business of the judgment debtor or judgment creditor with a person apparently over the age of 16 years and apparently residing there or, in the case of a place of business, apparently in charge of or employed at that place; or
 - (c) sent by pre-paid post addressed to the judgment debtor or 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 judgment creditor, as the case requires.
-

ORDER 62

SECURITY FOR COSTS

62.01 Definitions

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

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

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

62.02 When security for costs may be ordered

(1) Where—

- (a) the plaintiff is ordinarily resident out of Victoria;
- (b) the 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 Victoria 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 paragraph (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, her or its address after the commencement of the proceeding in order to avoid the consequences of the proceeding;

(f) under any Act 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 that defendant be stayed until the security is given.

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

62.03 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.

62.04 Failure to give security

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

62.05 Variation or setting aside

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

ORDER 63

COSTS

PART 1—PRELIMINARY

63.01 Definitions and application

- (1) In this Order, unless the context or subject matter otherwise requires—

bill means bill of costs, account, or statement of charges;

costs includes disbursements;

order includes judgment;

party includes—

- (a) a person not a party to a proceeding by or to whom costs in respect of the proceeding are payable by or under any Act or these Rules or any order of the Court;
- (b) in the case of a proceeding in another court or before a tribunal or an arbitration, a person whether or not a party to that proceeding or arbitration by or to whom costs in respect of the proceeding or arbitration are payable where by or under any Act or these Rules or any order of the Court the costs are to be taxed in the Court or the Costs Court;

taxation or *taxation of costs* means the assessment, settling, taxation or review of costs;

Rule 63.01(1)
def. of *party*
amended by
S.R. No.
97/2009
rule 12(1)(b).

Rule 63.01(1)
def. of
taxation or
taxation of
costs inserted
by S.R. No.
97/2009
rule 12(1)(a).

taxed costs means costs taxed in accordance with this Order;

trustee includes an executor of a will and an administrator of the estate of a deceased person.

(2) In this Order, unless the context or subject matter otherwise requires—

- (a) references to a Costs Judge or an Associate Judge who is a Costs Judge include references to another officer of the Court conducting a taxation of costs under this Order;

Rule 63.01
(2)(a)
amended by
S.R. No.
100/2008
rule 9(1)(h),
substituted by
S.R. No.
97/2009
rule 12(2)(a).

- (b) references to a fund, being a fund out of which costs are to be paid, or being a fund held by a trustee, include references to any property held for the benefit of any person or class of persons (including the assets of a company in liquidation), or held on trust for any purpose;

- (c) references to a fund held by a trustee include references to any property to which the person is entitled as trustee, whether alone or together with any other person and whether the property is for the time being in the possession of the trustee or not.

(3) This Order applies—

- (a) to costs payable or to be taxed under these Rules or any order of the Court; and
(b) to costs to be taxed in the Court or the Costs Court under any Act.

Rule 63.01
(3)(b)
amended by
S.R. No.
97/2009
rule 12(2)(b).

63.02 General powers of Court

The power and discretion of the Court as to costs under section 24 of the Act shall be exercised subject to and in accordance with this Order.

63.03 Time for costs order and payment

- (1) The Court may in any proceeding exercise its power and discretion as to costs at any stage of the proceeding or after the conclusion of the proceeding.
- (2) Costs which a party is required to pay under any of these Rules or an order of the Court shall, unless the Court otherwise orders, be paid forthwith.
- (2.1) Costs which a party is required to pay under an order of the Costs Court shall, unless the Costs Court otherwise orders, be paid forthwith.
- (3) Where the Court makes an interlocutory order for costs, the Court may then or thereafter order that if the party liable to pay the costs fails to do so—
 - (a) if that party is the plaintiff, the proceeding shall be stayed or dismissed;
 - (b) if that party is a defendant, the defendant's defence shall be struck out.
- (4) In paragraph (3)—

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

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

Rule 63.03
(2.1)
inserted by
S.R. No.
97/2009
rule 13.

63.04 Costs of question or part of proceeding

- (1) The Court may make an order for costs in relation to a particular question in or a particular part of a proceeding.

- (2) Where the Court makes an order under paragraph (1), the Court shall by order fix the proportion of the total costs of the proceeding which is attributable to the particular question in or the particular part of the proceeding.

63.05 By whom costs to be taxed

Unless the Court otherwise orders, costs taxed in accordance with this Order shall be taxed—

- (a) in the Costs Court by a Costs Judge; or
- (b) if a Costs Judge so directs, by a Costs Registrar, a Deputy Costs Registrar, the Prothonotary or a Deputy Prothonotary, as the case requires.

Rule 63.05
amended by
S.R. No.
100/2008
rule 9(1)(i),
substituted by
S.R. No.
97/2009
rule 14.

63.06 Officers of Court to assist each other

A Costs Judge, a Costs Registrar, a Deputy Costs Registrar, the Prothonotary and a Deputy Prothonotary—

- (a) shall assist each other in the taxation of costs under these Rules; and
- (b) subject to Rule 63.05, may tax or assist in the taxation of a bill which has been referred by another of them for taxation.

Rule 63.06
amended by
S.R. No.
100/2008
rule 9(1)(j),
substituted by
S.R. No.
97/2009
rule 14.

63.07 Taxed or other costs provision

- (1) Subject to this Order, where by or under these Rules or any order of the Court costs are to be paid to a party, that party shall be entitled to taxed costs.
- (2) Where the Court orders that costs be paid to a party, the Court may then or thereafter order that as to the whole or any part of the costs specified in the order, instead of taxed costs, that party shall be entitled to—
 - (a) a portion specified in the order of taxed costs;

- (b) taxed costs from or up to a stage of the proceeding specified in the order;
- (c) a gross sum specified in the order instead of taxed costs;
- (d) a sum in respect of costs to be determined in such manner as the Court directs.

Rule 63.08
amended by
S.R. No.
100/2008
rule 9(1)(k),
substituted by
S.R. No.
97/2009
rule 15.

63.08 Default judgment

- (1) Where judgment is entered for costs under Rule 21.03(2), unless the Court otherwise orders, the costs shall not be taxed but shall be fixed by a Costs Registrar, a Deputy Costs Registrar or the Prothonotary in accordance with the scale in Appendix A.
- (2) Where costs are fixed under paragraph (1), the party by whom or the party to whom the costs are payable may appeal to the Costs Court constituted by a Costs Judge in respect of the amount so fixed on the ground that the Costs Registrar, Deputy Costs Registrar or the Prothonotary, as the case requires, did not fix the proper amount.
- (3) Rule 77.06, with any necessary modification, applies to an appeal under paragraph (2).

63.09 Costs in other court or tribunal

Where proceedings in another court or before a tribunal are remitted or transferred to or removed into the Court or an appeal to the Court is brought from another court or a tribunal, and the Court makes an order as to the costs of proceedings in that court or before that tribunal, the Court may—

- (a) specify the amount of the costs to be allowed;
- (b) order that the costs be taxed in the Costs Court in accordance with this Order; or

Rule 63.09(b)
amended by
S.R. No.
97/2009
rule 16.

- (c) order that the amount of the costs be determined in the court or tribunal in such manner it directs.

63.10 No order for taxation required

Where—

- (a) the Court gives judgment, or makes an order, for costs;
- (b) a proceeding is dismissed with costs;
- (c) an application in a proceeding is refused with costs;
- (d) a party is otherwise liable under these Rules to pay the costs of another party;
- (e) a party may tax costs under any of these Rules;
- (f) parties have agreed in writing that costs payable by one party to another may be taxed, and the agreement is filed—

the costs may be taxed without an order for taxation.

63.11 Enforcement of order of Costs Court

- (1) If costs are taxed otherwise than under a judgment or order for costs, an order of the Costs Court for payment of any amount found to be due may be enforced in the same manner as a judgment for the payment of money.
- (2) Paragraph (1) applies to an interim order for payment of any item in a bill of costs made under Rule 63.56.

Rule 63.11
substituted by
S.R. No.
97/2009
rule 17.

63.12 Costs in account

Where the Court orders that an account be taken and the account consists in part of costs, the Court may, then or thereafter, direct that those costs be fixed, or be taxed in accordance with this Order.

PART 2—ENTITLEMENT TO COSTS

63.13 Order for payment

Subject to these Rules, a party to a proceeding shall not be entitled to recover any costs of the proceeding from any other party except by order of the Court.

63.14 Extension or abridgement of time

Where a party applies for an extension or abridgement of any time fixed by these Rules or by any order fixing, extending or abridging time, that party shall, unless the Court otherwise orders, pay the costs of and occasioned by the application.

63.15 Discontinuance or withdrawal

Unless the Court otherwise orders, a party who discontinues or withdraws part of a proceeding, counterclaim or claim by third party notice shall pay the costs of the party to whom the discontinuance or withdrawal relates to the time of the discontinuance or withdrawal.

63.16 Offer of compromise

Where an offer of compromise is served and the offer has not been accepted at the time of verdict or judgment, liability for costs shall be determined in accordance with Rule 26.08.

63.16.1 Failure to make discovery or answer interrogatories

A party on whom a notice is served in accordance with Rule 29.12.1 or 30.09.1 shall pay the costs of the notice unless the Court otherwise orders.

63.17 Amendment

- (1) A party who amends a pleading without the leave of the Court shall, unless the Court otherwise orders, pay the costs of and occasioned by the amendment.

- (2) A party who amends a pleading or other document by leave shall, unless the Court otherwise orders, pay the costs of and occasioned by the amendment.

63.18 Non-admission of fact or document

Where a party serves a notice—

- (a) under Rule 35.03(2) disputing a fact, and afterwards that fact is proved in the proceeding;
- (b) under Rule 35.05(2) disputing the authenticity of a document, and afterwards the authenticity of that document is proved in the proceeding—

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

63.19 Interlocutory injunction

Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification, an order as to the costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

63.20 Interlocutory application

Each party shall bear that party's own costs of an interlocutory or other application in a proceeding, whether made on or without notice, unless the Court otherwise orders.

63.21 Inquiry as to ownership of property

The costs of an inquiry to ascertain the person entitled to any legacy, money, share or other property shall be paid out of the property, unless the Court otherwise orders.

63.22 Costs reserved

Rule 63.22(1)
amended by
S.R. No.
97/2009
rule 18(1).

- (1) Where by order of the Court the costs of any interlocutory or other application or of any step in a proceeding are reserved, and the Court does not thereafter direct by and to whom those costs are to be paid, then, unless the Court otherwise orders, the Costs Court may by order so direct.
- (2) Paragraph (1) shall not apply where after the order that costs be reserved is made the Court determines that no further order be made with respect to those costs.

Rule 63.22.1
amended by
S.R. No.
97/2009
rule 18(2).

63.22.1 Evidence transcript costs

If any evidence in a proceeding is recorded and transcribed, and the Court does not direct by and to whom the costs of the recording and transcribing are to be paid, then, unless the Court otherwise orders, the Costs Court may by order so direct.

63.23 Costs liability of lawyer

- (1) Where a solicitor for a party, whether personally or through a servant or agent, has caused costs to be incurred improperly or without reasonable cause or to be wasted by a failure to act with reasonable competence and expedition, the Court may make an order that—
 - (a) all or any of the costs between the solicitor and the client be disallowed or that the solicitor repay to the client the whole or part of any money paid on account of costs;
 - (b) the solicitor pay to the solicitor's client all or any of the costs which the client has been ordered to pay to any party;
 - (c) the solicitor pay all or any of the costs payable by any party other than the client.

- (2) Without limiting paragraph (1), a solicitor fails to act with reasonable competence and expedition for the purpose of that paragraph where any application in or trial of a proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, by reason of the failure of the solicitor to—
- (a) attend in person or by a proper representative;
 - (b) file any document which ought to have been filed;
 - (c) lodge or deliver any document for the use of the Court which ought to have been lodged or delivered;
 - (d) be prepared with any proper evidence or account; or
 - (e) otherwise proceed.
- (3) The Court shall not make an order under paragraph (1) without giving the solicitor a reasonable opportunity to be heard.
- (4) The Court may, before making an order under paragraph (1), refer the matter to a Costs Judge or another Associate Judge for inquiry and report.

Rule 63.23(4)
amended by
S.R. Nos
100/2008
rule 9(1)(l),
97/2009
rule 19.

* * * * *

- (6) The Court may order that notice of any proceeding or order against a solicitor under this Rule be given to the client in such manner as the Court directs.
- (7) This Rule shall, with any necessary modification, apply to a barrister as it applies to a solicitor.

63.24 Money claim in wrong court

- (1) Subject to paragraph (1.1), where in a proceeding for debt or damages (other than a proceeding in which the jurisdiction of the County Court is unlimited) the plaintiff recovers by judgment or otherwise an amount (exclusive of costs) not exceeding one-half of the amount to which the jurisdiction of the County Court is limited, the plaintiff shall, unless the Court otherwise orders, be entitled only to the costs to which the plaintiff would have been entitled if the plaintiff had brought the proceeding in the County Court less an amount equal to the additional costs properly incurred by the defendant by reason of the proceeding having been brought in the Supreme Court instead of the County Court, but shall not be required to pay to the defendant any amount by which the additional costs exceed the costs payable to the plaintiff.
- (1.1) Where in a proceeding for libel or slander the plaintiff recovers by judgment or otherwise an amount (exclusive of costs) not exceeding \$50 000, the plaintiff shall, unless the Court otherwise orders, be entitled only to the costs to which the plaintiff would have been entitled if the plaintiff had brought the proceeding in the County Court less an amount equal to the additional costs properly incurred by the defendant by reason of the proceeding having been brought in the Supreme Court instead of the County Court, but shall not be required to pay the defendant any amount by which the additional costs exceed the costs payable to the plaintiff.

* * * * *

- (3) Paragraph (1) does not apply where a claim of the defendant against the plaintiff for the recovery of a debt or damages is set off against the claim of the plaintiff under Rule 13.14 and the amount for which the plaintiff would be entitled to judgment exceeds one-half of the amount to which the jurisdiction of the County Court is limited.
- (4) Paragraphs (1) and (1.1) do not apply to a proceeding commenced in another court and transferred to the Court under the **Courts (Case Transfer) Act 1991**.

63.25 Other claim in wrong court

Rule 63.24 shall apply, with any necessary modification—

- (a) where the plaintiff obtains by judgment or by the acceptance in accordance with Rule 26.03(4) of an offer of compromise relief other than for the recovery of a debt or damages; and
- (b) any amount in dispute in the proceeding or the value of any property to which the relief relates does not exceed one-half of the amount or value to which the jurisdiction of the County Court is limited.

63.26 Trustee or mortgagee

Unless the Court otherwise orders, a party who sues or is sued as trustee or mortgagee shall be entitled to the costs of the proceeding out of the fund held by the trustee or out of the mortgaged property in so far as the costs are not paid by any other person.

Rule 63.26
amended by
S.R. No.
97/2009
rule 40.

PART 3—COSTS OF PARTY IN A PROCEEDING

63.27 Application

This Part applies to costs in a proceeding which by or under any Act or these Rules or any order of the Court are to be paid to a party to the proceeding either by another party or out of a fund.

63.28 Bases of taxation

Subject to this Part, costs in a proceeding which are to be taxed shall be taxed on—

- (a) a party and party basis;
- (b) a solicitor and client basis;
- (c) an indemnity basis; or
- (d) such other basis as the Court may direct.

63.29 Party and party basis

On a taxation on a party and party basis all costs necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed shall be allowed.

63.30 Solicitor and client basis

On a taxation on a solicitor and client basis all costs reasonably incurred and of reasonable amount shall be allowed.

63.30.1 Indemnity basis

- (1) Subject to paragraph (2), on a taxation on an indemnity basis all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.
- (2) Any doubt which the Costs Court may have as to whether the costs were unreasonably incurred or were unreasonable in amount shall be resolved in favour of the party to whom the costs are payable.

Rule 63.30.1
(2)
amended by
S.R. No.
97/2009
rule 20(1).

63.31 General basis

Except as provided by these Rules or any order of the Court, including the Costs Court, costs shall be taxed on a party and party basis.

Rule 63.31
amended by
S.R. No.
97/2009
rule 20(2).

63.32 Where solicitor and client basis applicable

- (1) The Court may order that costs be taxed on a solicitor and client basis.
- (2) Without limiting paragraph (1), the Court may order that costs be taxed on a solicitor and client basis where the Court makes an order for—
 - (a) the payment to a party of costs out of a fund;
 - (b) the payment of costs to a party who sues or is sued as trustee.

63.33 Party as trustee

Where a party who sues or is sued as trustee is entitled to be paid costs out of any fund which the party holds in that capacity, the costs shall, unless the Court otherwise orders, be taxed on a solicitor and client basis.

63.34 Charges of solicitor

- (1) Subject to paragraph (3), the solicitor for the party to whom costs are payable shall be entitled to charge and be allowed the fees set forth in Appendix A.
- (2) Witnesses' expenses and interpreters' allowances shall be fixed in accordance with the scale in Appendix B.
- (3) The Court may, on special grounds arising out of the nature and importance or the difficulty or urgency of the case, allow an increase not exceeding 30 per cent of the solicitor's charges allowed on the taxation of costs with respect to—
 - (a) the proceeding generally; or

r. 63.35

(b) to any application, step or other matter in the proceeding.

Rule 63.34(4)
amended by
S.R. No.
97/2009
rule 20(3).

(4) Where the Court so directs, the Costs Court shall have the same authority as the Court under paragraph (3) to allow an increase in the fees set forth in Appendix A.

Pt 4 (Heading
and ss 63.35,
63.36)
amended by
S.R. No.
100/2008
rule 9(1)(m),
substituted by
S.R. No.
97/2009
rule 21.

PART 4—COSTS COURT

Rule 63.35
substituted by
S.R. No.
97/2009
rule 21.

63.35 Powers of Costs Court

On a taxation of costs under this Order, in addition to any powers conferred by any Act, the Costs Court has the same powers which an Associate Judge has on the hearing of an application in a proceeding.

Rule 63.36
substituted by
S.R. No.
97/2009
rule 21.

63.36 Costs of taxation

- (1) Costs to be taxed under these Rules shall include the costs of the taxation.
- (2) Costs to be taxed under a judgment or order shall, unless the judgment or order otherwise provides, include the costs of the taxation.
- (3) After service of a summons under Rule 63.38 for the taxation of costs—
 - (a) the party entitled to costs and the party liable for them may serve on one another an offer of compromise in respect of the amount of the costs to be taxed; and

- (b) Order 26, with any necessary modification, shall apply as if in Rule 26.03(3) and (4) "seven days" were substituted for "14 days" and as if the order of the Costs Court on the taxation were a verdict or judgment at trial.
- (4) Subject to this Rule and to any order of the Court, the Costs Court may make orders for the costs of a taxation.
- (5) Paragraphs (1) to (4) apply subject to any Act and to Rule 63.85.

PART 5—PROCEDURE ON PARTY AND PARTY TAXATION

63.37 Application

- (1) This Part applies to—
 - (a) the costs of any proceeding in the Court, including—
 - (i) the costs of an appeal to the Court of Appeal;
 - (ii) in the case of an appeal to the Court from another court or from a tribunal, the costs of proceedings in that court or before that tribunal;
 - (iii) in the case of a proceeding in another court or before a tribunal which is remitted or transferred to or removed into the Court, the costs of the whole proceeding, both before and after the remission, transfer or removal, which by or under these Rules or an order of the Court are to be paid to any party by another party or out of a fund;
 - (b) the costs of an arbitration which by or under any Act are to be taxed in the Court, including the Costs Court.

Rule 63.37
(1)(b)
amended by
S.R. No.
97/2009
rule 22.

- (2) Subject to Part 6, this Part applies to the taxation of costs payable to a solicitor by the solicitor's client.

Rule 63.38
substituted by
S.R. No.
97/2009
rule 23.

63.38 Summons for taxation

- (1) An application to the Costs Court for costs to be taxed shall be made by summons filed with the Prothonotary.
- (2) If the taxation is made pursuant to an order or judgment, a copy of the order or judgment shall be filed with the summons.
- (3) The summons shall be in Form 63A.
- (4) Unless the Costs Court otherwise directs, the summons shall be served not less than 14 days before the day for hearing named in the summons.
- (5) Subject to paragraphs (1) to (4), Order 46, with any necessary modification, applies to the application.
- (6) This Rule applies whether the proceeding to which the application relates arose in the Court or in another court or tribunal.

63.39 Filing of bill

- (1) A party who applies for costs to be taxed shall file with the summons a bill in respect of the costs.
- (2) The bill of costs shall be prepared in accordance with Rule 63.42.
- (3) The Costs Court may direct the party to lodge before the day for hearing named in the summons any documents in the party's possession, custody or power that will be required for the purpose of evidence on the taxation.

Rule 63.39(3)
amended by
S.R. No.
97/2009
rule 24(1).

63.40 Service of bill

The Costs Court shall not tax costs unless the party entitled to costs serves a copy of the bill of costs on the party liable for the costs before or at the time of service of the summons under Rule 63.38.

Rule 63.40
amended by
S.R. No.
97/2009
rule 24(2).

63.41 Defendant not appearing

Service of a summons and copy bill of costs on a defendant who has not filed an appearance shall not be necessary.

63.42 Content of bill of costs

- (1) In a bill of costs for taxation under this Order charges and disbursements shall be set out in separate columns, and the amounts in each column shall be totalled at the foot of each page and the total carried forward to the top of the next page.
- (2) The bill shall contain—
 - (a) items numbered in chronological order describing briefly the work done by the solicitor for the party entitled to costs, and stating beside each item the amount claimed for the work and the amount of any disbursement made;
 - (b) at the conclusion of the chronological description of the work done, a description, having regard to the matters referred to in Rule 63.48, of work done justifying an allowance under Appendix A of the amount claimed beside that item.
- (3) For the purpose of paragraph (2)(a) work done in Victoria by a servant or agent of the solicitor shall be taken to have been done by the solicitor.

- (4) Where work for which costs are claimed was done by a clerk of the solicitor and that fact is relevant to the amount of costs allowable for the work, the name and position of the clerk shall be stated in the bill.

63.43 Disbursement or fee not paid

- (1) A disbursement may be included in a bill notwithstanding that it has not been paid if the bill states that fact.
- (2) On the taxation, the disbursement may be allowed if—
- (a) it is paid before taxation; or
 - (b) an undertaking to the Court, satisfactory to the Costs Court, is given that it will be paid within a time specified in the undertaking.

Rule 63.43
(2)(b)
amended by
S.R. No.
97/2009
rule 25.

63.44 Charge of lawyer out of Victoria

Where a bill includes a charge for work done by a lawyer practising in a place out of Victoria—

- (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 lawyer practises.

Rule 63.45
amended by
S.R. No.
97/2009
rule 26(1).

63.45 Amendment of bill

The Court or the Costs Court may at any stage—

- (a) give leave to a party to amend or withdraw a bill;
- (b) order that a party file another bill.

63.46 Agreement as to part of bill

Where the parties agree in writing that part of the costs to be taxed may be allowed at a specified amount and the agreement is subscribed to the bill or filed—

(a) Rule 63.42 shall not apply to what is agreed unless the Costs Court otherwise directs;

Rule 63.46(a)
amended by
S.R. No.
97/2009
rule 26(2).

(b) Rules 63.44 and 63.45 shall apply to the agreement as they apply to a bill.

63.47 Objection to bill

(1) A party on whom a summons under Rule 63.38 and a bill is served may by notice object to any item in the bill.

(2) The notice shall—

(a) state by a list each item in the bill to which the party objects; and

(b) shall also state specifically and concisely the grounds of objection to each item.

(3) The notice shall be filed with the Costs Court and served on the party filing the bill and on any other party to whom the summons for the taxation is addressed not less than seven days before the day for hearing named in the summons.

Rule 63.47(3)
amended by
S.R. No.
97/2009
rule 27.

63.48 Discretionary costs

(1) Except where these Rules or any order of the Court otherwise provides, the fees and allowances which are discretionary that are referred to in Appendix A shall be allowed at the discretion of the Costs Court.

Rule 63.48(1)
amended by
S.R. No.
97/2009
rule 28.

r. 63.49

Rule 63.48(2)
amended by
S.R. No.
97/2009
rule 28.

- (2) In exercising the discretion under paragraph (1) the Costs Court shall have regard to—
- (a) the complexity of the item or of the proceeding in which it arose and the difficulty or novelty of the questions involved;
 - (b) the nature and importance of the proceeding;
 - (c) the skill, specialised knowledge and responsibility involved;
 - (d) the number and importance of the documents prepared or perused, without regard to length;
 - (e) the place where and the circumstances in which the business involved was transacted;
 - (f) the labour involved and the time spent by the solicitor or counsel;
 - (g) the amount or value of any money or property involved;
 - (h) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same proceeding;
 - (i) any other relevant circumstances.

Rule 63.49
amended by
S.R. No.
97/2009
rule 29.

63.49 Taxation where no objection

Where no objection to a bill is made in accordance with Rule 63.47, the Costs Court may allow or disallow the amount of the costs in the bill in whole or in part.

63.50 Attendance of parties

Rule 63.50(1)
amended by
S.R. No.
97/2009
rule 30.

- (1) The Costs Court may give directions with respect to—
- (a) the parties to whom a summons under Rule 63.38 shall be addressed;

- (b) the parties who should attend or be represented on any taxation.
- (2) The Costs Court may disallow the costs of attendance on a taxation of any party whose attendance is unnecessary.
- (3) Notwithstanding paragraphs (1) and (2), any party interested may attend a taxation before the Costs Court.

Rule 63.50(2)
amended by
S.R. No.
97/2009
rule 30.

Rule 63.50(3)
amended by
S.R. No.
97/2009
rule 30.

63.51 Reference to Judge of the Court

The Costs Court may refer to a Judge of the Court for directions any question arising on a taxation.

Rule 63.51
(Heading)
amended by
S.R. No.
100/2008
rule 9(1)(n).

Rule 63.51
amended by
S.R. Nos
100/2008
rule 9(1)(o),
97/2009
rule 31.

63.52 Notice to person interested in fund

- (1) Where costs are payable out of a fund, the Costs Court may—
 - (a) adjourn the taxation to a specified day; and
 - (b) order that the party to whom the costs are payable serve on any person interested in the fund, without charge to that person, a copy of the whole or any part of the bill and a notice in accordance with paragraph (2).
- (2) A notice under paragraph (1)(b) shall state—
 - (a) that the costs are payable out of the fund, identifying it, and that the bill is being taxed;
 - (b) the day to which the taxation is adjourned; and

Rule 63.52(1)
amended by
S.R. No.
97/2009
rule 32(a).

r. 63.53

Rule 63.52
(2)(c)
amended by
S.R. No.
97/2009
rule 32(a).

(c) such other information as the Costs Court may direct.

Rule 63.52(3)
amended by
S.R. No.
97/2009
rule 32(a).

(3) Unless the Costs Court otherwise orders, service under paragraph (1)(b) shall be personal.

63.53 Application by person liable to pay

Rule 63.53(1)
amended by
S.R. No.
97/2009
rule 32(b).

(1) Where a party who is entitled to be paid costs and to have the costs taxed under this Part does not apply to have the costs taxed within 30 days after service on that party of a request in writing to do so by a party liable for the costs, the Costs Court—

- (a) may order the party entitled to file and serve a summons under Rule 63.38; and
- (b) may fix a time for compliance.

Rule 63.53(2)
amended by
S.R. No.
97/2009
rule 32(b).

(2) Where a party in respect of whom an order is made under paragraph (1) fails to comply with the order, the Costs Court may—

- (a) disallow the costs of the party or allow a nominal or other sum for costs;
- (b) order that party to pay the costs of any other party.

63.54 Solicitor at fault

(1) This Rule applies where—

- (a) a party fails to apply to have costs taxed within a time fixed under Rule 63.53(1) and the failure is occasioned by the neglect or delay of the party's solicitor; or

(b) in any proceedings before the Costs Court the solicitor for any party—

(i) is guilty of neglect or delay; or

(ii) causes any other party unnecessary expense.

Rule 63.54
(1)(b)
amended by
S.R. No.
97/2009
rule 32(c).

(2) The Costs Court may—

Rule 63.54(2)
amended by
S.R. No.
97/2009
rule 32(c).

(a) order the solicitor to pay costs to any party in respect of the proceedings before the Costs Court;

Rule 63.54
(2)(a)
amended by
S.R. No.
97/2009
rule 32(c).

(b) refuse to allow the fees to which the solicitor would otherwise be entitled for drawing any bill or for any attendance before the Costs Court.

Rule 63.54
(2)(b)
amended by
S.R. No.
97/2009
rule 32(c).

63.55 Cross costs

(1) If a party entitled to be paid costs is also liable to pay costs, the Costs Court may—

Rule 63.55
substituted by
S.R. No.
97/2009
rule 33.

(a) tax the costs which that party is liable to pay and—

(i) set off the amount allowed against the amount the party is entitled to be paid; and

(ii) by order state the amount of the balance and the parties by whom and to whom the balance is payable; or

(b) decline to make an order as to the costs which the party is entitled to be paid until that party has paid or tendered the amount the party is liable to pay.

Rule 63.56
substituted by
S.R. No.
97/2009
rule 33.

- (2) Costs may be set off under paragraph (1)(a) notwithstanding that a solicitor for a party has a lien for costs in the proceeding.

63.56 Order on taxation

- (1) If the Costs Court taxes a bill or otherwise fixes or assesses an amount for costs, the result shall be stated in the form of an order.
- (2) The Costs Court may, after the conclusion of the taxation of any bill, make a final order with respect to the amount at which the Costs Court allows the costs or of the Costs Court's disallowance of the costs.
- (3) In the course of the taxation, the Costs Court may make separate and interim orders in respect of any item in a bill.
- (4) An order under this Rule shall be authenticated and filed in accordance with Order 60.
- (5) The Costs Court may at any time correct—
- (a) a clerical mistake in an order made under this Rule; or
 - (b) an error arising in an order from any accidental slip or omission.
- (6) In paragraphs (4) and (5), **order** means final or interim order, as the case requires.

63.56.1 Reconsideration of order of Costs Judge

Rule 63.56.1
(Heading)
substituted by
S.R. No.
144/2010
rule 5(1).

Rule 63.56.1
substituted by
S.R. No.
97/2009
rule 33.

Rule 63.56.1(1)
amended by
S.R. No.
144/2010
rule 5(2)(a).

(1) If any party interested objects to an order of the
Costs Court constituted by a Costs Judge—

(a) allowing or disallowing, wholly or in part,
any item in a bill; or

(b) allowing some amount in respect of any
item—

the Costs Court constituted by that Costs Judge,
on the application of that party, may reconsider
the order.

* * * * *

Rule 63.56.1(2)
revoked by
S.R. No.
144/2010
rule 5(2)(b).

(3) An application under paragraph (1) shall be made
by notice.

Rule 63.56.1(3)
amended by
S.R. No.
144/2010
rule 5(2)(c).

(4) The notice under paragraph (3) shall—

Rule 63.56.1(4)
amended by
S.R. No.
144/2010
rule 5(2)(d)(i).

(a) state by a list each item in the bill in respect
of which the party objects to the order of the
Costs Court constituted by a Costs Judge;
and

Rule 63.56.1
(4)(a)
amended by
S.R. No.
144/2010
rule 5(2)(d)(ii).

(b) state specifically and concisely the grounds
of objection to that order and the order
sought in its place.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 63

r. 63.56.1

Rule 63.56.1(5)
amended by
S.R. No.
144/2010
rule 5(2)(e).

- (5) Within 14 days after the making of the order which is the subject of reconsideration—
- (a) the notice under paragraph (3) shall be filed;
 - (b) a copy of the notice shall be lodged with the Costs Court; and
 - (c) a copy of the notice shall be served on each party interested.

Rule 63.56.1
(6)(a)
amended by
S.R. No.
144/2010
rule 5(2)(f).

- (6) Upon the application, the Costs Court constituted by a Costs Judge—

- (a) shall reconsider the taxation upon the objections stated in the notice;
- (b) shall make an order confirming, setting aside or varying the taxation or make such further or other order as may be necessary; and
- (c) may make any other order the case requires.

Rule 63.56.1(7)
amended by
S.R. No.
144/2010
rule 5(2)(g).

- (7) For the purposes of the reconsideration, the Costs Court constituted by a Costs Judge may receive further evidence in respect of any objection.
- (8) The Costs Court constituted by a Costs Judge may, and if required by any party within seven days after the order is made under paragraph (6) shall, give written reasons for the decision in respect of any item in the bill to which objection was taken in the notice.

63.56.2 Reconsideration or review by Costs Court constituted by judicial registrar

Rule 63.56.2
inserted by
S.R. No.
144/2010
rule 6.

- (1) If any party interested objects to an order of the Costs Court constituted by a judicial registrar—
- (a) allowing or disallowing, wholly or in part, any item in a bill; or
 - (b) allowing some amount in respect of any item—

the Costs Court constituted by that judicial registrar, on the application of that party, may reconsider the order.

- (2) If any party interested objects to an order of the Costs Court constituted by a Costs Registrar (who is not a judicial registrar) or by a Deputy Costs Registrar—
- (a) allowing or disallowing, wholly or in part, any item in a bill; or
 - (b) allowing some amount in respect of any item—

the Costs Court constituted by a judicial registrar, on the application of that party, may review the order.

- (3) An application under paragraph (1) or (2) shall be made by notice.
- (4) The notice under paragraph (3) shall—
- (a) state by a list each item in the bill in respect of which the party objects to the order of the Costs Court constituted by a judicial registrar, a Costs Registrar or a Deputy Costs Registrar, as the case requires; and
 - (b) state specifically and concisely the grounds of objection to that order and the order sought in its place.

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- (5) Within 14 days after the making of the order which is the subject of reconsideration or review—
- (a) the notice under paragraph (3) shall be filed;
 - (b) a copy of the notice shall be lodged with the Costs Court; and
 - (c) a copy of the notice shall be served on each party interested.
- (6) Upon the application, the Costs Court constituted by a judicial registrar—
- (a) shall reconsider or review the taxation upon the objections stated in the notice;
 - (b) shall make an order confirming, setting aside or varying the taxation or make such further or other order as may be necessary; and
 - (c) may make any other order the case requires.
- (7) For the purposes of the reconsideration or review, the Costs Court constituted by a judicial registrar may receive further evidence in respect of any objection.
- (8) The Costs Court constituted by a judicial registrar may, and if required by any party within seven days after the order is made under paragraph (6) shall, give written reasons for the decision in respect of any item in the bill to which objection was taken in the notice.

Rule 63.56.3
inserted by
S.R. No.
144/2010
rule 6.

63.56.3 Costs Judge may exercise powers under Rule 63.56.2

The Costs Court constituted by a Costs Judge may exercise all the powers of the Costs Court constituted by a judicial registrar under Rule 63.56.2 if—

- (a) at any time there is no holder of the office of judicial registrar in the Costs Court;

- (b) the judicial registrar is absent or for some other reason unable to perform his or her duties; or
- (c) for any other reason it is necessary or appropriate that a Costs Judge should exercise those powers.

63.56.4 Review by Costs Judge of judicial registrar decisions

Rule 63.56.4
inserted by
S.R. No.
144/2010
rule 6.

- (1) An order of the Costs Court under Rule 63.56.2(6) may be reviewed by the Costs Court constituted by a Costs Judge.
- (2) If any party interested objects to an order of the Costs Court under Rule 63.56.2(6), the Costs Court constituted by a Costs Judge, on the application of that party, may review the order if the Costs Court has given reasons under Rule 63.56.2(8).
- (3) An application under paragraph (2) shall be made by notice.
- (4) The notice under paragraph (3) shall—
 - (a) state by a list each item in the bill in respect of which the party objects to the order of the Costs Court constituted by a judicial registrar on the review; and
 - (b) state specifically and concisely the grounds of objection to that order and the order sought in its place.
- (5) Within 14 days after the making of the order of the Costs Court constituted by a judicial registrar or the giving of reasons, whichever is the later—
 - (a) the notice under paragraph (3) shall be filed;
 - (b) a copy of the notice shall be lodged with the Costs Court; and

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- (c) a copy of the notice shall be served on each party interested.
- (6) On the review, unless the Costs Court constituted by the Costs Judge otherwise orders—
- (a) further evidence shall not be received;
 - (b) the party giving notice shall not raise any ground of objection not stated in the notice.
- (7) On the review, the Costs Court constituted by the Costs Judge may—
- (a) exercise all the powers and discretions of the Costs Court with respect to the subject matter of the review;
 - (b) confirm, set aside or vary the order of the Costs Court or make such further or other order as may be necessary;
 - (c) remit any item in the bill to the Costs Court;
 - (d) make any other order the case requires.
- (8) The Costs Court constituted by a Costs Judge may, and if required by any party within seven days after the order is made under paragraph (7) shall, give written reasons for the decision in respect of any item in the bill to which objection was taken in the notice.
- (9) Except so far as the Costs Court constituted by the Costs Judge otherwise orders, a review under this Rule shall not operate as a stay of execution or of proceedings under the order of the Costs Court to which the review relates.

63.57 Review by Judge of the Court

Rule 63.57
amended by
S.R. No.
100/2008
rule 9(1)(p)(q),
substituted by
S.R. No.
97/2009
rule 33.

- (1) An order of the Costs Court under Rule 63.56.1(6) or Rule 63.56.4(7) may be reviewed by a Judge of the Court.
- (2) If any party interested objects to an order of the Costs Court under Rule 63.56.1(6) or Rule 63.56.4(7), a Judge of the Court, on the application of that party, may review the order if the Costs Court has given reasons under Rule 63.56.1(8) or Rule 63.56.4(8).
- (3) An application under paragraph (2) shall be made by notice.
- (4) The notice shall—
 - (a) state by a list each item in the bill in respect of which the party objects to the order of the Costs Court on the review; and
 - (b) state specifically and concisely the grounds of objection to that order and the order sought in its place.
- (5) Within 14 days after the making of the order of the Costs Court or the giving of reasons, whichever is the later—
 - (a) the notice under paragraph (3) shall be filed;
 - (b) a copy of the notice shall be lodged with the Costs Court; and
 - (c) a copy of the notice shall be served on each party interested.

Rule 63.57(1)
amended by
S.R. No.
144/2010
rule 7(a).

Rule 63.57(2)
amended by
S.R. No.
144/2010
rule 7.

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- (6) On the review, unless the Judge of the Court otherwise orders—
- (a) further evidence shall not be received;
 - (b) the party giving notice shall not raise any ground of objection not stated in the notice.
- (7) On the review, the Judge of the Court may—
- (a) exercise all the powers and discretions of the Costs Court with respect to the subject matter of the review;
 - (b) confirm, set aside or vary the order of the Costs Court or make such further or other order as may be necessary;
 - (c) remit any item in the bill to the Costs Court;
 - (d) make any other order the case requires.
- (8) Except so far as a Judge of the Court or a Costs Judge otherwise orders, a review under this Rule shall not operate as a stay of execution or of proceedings under the order of the Costs Court to which the review relates.

PART 6—COSTS OF A SOLICITOR

63.58 Application

This Part applies—

- (a) where costs are payable to a solicitor by the solicitor's client, whether or not in respect of a proceeding in the Court, and by or under any Act or these Rules or any order of the Court or any agreement between the solicitor and the client the costs are required or permitted to be taxed in the Court;
- (b) where any person not the client of a solicitor is liable to pay or, having been so liable, has paid costs which are or were chargeable by the solicitor to the client, whether or not in

respect of a proceeding in the Court, and by or under any Act or these Rules or any order of the Court or any agreement between that person and the client the costs are required or permitted to be taxed in the Court.

63.59 Basis of taxation of costs payable by client

- (1) Costs payable to a solicitor by the solicitor's client to which the Part applies shall, subject to any Act or any order of the Court or any agreement between the solicitor and the client, be taxed on a solicitor and client basis.
- (2) The solicitor and client basis of taxation shall be as provided by Rule 63.61.

63.60 Basis of taxation of costs payable otherwise than by client

Costs payable to a solicitor by a person other than the client to which this Part applies shall, subject to any Act or any order of the Court or any agreement between that person and the client, be taxed on a party and party basis in accordance with Rule 63.29.

63.61 Solicitor and client basis

- (1) On a taxation of the costs payable to a solicitor by the solicitor's client all costs reasonably incurred and of reasonable amount shall be allowed.
- (2) Costs not reasonably incurred or not of reasonable amount may nevertheless be allowed if—
 - (a) the costs were incurred with the authority of or the amount was authorised by the client; and
 - (b) before the costs were incurred the solicitor expressly warned the client that the costs might not be allowed on a taxation of costs on a party and party basis.

- (3) An authority for the purpose of this Rule may be express or implied.
- (4) Where the client is a person under disability, references to the client in paragraph (2) include references to the litigation guardian of the client.

63.62 Contentious business

- (1) This Rule applies to the taxation of the costs payable to a solicitor by the solicitor's client for work done in a contentious matter where at the time the work was completed no proceeding had been commenced by or against the client in respect of the matter in any court or before any tribunal.
- (2) Costs for work in the matter shall be allowed in accordance with the scale of costs of the court or tribunal in or before which, in the opinion of the Costs Court, it would be appropriate to commence a proceeding in respect of the matter or, if that court or tribunal has no scale of costs, in accordance with Appendix A.

Rule 63.62(2)
amended by
S.R. No.
97/2009
rule 34(a).

63.63 Procedure on taxation

- (1) Subject to the following Rules and to any Act or order of the Court—
 - (a) costs under this Part shall be taxed as provided by Part 5; and
 - (b) Part 5 shall, with any necessary modification, apply to the taxation accordingly.
- (2) References in paragraph (1) to the application of Part 5 of this Order to the taxation of costs under this Part include references to a review of an order of the Costs Court on the taxation under Rule 63.57.

Rule 63.63(2)
amended by
S.R. No.
97/2009
rule 34(b).

63.64 Appointment to tax

- (1) This Rule applies where by any Act a bill in respect of costs to which this Part applies may be taxed by the Costs Court on an appointment obtained as of course and without an order of the Court on application by the client or other person liable to pay the costs.
- (2) Application to the Costs Court to tax the bill shall be made by summons in accordance with Rule 63.38.

Rule 63.64(1)
amended by
S.R. No.
97/2009
rule 34(c).

Rule 63.64(2)
amended by
S.R. No.
97/2009
rule 34(c).

63.65 Reference for taxation

- (1) This Rule applies where the Court by order, whether or not made by or under any Act, refers a bill of costs to the Costs Court for taxation or directs that a bill of costs be taxed.
- (2) The taxation shall be brought before the Costs Court on application by summons in accordance with Rule 63.38.
- (3) Unless the Court otherwise orders, the summons shall be filed within 14 days after the day the order is made.

Rule 63.65(1)
amended by
S.R. No.
97/2009
rule 34(d).

Rule 63.65(2)
amended by
S.R. No.
97/2009
rule 34(d).

63.66 Inclusion in bill of disbursement not made

Where the solicitor acts as agent for a lawyer practising in a place out of Victoria, the professional fees of that lawyer shall not constitute a disbursement of the solicitor for the purpose of Rule 63.43 so as to require payment of those fees before the commencement of the taxation.

63.67 Failure to serve bill or tax

- (1) Where a solicitor who is entitled to be paid costs fails or refuses to serve a bill for the costs on the client, the Costs Court may—

Rule 63.67(1)
amended by
S.R. No.
97/2009
rule 34(e).

Rule 63.67(2)
amended by
S.R. No.
97/2009
rule 34(e).

- (a) disallow the costs of the solicitor or allow a nominal or other sum for costs;
 - (b) order the solicitor to pay any costs of the client occasioned by the failure or refusal.
- (2) Where a person who is entitled to have a bill of costs taxed fails or refuses to do so, and any person interested in the taxation is prejudiced thereby, the Costs Court may—
 - (a) disallow any costs which might otherwise be payable to the person entitled to have the bill taxed or allow a nominal or other sum for costs;
 - (b) order that person to pay any costs of the person interested occasioned by the failure or refusal.
- (3) For the purpose of the Rule—
 - (a) a solicitor shall be taken to have failed or refused to serve a bill of costs if within 60 days after service on the solicitor of a request in writing by the client that the solicitor serve a bill the solicitor does not do so;
 - (b) a person shall be taken to have failed or refused to have a bill of costs taxed if within 60 days after service on the person of a request in writing by any person interested that the bill be taxed that person does not apply in accordance with Rule 63.38 for the taxation of the bill.

PART 7—ALLOWANCES ON TAXATION GENERALLY

63.68 Application and interpretation

This Part applies to any taxation of costs in the Court.

63.69 Necessary or proper costs

All costs shall be allowed as are necessary or proper for the attainment of justice or for enforcing or defending the rights of any party.

63.70 Unnecessary or careless work

- (1) The Court by order or the Costs Court on a taxation may disallow the costs of any work which is not necessary or is done without due care.

Rule 63.70(1)
amended by
S.R. No.
97/2009
rule 34(f).

- (2) Where a document is of unnecessary length, for the purpose of paragraph (1) work which is not necessary shall include work for that part of the document which is not necessary.

- (3) A party whose costs for work is disallowed under paragraph (1) shall, unless the Court or the Costs Court otherwise orders, pay costs for any work by another party occasioned by the work for which the costs were disallowed.

Rule 63.70(3)
amended by
S.R. No.
97/2009
rule 34(f).

63.71 Gross sum for costs

- (1) Where costs are incurred improperly or without reasonable cause or are wasted by undue delay or negligence or by any other misconduct or default or where from any other cause the amount of costs is excessive, only costs which were reasonable and proper shall be allowed, and the Costs Court may assess those costs at a gross sum.

Rule 63.71(1)
amended by
S.R. No.
97/2009
rule 34(g).

- (2) The Costs Court may apportion costs assessed under paragraph (1) among different parties.

Rule 63.71(2)
amended by
S.R. No.
97/2009
rule 34(g).

63.72 Increased allowance

The Costs Court may increase the amount or value of any allowance or expense in Appendix A or Appendix B as the Costs Court thinks fit.

Rule 63.72
substituted by
S.R. No.
97/2009
rule 35.

63.73 Copy documents

The fees allowed in Appendix A for drawing any document shall include not more than three copies of the document made for the use of the party, the party's solicitor or the agent of the solicitor, or for counsel to settle.

63.74 Folio

For the purpose of calculating the allowance for a document according to the length of the document measured by folio, a folio shall comprise 100 words, and any number however set out shall count as one word.

63.75 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.

Rule 63.76
amended by
S.R. No.
97/2009
rule 36(a).

63.76 Defendants with same solicitor

Where two or more defendants are represented by the same solicitor, and the solicitor does work for one or some of them separately which could have been done for some or all of them together, on taxation of the solicitor's bill of costs, whether between party and party or between solicitor and client, the Costs Court may disallow costs for the unnecessary work.

63.77 Procuring evidence

- (1) Reasonable charges and expenses properly incurred in procuring evidence, and the attendance of witnesses, shall be allowed.
- (2) For the purpose of paragraph (1) the attendance of a witness includes attendance at a conference with counsel before trial, and, in the case of an expert witness, includes qualifying to give evidence as an expert.

63.78 Negotiations

Costs reasonably and properly incurred with respect to negotiations for compromise shall be allowed whether or not the negotiations were successful.

63.79 Conference

A fee for a conference shall not be allowed in addition to the fee of a solicitor or counsel for drawing and settling, or perusing, or advising on any document, unless for special reason the conference was necessary or proper.

63.80 Retainer of counsel

A retaining fee to counsel shall not be allowed on taxation as between party and party.

63.81 Advice and other work of counsel

- (1) Costs reasonably and properly incurred with respect to—
 - (a) the advice of counsel on the pleadings, evidence or other matter in a proceeding;
 - (b) counsel drawing or settling any pleading or other document in a proceeding which is proper to be drawn or settled by counsel;
 - (c) counsel engaging in any preparation, view, conference or consultation—shall be allowed.
- (2) Where affidavits or interrogatories which are proper 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.

63.82 Hearing and trial fees

- (1) The fees payable to counsel to appear at a hearing or trial shall be at the discretion of the Costs Court which may fix such fees—

Rule 63.82(1)
amended by
S.R. No.
97/2009
rule 36(b)(i).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005
Order 63

r. 63.82

Rule 63.82
(1)(d)
amended by
S.R. No.
97/2009
rule 36(b)(ii).

- (a) on the basis of daily fees;
- (b) on the basis of a brief fee and refreshers;
- (c) as a lump sum fee covering the whole of the hearing or trial; or
- (d) on such other basis as the Costs Court considers appropriate.

Rule 63.82
(2)(a)
amended by
S.R. No.
97/2009
rule 36(c).

- (2) Where such fees are fixed on the basis of daily fees—

- (a) the daily fee for the second or any subsequent day of the hearing or trial shall, unless the Costs Court determines otherwise by reason of the special circumstances of the case, include all time spent by counsel in preparation and conferences on that day of the hearing or trial as well as the actual time spent by counsel in Court on the hearing or trial on that day; and

Rule 63.82
(2)(b)
amended by
S.R. No.
97/2009
rule 36(c).

- (b) the Costs Court may allow differing amounts in respect of various days of the hearing or trial.

- (3) Where such fees are fixed on the basis of a brief fee and refreshers and 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 six working hours (including any luncheon adjournment) without being concluded—

Rule 63.82
(3)(a)
amended by
S.R. No.
97/2009
rule 36(c).

- (a) the Costs Court may allow a refresher fee for every five working hours (including any luncheon adjournment) subsequent to the expiration of the first six hours; and

- (b) the final refresher may be allowed for any period less than five hours that the hearing or trial may occupy.

63.83 Premature brief

Costs with respect to 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.

63.84 Barrister and solicitor

- (1) This Rule applies where a barrister and solicitor acts in both capacities or appears as a barrister, instructed by a partner or employee.
- (2) The person so acting or appearing or his or her partner shall not be allowed a fee for any instructions for a brief or for drawing or engrossing a brief, but the Costs Court may allow one of them a fee for preparing for trial.

Rule 63.84(2)
amended by
S.R. No.
97/2009
rule 36(d).

63.85 Bill reduced by a sixth

- (1) This Rule applies to the taxation of a bill of costs payable out of a fund.
- (2) If the amount of the professional charges and disbursements in the bill is reduced by a sixth part, unless the Costs Court otherwise orders, no costs shall be allowed to the solicitor filing the bill for taxation for preparing the bill and for attending the taxation.

Rule 63.85(2)
amended by
S.R. No.
97/2009
rule 36(e).

Pt 8 (Heading
and rules
63.86–63.89)
inserted by
S.R. No.
97/2009
rule 37.

PART 8—ALTERNATIVE ASSESSMENT PROCEDURE

Rule 63.86
inserted by
S.R. No.
97/2009
rule 37.

63.86 Application of this Part

- (1) Notwithstanding anything in this Order, the Costs Court, at any time, may—
 - (a) determine to proceed under this Part; and
 - (b) require the party who filed the bill to file any documents in the possession, control or power of that party.
- (2) If the Costs Court determines to proceed under this Part, the bill shall be assessed in accordance with Rule 63.88.

Rule 63.87
inserted by
S.R. No.
97/2009
rule 37.

63.87 Notice of estimate and filing of bill

If a bill is to be assessed in accordance with Rule 63.88—

- (a) the Costs Court shall—
 - (i) notify the party filing the bill in writing of the date when the Costs Court is to make an estimate; and
 - (ii) return copies of the bill to the party filing the bill; and
- (b) the party filing the bill shall notify each other party of the date when the Costs Court is to make the estimate at least seven days before that date.

63.88 Estimate

Rule 63.88
inserted by
S.R. No.
97/2009
rule 37.

- (1) The Costs Court, in the absence of the parties and without making any determination on the individual items in the bill, may make an estimate of the approximate total for which, if the bill were to be taxed, an order on taxation under Rule 63.56 would be likely to be made.
- (2) The Costs Court shall notify in writing each party of an estimate made under paragraph (1).
- (3) Within 21 days after the date of the issue of a notice under paragraph (2), a party may file and serve on each other party a notice of objection to the estimate.
- (4) If no notice of objection is filed under paragraph (3), the Costs Court may make an order on taxation under Rule 63.56 for the amount of the estimate.
- (5) If an order on taxation has been made under paragraph (4), a party that did not receive a notice under paragraph (2) within sufficient time to file a notice of objection may apply to the Costs Court for an order to set aside the order on taxation.

63.89 Withdrawal of objection

Rule 63.89
inserted by
S.R. No.
97/2009
rule 37.

If a party that files a notice of objection withdraws the notice of objection before the taxation is completed under this Part—

- (a) the amount of the estimate of costs is the amount for which an order on taxation may be made; and
 - (b) the party that filed the notice of objection shall bear the costs of taxation of all parties from the date of service of the notice of objection to the date of notification of the withdrawal.
-

ORDER 64

APPEAL TO COURT OF APPEAL

64.01 Definitions

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

appeal includes—

- (a) an application for a new trial;
- (b) an application to set aside a decision;
- (c) a cross-appeal—

and, subject to the provisions of the **County Court Act 1958**, includes an appeal from the County Court;

decision includes a judgment, order, verdict or finding;

respondent means a person served with a notice of appeal.

64.02 Appeal by notice

An appeal to the Court of Appeal shall be brought by notice in accordance with this Order.

64.03 Time for notice of appeal

- (1) Subject to paragraph (2) a notice of appeal shall, unless the Court of Appeal or a Judge of Appeal otherwise orders, be served—
 - (a) within 14 days after the day the decision of the court of first instance was given; or
 - (b) if leave to appeal is necessary, within 14 days of leave being granted.

Rule 64.03(1)
amended by
S.R. No.
100/2008
rule 9(1)(r).

- (2) A notice of appeal from a decision refusing an application made without notice to any person shall, unless the Court of Appeal or a Judge of Appeal otherwise orders, be filed—

Rule 64.03(2)
amended by
S.R. No.
100/2008
rule 9(1)(r).

- (a) within 14 days after the decision; or
(b) if leave to appeal is necessary, within 14 days of leave being granted.

- (3) An application for leave to appeal shall, unless the Court of Appeal or a Judge of Appeal otherwise orders, be made within 14 days after the day the decision of the court of first instance was given.

Rule 64.03(3)
amended by
S.R. No.
100/2008
rule 9(1)(r).

- (4) If leave to appeal is necessary and notice of appeal is served before leave has been granted, any person on whom the notice of appeal has been served may apply to the Court of Appeal for an order dismissing the appeal as incompetent.

64.04 Service of notice of appeal

- (1) Except as provided by paragraph (2), a notice of appeal shall be served on all parties affected by the appeal.
- (2) A notice of appeal under Rule 64.03(2) shall not be served.
- (3) Notwithstanding paragraphs (1) and (2), the Court of Appeal may direct that notice of appeal be served on any party to the proceeding or on a person not a party.
- (4) A notice of appeal may be served on a party personally or at the party's address for service under these Rules, including Rule 1.19.
- (5) Where notice of appeal is served on a person not a party—
- (a) that person shall not take any step in the appeal without first filing and serving a notice of address for service in Form 64A;

- (b) the Court of Appeal may give such judgment or make such order on the appeal as might have been given or made if the person served with the notice of appeal had been originally a party.

64.05 Contents of notice of appeal

- (1) A notice of appeal—
 - (a) shall state whether the whole or part only and which part of the decision of the court of first instance is complained of; and
 - (b) shall also state specifically and concisely the grounds of complaint and the judgment or order sought in place of that from which the appeal is brought.
- (2) A notice of appeal shall name each party or person upon whom it is proposed to serve the notice of appeal.

64.06 Amendment of notice of appeal

- (1) A notice of appeal may be amended at any time by leave of the Court of Appeal.
- (2) A notice of appeal may by leave of the Registrar be amended at any time before the contents of the appeal book in relation to the appeal have been settled under Rule 64.09, and the Registrar may direct that the appellant serve a copy of the notice of appeal as amended on the respondent.

64.07 Filing of notice of appeal

Where notice of appeal is served, the appellant shall within seven days after service file a copy of the notice accompanied by a list signed by or on behalf of the appellant of the persons upon whom the notice has been served and the dates of such service.

64.08 Appeal Book

- (1) Within seven days after the expiration of the time fixed by or under Rule 64.03 for the service or filing of notice of appeal, the appellant shall deliver to the Registrar and to all other persons upon whom the notice of appeal has been served a note of proposed contents of the appeal book.
- (2) The time fixed by paragraph (1) may be extended by direction of the Registrar.
- (3) Subject to Rule 64.09, as soon as practicable after the delivery to the Registrar of the note of the proposed contents the Registrar shall give directions to the appellant for the preparation and delivery of the appeal book.

64.09 Contents of appeal book

- (1) The Registrar shall settle the contents of the appeal book in consultation with the parties and for that purpose may add to or vary the contents.
- (2) For the purpose of settling the contents of the appeal book, the Registrar may—
 - (a) consult with the Judge of the Court or the Associate Judge, as the case may be, from whose decision the appeal is brought; and
 - (b) give directions and, if he or she considers it necessary or desirable, require the attendance of the parties.
- (3) On an appeal by leave, the Registrar may direct that the application papers filed under Rule 65.04 comprise a part of the appeal book.

Rule 64.09
(2)(a)
amended by
S.R. No.
100/2008
rule 9(1)(s).

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- (4) Where the Registrar gives a direction under paragraph (3)—
- (a) the appellant shall file such further copies of the application papers as the Registrar directs for the use of the members of the Court of Appeal;
 - (b) unless the Registrar otherwise directs, the appellant is not required under Rule 64.11(2) to deliver any further copies of the application papers.
- (5) Unless the Court of Appeal otherwise orders, the costs of settling the contents of the appeal book shall be costs in the appeal.

64.10 Notes for guidance

The Registrar shall prepare and publish from time to time, subject to the approval of the President, notes for the guidance of appellants in the preparation of appeal books.

64.11 Delivery of appeal book

- (1) The appellant shall prepare the appeal book in accordance with the directions of the Registrar and, subject to such directions, the notes published under Rule 64.10.
- (2) Within the time fixed by the Registrar for the filing of the appeal book (or such further time as the Registrar allows) the appellant shall without charge deliver to each respondent and to the Registrar so many copies of the appeal book as the Registrar determines.
- (3) If the appeal book does not conform to the directions of the Registrar, the Registrar may require the appellant to amend it to make it conform.

- (4) Where the Registrar requires the appellant to amend the appeal book, the appellant shall within the time fixed or the further time allowed by the Registrar deliver copies of the amended appeal book (or of the amendments, if the Registrar so directs) to each respondent and to the Registrar in accordance with paragraph (2).
- (5) The Registrar may direct the appellant to deliver to a respondent or to the Registrar further copies of the appeal book without charge.

64.12 Costs of appeal book

- (1) The expense of printing the appeal book shall in the first instance be borne by the appellant unless the Registrar otherwise directs.
- (2) The costs of the appeal book shall ultimately be costs in the appeal unless the Court of Appeal otherwise orders.

64.13 Entry of appeal

Within four days after the delivery of the appeal books to the Registrar under Rule 64.11 the Registrar shall enter the appeal in the list of appeals for hearing and notify the Prothonotary accordingly.

64.14 Discontinuance without leave

- (1) An appellant may at any time discontinue an appeal—
 - (a) wholly; or
 - (b) with respect to—
 - (i) any part of the decision complained of or any ground of appeal;
 - (ii) any respondent, where there are two or more respondents.

- (2) Subject to paragraph (4), an appeal is discontinued when the appellant files a notice stating that the appeal is discontinued or, where the appeal is not wholly discontinued, stating the extent of the discontinuance, and on the same day serves a copy on each party to the appeal.
- (3) In relation to a respondent in respect of whom an appeal is wholly discontinued, the appellant shall, unless the Court of Appeal otherwise orders, pay the costs of the respondent to the time of the discontinuance.
- (4) Notwithstanding the discontinuance of an appeal under paragraph (2), the Court of Appeal may order that the appeal be not discontinued or may make such order as to costs or otherwise as it thinks fit.

64.15 Discontinuance by leave

- (1) An appeal may at any time be discontinued either wholly or in part and with respect to any one or more respondents by leave of the Court of Appeal.
- (2) When granting leave the Court of Appeal may impose such terms or make such order as to costs or otherwise as it thinks fit.
- (3) Unless the Court of Appeal otherwise orders, an appeal which is discontinued by leave under this Rule is discontinued upon the making of and in accordance with the order granting leave without the filing of any further notice.

64.16 Appeal taken to be abandoned

- (1) If the appellant does not—
 - (a) within the time fixed by or under Rule 64.08 deliver to the Registrar a note of the proposed contents of the appeal book; or

(b) deliver to the Registrar within such time as is fixed or allowed by the Registrar such number of copies of the appeal book as the Registrar has determined—

the appeal shall be taken to be abandoned.

(2) Notwithstanding paragraph (1)—

(a) the Court of Appeal may at any time order that an appeal not be taken to be abandoned;

(b) the Registrar may, within 21 days after the day on which an appeal is taken to be abandoned, order by consent that the appeal not be taken to be abandoned.

(3) In respect of an appeal which is taken to be abandoned, the appellant shall, unless the Court of Appeal otherwise orders, pay the costs of the respondent to the time of the abandonment.

64.17 Cross-appeal

(1) Subject to paragraph (5), a respondent who desires to appeal from the decision from which the appellant has appealed shall do so by notice of cross-appeal.

(2) The respondent shall, within 14 days after the service upon the respondent of the notice of appeal serve a copy of the notice of cross-appeal on the appellant and any other party directly affected by the cross-appeal.

(3) Paragraphs (3), (4) and (5) of Rule 64.04, Rule 64.05 and paragraph (1) of Rule 64.06 apply to a notice of cross-appeal as if it were a notice of appeal.

(4) A cross-appeal may be discontinued and Rules 64.14 and 64.15 apply with any necessary modification.

- (5) If a respondent does not seek to have the judgment or order actually given or made discharged or varied but proposes to contend that it should be affirmed on a ground, whether of fact or law, which was not decided or was erroneously decided or was not raised for decision below, it shall not be necessary to give notice of cross-appeal, but not less than 14 days before the day fixed for the hearing of the appeal the respondent shall file and serve a notice of contention, stating the ground to be relied upon.

64.18 Filing notice of cross-appeal

Within seven days after service of the notice of cross-appeal the respondent shall file a copy of the notice accompanied by a list signed by or on behalf of the respondent of the persons upon whom the notice has been served and the dates of such service.

64.19 Effect of cross-appeal notice

- (1) In settling the contents of an appeal book under Rule 64.09 the Registrar shall have regard to any notice of cross-appeal.
- (2) Where notice of cross-appeal is given and appeal books are not delivered in accordance with Rule 64.11, the respondent may apply to the Court of Appeal for directions relating to the appeal and cross-appeal.
- (3) Where an appeal is discontinued or is taken to be abandoned, a respondent who has given notice of cross-appeal may proceed with the cross-appeal and the Court of Appeal may give directions for its conduct.

64.20 Time

- (1) The Court of Appeal may extend or abridge any time fixed by or under this Order.

- (2) The Registrar may extend or abridge any time fixed by the Registrar under this Order.

64.21 Directions and powers of Associate Judges and the Registrar

Rule 64.21
(Heading)
amended by
S.R. Nos
100/2008
rule 9(1)(t),
148/2010
rule 8(1).

Rule 64.21
substituted by
S.R. No.
171/2006
rule 5.

- (1) The Registrar or an Associate Judge may at any time of his or her own motion or on application give directions in relation to an appeal, application or other proceeding in the Court of Appeal.

Rule 64.21(1)
amended by
S.R. Nos
100/2008
rule 9(1)(u),
148/2010
rule 8(2).

- (2) The Registrar or an Associate Judge may make such order for costs as he or she thinks fit in relation to the exercise of any power conferred upon him or her under this Order.

Rule 64.21(2)
amended by
S.R. Nos
100/2008
rule 9(1)(u),
148/2010
rule 8(2).

- (3) The Court of Appeal, the Registrar or an Associate Judge may, with or without the consent of any party, order that an appeal, application or other proceeding in the Court of Appeal be referred to a mediator.

Rule 64.21(3)
amended by
S.R. Nos
100/2008
rule 9(1)(u),
148/2010
rule 8(2).

- (4) Rules 50.07 and 50.07.1 apply with any necessary modification to an appeal, application or other proceeding in the Court of Appeal which is referred to a mediator in accordance with paragraph (3).

- (5) Notwithstanding any direction given or order made by the Registrar or an Associate Judge, the Court of Appeal may at any time of its own motion or on application give directions in

Rule 64.21(5)
amended by
S.R. Nos
100/2008
rule 9(1)(u),
148/2010
rule 8(2).

Rule 64.21(6)
amended by
S.R. Nos
100/2008
rule 9(1)(u),
148/2010
rule 8(2).

relation to an appeal, application or other proceeding before it.

- (6) Without limiting the generality of paragraph (5), the Court of Appeal may upon application by any party to an appeal, application or other proceeding in the Court of Appeal, set aside or vary any direction given or order made by the Registrar or an Associate Judge.
- (7) If an application under paragraph (6) is refused and costs are ordered against the party making that application, such costs may be ordered on an indemnity basis.

64.22 Powers of the Court of Appeal

- (1) On an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of first instance.
- (2) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.
- (3) The Court of Appeal shall have power to receive further evidence upon questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner.
- (4) Where any question arises as to any matter occurring in the Court of first instance, the Court of Appeal may have regard to verified notes or other evidence and to such other materials as it thinks fit.
- (5) Without limiting paragraph (4), the Court of Appeal may call for a report from the Court of first instance, and if the contents of that report have first been made available to the parties to the appeal, may, so far as it thinks fit, act upon the report.

- (6) On an appeal the powers of the Court of Appeal shall not be limited by reason of any order made on an interlocutory application from which there has been no appeal.
- (7) The powers of the Court of Appeal under this Rule may be exercised notwithstanding—
 - (a) that no notice of appeal or notice of cross-appeal has been given in respect of any particular part of the decision of the Court of first instance or by any particular party to the proceeding in that Court; or
 - (b) that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice.

64.23 New trial

- (1) If upon the hearing of an appeal it appears to the Court of Appeal that there ought to be a new trial, the Court of Appeal may order that the judgment or the verdict and judgment be set aside, and that there be a new trial.
- (2) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge of the Court at the trial was not asked to leave to it, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned in the trial.
- (3) If it appears that such substantial wrong or miscarriage affects part only of the matter in controversy or some or one only of the parties, the Court of Appeal may give final judgment as to part thereof or as to some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.

Rule 64.23(2)
amended by
S.R. No.
100/2008
rule 9(1)(v)(i).

r. 64.24

Rule 64.23(6)
amended by
S.R. No.
100/2008
rule 9(1)(v)(ii).

- (4) Paragraphs (2) and (3) apply whether or not the proceeding was tried with a jury.
- (5) A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the decision upon any other question.
- (6) A new trial shall not be granted by reason of the ruling of a Judge of the Court or an Associate Judge, as the case may be—
 - (a) that the stamp upon any document is sufficient; or
 - (b) that the document does not require a stamp.
- (7) The Court of Appeal may in the order granting a new trial give all necessary directions for the further conduct of the proceeding.

64.24 Costs

- (1) The Court of Appeal may make such order for the whole or any part of the costs of an appeal as it thinks fit.
- (2) The Court of Appeal may in special circumstances make an order that security be given for the costs of an appeal.
- (3) An order under paragraph (2) may require the giving of security by payment into court to the Senior Master or in such other form as is satisfactory to the Prothonotary, without further specification.

Rule 64.25
amended by
S.R. No.
100/2008
rule 9(1)(w).

64.25 Stay of execution

Except so far as the Court of Appeal or a Judge of the Court, or an Associate Judge, as the case may be otherwise orders—

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision appealed from;

- (b) no intermediate act or step shall be invalidated.

64.26 Jurisdiction and powers exercisable by a single Judge of Appeal

- (1) The jurisdiction and powers of the Court of Appeal may be exercised by a single Judge of Appeal in the following applications or proceedings—
- (a) for leave to a solicitor under Rule 20.03(4) to file a notice of ceasing to act under Rule 20.03(1);
 - (b) for a direction under Rule 64.04(3) that notice of appeal or cross-appeal be served on any party to the proceeding or on a person not a party;
 - (c) for leave under Rule 64.06(1) to amend a notice of appeal or cross-appeal;
 - (d) for an order under Rule 64.14(3) as to the payment of costs upon discontinuance;
 - (e) for an order under Rule 64.14(4) that an appeal or cross-appeal be not discontinued or as to costs or otherwise;
 - (f) for leave to discontinue under Rule 64.15;
 - (g) for an order under Rule 64.16(2) that an appeal not be taken to be abandoned;
 - (h) for an order under Rule 64.16(3) as to the payment of costs where an appeal is taken to be abandoned;
- * * * *
- (k) for directions under Rule 64.19(2) when appeal books are not delivered in accordance with Rule 64.11;

Rule 64.26
(1)(na)
inserted by
S.R. No.
171/2006
rule 6,
amended by
S.R. Nos
100/2008
rule 9(1)(x),
148/2010
rule 9.

- (l) for directions under Rule 64.19(3) for the conduct of a cross-appeal where an appeal is discontinued or is taken to be abandoned;
- (m) for an order under Rule 64.20(1) for an extension or abridgment of time;
- (n) for directions under Rule 64.21;
- (na) for an order under Rule 64.21(6) setting aside or varying any direction given or order made by the Registrar or an Associate Judge;

(o) for any order by consent of all parties to an appeal, application, or other proceeding in the Court of Appeal.

- (2) A single Judge of Appeal may make any order or give any direction incidental or ancillary to the exercise by the Judge of the jurisdiction and powers of the Court of Appeal.

64.27 Jurisdiction and powers exercisable by two Judges of Appeal

- (1) Two Judges of Appeal may constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal in the following classes of applications or appeals to or proceedings in the Court of Appeal—
- (a) applications to which Order 65 applies;
 - (b) applications or proceedings described in Rule 64.26(1);

- (c) any appeal where all the parties have before the hearing filed a consent to the hearing and determination of the appeal by two Judges of Appeal;
 - (d) appeals from judgments or orders in interlocutory applications.
- (2) Two Judges of Appeal may make any order or give any direction incidental or ancillary to the exercise by them of the jurisdiction and powers of the Court of Appeal.

64.28 Exercise of powers and functions of Registrar

- (1) For the purpose of exercising any power or function conferred on the Registrar by or under this Order, Order 65 or Rule 2.04(2), the Registrar—
- (a) may constitute the Court of Appeal; and
 - (b) may exercise the jurisdiction and powers of the Court of Appeal to the extent necessary to exercise those powers or functions.
- (2) The Registrar may nominate one or more suitably qualified officers of the Court of Appeal employed under section 106 of the Act and delegate to such nominated officers the carrying out of the functions and powers of the Registrar in relation to the management of civil appeals and applications.
- (3) An officer referred to in paragraph (2) may exercise the powers and functions of the Registrar in relation to the powers and functions delegated to him or her.

Rule 64.28
amended by
S.R. Nos
171/2006
rule 7,
100/2008
rule 9(2)(a),
100/2008
rule 9(2)(a)(b),
substituted by
S.R. No.
148/2010
rule 10.

ORDER 65

APPLICATIONS TO COURT OF APPEAL

65.01 Definition

In this Order, unless the context or subject matter otherwise requires, *application* means any application other than an application by way of appeal or an application for a new trial or to set aside a judgment, order, verdict or finding.

65.02 Application by summons

- (1) An application to the Court of Appeal, whether on notice or not, shall be made by summons supported by affidavit.
- (2) The application is taken to be made when the summons is filed.
- (3) If an application is made on notice, notice of the application shall be given to all persons interested in accordance with Rule 65.04.

65.03 Expedition

- (1) Where it is satisfied that the delay caused by proceeding in accordance with Rule 65.02 would or might entail injustice, the Court of Appeal may make an order without notice to any party upon such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.
- (2) The Court of Appeal may set aside any order made under paragraph (1) on the application of any party affected.

65.04 Filing and service

- (1) The applicant shall file the affidavit in support of an application within three days after the filing of the summons.
- (2) Within three days after the filing of the summons, the applicant shall, if an application is made on notice, serve a sealed copy of the summons and a copy of the affidavit in support and of any exhibit on each person to whom notice of the application is to be given.
- (3) Within four days after the service of the summons and affidavit in support, the respondent shall file, and serve a copy of, any affidavit in answer and shall serve a copy of any exhibit.

65.05 Delivery of documents to Registrar

At or about the time of service under Rule 65.04—

- (a) the applicant shall deliver to the Registrar for the use of the members of the Court of Appeal two copies of the summons and of the affidavit in support and, unless the Registrar otherwise directs, of the exhibits thereto; and
- (b) each respondent shall deliver to the Registrar for the use of the members of the Court of Appeal two copies of any affidavit in answer and, unless the Registrar otherwise directs, of the exhibits thereto.

65.06 Further copies

At any time the Registrar may require the applicant or the respondent to deliver additional copies of any of the documents referred to in Rule 65.05.

65.07 Documents for inclusion

On any application relating to an appeal or a proposed appeal, the applicant shall include as exhibits to an affidavit—

- (a) a copy of the judgment or order from which the appeal is or is proposed to be brought;
- (b) a copy of any reasons given for that judgment or order; and
- (c) a copy of the notice of appeal or proposed notice of appeal—

or shall account in an affidavit for their absence as exhibits.

65.08 Preparation of documents

In the preparation of documents for the purpose of an application, regard shall be had to any notes published by the Registrar for the guidance of applicants.

65.09 Time

- (1) The Court of Appeal may extend or abridge any time fixed by or under this Order.
- (2) The jurisdiction and powers of the Court of Appeal under this Rule may be exercised by a single Judge of Appeal.
- (3) The Registrar may with the consent of the applicant and each respondent who has been served with the summons alter the day for hearing named in the summons.

65.10 Procedure on application

- (1) Subject to this Rule, Order 46 shall with any necessary modification apply to an application to the Court of Appeal under this Order.
 - (2) An application may be determined by the Court of Appeal without the attendance of, and without hearing, the applicant or any respondent provided that not less than three days before the day appointed for the hearing of the application the Registrar, at the direction of the Court, has notified all parties that attendance by them or on their behalf is not required.
 - (3) If an application is determined under paragraph (2), the Court of Appeal may upon application under this paragraph by any party to the summons set aside or vary the order made under paragraph (2).
 - (4) If an application under paragraph (3) is dismissed and costs are ordered against the party making that application, such costs may be ordered on an indemnity basis.
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ORDER 66

ENFORCEMENT OF JUDGMENTS AND ORDERS

66.01 Definitions

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

judgment includes order;

judgment for the payment of money into court
includes a judgment for the payment of
money to the Senior Master;

Rule 66.01
def. of
*judgment for
the payment
of money into
court*
substituted by
S.R. No.
100/2008
rule 9(2)(c).

person bound means a person against whom a
judgment is entered or given or an order is
made.

66.02 Payment of money

- (1) A judgment for the payment of money not within paragraph (2) may be enforced by one or more of the following means—
- (a) warrant of seizure and sale;
 - (b) attachment of debts under Order 71;
 - (c) attachment of earnings under Order 72;
 - (d) charging order under Order 73;
 - (e) appointment of a receiver under Order 74;
and
 - (f) where Rule 66.05 applies, and subject to Rule 66.10—
 - (i) committal; and
 - (ii) sequestration.

-
- (2) A judgment for the payment of money into court may be enforced by one or more of the following means—
- (a) appointment of a receiver; and
 - (b) where Rule 66.05 applies, and subject to Rule 66.10—
 - (i) committal; and
 - (ii) sequestration.
- (3) Paragraphs (1) and (2) do not affect any other means of enforcement of a judgment for the payment of money.
- (4) The Court may authorise or direct an Associate Judge or the Prothonotary or a party to enforce a judgment for the payment of money into court by one or more of the means referred to in paragraph (1).

Rule 66.02(4)
amended by
S.R. No.
100/2008
rule 9(2)(d).

66.03 Possession of land

A judgment for possession of land may be enforced by one or more of the following means—

- (a) warrant of possession; and
- (b) where Rule 66.05 applies, and subject to Rule 66.10—
 - (i) committal; and
 - (ii) sequestration.

66.04 Delivery of goods

- (1) A judgment for the delivery of goods and a judgment for the delivery of goods or the payment of their assessed value may be enforced by one or more of the following means—
- (a) warrant of delivery; and

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- (b) where Rule 66.05 applies, and subject to Rule 66.10—
 - (i) committal; and
 - (ii) sequestration.
 - (2) The warrant of delivery shall, as the judgment requires, be for—
 - (a) the delivery of the goods; or
 - (b) the delivery of the goods or recovery of their assessed value.
 - (3) A warrant of delivery may include provision for enforcing the payment of money required to be paid by the judgment and money recoverable under section 107(1) of the Service and Execution of Process Act 1992 of the Commonwealth.
 - (4) A judgment for the payment of the assessed value of goods may be enforced by the same means as any other judgment for the payment of money except a judgment for the payment of money into court.

66.05 Doing or abstaining from doing any act

- (1) This Rule applies where—
 - (a) a judgment requires a person to do an act and the act is to be done within a time fixed in the judgment or by subsequent order, and the person refuses or neglects to do the act within that time;
 - (b) a judgment requires a person to abstain from doing an act, and the person disobeys the judgment.
- (2) Where this Rule applies, a judgment may, subject to Rule 66.10, be enforced by one or more of the following means—
 - (a) committal of the person bound;

- (b) sequestration of the property of the person bound; and
- (c) where the person bound is a corporation, without limiting paragraph (2)(b)—
 - (i) committal of any officer of the corporation; and
 - (ii) sequestration of the property of any officer of the corporation.
- (3) Paragraph (2) has effect subject to the **Imprisonment of Fraudulent Debtors Act 1958.**

66.06 Attendance of natural person

- (1) This Rule applies where the Court by subpoena or otherwise makes an order in any proceeding for the attendance of a natural person—
 - (a) for the purpose of giving evidence;
 - (b) for the production of any document or thing;
 - (c) to answer a charge of contempt; or
 - (d) for any other purpose—and after service of the order the person defaults in attendance in accordance with the order.
- (2) In the circumstances referred to in paragraph (1) the Court may—
 - (a) make an order for the issue of a warrant to the Sheriff or such other person as the Court may appoint for the arrest of the person in default and for his or her production before the Court or before an examiner or other person for the purpose of the proceeding and for his or her detention in custody in the meantime; and
 - (b) order the person in default to pay any costs and expenses occasioned by the default.

66.07 Attendance of corporation

- (1) This Rule applies where—
 - (a) the Court by subpoena or otherwise makes an order in any proceeding for the production by a corporation of any document or thing; and
 - (b) after service of the order the corporation defaults in producing the document or thing in accordance with the order.
- (2) In the circumstances referred to in paragraph (1) the Court may—
 - (a) make an order for the issue of a warrant to the Sheriff or such other person as the Court may appoint for the arrest of any officer of the corporation and for his or her production before the Court or before an examiner or other person for the purpose of the proceeding and for his or her detention in custody in the meantime; and
 - (b) order the corporation to pay any costs and expenses occasioned by the default.

66.08 Attendance before another court etc.

Rules 66.06 and 66.07 shall, with any necessary modification, apply where by or under any Act the Court has authority to compel by subpoena the attendance of a person for the purpose of giving evidence or producing any document or thing for evidence in any court or before any person having by law or by consent of parties authority to hear, receive and examine evidence.

66.09 Contempt

Nothing in Rules 66.06 and 66.07 shall affect the power of the Court to punish for contempt.

66.10 Service before committal or sequestration

- (1) A judgment shall not be enforced by committal or sequestration unless—
 - (a) a copy of the judgment is served personally on the person bound; and
 - (b) if the judgment requires the person bound to do an act within a fixed time, the copy of the judgment is so served a reasonable time before that time expires.
- (2) Where the person bound is a corporation, the judgment shall not be enforced by committal of an officer of the corporation or by sequestration of the property of an officer of the corporation unless, in addition to service under paragraph (1) on the corporation—
 - (a) a copy of the judgment is served personally on the officer; and
 - (b) if the judgment requires the corporation to do an act within a fixed time, the copy of the judgment is so served a reasonable time before that time expires.
- (3) A copy of a judgment served under this Rule shall be indorsed with a notice, naming the person served, that the person served is liable to imprisonment or to sequestration of property if—
 - (a) where the judgment requires the person bound to do an act within a fixed time, the person bound refuses or neglects to do the act within that time; or
 - (b) where the judgment requires the person bound to abstain from doing an act, the person disobeys the judgment.

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- (4) Where a judgment requires the person bound to do an act and an order is made under Rule 59.03 fixing a time within which the act is to be done, a copy of the judgment, indorsed as required by paragraph (3)(a), and a copy of the order shall be served on that person a reasonable time before the expiry of that time.
- (5) A judgment requiring a person to do an act within a fixed time or a judgment requiring a person to abstain from doing an act may be enforced under Rule 66.05 notwithstanding that service has not been effected under this Rule if the person against whom the judgment is to be enforced has notice of the judgment—
- (a) by being present when the judgment was given; or
 - (b) by being notified of the terms of the judgment whether by telephone, telegram or otherwise.
- (6) The Court may dispense with service under this Rule.

66.11 Substituted performance

- (1) Where a judgment requires the person bound to do an act and the person bound does not do the act, the Court may—
- (a) direct that the act be done by a person appointed by the Court; and
 - (b) order the person bound to pay any costs and expenses occasioned by the default.

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- (2) Paragraph (1) does not affect—
- (a) the power of the Court under section 22 of the Act or section 60 of the **Trustee Act 1958**;
 - (b) the power of the Court to punish for contempt.

66.12 Enforcement by or against non-party

- (1) A person not being a party who obtains a judgment or in whose favour a judgment is made may enforce the judgment by the same means as if that person were a party.
- (2) Where obedience to a judgment may be enforced against a person not a party, the judgment may be enforced against the person by the same means as if the person were a party.
- (3) Where obedience to a judgment may be enforced against a corporation not a party, an officer of the corporation shall be liable to the same processes of enforcement as if the corporation were a party.

66.13 Non-performance of condition

A person entitled to a judgment subject to the fulfilment of a condition who fails to fulfil the condition shall be taken to have abandoned the benefit of the judgment, and, unless the Court otherwise orders, any other person interested may take any steps which are warranted by the judgment or which might have been taken if the judgment or order had not been given or made.

66.14 Matters occurring after judgment

The Court may stay execution of a judgment, or make such order as the nature of the case requires, on the ground of matters occurring after judgment.

66.15 Order in aid of enforcement

- (1) The Court may make such order as it thinks fit in aid of the enforcement of a warrant of execution and for that purpose may make an order that any person, whether or not a party—
 - (a) attend before the Court to be examined;
 - (b) do or abstain from doing any act.
- (2) An application for an order under paragraph (1) may be made by the Sheriff or other person to whom a warrant of execution is directed.

66.16 Stay of execution

The Court may stay execution of a judgment.

ORDER 67

DISCOVERY IN AID OF ENFORCEMENT

67.01 Definitions

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

judgment includes order;

the material questions are—

- (i) whether any and, if so, what debts are owing to the person bound;
- (ii) whether the person bound has any and, if so, what other property or means of satisfying the judgment; and
- (iii) any questions concerning or in aid of the enforcement or satisfaction of the judgment specified in the order for examination or production.

67.02 Order for examination or production

- (1) The Court may, on application by a person entitled to enforce a judgment, order a person bound by the judgment to—
 - (a) attend before the Court and be orally examined on the material questions; and
 - (b) produce any document or thing in the possession, custody or power of the person bound relating to the material questions.
- (2) Where the Court makes an order under paragraph (1), it may order that the person attend to be examined before or produce the document or thing to an Associate Judge.

Rule 67.02(2)
amended by
S.R. No.
100/2008
rule 9(2)(d).

67.03 Corporation

Where the person bound is a corporation, the Court may make an order that—

- (a) an officer or a former officer of the corporation attend before the Court and be orally examined on the material questions; and
- (b) an officer of the corporation produce any document or thing in the possession, custody or power of the corporation relating to the material questions.

67.04 Procedure

- (1) An application for an order under Rule 67.02 or 67.03 may be made without notice to the person bound by the judgment.
- (2) An order under Rule 67.02 or 67.03 shall be served personally on the person bound and on any other person ordered to attend or to produce any document or thing.

Rule 67.05
amended by
S.R. No.
169/2006
rule 8(1).

67.05 Conduct money

Rule 42.06(1) applies in relation to the service of an order under Rule 67.02 or 67.03 as it does in relation to the service of a subpoena.

Rule 67.06
amended by
S.R. No.
100/2008
rule 9(2)(e).

67.06 Record of examination

The Judge of the Court or Associate Judge before whom an examination is conducted under Rule 67.02 or 67.03 shall take down, or cause to be taken down, in writing the statement made by the person examined at the examination.

ORDER 68

WARRANTS OF EXECUTION GENERALLY

68.01 Definitions

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

judgment includes order;

Sheriff includes a person to whom a warrant of execution is directed;

warrant of execution means a warrant of seizure and sale, a warrant of possession and a warrant of delivery.

68.02 Leave to issue warrant

- (1) Notwithstanding Order 66, a warrant of execution to enforce a judgment shall not be issued without the leave of the Court in the following cases—
- (a) where six years have elapsed since the judgment took effect;
 - (b) where any change has taken place, whether by assignment or death or otherwise, in the identity of the persons entitled or liable to execution under the judgment;
 - (c) where the judgment is against the assets of a deceased person coming to the hands of the deceased's executor or administrator after the date of the judgment, and it is sought to issue execution against assets of that description;
 - (d) where under the judgment a person is entitled to enforce it subject to the fulfilment of a condition;
 - (e) where the warrant is against property in the hands of a receiver appointed by the Court or of a sequestrator;

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- (f) where the judgment is for a sum in a currency not Australian dollars.
- (2) Paragraph (1) does not affect any provision of or under any Act requiring the leave of the Court before a judgment may be enforced.
- (3) An application for leave under paragraph (1) may be made without notice to any person, unless the Court otherwise orders.
- (4) The application shall be supported by evidence on affidavit showing—
- (a) where the judgment is for the payment of money, the amount, including any interest, due on the date of the application;
 - (b) where paragraph (1)(a) applies, the reasons for the delay;
 - (c) where paragraph (1)(b) applies, the change which has taken place;
 - (d) where paragraph (1)(b), (1)(c) or (1)(d) applies, that a demand to satisfy the judgment has been made on the person liable to satisfy it and that he has not satisfied it;
 - (e) that the applicant is entitled to proceed to execution on the judgment; and
 - (f) that the person against whom execution is sought is liable to execution on the judgment.
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68.03 Separate execution for costs

A person entitled to enforce a judgment entered or given with costs may have execution to enforce the judgment and, when the costs become payable, have execution separately to enforce payment of the costs.

68.04 Issue of warrant of execution

- (1) A warrant of execution is issued when the warrant is sealed with the seal of the Court.
- (2) A warrant of execution shall bear the date of its issue.
- (3) A warrant of execution shall not be issued unless the person requesting it to be issued—
 - (a) produces to the Prothonotary a form of the warrant;
 - (b) files a copy;
 - (c) where the warrant is to enforce a judgment for the payment of money, files an affidavit, sworn within 14 days before the request, stating—
 - (i) the date of the judgment;
 - (ii) the amount for which judgment was entered or given;
 - (iii) the amount, including any interest accrued and any costs, due and payable in respect of the judgment at the date of swearing of the affidavit with particulars showing how that amount is calculated or made up; and

- (iv) the daily amount of interest, if any, which, subject to any future payment under the judgment, will accrue after the date of swearing of the affidavit in respect of the judgment amount and costs.
- (4) In the case of a warrant of execution to enforce a judgment for the payment of money, the person to whom the warrant is directed shall, when executing the warrant, serve a copy of the affidavit required under paragraph (3)(c) and of any affidavit filed under Rule 10.03 of Chapter II on the person against whom the warrant is executed or leave it at the place where the warrant is executed.

68.05 Duration

- (1) A warrant of execution shall be valid for the purpose of execution for one year after the day it is issued.
- (2) Notwithstanding paragraph (1), the Court may from time to time by order extend the period of the validity of the warrant for the purpose of execution for not more than one year at any one time from the day on which it would otherwise expire.
- (3) An order under paragraph (2) shall not be made after the day of expiry of the warrant.
- (4) An application for an order under paragraph (2) may be made without notice to any person.
- (5) A copy of an order under paragraph (2) shall be delivered to the Sheriff by the party obtaining the order.

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- (6) The priority of a warrant of execution in respect of which an order under paragraph (2) has been made shall be determined by reference to the date on which the warrant was originally delivered to the Sheriff.

68.06 Costs of prior execution

The amount for which a warrant of execution may be issued shall, unless the Court otherwise orders, include—

- (a) the costs, fees and expenses incurred in respect of any prior warrant of execution on the same judgment, whether the prior warrant was or was not productive; and
- (b) money recoverable under section 107(1) of the Service and Execution of Process Act 1992 of the Commonwealth.

68.07 Provision for enforcing payment of money

Order 69 shall, with any necessary modification, apply to a warrant of execution which includes a provision for enforcing the payment of money required to be paid by the judgment which is to be enforced by the warrant.

68.08 Form of warrant of execution

A warrant of execution shall be in Form 53B, 68A, 68B or 68C, whichever is appropriate.

ORDER 69

WARRANT OF SEIZURE AND SALE

69.01 Definitions

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

creditor means a person for whom a warrant is issued;

debtor means a person against whose property a warrant is to be executed;

judgment includes order;

Sheriff includes a person to whom a warrant is directed;

warrant means a warrant of seizure and sale.

69.02 New enforcement process

The process of enforcement under this Order shall be used instead of the process of enforcement by writ of fieri facias.

69.03 Two or more warrants

Unless the Court otherwise orders, a warrant shall not be issued while another warrant issued in respect of the same judgment is in force except for the purpose of Rule 68.03.

69.04 Order of sale

- (1) Subject to paragraphs (2) and (3), where it appears to the Sheriff that property subject to levy under a warrant is more than sufficient to satisfy the amount to be levied, he shall take or sell so much of the property as appears to the Sheriff to be sufficient.

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- (2) Subject to paragraph (3), the Sheriff shall take or sell property—
- (a) in such order as seems to the Sheriff best for the prompt execution of the warrant without undue expense;
 - (b) subject to paragraph (2)(a), in such order as the debtor directs; and
 - (c) subject to paragraph (2)(a) and (b), in such order as seems to the Sheriff best for minimising hardship to the debtor and other persons.
- (3) Land shall not be put up for sale under the warrant until all other property liable to sale under the warrant has been sold unless the debtor so requests.
- (4) The Court may order that property subject to levy under the warrant be taken or sold otherwise than in accordance with the preceding paragraphs.

69.05 Time, place and mode of sale

- (1) The Sheriff shall put up for sale all property liable to sale under a warrant—
- (a) as early as may be having regard to the interests of the parties; and
 - (b) at the place which seems to the Sheriff best for a beneficial sale of the property.
- (2) In the case of property, other than land, which is liable to sale under a warrant, the Sheriff may as the Sheriff thinks fit sell the property either by private contract or public auction.
- (3) Rule 69.06 shall not apply to a sale by private contract made in accordance with paragraph (2).

69.06 Advertisement of sale

- (1) Before putting property up for sale under a warrant the Sheriff shall advertise the sale by giving notice of the time and place of sale and of particulars of the property in the manner which seems to the Sheriff best to give publicity to the sale.
- (2) The Sheriff shall not advertise the sale of any land until the creditor has satisfied the Sheriff by such means as the Sheriff may reasonably require that—
 - (a) in the case of land under the operation of the **Transfer of Land Act 1958**, a copy of the warrant has been served on the Registrar of Titles and that a memorandum of that service has been recorded in the Register kept under that Act;
 - (b) in the case of other land, a copy of the warrant has been left with the Registrar-General.
- (3) An advertisement relating to the intended sale of land by the Sheriff shall be in Form 69A and include—
 - (a) a concise description of the land, including its location, stated in terms calculated to enable interested persons to identify it;
 - (b) a statement in general terms of the improvements, if any, believed by the Sheriff to be on the land;
 - (c) a statement of the last known address of the debtor; and

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- (d) in the case of land under the operation of the **Transfer of Land Act 1958**, a statement of the interest, if any, of the debtor according to the Register kept under that Act and of the recordings in that Register which affect or may affect the land as at the date of service upon the Registrar of Titles of the warrant.
- (4) The creditor shall serve personally on the debtor a copy of the advertisement not less than 14 days before the date of the intended sale.
- (5) The Court may dispense with service under paragraph (4).
- (6) Not less than three days or such lesser period as the Sheriff may allow before the date advertised for the sale the creditor shall—
- (a) file an affidavit of service of a copy of the advertisement or, where the Court makes an order for substituted service of the advertisement, an affidavit showing due compliance with the order;
 - (b) deliver to the Sheriff—
 - (i) where a copy of the advertisement is served on the debtor, a copy of the affidavit of service;
 - (ii) where the Court makes an order dispensing with service of a copy of the advertisement, a copy of the order;
 - (iii) where the Court makes an order for substituted service of the advertisement, a copy of the order and of the affidavit showing due compliance.
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69.07 Notional possession of goods

Notwithstanding that the Sheriff leaves land on which goods have been seized under a warrant, the Sheriff shall be taken to remain in possession of the goods if the Sheriff leaves in a prominent position on or about the land on which the goods were seized or upon the goods seized a notice of the seizure listing the items seized.

ORDER 70

WARRANT OF POSSESSION

70.01 Payment of money

A warrant of possession to enforce a judgment for the possession of land may include provision for enforcing the payment of money required to be paid by the judgment and money recoverable under the Service and Execution of Process Act 1992 of the Commonwealth.

70.02 Removal of goods on warrant of possession

On the execution of a warrant of possession the Sheriff need not remove any of the goods found on the land.

ORDER 71

ATTACHMENT OF DEBTS

71.01 Definitions and application

- (1) In this Order, unless the context or subject matter otherwise requires—

co-operative means a body registered or deemed to be registered under the **Co-operatives Act 1996** as a co-operative;

garnishee means a person from whom a judgment creditor claims—

- (a) that a debt is due or accruing to the judgment debtor on the day an order for the filing and service of a garnishee summons is made; or
- (b) that a debt will or is likely to become due or accrue to the judgment debtor between the day an order for the filing and service of a garnishee summons is made and the day for hearing named in the summons;

judgment includes an order;

judgment creditor means a person entitled to enforce a judgment for the payment of money other than a judgment for the payment of money into court;

judgment debtor means a person required by a judgment to pay money otherwise than into court.

- (2) This Order shall not apply to debts being earnings within the meaning of Order 72 due or accruing to the judgment debtor.

71.02 What debts attachable

A debt may be attached under this Order 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 named in the summons.

71.03 Bank account

- (1) An amount standing to the credit of a judgment debtor in an account in a bank or a co-operative shall, for the purpose of this Order, be a debt due or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied—
 - (a) that a demand or notice is required before money is withdrawn;
 - (b) that a personal application must be made before money is withdrawn;
 - (c) that a deposit book must be produced before money is withdrawn;
 - (d) that a receipt for money deposited in the account must be produced before money is withdrawn.

Note

bank is defined in Rule 1.13(1).

- (2) Paragraph (1) shall apply, with any necessary modification, to an amount which is placed to the credit of a judgment debtor in an account in a bank or a co-operative between the day an order for the filing and service of a garnishee summons is made and the day for hearing named in the summons.

71.04 Filing and service of garnishee summons

- (1) Subject to any Act, the Court may, on the application of a judgment creditor, order that a garnishee summons be filed and served on the garnishee.
- (2) A judgment creditor may apply for an order under paragraph (1) without notice to any person.
- (3) In making an order under paragraph (1), the Court shall fix an amount to be specified in the garnishee summons for the purpose of Rule 71.06 having regard to—
- (a) the amount due under the judgment on the date of the order and any money then recoverable under section 107(1) of the Service and Execution of Process Act 1992 of the Commonwealth; and
 - (b) the amount of interest accrued and accruing on the judgment debt; and
 - (c) the costs of the garnishee proceedings.
- (4) Where an order is made under paragraph (1) in respect of a debt not yet due or accruing to the judgment debtor from the garnishee, the day for hearing named in the summons shall be not more than 30 days after the date of the order.

71.05 Evidence on application for garnishee summons

- (1) An order shall not be made under Rule 71.04 unless it is shown by affidavit—
 - (a) that the judgment 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;
 - (ii) a debt will or is likely to become due or accrue to the judgment debtor from the garnishee—as the case requires.
- (2) Where an application is made for an order under Rule 71.04 in respect of a debt within paragraph (1)(b)(ii) of this Rule, the affidavit shall—
 - (a) 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
 - (b) 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.

71.06 Garnishee summons

- (1) A garnishee summons shall identify each debt in respect of which it is filed and as the case requires—
 - (a) state—
 - (i) where the debt is due or accruing to the judgment debtor from the garnishee, that upon service of the summons the debt shall be attached and bound in the

hands of the garnishee to the extent of the amount specified in the summons;

- (ii) where the debt is not yet due or accruing to the judgment debtor from the garnishee, that in the event that the debt becomes due or accrues before the day for hearing named in the summons the debt shall be attached and bound in the hands of the garnishee to the extent of the amount specified in the summons when it becomes due or accrues; and

- (b) state that on the day for hearing named in the summons the judgment creditor will apply for an order that the garnishee pay to the judgment creditor the debt attached to the extent of the amount specified in the summons.

- (2) A garnishee summons shall be in Form 71A.

71.07 Service of summons

- (1) Subject to paragraph (2), the judgment creditor shall, not less than seven days before the day for hearing named in the garnishee summons, serve the summons and a copy of each affidavit used on the application for an order under Rule 71.04 on the garnishee personally and on the judgment debtor.
- (2) A garnishee summons shall not be served on a garnishee out of Victoria.

71.08 What debts attached, when and to what extent

- (1) A debt due or accruing to the judgment debtor from the garnishee in respect of which an order for the filing and service of a garnishee summons is made shall, upon service of the summons on the garnishee, be attached and bound in the hands of the garnishee to the extent of the amount specified in the summons.

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- (2) A debt not yet due or accruing to the judgment debtor from the garnishee in respect of which an order for the filing and service of a garnishee summons is made shall, in the event that the debt becomes due or accrues before the day for hearing named in the summons, be attached and bound in the hands of the garnishee to the extent of the amount specified in the summons when it becomes due or accrues.
- (3) Notwithstanding paragraphs (1) and (2), where, after service of a garnishee summons on the garnishee, the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purpose of the garnishee application the debt attached be reduced to the extent of the payment or satisfaction.

71.09 Payment to judgment creditor

- (1) Subject to Rules 71.10 and 71.11, the Court, on the hearing of a garnishee summons, may order the garnishee to pay to the judgment creditor—
- (a) the debt attached to the extent specified in the garnishee summons; or
 - (b) so much of the debt attached to the extent so specified as is required to satisfy the judgment in respect of which the summons is filed and served together with interest, any money recoverable under section 107(1) of the Service and Execution of Process Act 1992 of the Commonwealth and such costs of the application as may be specified in the order.

- (2) Where on the hearing of a garnishee summons the garnishee does not dispute the debt, or where the garnishee does not attend on the hearing, the Court may make an order under paragraph (1) upon the evidence in support of the application under Rule 71.04 for an order that the garnishee summons be filed and served on the garnishee.
- (3) An order under paragraph (1) may be enforced in the same manner as any other order for the payment of money.
- (4) An order under paragraph (1) shall be in Form 71B or 71C as the case requires.

71.10 Dispute of liability by garnishee

If on the hearing of the garnishee summons the garnishee disputes liability to pay the debt attached, the Court may—

- (a) determine the question of liability; or
- (b) give directions for the trial of the question.

71.11 Claim by other person

Where it appears to the Court that any person other than the judgment debtor may be entitled to the debt attached or to a charge or lien upon it, the Court may order that notice of the application be given to that person and then determine the entitlement or give directions for its determination.

71.12 Discharge of garnishee

Any payment made by a garnishee in compliance with, and any execution levied against a garnishee under, an order made under Rule 71.09 shall be a valid discharge of the garnishee's liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that subsequently—

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- (a) the garnishee proceedings are set aside; or
 - (b) the judgment from which they arose is reversed or varied.

71.13 Money in court

- (1) Where money is standing to the credit of the judgment debtor in court, the Court, on the application of the judgment creditor made by summons, may order that the money or so much thereof as is sufficient to satisfy the judgment sought to be enforced together with interest accrued on the judgment debt and the costs of the application be paid to the judgment creditor.
- (2) The summons and a copy of any affidavit in support shall be served on the judgment debtor not less than seven days before the day for hearing named in the summons.
- (3) Paragraph (1) is subject to Rule 15.09.

71.14 Costs

Unless the Court otherwise orders, the costs of the judgment creditor of a garnishee application under this Order shall, be retained by the judgment creditor out of the money recovered by the judgment creditor from the garnishee in priority to the debt under the judgment in respect of which the application arose and interest accrued thereon and any money recoverable under section 107(1) of the Service and Execution of Process Act 1992 of the Commonwealth.

ORDER 72

ATTACHMENT OF EARNINGS

72.01 Definitions

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

attachment of earnings order means an order under Rule 72.03 or such an order as varied from time to time;

earnings in relation to a judgment debtor means any amounts payable to the judgment debtor—

- (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 any pension payable to the judgment debtor under the Social Security Act 1991 of the Commonwealth, or the Veterans' Entitlements Act 1986 of the Commonwealth;

employer in relation to a judgment debtor means a person (including the Crown in right of the State of Victoria, a Minister of the Crown in

right of the State of Victoria, and any statutory authority representing the Crown in right of the State of Victoria) 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;

judgment includes an order;

judgment creditor means a person entitled to enforce a judgment for the payment of money other than a judgment for the payment of money into court;

judgment debtor means a person required by a judgment to pay money otherwise than into court;

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 making all proper deductions under income tax legislation of the Commonwealth;

Rule 72.01
def. of
net earnings
amended by
S.R. No.
43/2006 rule 7.

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 that pay-day and either—

- (a) the last preceding pay-day; or
- (b) where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer;

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 that pay-day and either—

- (a) the last preceding pay-day; or
- (b) where there is no last preceding pay-day, the date on which the employer became, or last became, the judgment debtor's employer.

72.02 Application for attachment of earnings order

- (1) A judgment creditor may apply by summons to the Court for an attachment of earnings order.
- (2) The summons shall be supported by an affidavit, which may contain statements of fact based on information and belief if the grounds are set out.
- (3) The summons shall be in Form 72A and the affidavit shall be in Form 72B.
- (4) The summons, a copy of the affidavit and a notice in Form 72C as 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.
- (5) The Court shall not make an attachment of earnings order to secure the payment of money payable under a judgment where a warrant has been issued in that case committing the judgment debtor to prison under the **Imprisonment of Fraudulent Debtors Act 1958** and has not been executed, but in such case the Court may discharge the warrant with a view to making an attachment of earnings order instead.

72.03 Making of order

Where the Court is satisfied that the judgment debtor is a person to whom earnings are payable or are likely to become payable and—

- (a) that at the time when the application was made there was due and unpaid in respect of the judgment which the judgment creditor is entitled to enforce an amount of not less than \$20; or
- (b) that the judgment debtor has persistently failed to comply with an order with respect to the judgment—

the Court may order a person who appears to the Court to be the judgment debtor's employer in respect of those earnings or part of those earnings to make out of those earnings or that part of those earnings payments in accordance with Rule 72.07.

72.04 Attendance of or information about judgment debtor

- (1) In relation to an attachment of earnings order or any application for such an order the Court may order that—
 - (a) the judgment debtor attend before the Court at a time specified in the order to be examined concerning the judgment debtor's means and ability to comply with the judgment;
 - (b) the judgment debtor state to the Court or furnish to the Court within the time fixed by the Court a statement signed by the judgment debtor setting forth—
 - (i) the name and address of his or her employer or, if he or she has more employers than one, of each of his or her employers;

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- (ii) particulars as to the judgment debtor's earnings;
 - (iii) such other particulars as the Court thinks necessary to enable the enforcement of the order; or
 - (c) any person who appears to the Court to be indebted to the judgment debtor or to be the employer of the judgment debtor give to the Court a statement signed by that person or on that person's behalf containing such particulars as are specified in the direction of that person's indebtedness to the judgment debtor that became payable by that person during a specified period.
- (2) A document purporting to be a statement referred to in paragraph (1) shall be received in evidence in any proceedings for the enforcement of the order.
- (3) Where on an application for an attachment of earnings order the Court is satisfied—
- (a) that the judgment debtor has been served with a copy of the summons;
 - (b) that the judgment debtor has had a reasonable opportunity of attending the hearing;
 - (c) that the judgment debtor is employed by an ascertained employer; and
 - (d) as to the earnings of the judgment debtor—
- the Court may make an attachment of earnings order in the absence of the judgment debtor.
- (4) For the purpose of this Rule the Court may act upon evidence by or on behalf of the judgment debtor's employer or by the judgment debtor's spouse or any statement or information furnished under paragraph (1).
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- (5) Where the Court considers an application in the absence of the judgment debtor or his or her spouse and the Court has before it sufficient evidence in the opinion of the Court upon which to specify a protected earnings rate and a normal deduction rate, the Court shall so specify those rates, but where the Court does not have sufficient evidence, the Court may without specifying such 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.
- (6) Nothing in paragraph (1)(a) shall affect any other mode of enforcing the attendance of the judgment debtor before the Court.
- (7) An application for an order under paragraph (1)—
- (a) shall be made by summons in Form 72D;
and
 - (b) shall be supported by an affidavit in Form 72E.
- (8) An order under paragraph (1) shall be in Form 72F or 72G, whichever is appropriate.

72.05 Contents of order

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

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- (a) securing payment of the amount due and unpaid under the judgment; and
 - (b) securing payment within a reasonable time of any costs ordered by the Court to be paid by the judgment debtor.
 - (2) An attachment of earnings order may specify a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to subsequent pay-days.
 - (3) An attachment of earnings order shall also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the judgment debtor and of any other person for whom he or she must or reasonably may provide, the Court considers it to be reasonable that the earnings to which the order relates should not be reduced by a payment under the order.
 - (4) Unless the Court—
 - (a) has received from the judgment debtor a completed form pursuant to the notice in Form 72C given under Rule 72.02(4) as to the property and assets of the judgment debtor and the debts, liabilities and other financial obligations of the judgment debtor; or
 - (b) has examined the judgment debtor as to those matters—the Court shall not under paragraph (3) specify as the protected earnings rate a rate that is less than 80 per cent of the net earnings of the judgment debtor.
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- (5) An attachment of earnings order shall—
- (a) provide that the payments under the order are to be made to the person specified in the order;
 - (b) contain such particulars as the Court thinks necessary for enabling the person to whom the order is directed to identify the judgment debtor.
- (6) An attachment of earnings order shall be in Form 72H.

72.06 Service of order

- (1) An attachment of earnings order shall be served on the judgment debtor and on the person to whom the order is directed.
- (2) There shall also be served on the person to whom an attachment of earnings order is directed—
 - (a) a notice informing the person of the effect of the order and of that person's obligations under this Order; and
 - (b) two forms of notice that the judgment debtor is not in that person's employ.
- (3) A notice under paragraph (2)(a) shall be in Form 72J and a notice under paragraph (2)(b) shall be in Form 72K.
- (4) The order shall not come into force until the expiration of seven days after the day on which the order is served on the person to whom the order is directed.

72.07 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 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 other previous pay-day—

pay, so far as that 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 any 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 paragraph (1) shall be a valid discharge to the employer as against the judgment debtor to the extent of the amount paid.
- (3) An employer making payments in accordance with an attachment of earnings order—
 - (a) is entitled to deduct from the earnings of the judgment debtor in addition to any other amount an allowance of \$3 in respect of each payment towards the clerical and administrative costs of making payments under the order; and
 - (b) shall give to the judgment debtor notice of the amount deducted.

72.08 Attachment of earnings in place of other orders

Where an application is made to the Court to enforce a judgment for the payment of money otherwise than into Court, the Court may, instead of making any other order, make an attachment of earnings order.

72.09 Execution after attachment of earnings

Unless the Court otherwise orders, where an attachment of earnings order is in force—

- (a) no warrant of execution shall issue; and
- (b) no order shall be made for the enforcement of the judgment to which the attachment of earnings order relates.

72.10 Discharge or variation of order

- (1) Where 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 shall not come into force until the expiration of seven days after the day on which the order is served on the person to whom it is directed.

72.11 Cessation of attachment of earnings order

- (1) An attachment of earnings order shall cease to have effect—
 - (a) upon being discharged under Rule 72.10; or
 - (b) unless the Court otherwise orders, upon the making of any other order for the recovery of the moneys owing under the judgment in relation to which the attachment of earnings order was made.
- (2) Where an attachment of earnings order ceases to have effect, the Prothonotary shall forthwith give notice accordingly to the person to whom the order was directed.

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- (3) A notice under paragraph (2) shall be in Form 72L.
 - (4) Where an attachment of earnings order ceases to have effect, the person to whom the order is directed shall not incur any liability in consequence of that person treating the order as still in force at any time before the expiration of seven days after the day on which the notice required by paragraph (2) or a copy of the order discharging the attachment of earnings order, as the case may be, is served on that person.

72.12 Two or more orders in force

Where earnings become payable to a judgment debtor and there are in force two or more attachment of earnings orders, whether made under these Rules or otherwise, in relation to those earnings, the person to whom the orders are directed—

- (a) shall comply with those orders according to the respective dates on which they took effect and shall disregard any order until the earlier order has been complied with; and
- (b) shall comply with any order as if the earnings to which the order relates were the residue of the earnings of the judgment debtor after the making of any payment under an earlier order.

72.13 When varied order taken to be made

For the purpose of Rule 72.12 an attachment of earnings order which has been varied under Rule 72.10 shall be taken to have been made as so varied on the day upon which the attachment of earnings order was made.

72.14 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 that payment.
- (2) Where a person served with an attachment of earnings order directed to that person is not the employer of the judgment debtor at the time of service of the order, that person shall, forthwith after service of the order, give notice in writing accordingly to the Prothonotary.
- (3) Where a person served with an attachment of earnings order directed to that 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, that person shall, forthwith after ceasing to be the judgment debtor's employer, give notice in writing accordingly to the Prothonotary.

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

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- (3) Paragraph (2) shall not apply in respect of any payment made after an application is withdrawn or an appeal from an order made on the application is abandoned.

72.16 Service

An order or document that is required or permitted to be served on a person under this Order may be served on that person—

- (a) personally;
 - (b) by delivering a copy at the usual or last known place of residence or business of that person to some person who apparently resides or is employed there and is apparently over the age of 16 years; or
 - (c) by sending a copy to the person at the person's usual or last known place of residence or business by registered post.
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ORDER 73

CHARGING ORDERS AND STOP ORDERS AND NOTICES

73.01 Definitions

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

charging order means an order made under Rule 73.02;

corporation includes a body registered or deemed to be registered under the **Co-operatives Act 1996** as a co-operative;

funds or ***funds in court*** means—

- (a) any money, any stock issued by or any funds of or annuity granted by any government; or
- (b) any stock of any corporation standing or to be placed to the credit of an account in the books of the Court;

judgment means a judgment or order for the payment of an ascertained sum of money otherwise than into court;

judgment creditor means a person entitled to enforce a judgment;

judgment debt means the sum due under a judgment and includes the amount of any interest;

judgment debtor means a person against whom a judgment may be enforced;

securities means—

- (a) (i) any stock issued by or any funds of or annuity granted by the Commonwealth of Australia or by

any State or Territory of the Commonwealth; and

- (ii) any stock of any corporation registered or formed under any general Act of the Commonwealth of Australia or under any general Act of any State or Territory of the Commonwealth; and

- (b) any dividend or interest payable on such stock;

stock includes shares, and any debenture, debenture stock, bond, note or other security.

73.02 Order charging securities

For the purpose of securing the payment of a judgment debt the Court may by order impose a charge on the beneficial interest of the judgment debtor in any securities.

73.03 Filing and service of charging summons

- (1) On the application of a judgment creditor, the Court may order that a charging summons be filed and served.
- (2) A judgment creditor may apply for an order under paragraph (1) without notice to any person.

73.04 Evidence on application for charging summons

- (1) An application for an order under Rule 73.03(1) shall be supported by an affidavit—
 - (a) stating that the judgment is unsatisfied, either wholly or to a stated extent;
 - (b) identifying the securities in respect of which the order is sought and stating in whose name they stand; and

- (c) stating that the judgment debtor has a beneficial interest in the securities and describing that interest.
- (2) An affidavit under this Rule may contain statements of fact based on information and belief if the grounds are set out.

73.05 Charging summons

- (1) A charging summons shall identify the securities in respect of which it is filed and state that—
 - (a) upon service of the summons on the government or corporation to which it is addressed, the government or corporation, as the case may be, shall not except by order of the Court—
 - (i) cause or permit any transfer of any of the securities to be made; or
 - (ii) pay to any person any dividend or interest thereon;
 - (b) upon service of the summons on the judgment debtor, unless the Court otherwise orders, no disposition by the judgment debtor of the judgment debtor's interest in any of the securities made before the application for the charging order is heard by the Court shall be valid as against the judgment creditor.
- (2) A charging summons shall be in Form 73A.

73.06 Service of summons

The judgment creditor shall, not less than seven days before the day for hearing named in the charging summons, serve on the judgment debtor and personally on the government or corporation the summons and a copy of each affidavit used on the application for an order under Rule 73.03(1).

73.07 Effect of service of summons

- (1) Where without the authority of the Court a government or corporation upon which a charging summons has been served—
 - (a) causes or permits any of the securities to which the summons relates to be transferred; or
 - (b) pays to any person any dividend or interest thereon—

the government or corporation, as the case may be, shall be liable to pay to the judgment creditor an amount equal to the value to the judgment debtor of the securities transferred or of the dividend or interest paid, as the case may be, or so much thereof as is sufficient to satisfy the judgment.

- (2) No disposition by the judgment debtor of the judgment debtor's interest in any of the securities to which a charging summons relates made after the service of it on the judgment debtor and before the application for the charging order is heard shall be valid as against the judgment creditor, unless the Court otherwise orders.

73.08 Order on summons hearing

- (1) On the hearing of a charging summons, the Court may make a charging order with respect to securities to which the summons relates.
- (2) If the judgment debtor does not attend on the hearing of the charging summons or, if attending, does not dispute the evidence in support of the application under Rule 73.03(1), the Court may make a charging order upon that evidence.

73.09 Effect and enforcement of charge

A charge imposed by a charging order shall have the same effect and give the judgment creditor the same remedies for enforcing it as if it were a valid charge effectively made by the judgment debtor.

73.10 Variation or discharge of order

The Court may by order at any time—

- (a) vary the effect under Rule 73.07 of service of a charging summons;
- (b) vary or discharge a charging order.

73.11 Order charging funds in court

- (1) For the purpose of securing the payment of a judgment debt, the Court may by order impose a charge on the beneficial interest of the judgment debtor in any funds in court.
- (2) Rules 73.03 to 73.08 and Rule 73.10 shall apply, with any necessary modification, to an application for an order under paragraph (1).
- (3) The judgment creditor shall, forthwith upon the making of an order that a summons for an order under paragraph (1) be filed and served, lodge a copy of the summons and of each affidavit used on the application for the order with the Senior Master or Prothonotary by whom the funds in court are held.
- (4) Paragraph (1) is subject to Rule 15.09.

Rule 73.11(3)
amended by
S.R. No.
100/2008
rule 9(2)(f).

73.12 Stop order for funds in court

- (1) The Court may make an order that funds in court, or any part thereof, or the income thereon, shall not be transferred, sold, delivered out, paid or otherwise dealt with unless notice is first given to the person applying for the order.

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- (2) An order may be made under paragraph (1) on the application of—
- (a) any person who has a mortgage or charge on the interest of any person in the funds in court;
 - (b) any person to whom that interest has been assigned; or
 - (c) any person who is a judgment creditor of the person entitled to that interest.
- (3) The application shall be made—
- (a) by summons in the proceeding in which the funds are in court; or
 - (b) if there is no proceeding, by originating motion.
- (4) The summons or originating motion and a copy of any affidavit in support shall be served on every person who has an interest in the funds in court which may be affected by the order sought.
- (5) On an application under this Rule, the Court may make such order as it thinks fit for the costs and expenses of the applicant and of any party to the application or other person against whom an order is sought.

73.13 Stop notice on corporation stock not in court

- (1) In this Rule and the following Rules of this Order ***corporation*** means any corporation registered or formed under any general Act of the Commonwealth of Australia or under any general Act of any State or Territory of the Commonwealth.
- (2) Any person (in this and the following Rules called ***the claimant***) claiming a beneficial interest in any stock of a corporation, other than stock in court, who desires to be notified of any proposed

transfer of that stock or payment of any dividend or interest thereon may give notice of that desire to the corporation by—

- (a) filing—
 - (i) an affidavit in Form 73B identifying the stock in question and describing the person's interest therein and identifying any document under which it arises; and
 - (ii) a notice in Form 73C, signed by the deponent and addressed to the corporation; and
- (b) serving a sealed copy of the affidavit and of the notice on the corporation.
- (3) The affidavit shall be indorsed with a note stating the address to which any notice under Rule 73.14 is to be sent and, subject to paragraph (4), that address shall for the purpose of that Rule be the address for service of the claimant.
- (4) The claimant may change the claimant's address for service for the purpose of Rule 73.14 by filing and serving on the corporation notice of the change.

73.14 Effect of stop notice

Where an affidavit and a notice are served on a corporation under Rule 73.13, and during the time the notice is in force, the corporation is requested to register a transfer of the stock to which the notice relates or the payment of any dividend or interest on the stock falls due, the corporation—

- (a) shall serve on the claimant at the claimant's address for service a notice informing the claimant of the request; and

- (b) except with the authority of the Court, shall not register the transfer or, as the case requires, pay the dividend or interest before the expiration of 10 days after the day that notice is served.

73.15 Withdrawal or discharge of stop notice

- (1) A claimant may by notice served on the corporation withdraw a notice served on it under Rule 73.13.
- (2) The Court may by order discharge any such notice.

73.16 Prohibition of transfer of or payment on stock

- (1) The Court, on the application of any person claiming a beneficial interest in any stock of a corporation, other than stock in court, may by order prohibit or restrict the corporation from registering any transfer of the whole or any part of the stock or from paying any dividend or interest thereon.
 - (2) The Court may vary or discharge an order made under paragraph (1).
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ORDER 74

ENFORCEMENT BY APPOINTMENT OF RECEIVER

74.01 Procedure

An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 39 and that Order shall apply to such a receiver as it applies to a receiver appointed for any other purpose.

74.02 Appointment of receiver by way of equitable execution

Before determining an application for the appointment of a receiver by way of equitable execution the Court—

- (a) shall have regard to—
 - (i) the amount claimed by the judgment creditor;
 - (ii) the amount likely to be obtained by the receiver; and
 - (iii) the probable costs of the receiver's appointment; and
- (b) may direct an inquiry on these or any other matters.

ORDER 75

CONTEMPT

PART 1—INTERPRETATION

75.01 Definition

In this Order, unless the context or subject matter otherwise requires, *respondent* means a person guilty or alleged to be guilty of contempt of court.

PART 2—SUMMARY PROCEEDINGS FOR CONTEMPT

75.02 Contempt in face of the Court

Where it is alleged or appears to the Court that a person is guilty of contempt of court committed in the face of the Court, the Court may—

- (a) by oral order direct that the respondent be arrested and brought before the Court; or
- (b) issue a warrant for his or her arrest in Form 75A.

75.03 Procedure on hearing of charge

Where the respondent is brought before the Court, whether under oral order or warrant for arrest, the Court shall—

- (a) cause the respondent to be informed of the contempt with which the respondent is charged; and
- (b) adopt thereafter such procedure as in the circumstances the Court thinks fit.

75.04 Custody pending disposal of charge

The Court may order that until the charge is disposed of the respondent be kept in custody or be released or released on terms, including a condition that the respondent give security for attendance in person to answer the charge.

PART 3—OTHER PROCEDURE FOR CONTEMPT

75.05 Application

- (1) This Part applies to—
 - (a) contempt of court committed in the face of the Court;
 - (b) any other contempt of the Court;
 - (c) contempt of an inferior court.
- (2) In the case of contempt of court committed in the face of the Court, the procedure under this Part is alternative to that under Part 2.

75.06 Procedure

- (1) Application for punishment for the contempt shall be by summons or originating motion in accordance with this Rule.
- (2) Where the contempt is committed by a party in relation to a proceeding in the Court, the application shall be made by summons in the proceeding.
- (3) Where paragraph (2) does not apply, the application shall be made by originating motion which—
 - (a) shall be entitled "The Queen v." the respondent, "on the application of" the applicant; and
 - (b) shall require the respondent to attend before a Judge of the Court.
- (4) The summons or originating motion shall specify the contempt with which the respondent is charged.

Rule 75.06
(3)(b)
amended by
S.R. No.
100/2008
rule 9(2)(g).

- (5) The summons or originating motion and a copy of every affidavit shall be served personally on the respondent, unless the Court otherwise orders.

75.07 Application by Prothonotary

- (1) The Court may, by order, direct the Prothonotary to apply by summons or originating motion for punishment of the contempt.
- (2) Where the Prothonotary applies as so directed, the Court may order that costs be paid by the Prothonotary to the respondent or by the respondent to the Prothonotary as it thinks fit.

75.08 Arrest of respondent

Where a summons or originating motion for punishment of a contempt has been filed, and it appears to the Court that the respondent has absconded or is likely to abscond or has left or is likely to leave Victoria, the Court may issue a warrant for his or her arrest and detention in custody until he or she is brought before the Court to answer the charge, unless he or she gives security, as the Court directs, for his or her attendance in person to answer the charge and to submit to the judgment of the Court.

75.08.1 Arrest pending contempt hearing

- (1) If it appears to the Court that a party or other person bound by an order of the Court is guilty of contempt of court, and that the delay caused by proceeding in accordance with Rule 75.06 may cause serious or irreparable mischief, the Court may issue a warrant for the arrest of the person in Form 75AA.

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- (2) The Court may thereafter adopt such procedure as it thinks fit and in particular may direct that—
- (a) proceedings be conducted in accordance with Rule 75.06 with such variation as the case requires;
 - (b) the person arrested be kept in custody or be released or released on terms, including a condition that he or she give security for his or her attendance in person to answer a charge of contempt.

75.09 Warrant for arrest

- (1) A warrant for the arrest of a respondent shall be addressed to the Sheriff and may be issued—
 - (a) where the arrest is ordered by a Judge of the Court, under his or her hand;
 - (b) where the arrest is ordered by the Court of Appeal, under the hand of the presiding Judge.
- (2) The warrant shall be in Form 75B.

Rule 75.09
(1)(a)
amended by
S.R. No.
100/2008
rule 9(2)(h).

PART 4—COMMITTAL AND COSTS

75.10 Application

This Part applies where the Court finds that a respondent is guilty of contempt of court.

75.11 Punishment for contempt

- (1) Where the respondent is a natural person, the Court may punish for contempt by committal to prison or fine or both.
- (2) Where the respondent is a corporation, the Court may punish for contempt by sequestration or fine or both.

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- (3) When the Court imposes a fine, it may commit, or further commit, the respondent to prison until the fine is paid.
 - (4) The Court may make an order for punishment on terms, including a suspension of punishment.

75.12 Discharge

Where a respondent is committed to prison for a term, the Court may order his or her discharge before the expiry of the term.

75.13 Warrant for committal

A warrant for the committal of a person found guilty of contempt of court shall be in Form 75C.

75.14 Costs

The costs of an application for punishment for contempt shall be in the discretion of the Court, whether an order for committal is made or not.

ORDER 76

SEQUESTRATION

76.01 Definitions

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

judgment includes order;

person bound means a person against whom a judgment is entered or given or an order is made.

76.02 Enforcement by sequestration

The process of enforcement under this Order shall be used instead of the process of enforcement by writ of sequestration.

76.03 Order for sequestration

- (1) An order for sequestration shall appoint not less than four persons as sequestrators and provide that the sequestrators, or any two or more of them, be authorised and directed to—
 - (a) enter upon and take possession of the real and personal estate of the person bound; and
 - (b) collect, receive and get into their hands the rents and profits of the real and personal estate of the person bound; and
 - (c) keep them under sequestration in their hands until the person bound complies with the judgment to be enforced by sequestration or until further order.
- (2) Where the person bound is a corporation and an order is made for the sequestration of the property of an officer of the corporation (whether or not an order for sequestration is also made against the corporation), the order—

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- (a) shall give the same authority and direction to the sequestrators with respect to the real and personal estate of the officer as in the case of an order against a corporation; and
 - (b) shall provide that the sequestrators shall keep that estate under sequestration in their hands until the corporation complies with the judgment to be enforced by sequestration or until further order.
- (3) The Court may discharge an order for sequestration.

76.04 Application

- (1) An application for an order for sequestration shall be by summons, and the summons and a copy of each affidavit in support shall be served personally on the person bound.
 - (2) Where the person bound is a corporation and sequestration of the property of an officer of the corporation is sought, a copy of the summons and of each affidavit in support shall also be served personally on the officer.
 - (3) The Court may dispense with service under paragraphs (1) and (2).
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ORDER 77
AUTHORITY OF ASSOCIATE JUDGES

Order 77
(Heading and
rules
77.01-77.08)
substituted by
S.R. No.
100/2008
rule 10.

77.01 Authority

Rule 77.01
substituted by
S.R. No.
100/2008
rule 10.

- (1) Subject to this Order, an Associate Judge, in addition to exercising the powers and authorities conferred by any other provision of these Rules, may, in any proceeding to which these Rules apply, give any judgment or make any order, including any judgment or order in the exercise of the inherent jurisdiction of the Court.
- (2) Subject to this Order, an Associate Judge, in addition to exercising the powers and authorities conferred by any other provision of these Rules, may hear and determine—
 - (a) any application and exercise any powers and authorities under the following statutory provisions—
 - (i) section 65 of the **Administration and Probate Act 1958**, and Part IV of that Act, if an order is sought under that Part by consent;
 - (ii) sections 3, 4, 5 and 6 of the **Administrative Law Act 1978**;
 - (iii) sections 34 and 37(2) of the **Associations Incorporation Act 1981**;
 - (iiia) section 143 of the **Confiscation Act 1997**;

Rule 77.01
(2)(a)(iiia)
inserted by
S.R. No.
44/2009
rule 6(1).

r. 77.01

Rule 77.01
(2)(a)(vi)
amended by
S.R. No.
44/2009
rule 6(2).

(iv) Divisions 1, 1A, 1B and 1C of Part I and section 42E of the **Evidence Act 1958**;

(v) section 66 of the **Guardianship and Administration Act 1986**;

(vi) sections 5, 6, 7 and 13(1) of the **Instruments Act 1958**;

(vii) section 3.4.33 of the **Legal Profession Act 2004**;

Rule 77.01
(2)(a)(viii)
substituted by
S.R. No.
44/2009
rule 6(3).

(viii) section 84 of the **Property Law Act 1958** and Part IV of that Act;

Rule 77.01
(2)(a)(viiiia)
inserted by
S.R. No.
44/2009
rule 6(3).

(viiiia) Part 3.2 and Part 3.3 of Chapter 3 of the **Relationships Act 2008**;

(ix) section 17(1), 18(3), 19(1), 25(1), 30(1), 33, 35(3), 39(1), 43, 44(1), 45(3), 57(1), 61, 67(1), 71, 72(1), 87(4), 105(4) or 106(1) of the Service and Execution of Process Act 1992 of the Commonwealth;

(x) sections 18, 22, 24, 32, 51A, 58, 59, 60, 76, 77 and 78 of the **Supreme Court Act 1986**, and, if otherwise the Associate Judge would exercise jurisdiction under these Rules to give, or the plaintiff would be entitled, under these Rules to enter judgment for the possession of land, section 85 of that Act;

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- (xi) sections 48(1) and 63A(1)(a) and 63A(3) of the **Trustee Act 1958**, in respect of trusts entered into in consequence of an order of the Court made in respect of money held or to be held on behalf of a person under a disability;
- (b) an application under any Act for payment or transfer to any person of any money or securities in Court, including any interest;
- (c) an application for or relating to the sale of property by auction or private contract, and for payment into court and investment of the purchase money;
- (d) an application—
- (i) for the appointment of a receiver by way of equitable execution;
 - (ii) for an injunction ancillary or incidental to equitable execution;
 - (iii) made under Rule 21.04(1) for judgment for an injunction;
- (e) any proceeding for the recovery of land under Order 53;
- (f) a trial of an undefended civil proceeding.
- Rule 77.01
(2)(d)(iii)
amended by
S.R. No.
44/2009
rule 6(4)(a).
- Rule 77.01
(2)(e)
inserted by
S.R. No.
44/2009
rule 6(4)(b).
- Rule 77.01
(2)(f)
inserted by
S.R. No.
44/2009
rule 6(4)(b).
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77.02 Limitations on authority

Rule 77.02
substituted by
S.R. No.
100/2008
rule 10.

Rule 77.02(1)
amended by
S.R. No.
44/2009
rule 7(1).

- (1) Subject to paragraph (2) and Rules 12.12, 22.06(1)(d), 32.08(3) and 77.01(2)(b), (c), (d), (e) and (f)—
 - (a) the trial of a proceeding shall not be held before an Associate Judge; and
 - (b) an Associate Judge shall not give any judgment or make any order at the trial of a proceeding.
- (2) Except as provided by paragraph (3)(a), (c), (d) or (e), an Associate Judge may at the trial of a proceeding give judgment or make an order by consent of all parties.
- (3) An Associate Judge shall not have authority to hear and determine—
 - (a) any application which by these Rules or any Act is required to be heard only by a Judge of the Court or the Court of Appeal, as the case requires;
 - (b) subject to this Order, any application for an injunction or other order under section 37 of the **Supreme Court Act 1986**;
 - (c) any proceeding relating to the liberty of the subject;
 - (d) any criminal proceeding, other than an appeal or an application for leave to appeal under Part 3 of Order 58;

Rule 77.02
(3)(b)
amended by
S.R. No.
44/2009
rule 7(2).

- (e) any application under section 21 of the
Supreme Court Act 1986;

Rule 77.02
(3)(e)
amended by
S.R. No.
44/2009
rule 7(3)(a).

- (f) any application or proceeding under Part 2 or
Part 2A of the **Confiscation Act 1997.**

Rule 77.02
(3)(f)
inserted by
S.R. No.
44/2009
rule 7(3)(b).

- (4) Except where the trial was conducted by
an Associate Judge, an order under Rule 49.02(2)
shall only be made by a Judge of the Court.

77.03 Associate Judge to hear application

Rule 77.03
substituted by
S.R. No.
100/2008
rule 10.

- (1) Subject to paragraph (2), an application in a
proceeding for any judgment or order which may,
in accordance with this Order, be given or made
by an Associate Judge shall be made to an
Associate Judge, not a Judge of the Court.
- (2) A judgment or order to which paragraph (1)
applies may be given or made by a Judge of the
Court on—
- (a) a reference by an Associate Judge to a Judge
of the Court under Rule 77.04;
- (b) an application made by special leave of a
Judge of the Court;
- (c) an appeal from an Associate Judge under
Rule 77.06;
- (d) the trial of the proceeding.

77.04 Reference by Associate Judge to Judge of the Court

Rule 77.04
substituted by
S.R. No.
100/2008
rule 10.

- (1) If on an application to an Associate Judge in
accordance with Rule 77.01 it appears to the
Associate Judge that the application is proper for
the determination of a Judge of the Court, the

Associate Judge may refer the application to a Judge of the Court.

- (2) The Judge of the Court to whom the application is referred may—
 - (a) hear and determine the application; or
 - (b) refer it back to the Associate Judge with directions.
- (3) An Associate Judge may refer to a Judge of the Court for directions any question arising on an application to the Associate Judge.

Rule 77.05
substituted by
S.R. No.
100/2008
rule 10.

77.05 Reference by Judge of the Court to Associate Judge

- (1) If a matter before a Judge of the Court, which matter would not otherwise be within the authority of an Associate Judge, appears to the Judge to be proper for the determination of an Associate Judge, the Judge of the Court, by order, may refer the matter to an Associate Judge.
- (2) If a Judge of the Court refers a matter to an Associate Judge, the Associate Judge may—
 - (a) hear and determine the matter, subject to any directions in the order referring the matter; or
 - (b) refer the matter back to the Judge of the Court in accordance with Rule 77.04.
- (3) In hearing and determining a matter referred by a Judge of the Court to an Associate Judge, the Associate Judge has the same powers as a Judge of the Court would have in hearing and determining such a matter, subject to any directions in the order referring the matter.
- (4) Despite paragraph (1), a Judge of the Court shall not refer to an Associate Judge any matter under Part 2 or Part 2A of the **Confiscation Act 1997**.

Rule 77.05(3)
inserted by
S.R. No.
44/2009 rule 8.

Rule 77.05(4)
inserted by
S.R. No.
44/2009 rule 8.

77.06 Appeal to Judge of the Court

Rule 77.06
substituted by
S.R. No.
100/2008
rule 10.

Rule 77.06(1)
amended by
S.R. No.
44/2009
rule 9(1).

- (1) Subject to paragraphs (2) and (2.1) and Rule 77.07, any person affected by any judgment given or order made by an Associate Judge under any Chapter of the Rules of the Supreme Court may appeal to a Judge of the Court.
- (2) No judgment or order of an Associate Judge given or made by consent or order of an Associate Judge as to costs only shall be the subject of appeal under paragraph (1) except by leave of a Judge of the Court or the Associate Judge.
- (2.1) No order of an Associate Judge made in an interlocutory application in a proceeding in the Commercial Court shall be subject to an appeal under paragraph (1) except by leave of a List Judge of that Court.
- (3) If the application on which the Associate Judge gave the judgment or made the order was not made on notice, the appeal shall be brought on for hearing within five days of the judgment or order.
- (4) If the application was made on notice, the appeal shall be by notice in writing to attend before a Judge of the Court on the day and at the time named in the notice, and the notice shall be filed within five days of the judgment or order.
- (5) The notice shall be served on every person interested not less than two days before the day named in the notice.
- (6) An order extending the time fixed by paragraph (3) or (4) may be made by a Judge of the Court or the Associate Judge.

Rule 77.06
(2.1)
inserted by
S.R. No.
44/2009
rule 9(2).

- (7) The appeal shall be by re-hearing de novo of the application to the Associate Judge but each party may, subject to any proper objections to admissibility—
 - (a) rely upon any affidavit used before the Associate Judge and upon any evidence given orally before the Associate Judge;
 - (b) by special leave of the Judge of the Court, rely upon an affidavit or oral evidence not used or given before the Associate Judge.
- (8) Except so far as a Judge of the Court or the Associate Judge otherwise orders, an appeal shall not operate as a stay of execution or of proceedings under the judgment or order.

Rule 77.07
substituted by
S.R. No.
100/2008
rule 10.

77.07 Appeal to Court of Appeal

- (1) For the purposes of section 17(3) of the **Supreme Court Act 1986**, in a proceeding to which any Chapter of the Rules of the Supreme Court (except Chapter V) applies—
 - (a) an appeal lies to the Court of Appeal from the Trial Division constituted by an Associate Judge in respect of a matter not otherwise within the authority of an Associate Judge which is referred to an Associate Judge by a Judge of the Court; and
 - (b) if the matter referred to the Associate Judge by a Judge of the Court was a matter of a kind from which an appeal lies from the determination of a Judge of the Court by leave of the Court of Appeal, the appeal from the Trial Division constituted by an Associate Judge shall only be by leave of the Court of Appeal.

- (2) For the purposes of section 17(3) of the **Supreme Court Act 1986**, an appeal lies to the Court of Appeal from the Trial Division constituted by an Associate Judge from any judgment or order made at the trial of a proceeding—

Rule 77.07(2)
substituted by
S.R. No.
44/2009
rule 10.

- (a) under Part 3.2 or Part 3.3 of Chapter 3 of the **Relationships Act 2008**; or
- (b) under section 84 or Part IV of the **Property Law Act 1958**; or
- (c) for the recovery of land under Order 53.

- (3) Order 64 applies to an appeal referred to in paragraph (1) or paragraph (2) with any necessary modification.

Rule 77.07(3)
inserted by
S.R. No.
44/2009
rule 10.

77.08 Associate Judge may act for another

If circumstances so require, an Associate Judge may hear and determine an application instead of the Associate Judge by whom it would otherwise be heard and determined.

Rule 77.08
substituted by
S.R. No.
100/2008
rule 10.

ORDER 78

PROCEEDINGS UNDER JUDGMENT

78.01 Definition

In this Order *judgment* includes order.

78.02 Directions in judgment

- (1) Where by a judgment of the Court further proceedings are necessary, the Court, when giving the judgment or at any later time, may give directions for the conduct of those proceedings.
- (2) Without limiting paragraph (1), the Court may give directions with respect to—
 - (a) the taking of any account or the making of any inquiry;
 - (b) the evidence to be adduced on the account or inquiry;
 - (c) the preparation of any draft instrument directed by the judgment to be settled, and the making of any objections to the draft;
 - (d) the parties required to attend the proceedings;
 - (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented;
 - (f) the time for taking each step in the proceedings, and the day or days for the further attendance of the parties;
 - (g) the publication of advertisements for creditors or other claimants and the time for creditors and claimants to respond.
- (3) The Court may revoke or vary any directions given under this Rule.

78.03 Claims

- (1) In this Rule *administration proceeding* means a proceeding for the administration of the estate of a deceased person or the execution of a trust under the direction of the Court.
- (2) Where the judgment in an administration proceeding directs the taking of an account of debts or other liabilities of a deceased person, the Court may—
 - (a) direct a party—
 - (i) to examine the claims of persons claiming to be creditors of the estate and determine, so far as the party is able, to which of the claims the estate is liable; and
 - (ii) determine, so far as the party is able, what are the other debts or liabilities of the deceased; and
 - (b) direct a party to file an affidavit stating the party's conclusions and reasons.
- (3) Where the judgment in an administration proceeding directs an inquiry for unascertained persons entitled, the Court may—
 - (a) direct a party—
 - (i) to examine the claims of persons claiming to be entitled and determine, so far as the party is able, which of them are valid; and
 - (ii) determine, so far as the party is able, what other persons are entitled; and
 - (b) direct a party to file an affidavit stating the party's conclusions and reasons.

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- (4) Where the party directed by the Court under paragraph (2) or (3) to examine claims is not the personal representative or trustee concerned, then, unless the Court otherwise orders, that personal representative or trustee shall join with the party so directed in making the affidavit.
 - (5) A copy of the affidavit under paragraph (2)(b) or (3)(b) shall be served on every other party not less than seven days before the time appointed by the Court for adjudicating on claims.
 - (6) For the purpose of adjudicating on claims the Court may—
 - (a) direct any claim to be investigated in such manner it thinks fit;
 - (b) require any claimant to attend and prove the claimant's claim or to furnish further particulars or evidence of it; or
 - (c) allow any claim with or without proof.
 - (7) The Court may give directions for service on persons claiming to be creditors of notice of the result of the adjudication.
 - (8) This Rule, with any necessary modification, shall apply where the judgment in any proceeding other than an administration proceeding directs that an account of debts or other liabilities be taken or that an inquiry be made.

78.04 Interest on debts

- (1) Where a judgment directs an account of the debts of a deceased person, unless the estate of the deceased is insolvent or the Court otherwise orders, interest shall be allowed—
 - (a) on any debt which carries interest, at the rate it carries;

- (b) on any other debt, from the date of the judgment at the rates payable on judgment debts from that date.
- (2) A creditor whose debt does not carry interest and who establishes the debt in proceedings under the judgment shall, unless the Court otherwise orders, be entitled to interest on the debt in accordance with paragraph (1)(b) out of any assets which remain after satisfying the costs of the proceeding, the debts established and the interest on such debts as by law carry interest.
- (3) For the purpose of this Rule—
 - (a) the debts of a deceased person include funeral, testamentary and administration expenses; and
 - (b) in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment substitute a reference to the date on which the expenses became payable.

78.05 Interest on legacies

Where a judgment directs an account of legacies, then, subject to any direction in the will or codicil or any order of the Court, interest shall be allowed on each legacy at the rate of eight per cent per annum from the end of one year after the testator's death.

78.06 Account or inquiry by Associate Judge

Unless the Court otherwise orders, an Associate Judge shall take any account or make any inquiry with respect to further proceedings under a judgment.

Rule 78.06
(Heading)
amended by
S.R. No.
100/2008
rule 11(a).
Rule 78.06
amended by
S.R. No.
100/2008
rule 11(b).

r. 78.07

Rule 78.07
(Heading)
amended by
S.R. No.
100/2008
rule 11(c).

78.07 Associate Judge's order

Rule 78.07(1)
amended by
S.R. No.
100/2008
rule 11(d)(i).

- (1) The result of proceedings before an Associate Judge under a judgment shall be stated in the form of an order.

Rule 78.07(2)
amended by
S.R. No.
100/2008
rule 11(d)(ii).

- (2) An order under this Rule shall have immediate binding effect on the parties to the proceeding and a copy shall be served on such parties as the Associate Judge directs.

Rule 78.07(3)
amended by
S.R. No.
100/2008
rule 11(d)(ii).

- (3) Subject to any direction of the Associate Judge under paragraph (4) or otherwise, an order under this Rule shall have effect as a final order disposing of the proceeding in which it is made.

Rule 78.07(4)
amended by
S.R. No.
100/2008
rule 11(d)(ii).

- (4) The Associate Judge may give directions as to the further consideration of the proceeding.

Rule 78.08
(Heading)
amended by
S.R. No.
100/2008
rule 11(e).

78.08 Appeal from Associate Judge

Rule 78.08
amended by
S.R. No.
100/2008
rule 11(f).

Rule 77.06 shall apply to an order under Rule 78.07.

ORDER 79

FUNDS IN COURT

PART 1—INTERPRETATION

79.01 Definitions

In this Order—

common fund means a common fund established
by or under the Act;

order includes judgment.

PART 2—GENERAL

79.02 Application of money

- (1) This Rule applies where money is paid into court under an order of the Court.
- (2) Subject to paragraph (3), money paid into court and any interest allocated or received in respect thereof shall not be paid out except by order of the Court.
- (3) Except where money is paid into court for the benefit of a person under disability, money paid into court and any interest allocated or received in respect thereof may be paid out by the Senior Master upon and in accordance with a written authority signed by each party to the proceeding or the party's solicitor, each signature of a party to be verified by the indorsed certificate of a solicitor.

79.03 Money in court for person under disability

- (1) Where an order is made that money in court be held by the Senior Master for the benefit of a person under disability, the party who obtains the order shall as soon as practicable procure its authentication in accordance with these Rules.

(2) As soon as practicable after authentication the Prothonotary shall forward to the Senior Master's clerk—

- (a) a copy of the order; and
- (b) if appropriate, a cheque for the amount in court to which the order relates.

79.04 Payment into court for person under disability

- (1) Where an order is made that money be paid into court for the benefit of a person under disability, the party who obtains the order shall as soon as practicable procure its authentication in accordance with these Rules.
- (2) As soon as practicable after authentication—
 - (a) the party obtaining the order shall serve a copy on the party ordered to pay into court;
 - (b) the Prothonotary shall forward a copy to the Senior Master's clerk.
- (3) The party ordered to pay into court shall pay the money to the Senior Master and within seven days of the payment serve on the party who obtained the order notice in writing of the payment.

79.05 Certificate of receipt

Where money is received by the Senior Master under an order of the Court, the Senior Master shall as soon as practicable send to the party obtaining the order a certificate of receipt.

79.06 Delay

- (1) Where an order is made that a party pay money into court for the benefit of a person under disability, and it appears to the Senior Master after due inquiry that loss has been occasioned to the person under disability—

- (a) through undue delay by the party or the party's solicitor in making the payment;
- (b) where the order was made on the approval of a compromise of a claim by the person under disability, through undue delay by the solicitor for or the litigation guardian of the person under disability in—
 - (i) obtaining the approval of the compromise;
 - (ii) procuring the authentication of the order; or
 - (iii) serving a copy of the order on the other party—

the Senior Master may order that the person responsible for the loss pay into court for the benefit of the person under disability a sum by way of interest on the money received or to be received for investment.

- (2) The sum ordered to be paid under paragraph (1) shall not exceed that derived by applying to the money for the period of the loss the last rate fixed under the **Penalty Interest Rates Act 1983**.
- (3) The Senior Master shall not make an order under paragraph (1) without giving the person who appears to be responsible for the loss an opportunity to be heard.
- (4) Any person affected by an order made by the Senior Master under paragraph (1) may appeal to a Judge of the Court, and Rule 77.06 shall apply with any necessary modification.
- (5) Where money is paid into court in accordance with an order of the Senior Master under paragraph (1), the Senior Master shall deal with the sum as if paid into court under the original order.

Rule 79.06(4)
amended by
S.R. No.
100/2008
rule 11(g).

PART 3—COMMON FUNDS

79.07 Investments in name of Senior Master

All investments made from moneys forming part of any common fund shall be made in the name "The Senior Master of the Supreme Court of Victoria".

79.08 Transfer

The Senior Master shall transfer any moneys received by him or her for the benefit of any person, estate or trust to a common fund, unless he or she considers it desirable for any special reason to invest on separate account.

79.09 Interest

- (1) At 31 May in each year interest shall be allocated and paid on each amount in a common fund as provided by section 113(14) of the Act at the last rate fixed under that section.
- (2) Where moneys are paid out of a common fund interest shall be allocated and paid thereon from the preceding 31 May to the date of the payment out at the last rate fixed under section 113(14) of the Act.

79.10 Proceeding in another court

- (1) This Rule applies where—
 - (a) money is held for the benefit of a person in respect of a claim by or on behalf of that person in another court, whether that court is within or out of Victoria; and
 - (b) if the claim were made in a proceeding in the Court, that person would be a person under disability.
- (2) Where—
 - (a) the money is held in Victoria; or

(b) the person for whose benefit the money is held is or is about to become domiciled or ordinarily resident within Victoria—

the Senior Master may order that if the money is paid to the Court it be held in court for the benefit of that person.

- (3) Money held in court pursuant to an order made under paragraph (2) shall be taken to have been paid into court pursuant to an order in a proceeding in the Court that money be paid into court for the benefit of a person under disability.
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Order 80
(Headings
and rules
80.01–80.05)
substituted as
Order 80
(Headings
and rules
80.01–80.16)
by S.R. No.
60/2009 rule 7.

ORDER 80

SERVICE UNDER THE HAGUE CONVENTION

PART 1—PRELIMINARY

Note 1

This Order forms part of a scheme to implement Australia's obligations under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Under the Convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under Article 2 of the Convention) and certain courts and government departments are, for certain purposes, designated as "other" or "additional" authorities (under Article 18 of the Convention).

Note 2

This Order provides (in Part 2) for service in overseas Convention countries of local judicial documents (documents that relate to proceedings in the Court) and (in Part 3) for default judgment in proceedings in the Court after service overseas of such a document. Part 4, on the other hand, deals with service by the Court or arranged by the Court, in its role as an other or additional authority, of judicial documents emanating from overseas Convention countries.

Note 3

The Attorney-General's Department of the Commonwealth maintains a copy of the Convention, a list of all Convention countries, details of declarations and objections made under the Convention by each of those countries and the names and addresses of the Central and other authorities of each of those countries. A copy of the Convention can be found at <http://www.hcch.net>.

Rule 80.01
substituted by
S.R. No.
60/2009 rule 7.

80.01 Definitions

In this Order—

additional authority, for a Convention country,
means an authority that is—

- (a) for the time being designated by that country, under Article 18 of the Hague Convention, to be an authority (other than the Central Authority) for that country; and

(b) competent to receive requests for service abroad emanating from Australia;

applicant, for a request for service abroad or a request for service in this jurisdiction, means the person on whose behalf service is requested;

Note

The term ***applicant*** may have a different meaning in other provisions of these Rules.

Central Authority, for a Convention country, means an authority that is for the time being designated by that country, under Article 2 of the Hague Convention, to be the Central Authority for that country;

certificate of service means a certificate of service that has been completed for the purposes of Article 6 of the Hague Convention;

certifying authority, for a Convention country, means the Central Authority for that country or some other authority that is for the time being designated by that country, under Article 6 of the Hague Convention, to complete certificates of service in the form annexed to the Hague Convention;

civil proceedings means any judicial proceedings in relation to civil or commercial matters;

Convention country means a country, other than Australia, that is a party to the Hague Convention;

defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served;

foreign judicial document means a judicial document that originates in a Convention country and relates to civil proceedings in a court of that country;

forwarding authority means—

- (a) for a request for service of a foreign judicial document in this jurisdiction, the authority or judicial officer of the Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that country to forward a request for service under Article 3 of the Hague Convention); or
- (b) for a request for service of a local judicial document in a Convention country, the Prothonotary;

Hague Convention means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague on 15 November 1965;

initiating process means any document by which proceedings (including proceedings on any cross-claim or third party notice) are commenced;

local judicial document means a judicial document that relates to civil proceedings in the Court;

request for service abroad means a request for service in a Convention country of a local judicial document mentioned in Rule 80.04(1);

request for service in this jurisdiction means a request for service in this jurisdiction of a foreign judicial document mentioned in Rule 80.13(1);

this jurisdiction means Victoria.

80.02 Provisions of this Order to prevail

The provisions of this Order prevail to the extent of any inconsistency between those provisions and any other provisions of these Rules.

Rule 80.02
substituted by
S.R. No.
60/2009 rule 7.

PART 2—SERVICE ABROAD OF LOCAL JUDICIAL DOCUMENTS

80.03 Application of Part

- (1) Subject to paragraph (2), this Part applies to service in a Convention country of a local judicial document.
- (2) This Part does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Convention.

Rule 80.03
substituted by
S.R. No.
60/2009 rule 7.

80.04 Application for request for service abroad

- (1) A person may apply to the Prothonotary, in the Prothonotary's capacity as a forwarding authority, for a request for service in a Convention country of a local judicial document.
- (2) The application must be accompanied by 3 copies of each of the following documents—
 - (a) a draft request for service abroad, which must be in accordance with Part 1 of Form 80A;
 - (b) the document to be served;

Rule 80.04
substituted by
S.R. No.
60/2009 rule 7.

-
- (c) a summary of the document to be served, which must be in accordance with Form 80B;
 - (d) if, under Article 5 of the Hague Convention, the Central Authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, the official language or one of the official languages of that country, a translation into that language of both the document to be served and the summary of the document to be served.
- (3) The application must contain a written undertaking to the Court, signed by the legal practitioner on the record for the applicant in the proceedings to which the local judicial document relates or, if there is no legal practitioner on the record for the applicant in those proceedings, by the applicant—
- (a) to be personally liable for all costs that are incurred—
 - (i) by the employment of a person to serve the documents to be served, being a person who is qualified to do so under the law of the Convention country in which the documents are to be served; or
 - (ii) by the use of any particular method of service that has been requested by the applicant for service of the documents to be served; and
-

-
- (b) to pay the amount of those costs to the Prothonotary within 28 days after receipt from the Prothonotary of a notice specifying the amount of those costs under Rule 80.06(3); and
 - (c) to give such security for those costs as the Prothonotary may require.
 - (4) The draft request for service abroad—
 - (a) must be completed (except for signature) by the applicant; and
 - (b) must state whether (if the time fixed for entering an appearance in the proceedings to which the local judicial document relates expires before service is effected) the applicant wants service to be attempted after the expiry of that time; and
 - (c) must be addressed to the Central Authority, or to an additional authority, for the Convention country in which the person is to be served; and
 - (d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority.
 - (5) Any translation required under paragraph (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating—
 - (a) that the translation is an accurate translation of the documents to be served; and
 - (b) the translator's full name and address and his or her qualifications for making the translation.
-

Rule 80.05
substituted by
S.R. No.
60/2009 rule 7.

80.05 How application to be dealt with

- (1) If satisfied that the application and its accompanying documents comply with Rule 80.04, the Prothonotary—
 - (a) must sign the request for service abroad; and
 - (b) must forward 2 copies of the relevant documents—
 - (i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Convention country in which service of the document is to be effected, to the nominated additional authority; or
 - (ii) in any other case, to the Central Authority for the Convention country in which service of the document is to be effected.
- (2) The relevant documents mentioned in paragraph (1)(b) are the following—
 - (a) the request for service abroad (duly signed);
 - (b) the document to be served;
 - (c) the summary of the document to be served;
 - (d) if required under Rule 80.04(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).
- (3) If not satisfied that the application or any of its accompanying documents complies with Rule 80.04, the Prothonotary must inform the applicant of the respects in which the application or document fails to comply.

80.06 Procedure on receipt of certificate of service

Rule 80.06
inserted by
S.R. No.
60/2009 rule 7.

- (1) Subject to paragraph (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the Prothonotary—
 - (a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and
 - (b) must send a copy of the certificate to—
 - (i) the legal practitioner on the record for the applicant in those proceedings; or
 - (ii) if there is no legal practitioner on the record for the applicant in those proceedings, the applicant.
- (2) For the purposes of paragraph (1), a certificate of service is in due form if—
 - (a) it is in accordance with Part 2 of Form 80A; and
 - (b) it has been completed by a certifying authority for the Convention country in which service was requested; and
 - (c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority, it has been so countersigned.
- (3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in paragraph (1), the Prothonotary must send to the legal practitioner or applicant who gave the undertaking mentioned in Rule 80.04(3) a notice specifying the amount of those costs.

-
- (4) For the purposes of paragraph (3), a statement of costs is in due form if—
- (a) it relates only to costs of a kind mentioned in Rule 80.04(3)(a); and
 - (b) it has been completed by a certifying authority for the Convention country in which service was requested.
- (5) Paragraph (1) does not apply unless—
- (a) adequate security to cover the costs mentioned in paragraph (3) has been given under Rule 80.04(3)(c); or
 - (b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which those costs exceed the security so given has been paid to the Prothonotary.

Rule 80.07
inserted by
S.R. No.
60/2009 rule 7.

80.07 Payment of costs

- (1) On receipt of a notice under Rule 80.06(3) in relation to the costs of service, the legal practitioner or applicant, as the case may be, must pay to the Prothonotary the amount specified in the notice as the amount of those costs.
- (2) If the legal practitioner or applicant fails to pay that amount within 28 days after receiving the notice—
- (a) except by leave of the Court, the applicant may not take any further step in the proceedings to which the local judicial document relates until those costs are paid to the Prothonotary; and
 - (b) the Prothonotary may take such steps as are appropriate to enforce the undertaking for payment of those costs.

80.08 Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of Rule 80.06(2)) that certifies that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that—

- (a) service of the document was effected by the method specified in the certificate on that date; and
- (b) if that method of service was requested by the applicant, that method is compatible with the law in force in the Convention country in which service was effected.

Rule 80.08
inserted by
S.R. No.
60/2009 rule 7.

**PART 3—DEFAULT JUDGMENT FOLLOWING SERVICE
ABROAD OF INITIATING PROCESS**

80.09 Application of Part

This Part applies to civil proceedings for which an initiating process has been forwarded following a request for service abroad to the Central Authority (or to an additional authority) for a Convention country.

Rule 80.09
inserted by
S.R. No.
60/2009 rule 7.

**80.10 Restriction on power to enter default judgment if
certificate of service filed**

- (1) This Rule applies if—
- (a) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of Rule 80.06(2)) that states that service has been duly effected; and
 - (b) the defendant has not appeared or filed a notice of address for service.

Rule 80.10
inserted by
S.R. No.
60/2009 rule 7.

-
- (2) In circumstances to which this Rule applies, default judgment may not be given against the defendant unless the Court is satisfied that—
- (a) the initiating process was served on the defendant—
 - (i) by a method of service prescribed by the internal law of the Convention country for the service of documents in domestic proceedings on persons who are within its territory; or
 - (ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to his or her residence) and that method is compatible with the law in force in that country, by that method; or
 - (iii) if the applicant did not request a particular method of service, in circumstances where the defendant accepted the document voluntarily; and
 - (b) the initiating process was served in sufficient time to enable the defendant to enter an appearance in the proceedings.
- (3) In paragraph (2)(b), *sufficient time* means—
- (a) 42 days from the date specified in the certificate of service in relation to the initiating process as the date on which service of the process was effected; or
 - (b) such lesser time as the Court considers, in the circumstances, to be a sufficient time to enable the defendant to enter an appearance in the proceedings.
-

80.11 Restriction on power to enter default judgment if certificate of service not filed

Rule 80.11
inserted by
S.R. No.
60/2009 rule 7.

- (1) This Rule applies if—
- (a) a certificate of service of initiating process has not been filed in the proceedings; or
 - (b) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of Rule 80.06(2)) that states that service has not been effected—
- and the defendant has not appeared or filed a notice of address for service.
- (2) If this Rule applies, default judgment may not be given against the defendant unless the Court is satisfied that—
- (a) the initiating process was forwarded to the Central Authority, or to an additional authority, for the Convention country in which service of the initiating process was requested; and
 - (b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date on which initiating process was so forwarded; and
 - (c) every reasonable effort has been made—
 - (i) to obtain a certificate of service from the relevant certifying authority; or
 - (ii) to effect service of the initiating process—as the case requires.

Rule 80.12
inserted by
S.R. No.
60/2009 rule 7.

80.12 Setting aside judgment in default of appearance

- (1) This Rule applies if default judgment has been entered against the defendant in proceedings to which this Part applies.
- (2) If this Rule applies, the Court may set aside the judgment on the application of the defendant if it is satisfied that the defendant—
 - (a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceedings; and
 - (b) has a prima facie defence to the proceedings on the merits.
- (3) An application to have a judgment set aside under this Rule may be filed—
 - (a) at any time within 12 months after the date on which the judgment was given; or
 - (b) after the expiry of that 12 month period, within such time after the defendant acquires knowledge of the judgment as the Court considers reasonable in the circumstances.
- (4) Nothing in this Rule affects any other power of the Court to set aside or vary a judgment.

PART 4—LOCAL SERVICE OF FOREIGN JUDICIAL DOCUMENTS

Rule 80.13
inserted by
S.R. No.
60/2009 rule 7.

80.13 Application of Part

- (1) This Part applies to service in this jurisdiction of a foreign judicial document in relation to which a due form of request for service has been forwarded to the Court—

-
- (a) by the Attorney-General's Department of the Commonwealth, whether in the first instance or following a referral under Rule 80.14; or
 - (b) by a forwarding authority.
- (2) Subject to paragraph (3), a request for service in this jurisdiction is in due form if it is in accordance with Part 1 of Form 80A and is accompanied by the following documents—
- (a) the document to be served;
 - (b) a summary of the document to be served, which must be in accordance with Form 80B;
 - (c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);
 - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- (3) Any translation required under paragraph (2)(d) must bear a certificate (in English) signed by the translator stating—
- (a) that the translation is an accurate translation of the document; and
 - (b) the translator's full name and address and his or her qualifications for making the translation.

80.14 Certain documents to be referred back to the Attorney-General's Department of the Commonwealth

Rule 80.14
inserted by
S.R. No.
60/2009 rule 7.

If, after receiving a request for service in this jurisdiction, the Prothonotary is of the opinion—

- (a) that the request does not comply with Rule 80.13; or

- (b) that the document to which the request relates is not a foreign judicial document; or
- (c) that compliance with the request may infringe Australia's sovereignty or security; or
- (d) that the request seeks service of a document in some other State or Territory—

the Prothonotary must refer the request to the Attorney-General's Department of the Commonwealth together with a statement of his or her opinion.

Note

The Attorney-General's Department of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

Rule 80.15
inserted by
S.R. No.
60/2009 rule 7.

80.15 Service

- (1) Subject to Rule 80.14, on receipt of a request for service in this jurisdiction, the Court must arrange for the service of the relevant documents in accordance with the request.
- (2) The relevant documents mentioned in paragraph (1) are the following—
 - (a) the document to be served;
 - (b) a summary of the document to be served;
 - (c) a copy of the request for service in this jurisdiction;
 - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

-
- (3) Service of the relevant documents may be effected by any of the following methods of service—
- (a) by a method of service prescribed by the law in force in this jurisdiction—
 - (i) for the service of a document of a kind corresponding to the document to be served; or
 - (ii) if there is no such corresponding kind of document, for the service of initiating process in proceedings in the Court;
 - (b) if the applicant has requested a particular method of service and that method is compatible with the law in force in this jurisdiction, by that method;
 - (c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily, by delivery of the document to the person requested to be served.

80.16 Affidavit as to service

Rule 80.16
inserted by
S.R. No.
60/2009 rule 7.

- (1) If service of a document has been effected pursuant to a request for service in this jurisdiction, the person by whom service has been effected must lodge with the Court an affidavit specifying—
 - (a) the time, day of the week and date on which the document was served; and
 - (b) the place where the document was served; and
 - (c) the method of service; and
 - (d) the person on whom the document was served; and
 - (e) the way in which that person was identified.

-
- (2) If attempts to serve a document pursuant to a request for service in this jurisdiction have failed, the person by whom service has been attempted must lodge with the Court an affidavit specifying—
- (a) details of the attempts made to serve the document; and
 - (b) the reasons that have prevented service.
- (3) When an affidavit as to service of a document has been lodged in accordance with this Rule, the Prothonotary—
- (a) must complete a certificate of service, sealed with the seal of the Court, on the reverse side of, or attached to, the request for service in this jurisdiction; and
 - (b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.
- (4) A certificate of service must be—
- (a) in accordance with Part 2 of Form 80A; or
 - (b) if a form of certificate of service that substantially corresponds to Part 2 of Form 80A accompanies the request for service, in that accompanying form.

ORDER 81

OBTAINING EVIDENCE FOR EXTERNAL TRIBUNAL

81.01 Procedure

- (1) An application for an order under Division 1C of Part I of the **Evidence (Miscellaneous Provisions) Act 1958** for the examination of a witness in Victoria in relation to a matter pending before a court or tribunal in a place out of Victoria may be made—
 - (a) by a person nominated for that purpose by the court or tribunal concerned; or
 - (b) if no person is so nominated, by the Victorian Government Solicitor with the consent of the Attorney-General.
- (2) The application—
 - (a) shall be made by originating motion not joining any person as a defendant; and
 - (b) shall be supported by affidavit to which shall be exhibited—
 - (i) the letter of request, certificate or other document pursuant to which the application is made; and
 - (ii) if that document is not in the English language, a translation in that language.

Rule 81.01(1)
amended by
S.R. No.
146/2009
rule 8.

81.02 Examiner

The Court may make an order for the examination of the witness before any fit and proper person nominated by the person making the application or such other qualified person as the Court appoints (in this Order called *the examiner*).

81.03 Conduct of examination

- (1) An examination under this Order shall be conducted in accordance with this Rule, unless the Court otherwise orders.
- (2) Subject to Rules 81.04, 81.05 and 81.06, Rules 41.02 to 41.10 apply to the examination as if—
 - (a) the matter pending before the court or tribunal concerned were a proceeding in the Court;
 - (b) the order for the examination were made under Rule 41.01(1)(a) in that proceeding; and
 - (c) where the examiner is a Judge of the Court or an Associate Judge, an order were made under Rule 41.01(1)(a) for the examination of a person before a Judge of the Court or an Associate Judge.

Rule 81.03
(2)(c)
amended by
S.R. No.
100/2008
rule 11(h).

81.04 Attendance of non-party

Where the person on whose application an order is made under this Order is not a party to the matter pending before the court or tribunal concerned, the examiner may permit that person and the person's legal advisers to attend the examination.

81.05 Deposition and exhibits

- (1) Paragraphs (4) and (5) of Rule 41.08 shall not apply to an examination under this Order.
- (2) The examiner shall send the deposition to the Prothonotary.
- (3) Where the examiner receives an exhibit on the examination, the examiner shall, on the conclusion of the examination, return the exhibit to the person producing it unless that person consents to its retention by the examiner.

-
- (4) Where the examiner retains an exhibit under paragraph (3), the examiner shall send it to the Prothonotary together with the deposition.

81.06 Certificate

Upon receipt of a deposition taken under this Order the Prothonotary shall—

- (a) give a certificate sealed with the seal of the Court annexing and identifying the letter of request, certificate or other document from the court or tribunal requesting the examination, the order of the Court for examination, the deposition, and the exhibits (if any) received from the examiner; and
 - (b) send the certificate and the annexures to the Attorney-General or, where the letter of request, certificate or other document was sent to the Prothonotary by some other person pursuant to a Convention, to that other person.
- _____

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 4A

FORMS

Form 4A
inserted by
S.R. No.
143/2010
rule 7.

FORM 4A

Rule 4.09

OVERARCHING OBLIGATIONS CERTIFICATION

[heading as in originating process]

In accordance with section 41 of the **Civil Procedure Act 2010**, I [*name of party*] certify to the Court that I have read and understood the overarching obligations set out in sections 16 to 26 of that Act and the paramount duty set out in section 16 of the Act.

Date:

Signed

*[To be signed personally by party
or if party is represented by a litigation guardian
or similar representative,
by that litigation guardian or representative]*

Form 4B

FORM 4B

Rule 4.10

Form 4B
inserted by
S.R. No.
143/2010
rule 7.

PROPER BASIS CERTIFICATION

[heading as in originating process]

In accordance with section 42 of the **Civil Procedure Act 2010**, I *[name of legal practitioner or if not legally represented, name of party]* certify to the Court that, in relation to the document *[identify document to which certification relates]* filed on behalf of *[specify party]*, on the factual and legal material available to me at present:

- (a) each allegation of fact in the document has a proper basis;
- **(b)* each denial in the document has a proper basis;
- **(c)* there is a proper basis for each non-admission in the document.

Date:

Signed

*Delete if not applicable.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 4C

Form 4C
inserted by
S.R. No.
143/2010
rule 7,
amended by
S.R. No.
147/2010
rule 6.

FORM 4C

Rule 4.11

**PRE-LITIGATION REQUIREMENTS COMPLIANCE
CERTIFICATION**

[heading as in originating process]

In accordance with section 43 of the **Civil Procedure Act 2010**, I *[name of party or party's legal practitioner]* certify to the Court that:

*I have/**[Name of party]* has complied with the pre-litigation requirements set out in section 34 of that Act.

OR

*I have/**[Name of party]* has not undertaken the pre-litigation requirements set out in section 34 of that Act for the following reasons:

[specify briefly reasons for not undertaking pre-litigation requirements].

Date:

Signed

*Delete if not applicable

Note

See section 32 of the **Civil Procedure Act 2010** for the types of proceedings or disputes for which this certification is not required.

FORM 5A

Rule 5.02(1)

Form 5A
amended by
S.R. No.
100/2008
rule 12(a).

WRIT

IN THE SUPREME COURT
OF VICTORIA

20

No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 5A

- (d) where you are served with the writ in any other place, within 42 days after service.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED [*e.g.* 15 June 20]

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

Page 2

[Plaintiff's indorsement of a statement of claim or of a statement sufficient to give with reasonable particularity notice of the nature of the claim and the cause thereof and of the relief or remedy sought in the proceeding.]

Page 3

1. Place of trial—

(If no place of trial is specified, trial will be in Melbourne.)

2. Mode of trial—

(If trial before a Judge of the Court and jury is not specified, trial will be before a Judge of the Court sitting alone.)

- 3.** This writ was filed—

- (a) by the plaintiff in person;
- (b) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*];
- (c) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] as agent for [*name or firm of principal solicitor*], solicitor, of [*business address of principal*].

4. The address of the plaintiff is—

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 5A

5. The address for service of the plaintiff is—

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 4, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

6. The address of the defendant is—

* *[Strike out this paragraph where order made fixing time for appearance and substitute "THE PROPER TIME TO FILE AN APPEARANCE is within days after service on you of this writ."]*

** *[Complete or strike out as appropriate.]*

Form 5B

FORM 5B

Rule 5.02(2)

ORIGINATING MOTION BETWEEN PARTIES

[heading as in Form 5A]

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been brought against you by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the originating motion has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance within the proper time, the plaintiff MAY OBTAIN JUDGMENT AGAINST YOU without further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after notice to you by summons.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;
- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating motion in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in any other place, within 42 days after service.

FILED [*e.g.* 15 June 20].

Prothonotary

THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

Page 2

[Specify the relief or remedy sought and the Act, if any, under which the claim is made, and, where it includes the answer to any question, state the question.]

Page 3

1. Place of trial—

(If no place of trial is specified, trial will be held in Melbourne.)

2.** This originating motion was filed—

- (a) by the plaintiff in person;
- (b) for the plaintiff by *[name or firm of solicitor]*, solicitor, of *[business address of solicitor]*;
- (c) for the plaintiff by *[name or firm of solicitor]*, solicitor, of *[business address of solicitor]* as agent for *[name or firm of principal solicitor]*, solicitor, of *[business address of principal]*.

3. The address of the plaintiff is—

4. The address for service of the plaintiff is—

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

5. The address of the defendant is—

* *[Strike out this paragraph where order made fixing time for appearance and substitute "THE PROPER TIME TO FILE AN APPEARANCE is within days after service on you of this originating motion."]*

** *[Complete or strike out as appropriate.]*

Form 5C

FORM 5C

Rules 5.02(2), 41.19(2), 45.05(2)(b)

ORIGINATING MOTION BETWEEN PARTIES

(where commenced under Rule 45.05)

[heading as in Form 5A]

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been brought against you by the plaintiff for the relief or remedy set out below.

ALSO TAKE NOTICE that the plaintiff cannot continue with the proceeding except by order of the Court. You will be given notice by summons of any application for the order and until the summons is served you are not required to take any step in the proceeding.

*[or where a summons for an order under Rule 45.05
or for judgment will be served with the originating motion]*

IF YOU INTEND TO DEFEND the proceeding you must attend before the Court at the time and place named in the summons served with this originating motion.

FILED [*e.g.* 15 June 20].

Prothonotary

THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

Page 2

[complete as in Form 5B]

Page 3

[complete as in Form 5B]

FORM 5D

Rule 5.02(2)

ORIGINATING MOTION

(where no defendant)

IN THE SUPREME COURT
OF VICTORIA

20 No.

AT

IN THE MATTER of an application by *A.B.* for [*describe nature of application and state the Act, if any, under which made*].

TAKE NOTICE that the plaintiff will apply to the Court on
[e.g. 20 June, 20] at a.m. [*or* p.m.] for [*specify the relief or remedy sought and the Act, if any, under which the claim is made, and where it includes any question to be answered, state the question*].

FILED [e.g. 15 June 20].

Prothonotary

The address of the plaintiff is—

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 5E

Form 5E
amended by
S.R. No.
100/2008
rule 12(b).

FORM 5E

Rules 5.02(2), 53.02(3)

**ORIGINATING MOTION FOR RECOVERY OF LAND UNDER
ORDER 53**

IN THE SUPREME COURT
OF VICTORIA

20 No.

AT

BETWEEN

A.B. Plaintiff

and

C.D. Defendant

[or if the plaintiff does not know the name of any person in occupation]

BETWEEN

A.B. Plaintiff

and

(The plaintiff does not know the name of any person in
occupation to make defendant)

Defendant

TO THE DEFENDANT AND TO EVERY PERSON IN OCCUPATION OF
THE LAND AT [description of land*]

[or where there is no defendant]

TO EVERY PERSON IN OCCUPATION OF THE LAND AT [description
of land*]

TAKE NOTICE that this proceeding by originating motion has been
commenced by the plaintiff for the recovery of land at . Further
particulars of the claim appear in the affidavit made in support of the claim.
A copy of the affidavit and of any exhibit referred to therein is served with
this originating motion.

AND TAKE NOTICE that the plaintiff will apply to an Associate Judge
in Court No. , Supreme Court, 436 Lonsdale Street, Melbourne on
[e.g. 20 June 20] at a.m. [or p.m.] or so soon afterwards as the
business of the Court allows. At that time the Associate Judge may refer to a
Judge of the Court for hearing forthwith an application by the plaintiff for
judgment.

IF YOU ARE NAMED AS DEFENDANT AND INTEND TO DEFEND
THIS PROCEEDING you must:

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 5E

- (a) give notice of your intention by filing an appearance on or before the day specified above; and
- (b) attend before the Associate Judge as specified above.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the originating motion has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance on or before the day specified above or to attend before the Associate Judge on that day, the plaintiff MAY OBTAIN JUDGMENT AGAINST YOU without further notice.

IF YOU ARE IN OCCUPATION OF THE LAND AND ARE NOT NAMED AS DEFENDANT you may attend before the Associate Judge in person or by your counsel or solicitor on the day and at the time and place specified above and apply to be made a defendant.

FILED [*e.g.* 15 June 20].

Prothonotary

Page 2

1. Place of trial—

(If no place of trial is specified, trial will be held in Melbourne.)

2.** This originating motion was filed—

- (a) by the plaintiff in person;
- (b) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*];
- (c) for the plaintiff by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] as agent for [*name or firm of principal solicitor*], solicitor, of [*business address of principal*].

3. The address of the plaintiff is—

4. The address for service of the plaintiff is—

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 5E

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

5. *[If there is a defendant]* The address of the defendant is—

* *[Note: The land should be so described as to be physically identifiable.]*

** *[Complete or strike out as appropriate.]*

FORM 7A

Rule 7.13(2)

LETTER OF REQUEST FOR SERVICE OF DOCUMENT

[heading as in originating process]

To

Whereas a civil proceeding is now pending in the Supreme Court of Victoria in which is plaintiff and is defendant and in which the plaintiff claims .

And whereas in order that the matters in dispute between the parties in the proceeding may be duly determined it is necessary that *[describe the document]* be served on and it has been made to appear that is a national of and is domiciled or resident in at .

Now I the Prothonotary of the Supreme Court of Victoria hereby request that for the reasons aforesaid and for the assistance of the Court you will be pleased to cause the said *[and a translation of it]*, *[both of]* which I send to you with this request, to be served on of .

And I inform you that proper arrangements have been made by the Court and by the Commonwealth of Australia for the reimbursement of any expenses incurred in carrying out the service hereby requested.

And I further inform you that legal assistance with respect to the service of documents in the State of Victoria can be given by this Court at the request of a foreign court if that request is duly transmitted to the Attorney-General of the State of Victoria.

Dated *[e.g. 15 June 20]*.

Prothonotary of the Supreme
Court of the State of Victoria.

Form 8A

FORM 8A

Rule 8.05(1)

NOTICE OF APPEARANCE

[heading as in originating process]

FILE an appearance for *[full name of defendant]* the abovenamed defendant.

Dated *[e.g. 15 June, 20]*.

[Signed]

The address of the defendant is

[where the defendant appears in person and the address of the defendant is outside Victoria] The address of the defendant within Victoria for service is
].

[where the defendant appears by a solicitor] The name or firm and the business address within Victoria of the solicitor for the defendant is
].

[where the solicitor is agent of another as agent for [name or firm and business address of principal].]

FORM 8B

Rule 8.08(2)

NOTICE OF CONDITIONAL APPEARANCE

[heading as in originating process]

FILE a conditional appearance for *[full name of defendant]* the abovenamed defendant.

Dated *[e.g. 15 June 20]*.

[Signed]

[continue as in Form 8A]

FORM 10A

Rule 10.04(5)

**HEADING AND NOTICE ON COUNTERCLAIM WHERE
DEFENDANT NEW PARTY**

IN THE SUPREME COURT
OF VICTORIA

20

No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

(by original proceeding)

AND BETWEEN

C.D.

Plaintiff

and

A.B. and *E.F.*

Defendants

(by counterclaim)

To *E.F.*
of [*address*]

TAKE NOTICE that this proceeding has been brought against you by the
defendant for the claim set out in this counterclaim.

IF YOU INTEND TO DEFEND the claim YOU MUST GIVE NOTICE of
your intention by filing an appearance within the proper time for appearance
stated below.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 10A

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the counterclaim has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the defendant's address for service, which is set out at the end of the counterclaim.

IF YOU FAIL to file an appearance within the proper time, the defendant may OBTAIN JUDGMENT AGAINST YOU on the counterclaim without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the counterclaim in Victoria, within 10 days after service;
- (b) where you are served with the counterclaim out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the counterclaim in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the counterclaim in any other place, within 42 days after service.

COUNTERCLAIM

[Set out in separate, consecutively numbered paragraphs all the material facts relied upon for the counterclaim and state precisely the relief claimed.]

The address of the defendant is—

The address for service of the defendant is—

* *[Strike out this paragraph where order made fixing time for appearance and substitute "THE PROPER TIME TO FILE AN APPEARANCE is within days after service on you of this counterclaim."]*

FORM 10B

Rule 10.04(6)

NOTICE OF APPEARANCE TO COUNTERCLAIM

[heading as in Form 10A]

FILE an appearance for *[full name of defendant to counterclaim]* the
abovenamed defendant to the counterclaim of the defendant.

Dated *[e.g. 15 June 20]*.

[Signed]

[continue as in Form 8A]

Form 11A

FORM 11A

Rule 11.15(4)(a)

THIRD PARTY NOTICE

IN THE SUPREME COURT
OF VICTORIA

20 No.

AT

BETWEEN

A.B.

Plaintiff

and

C.D.

Defendant

and

E.F.

Third Party

To *E.F.*
of [*address*]

TAKE NOTICE that the plaintiff has brought this proceeding against the defendant for the claim set out in the writ and statement of claim [or originating motion and affidavit[s]] served herewith.

AND TAKE NOTICE that the defendant disputes the plaintiff's claim on the grounds set out in the defendant's defence served herewith, and claims to be entitled to relief against you on the grounds set out in the statement of claim indorsed on this notice.

IF YOU INTEND TO DISPUTE the plaintiff's claim against the defendant, or the defendant's claim against you, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the defendant's address for service, which is set out at the end of this notice.

IF YOU FAIL to file an appearance within the proper time you will be taken to admit the validity of any judgment against the defendant and your own liability to the defendant to the extent claimed in the statement of claim indorsed on this notice, and the defendant may OBTAIN JUDGMENT AGAINST YOU without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the notice in Victoria, within 10 days after service;
- (b) where you are served with the notice out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the notice in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the notice in any other place, within 42 days after service.

FILED [*e.g.* 15 June 20].

Prothonotary

Page 2

STATEMENT OF CLAIM

[*Set out in separate, consecutively numbered paragraphs all the material facts relied upon for the claim against the third party and state precisely the relief claimed.*]

Page 3

1. ** This notice was filed—

- (a) by the defendant in person;
- (b) for the defendant by [*name of firm of solicitor*], solicitor, of [*business address of solicitor*];
- (c) for the defendant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*] as agent for [*name or firm of principal solicitor*], solicitor, of [*business address of principal*].

2. The address of the defendant is—

3. The address for service of the defendant is—

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 11A

4. The address of the third party is—

* *[Strike out this paragraph where order made fixing time for appearance and substitute "THE PROPER TIME TO FILE AN APPEARANCE is within days after service on you of this notice."]*

** *[Complete or strike out as appropriate.]*

FORM 11B

Rule 11.15(5)

**NOTICE BY ONE TORTFEASOR CLAIMING CONTRIBUTION
AGAINST ANOTHER**

[heading as in originating process]

TO THE DEFENDANT

TAKE NOTICE that the plaintiff has brought this proceeding against the defendants to recover damages for loss sustained [e.g. as the result of a collision between a motor car driven by you and a motor car driven by the defendant], which is alleged to have been caused by the negligence of the defendants].

AND TAKE NOTICE that the defendant claims to be entitled to contribution from you in respect of any sum which the plaintiff may recover herein against him to the extent of such amount as may be found by the Court to be just and equitable having regard to the extent of your responsibility for such damages [e.g. on the ground that your negligence contributed to the happening of the collision].

FILED [e.g. 15 June 20].

Prothonotary

Form 12A

FORM 12A

Rule 12.05(1)(b)

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION

[heading as in originating process]

To the *[judgment creditor]*
of *[address]*

TAKE NOTICE that *A.B.* has claimed the goods [or certain goods] *[where only certain goods are claimed here enumerate them]* taken in execution by the Sheriff under the warrant of execution issued in this proceeding.

WITHIN five days of service of this notice on you, you may serve notice in writing on the Sheriff stating whether you admit or dispute the claim of *A.B.* to the goods.

IF you do not within the period of five days after service of this notice serve notice on the Sheriff stating that you admit the claim or if within the period of five days you serve notice in writing on the Sheriff that you dispute the claim, the Sheriff may apply to the Court by summons for relief by way of interpleader. If you serve notice in writing on the Sheriff stating that you admit the claim you will not be liable for any fees or expenses incurred by the Sheriff after the notice is given.

Dated [*e.g.* 15 June 20].

Sheriff

FORM 15A

Rule 15.08(6)

Form 15A
amended by
S.R. No.
100/2008
rule 12(c).

ORDER APPROVING COMPROMISE OF CLAIM OF MINOR

*[heading as in originating process]
[other particulars as in Form 60C]*

JUDGE OF THE COURT [*or* ASSOCIATE JUDGE]:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

*[state whether on application by summons before trial with date of summons,
or at trial with date of commencement of trial]*

ATTENDANCE:

OTHER MATTERS:

1. The plaintiff was born on *[insert date of birth]*.
2. By a compromise entered into on 20 the defendant proposes to pay and the plaintiff desires to accept \$ for the benefit of the plaintiff and the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.
3. The Court read the following material:
 - (a) *[identify affidavits by date and name of deponent]*;
 - (b) the exhibits to the affidavits including the opinion of
 of Counsel dated 20 .
4. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. *[where order is made by a Judge of the Court]* There be special leave for the application to be made to a Judge of the Court.
2. The compromise be approved.
3. The defendant within days after service of a copy of this order on the defendant's solicitors pay \$ to the Senior Master for the benefit of the plaintiff *[where appropriate]* and \$ to the solicitors for the plaintiff, to be disbursed or retained by them in payment of the items totalling \$ referred to in the affidavit of dated 20].
4. The costs of the plaintiff, including the costs of this application, be taxed, and when taxed, paid by the defendant.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 15A

-
5. Subject to any further order, the Senior Master invest \$ for the plaintiff to be paid out with the interest accrued thereon to the plaintiff upon his or her attaining the age of 18 years.
 6. Upon payment by the defendant of the sum[s] and costs referred to, the proceeding be forever stayed.
 7. Each party have liberty to apply.
 8. The exhibits to the affidavits [*where appropriate* and a transcript of the evidence with respect to the application] be transmitted to the Senior Master's clerk.

DATE AUTHENTICATED:

Prothonotary

FORM 15B

Rule 15.08(6)

Form 15B
amended by
S.R. No.
100/2008
rule 12(d).

**ORDER APPROVING COMPROMISE OF CLAIM UNDER PART III
OF WRONGS ACT FOR BENEFIT OF MINOR**

[heading as in originating process]

[other particulars as in Form 60C]

JUDGE OF THE COURT *[or ASSOCIATE JUDGE]*:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

*[state whether on application by summons before trial with date of summons,
or at trial with date of commencement of trial]*

ATTENDANCE:

OTHER MATTERS:

1. The dates of birth of the minors on whose behalf the proceeding is brought are:

[name] [date of birth] .

[name] [date of birth].

2. By a compromise entered into on 20 the defendant proposes to pay and the plaintiff desires to accept *[where appropriate \$ for the plaintiff and] \$ and \$ for and , respectively, the minors referred to above and the plaintiff's costs, including the costs of this application, in full settlement of the plaintiff's claim in the proceeding.*

3. The Court read the following material:

(a) *[identify affidavits by date and name of deponent]*;

(b) the exhibits to the affidavits including the opinion of of Counsel dated 20 .

4. The defendant consents to the proposed compromise.

THE COURT ORDERS THAT:

1. *[where order is made by a Judge of the Court]* There be special leave for the application to be made to a Judge of the Court.
2. The compromise be approved.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 15B

-
3. The defendant within days after service of a copy of this order on the defendant's solicitors pay [*where appropriate* \$ to the solicitors for the plaintiff, being \$ for the plaintiff and the balance of \$ to be disbursed or retained by them in payment of the items referred to in the affidavit of dated 20 and] \$ to the Senior Master for the benefit of the minors referred to above, being \$ for the benefit of and \$ for the benefit of .
 4. The costs of the plaintiff, including the costs of this application, be taxed and, when taxed, paid by the defendant.
 5. Subject to any further order, the Senior Master invest \$ and \$ for and respectively, each sum to be paid out with the interest accrued thereon to the minor for whose benefit it was invested upon his or her attaining the age of 18 years.

[continue as in Form 15A]

FORM 18AA

Rule 18A.02

NOTICE OF CONSENT TO BE A GROUP MEMBER

[heading as in originating process]

To: The Plaintiff and the Defendant

TAKE NOTICE THAT *[insert name of person]*, a person referred to in section 33E(2) of the **Supreme Court Act 1986**, consents to be a group member in this proceeding.

Dated: [*e.g.* 15 June 20]

[Signed]

Signature of person consenting or his or her solicitor

Address of person consenting:

Position of person consenting:

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 18AB

FORM 18AB

Rule 18A.04

NOTICE OF OPTING OUT BY GROUP MEMBER

[heading as in originating process]

To: The Prothonotary

The Plaintiff

The Defendant

I, *[name]*, a group member in the above group proceeding, give notice under section 33J(2) of the **Supreme Court Act 1986** that I am opting out of this proceeding.

Dated: *[e.g. 15 June 20]*

[Signed]

Signature of group member or his or her solicitor:

Address of group member:

FORM 19A

Rule 19.02(3)

NOTICE OF A CONSTITUTIONAL MATTER

[heading as in originating process]

1. The *[party whose case raises the matter]* gives notice that this proceeding involves a matter under the Constitution or involving its interpretation within the meaning of section 78B of the Judiciary Act 1903 of the Commonwealth.
2. *[State specifically the nature of the matter].*
3. *[State the facts showing the matter is one to which section 78B of the Judiciary Act 1903 applies].*

Dated [*e.g.* 15 June 20].

[Signed]

To the Prothonotary

And to

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 28A

Form 28A
inserted by
S.R. No.
5/2007 rule 11.

Rule 28.10(2)(a)

FORM 28A

FILING CONFIRMATION NOTICE

IN THE SUPREME COURT

OF VICTORIA

AT

To *[name of authorised user]*

An electronic copy of the document now described—

[description of document]

is taken to have been filed in the Supreme Court in this proceeding under
Part 2 of Order 28 on *[date]* at *[time]*.

CASE DETAILS

Case number—

Case *[name of parties]*—

List—

Your reference—

Copies of this filing confirmation notice are permitted to be made for service
and proof of service—refer to Rule 28.12.

This filing confirmation notice must be retained as proof of filing of the
document described above—refer to Rules 28.14 and 40.08.

DATED:

[Facsimile of Court Seal]

Prothonotary

FORM 29A

Rule 29.02(2)

NOTICE FOR DISCOVERY

[heading as in originating process]

To the *[identify party]*

You are required to make discovery of documents within 42 days after service of this notice on you.

Dated [*e.g.* 15 June 20].

[Signed]

Form 29B

Form 29B
amended by
S.R. Nos
53/2010
rule 10,
100/2010
rule 9.

FORM 29B

Rule 29.04

AFFIDAVIT OF DOCUMENTS

[heading as in originating process]

I, the abovenamed , make oath and say as follows:

1. I have in my possession, custody or power, the documents enumerated in Schedule 1 which are required to be discovered.
2. The documents enumerated in Part 2 of Schedule 1 are privileged, and I object to produce them. The documents are privileged on the ground—
 - (a) as to documents numbered 4 to 6, that
[state the ground];
 - (b) as to document numbered 7, that
[state the ground].
3. I have had, but no longer have, in my possession, custody or power, the documents enumerated in Schedule 2 which are required to be discovered.
4. Document numbered 8, referred to in Schedule 2, was last in my possession, custody or power on *[state when]* 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 solicitor nor any other person on my behalf has now, or ever had, in my or his, her or its possession, custody or power, any document required to be discovered, other than the documents enumerated in the said Schedules 1 and 2.
- *6. In making a reasonable search as required by Rule 29.01.1 of Chapter I of the Rules of the Supreme Court, I did not search for the following category or class of document *[specify which category or class of document for which no search was made]*.
- *7. The reason why I did not make a search for the category or class of documents referred to in clause 6 is *[specify reason]*.

[Describe each document in the Schedules as original or copy.]

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 29B

SCHEDULE 1

Part 1

- 1.
- 2.
- 3.

Part 2

- 4.
- 5.
- 6.
- 7.

SCHEDULE 2

- 8.

Sworn, etc.

*Delete if not applicable.

Form 29C

FORM 29C

Rules 29.09(3), 29.10(5)

NOTICE TO PRODUCE

[heading as in originating process]

To the *[identify party]*

TAKE NOTICE that the *[identify party]* requires you to produce for that party's inspection the following documents referred to in your [writ, pleading, particulars, affidavit, *etc.*] *[describe documents required]*.

Dated [*e.g.* 15 June 20].

[Signed]

FORM 29D

Rule 29.12.1(2)

**NOTICE OF DEFAULT IN MAKING DISCOVERY OF
DOCUMENTS**

[heading as in originating process]

To the *[identify party]*

YOU have failed to make discovery of documents to the *[identify party]* within the time limited by the Rules [or fixed by order of the Court made on [*e.g.* 20 June 20]].

TAKE NOTICE that unless you make discovery of documents to the *[identify party]* within 7 days of the day of service of this notice on you the plaintiff will apply to the Court for an order that the defence served by you be struck out [*or* the defendant will apply to the Court for an order that the proceeding be dismissed].

Dated [*e.g.* 20 June 20].

[Signed]

FORM 30A

Rule 30.09.1(2)

NOTICE OF DEFAULT IN ANSWERING INTERROGATORIES

[heading as in originating process]

To the *[identify party]*

YOU have failed to answer interrogatories served by the *[identify party]* for your examination within the time limited by the Rules *[or fixed by order of the Court made on e.g. 20 June 20]*.

TAKE NOTICE that unless you answer the interrogatories within 7 days of the day of service of this notice on you the plaintiff will apply to the Court for an order that the defence served by you be struck out *[or the defendant will apply to the Court for an order that the proceeding be dismissed]*.

Dated *[e.g. 20 June 20]*.

[Signed]

Form 35A

FORM 35A

Rules 35.03(4), 35.05(4)

NOTICE TO ADMIT

[heading as in originating process]

To the *[identify party]*

TAKE NOTICE that if you do not, within *[specify a number not less than 14]* days after service of this notice upon you, serve a notice upon the
disputing any fact specified *[or the authenticity of any document mentioned]* below, that 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 . If you do serve a notice disputing that fact *[or the authenticity of that document]*, and afterwards that fact *[or the authenticity of that document]* is proved, you shall pay the costs of proof, unless the Court otherwise orders.

1.

2.

[specify each fact]

or

1.

[mention each document]

2.

Dated *[e.g. 15 June 20]*.

[Signed]

FORM 35B

Rules 35.03(4), 35.05(4)

NOTICE OF DISPUTE

[heading as in originating process]

To the *[identify party]*

The disputes the following facts specified in the 's notice dated
[insert date of notice].

1.

[identify each fact]

2.

or

The disputes the authenticity of the following documents mentioned in
the 's notice dated *[insert date of notice]*.

1.

[identify each document]

2.

Dated [*e.g.* 15 June, 19].

[Signed]

Form 37AA

Form 37AA
inserted by
S.R. No.
102/2006
rule 7,
amended by
S.R. No.
23/2010
rule 13.

Rule 37A.02

FORM 37AA

FREEZING ORDER

[title of proceeding]

PENAL NOTICE

TO: *[name of person against whom the order is made]*

IF YOU:

**(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME
SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT;
OR**

**(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE
ORDER REQUIRES YOU TO ABSTAIN FROM DOING,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION
OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES
ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE
TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

TO: *[name of person against whom the order is made]*

This is a "freezing order" made against you on *[insert date]* by Justice *[insert name of Judge]* at a hearing without notice to you after the Court has been given the undertakings set out in Schedule A to this order and after the Court has read the affidavits listed in Schedule B to this order¹.

**The applicant has given to the Court the undertakings set out in
Schedule A to this order.**

THE COURT ORDERS:

INTRODUCTION

1. (a) The application for this order is made returnable immediately.
(b) The time for service of *[describe documents required to be served]* is abridged and service is to be effected by *[insert time and date]*².
2. Subject to the next paragraph, this order has effect up to and including *[insert date]* ("the return date"). On the return date there will be a further hearing in respect of this order at *[insert time]* a.m./p.m. before Justice *[insert name of Judge]*³.

-
3. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
 4. In this order—
 - (a) **"applicant"**, if there is more than one applicant, includes all the applicants;
 - (b) **"you"**, where there is more than one of you, includes all of you and includes you if you are a corporation;
 - (c) **"third party"** means a person other than you and the applicant;
 - (d) **"unencumbered value"** means value free of mortgages, charges, liens or other encumbrances.
 5.
 - (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
 - (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

FREEZING OF ASSETS

[For order limited to assets in Australia]

6.
 - (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets which are in Australia (**"Australian assets"**) up to the unencumbered value of AUD\$ **("the relevant amount")**.
 - (b) If the unencumbered value of your Australian assets exceeds the relevant amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the relevant amount.

[If the Court makes a world wide order, the following additional paragraph (c) also applies]

- (c) If the unencumbered value of your Australian assets is less than the relevant amount, and you have assets outside Australia (**"ex-Australian assets"**)—
 - (i) you must not dispose of, deal with or diminish the value of any of your Australian assets and ex-Australian assets up to the unencumbered value of your Australian and ex-Australian assets of the relevant amount; and

- (ii) you may dispose of, deal with or diminish the value of any of your ex-Australian assets, so long as the unencumbered value of your Australian assets and ex-Australian assets still exceeds the relevant amount.

[For either form of order]

7. For the purposes of this order—

- (a) your assets include—
 - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
 - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
 - (iii) the following assets in particular—
 - (A) the property known as *[title/address]* or, if it has been sold, the net proceeds of the sale;
 - (B) the assets of your business [known as *[name]*] [carried on at *[address]*] or, if any or all of the assets have been sold, the proceeds of the sale; and
 - (C) any money in account *[numbered account number]* *[in the name of]* at *[name of bank and name and address of branch]*;
- (b) the value of your assets is the value of the interest you have individually in your assets.

PROVISION OF INFORMATION⁴

8. Subject to paragraph 9, you must—

- (a) at or before the further hearing on the return date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in [Australia] [world wide], giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
- (b) within [] working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.

-
9. (a) This paragraph 9 applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 9 also applies if you are a corporation and all persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must—
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

EXCEPTIONS TO THIS ORDER

10. This order does not prohibit you from—
- (a) paying [up to \$..... a week/day on] [your ordinary] living expenses;
 - (b) paying [\$.....on] [your reasonable] legal expenses;
 - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred;
 - (d) in relation to matters not falling within sub-paragraphs (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

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11. You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may thereafter order that the exceptions are varied accordingly.
12. (a) The order will cease to have effect if you—
- (i) pay the sum of \$..... into Court; or
 - (ii) pay that sum into a joint bank account in the name of your solicitor and the solicitor for the applicant as agreed in writing between them; or
 - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant to sub-paragraph (a), you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

COSTS

13. The costs of this application are reserved.

PERSONS OTHER THAN THE APPLICANT AND RESPONDENT

14. **Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

15. **Bank withdrawals by the respondent**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

[For world wide order]

16. **Persons outside Australia**

- (a) Except as provided in sub-paragraph (b) below, the terms of this order do not affect or concern anyone outside Australia.

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- (b) The terms of this order will affect the following persons outside Australia—
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
 - (ii) any person (including a bank or financial institution) who—
 - (A) is subject to the jurisdiction of this Court;
 - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
 - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
 - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

[For world wide order]

17. Assets located outside Australia

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

SCHEDULE A

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will—
 - (a) file a copy of this order and [*describe documents required to be filed*]; and
 - (b) serve on the respondent copies of this order and [*describe documents required to be served*].
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect⁵ the applicant will promptly take all reasonable steps to inform in writing anyone to whom the applicant has given notice of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.
- [(8) The applicant will—
 - (a) on or before [*date*] cause an irrevocable undertaking to pay in the sum of \$ to be issued by a bank with a place of business within Australia, in respect of any order the court may make pursuant to undertaking (1) above; and
 - (b) immediately upon issue of the undertaking, cause a copy of it to be served on the respondent.]⁶

SCHEDULE B⁷

AFFIDAVITS RELIED ON

Name of Deponent of Affidavit

Date Affidavit Made

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The applicant's legal representatives are—

[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]

1 The words “without notice to you” and “after the Court has read the affidavits listed in Schedule B to this order” are appropriate only in the case of an order without notice.

2 Paragraph 1 is appropriate only in the case of an order without notice.

3 Paragraph 2 is appropriate only in the case of an order without notice.

4 See Practice Note paragraphs 13 and 14.

5 For example, if the respondent pays money into Court or provides security, as provided for in paragraph 12 of the Order.

6 See Practice Note paragraph 17.

7 Schedule B is appropriate only in the case of an order without notice.

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Form 37BA
inserted by
S.R. No.
102/2006
rule 7,
amended by
S.R. No.
23/2010
rule 14.

Rule 37B.02

FORM 37BA

SEARCH ORDER

[title of proceeding]

PENAL NOTICE

TO: *[name of person against whom the order is made]*

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO: *[name of person against whom the order is made]*

This is a "search order" made against you on *[insert date]* by Justice *[insert name of Judge]* at a hearing without notice to you after the applicant has given to the Court the undertakings set out in Schedule B to this order and after the Court has read the affidavits listed in Schedule C to this order.

The applicant has given to the Court the applicant's undertakings set out in Schedule B to this order.

The applicant's solicitor has given to the Court the applicant's solicitor's undertakings set out in Schedule B to this order.

Each independent solicitor has given to the Court the independent solicitor's undertakings set out in Schedule B to this order.

Each independent computer expert has given to the Court the independent computer expert's undertakings set out in Schedule B to this order.

THE COURT ORDERS:

INTRODUCTION

1. (a) The application for this order is made returnable immediately.
(b) The time for service of [*describe documents required to be served*] is abridged and service is to be effected by [*insert time and date*].
2. Subject to the next paragraph, this order has effect up to and including [*insert date*] ("*the return date*"). On the return date at [*insert time*] a.m./p.m. there will be a further hearing in respect of this order before Justice [*insert name of Judge*].
3. You may apply to the Court at any time to vary or discharge this order including, if necessary, by telephone to the Judge referred to in the immediately preceding paragraph (telephone no.) or to the Judge in the Practice Court (telephone no.).
4. This order may be served only between [*insert time*] a.m./p.m. and [*insert time*] a.m./p.m. [on a business day]¹.
5. In this order—
 - (a) **"applicant"** means the person who applied for this search order, and if there is more than one applicant, includes all the applicants;
 - (b) **"independent computer expert"** means the person (if any) identified as the independent computer expert in the search party referred to in Schedule A to this order;
 - (c) **"independent solicitor"** means the person identified as the independent solicitor in the search party referred to in Schedule A to this order;
 - (d) **"listed thing"** means the things referred to in Schedule A to this order;
 - (e) **"premises"** means the premises and any of the premises identified in Schedule A to this order including any vehicles and vessels that are under the respondent's control on or about those premises or that are otherwise identified in Schedule A;
 - (f) **"search party"** means the persons identified or described as constituting the search party in Schedule A to this order;
 - (g) **"thing"** includes document;
 - (h) **"you"**, where there is more than one of you, includes all of you and includes you if you are a corporation;
 - (i) any requirement that something shall be done in your presence means—

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- (i) in the presence of you or of one of the persons described in paragraph 6 below; or
 - (ii) if there is more than one of you, in the presence of each of you or, in relation to each of you, in the presence of one of the persons described in paragraph 6 below.
- 6. This order must be complied with by you by—
 - (a) yourself;
 - (b) any director, officer, partner and responsible employee or agent of yourself; or
 - (c) any other person having responsible control of the premises.
- 7. This order must be served by, and be executed under the supervision of, the independent solicitor.

ENTRY AND SEARCH

- 8. Subject to paragraphs 10 to 19 below, upon service of this order you must permit members of the search party to enter the premises so that they can carry out the search and other activities referred to in this order.
- 9. Having permitted members of the search party to enter the premises, you must—
 - (a) permit them to leave and re-enter the premises on the same and the following day until the search and other activities referred to in this order are complete;
 - (b) permit them to search for and inspect the listed things and to make or obtain a copy, photograph, film, sample, test or other record of the listed things;
 - (c) disclose to them the whereabouts of all the listed things in the respondent's possession, custody or power, whether at the premises or otherwise;
 - (d) disclose to them the whereabouts of all computers, computer disks and electronic information storage devices or systems at the premises in which any documents among the listed things are or may be stored, located or recorded and cause and permit those documents to be printed out;
 - (e) do all things necessary to enable them to access the listed things, including opening or providing keys to locks and enabling them to access and operate computers and providing them with all necessary passwords;

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- (f) permit the independent solicitor to remove from the premises into the independent solicitor's custody—
 - (i) the listed things or things which reasonably appear to the independent solicitor to be the listed things and any things the subject of dispute as to whether they are listed things;
 - (ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to above; and
 - (g) permit the independent computer expert (if there is one) to search any computer and make a copy or digital copy of any computer hard drive and permit the independent computer expert (if any) or the independent solicitor to remove any computer hard drive and computer from the premises as set out in paragraphs 20 and 21 below.

RESTRICTIONS ON ENTRY, SEARCH AND REMOVAL

- 10. This order must not be executed at the same time as the execution by the police or other proper authority of a search warrant.
- 11. You are not required to permit anyone to enter the premises until—
 - (a) the independent solicitor serves you with copies of this order and the documents referred to in Schedule C (confidential exhibits, if any, need not be served until further order of the Court); and
 - (b) you are entitled to read this order and to have the independent solicitor explain the terms of this order to you.
- 12. Before permitting entry to the premises by anyone other than the independent solicitor, you, for a time (not to exceed two hours from the time of service or such longer period as the independent solicitor may permit)—
 - (a) may seek legal advice;
 - (b) may ask the Court to vary or discharge this order;
 - (c) (provided you are not a corporation) may gather together any things which you believe may tend to incriminate you or make you liable to a civil penalty and hand them to the independent solicitor in (if you wish) a sealed envelope or container; and
 - (d) may gather together any documents passing between you and your lawyers for the purpose of obtaining legal advice or otherwise subject to legal professional privilege or client legal privilege, and hand them to the independent solicitor in (if you wish) a sealed envelope or container.

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13. Subject to paragraph 22 below, the independent solicitor must not inspect or permit to be inspected by anyone, including the applicant and the applicant's solicitors, any thing handed to the independent solicitor in accordance with paragraphs 12(c) and (d) above and the independent solicitor must deliver it to the Court at or prior to the hearing on the return date.
 14. During any period referred to in paragraph 12 above, you must—
 - (a) inform and keep the independent solicitor informed of the steps being taken;
 - (b) permit the independent solicitor to enter the premises but not to start the search;
 - (c) not disturb or remove any listed things; and
 - (d) comply with the terms of paragraphs 25 and 26 below.
 15. Any thing the subject of a dispute as to whether it is a listed thing must promptly be handed by you to the independent solicitor for safekeeping pending resolution of the dispute or further order of the Court.
 16. Before removing any listed thing from the premises (other than the things referred to in the immediately preceding paragraph), the independent solicitor must supply a list of them to you, give you a reasonable time to check the correctness of the list, and give you and the applicant's solicitors a copy of the list signed by the independent solicitor.
 17. The premises must not be searched, and things must not be removed from the premises, except in the presence of you or of a person who appears to the independent solicitor to be your director, officer, partner or employee, agent or other person acting on your behalf or on your instructions.
 18. If the independent solicitor is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the independent solicitor may permit the search to proceed and the listed things to be removed without full compliance.
 19. The applicant's solicitors and the independent solicitor must not allow the applicant in person to inspect or have copies of any thing removed from the premises nor communicate to the applicant information about their contents or about anything observed at the premises until 4.30 p.m. on the return date or other time fixed by further order of the Court.
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COMPUTERS

20. (a) If it is expected that a computer will be searched, the search party must include a computer expert who is independent of the applicant and of the applicant's solicitors ("**the independent computer expert**").
- (b) Any search of a computer must be carried out only by the independent computer expert.
- (c) The independent computer expert may make a copy or digital copy of the computer hard drive and remove that copy or digital copy from the premises.
- (d) The independent computer expert may search the computer or the copy or digital copy of the computer hard drive at the premises or away from the premises or both for listed things and may copy the listed things electronically or in hard copy or both.
- (e) The independent computer expert must as soon as practicable and, in any event, prior to the hearing on the return date, deliver the copy or digital copy of the computer hard drive and all electronic and hard copies of listed things to the independent solicitor, together with a report of what the independent computer expert has done including a list of such electronic and hard copies.
- (f) The independent solicitor must, at or prior to the hearing on the return date, deliver to the Court all things received from the independent computer expert and serve a copy of the latter's report on the parties.
- (g) If no independent computer expert has been appointed, but the independent solicitor considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically and printing out information in documentary form, the independent solicitor may remove the computer from the premises for that purpose and cause that purpose to be achieved.
21. (a) This paragraph 21 applies if you are not a corporation and you wish to object to complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
- (ii) are liable to a civil penalty.

- (b) This paragraph 21 also applies if you are a corporation and all persons who are able to comply with paragraph 20 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 20 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
 - (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must—
 - (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

INSPECTION

22. Prior to the return date, you or your solicitor or representative shall be entitled, in the presence of the independent solicitor, to inspect any thing removed from the premises and to—
- (a) make copies of the same; and
 - (b) provide the independent solicitor with a signed list of things which are claimed to be privileged or confidential and which you claim ought not to be inspected by the applicant.

PROVISION OF INFORMATION

23. Subject to paragraph 24 below you must—
- (a) at or before the further hearing on the return date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing as to—
 - (i) the location of the listed things;
 - (ii) the name and address of everyone who has supplied you, or offered to supply you, with any listed thing;
 - (iii) the name and address of every person to whom you have supplied, or offered to supply, any listed thing; and
 - (iv) details of the dates and quantities of every such supply and offer; and

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- (b) within [] working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.
24. (a) This paragraph 24 applies if you are not a corporation and you wish to object to complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 24 also applies if you are a corporation and all persons who are able to comply with paragraph 23 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 23 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (c) You must—
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

PROHIBITED ACTS

25. Except for the sole purpose of obtaining legal advice, you must not, until 4.30 p.m. on the return date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against you by the applicant.
26. Until 4.30 p.m. on the return date you must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed things otherwise than in accordance with the terms of this order or further order of the Court.

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COSTS

27. The costs of this application are reserved.

SCHEDULE A

Premises

The premises located at *[insert address or addresses]* including any vehicle or vessel or vehicles or vessels under the respondent's control on or about those premises.

Listed Things

- 1.
- 2.
- 3.

Search Party

1. The independent solicitor: *[insert name and address]*
 2. The applicant's solicitor or solicitors:
 - (a) *[insert name and address]* [or description e.g. a partner or employed solicitor] of *[name of firm]*;
 - (b) *[insert name and address]* [or description e.g. a partner or employed solicitor] of *[name of firm]*;
 - (c) *[insert name and address]* [or description e.g. a partner or employed solicitor] of *[name of firm]*.
 3. Other members of the search party:
 - (a) *[insert name and address]* in the capacity of *[e.g. an independent computer expert]*;
 - (b) *[insert name and address]* in the capacity of *[insert capacity]*.
-

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT

Undertakings given to the Court by the applicant:

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) The applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (3) The applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.
- (4) If the applicant has not already done so, as soon as practicable the applicant will file a copy of this order and [*describe documents required to be filed*].
- [(5) The applicant will insure the things removed from the premises against loss or damage for an amount that reasonably appears to the applicant to be their full value.]²
- [(6) The applicant will³—
 - (a) on or before [*insert date*] cause a written irrevocable undertaking to pay in the sum of \$[*insert amount*] to be issued from a bank with a place of business within Australia, in respect of any order the Court may make referred to in the undertaking as to damages referred to in undertaking (1) above; and
 - (b) immediately upon issue of the irrevocable undertaking to pay, cause a copy of it to be served on the respondent.]

Undertakings given to the Court by the applicant's solicitor:

- (1) The applicant's solicitor will pay the reasonable costs and disbursements of the independent solicitor and of any independent computer expert.
- (2) The applicant's solicitor will provide to the independent solicitor for service on the respondent copies of this order and the documents which are listed in Schedule C.
- (3) The applicant's solicitor will answer at once to the best of his or her ability any question as to whether a particular thing is a listed thing.

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- (4) The applicant's solicitor will use his or her best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
 - (5) The applicant's solicitor will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
 - (6) The applicant's solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.
 - (7) The applicant's solicitor will not disclose to the applicant any information that the solicitor acquires during or as a result of execution of the search order, without leave of the Court.
 - (8) The applicant's solicitor will use his or her best endeavours to follow all directions of the independent solicitor.

Undertakings given to the Court by the independent solicitor:

- (1) The independent solicitor will use his or her best endeavours to serve the respondent with this order and the other documents referred to in undertaking (2) of the above undertakings by the applicant's solicitor or solicitors.
- (2) Before entering the premises, the independent solicitor will—
 - (a) offer to explain the terms of the search order to the person served with the order and, if the offer is accepted, do so;
 - (b) inform the respondent of his or her right to take legal advice.
- (3) Subject to undertaking (4) below, the independent solicitor will retain custody of all things removed from the premises by the independent solicitor pursuant to this order until delivery to the Court or further order of the Court.
- (4) At or before the hearing on the return date, the independent solicitor will provide a written report on the carrying out of the order to the Court and provide a copy to the applicant's solicitors and to the respondent or the respondent's solicitors. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an independent computer expert.

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- (5) The independent solicitor will use his or her best endeavours—
- (a) to ensure that members of the search party act in conformity with the order; and
 - (b) to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent; and
 - (c) to give such reasonable directions to other members of the search party as are necessary or convenient for the execution of the order.
- (6) The independent solicitor will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (7) The independent solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.

Undertakings given to the Court by the independent computer expert:

- (1) The independent computer expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the independent computer expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.
- (2) The independent computer expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.
- (3) The independent computer expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 p.m. on the return date.
- (4) The independent computer expert will use his or her best endeavours to follow all directions of the independent solicitor.

SCHEDULE C

DOCUMENTS THAT MUST BE SERVED WITH THIS ORDER

The following affidavits and exhibits to them:

<i>Name of deponent</i>	<i>Date affidavit was made</i>	<i>Exhibits numbered</i>
(1)		
(2)		
(3)		

The following written submissions put to the Court:

Other documents provided to the Court:

A transcript [note] of any oral allegation of fact that was made, and of any oral submission that was put, to the Court:

The originating motion [draft originating motion] produced to the Court:

The summons [draft summons] produced to the Court:

NAME AND ADDRESS OF APPLICANT'S SOLICITORS

The Applicant's solicitors are: *[insert name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]*.

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- 1 Normally the order should be served between 9:00 a.m. and 2:00 p.m. on a weekday to enable the respondent more readily to obtain legal advice.
 - 2 Depending on the nature of the things likely to be removed and their likely value, and the likely particular risks of their being lost or damaged, this undertaking or a more elaborate one may be required.
 - 3 See Practice Note paragraph 18.
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Form 39A

Form 39A
amended by
S.R. No.
100/2008
rule 12(e).

FORM 39A

Rule 39.05(b)

DEED OF GUARANTEE

[heading as in originating process]

THIS guarantee is made the day of 20 , between *[name]* of *[address]*, called "the guarantor", and the Prothonotary of the Supreme Court of the State of Victoria.

Whereas by an order of the Supreme Court of the State of Victoria made the day of 20 , in the abovementioned proceeding, *[name]* of *[address]*, called "the receiver", has been appointed to receive *[or receive and manage]* *[follow words of the order]*.

And whereas pursuant to the said order the receiver is required to give security approved by the Court.

And whereas the guarantor has agreed at the request of the receiver to give a guarantee in consideration of the annual premium mentioned below which guarantee has been approved by the Court in testimony whereof an Associate Judge of the Supreme Court has signed an allowance in the margin hereof.

Now this guarantee witnesses that the guarantor promises the Prothonotary that if the receiver does not account to the Court for what he receives as receiver or does not deal with what he receives as the Court directs the guarantor will pay to the Prothonotary whatever is required to make good the default to a limit of \$.

Guarantee for \$. Annual premium \$.

The Common Seal of)

was)

hereunto affixed in)

the presence of)

FORM 41A

Rule 41.01(2)

ORDER FOR EXAMINATION WITHIN VICTORIA

[heading as in originating process]

[other particulars as in Form 60C]

THE COURT ORDERS THAT:

[name] of *[address within Victoria]* be examined before *[name and address or description of examiner]*.

Form 41B

FORM 41B

Rule 41.01(2)

ORDER FOR EXAMINATION OUT OF VICTORIA

[heading as in originating process]

[other particulars as in Form 60C]

THE COURT ORDERS THAT:

1. *[name and address or description]* be appointed as examiner for the purpose of taking the examination, cross-examination and re-examination orally on oath or affirmation of a witness *[name]* of *[address out of Victoria]* a witness on the part of at in *[name of country]*.
2. The examiner be at liberty to invite the attendance of *the witness and the production of documents, but shall not exercise any compulsory powers, and that otherwise the examination be taken in accordance with the procedure of Victoria.
3. The solicitors give to the solicitors days' notice of the date on which they propose to send out this order to for execution, and that days after the service of such notice the solicitors for the plaintiff and defendant respectively exchange the names of their agents at to whom notice relating to the examination of the said witness may be sent.
4. days before the examination of the said witness notice of such examination be given by the agent of the party on whose behalf the witness is to be examined to the agent of the other party, unless such notice be dispensed with.
5. The depositions when taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be sent by the examiner, under seal, to the Prothonotary of the Supreme Court of Victoria, 436 Lonsdale Street, Melbourne, on or before , 20 or such further day as may be ordered, there to be filed in the Prothonotary's office.
6. The trial of the proceeding be stayed until the depositions are filed or further order.
7. The costs of this application and the examination be costs in the proceeding.

* *[If any Convention which applies requires that the invitation or notice to the witness shall expressly state that no compulsory powers may be exercised, this shall be done.]*

FORM 41C

Rule 41.01(3)

**ORDER FOR LETTER OF REQUEST TO JUDICIAL AUTHORITY
OUT OF VICTORIA**

[heading as in originating process]

[other particulars as in Form 60C]

THE COURT ORDERS THAT:

1. A letter of request issue directed to the proper judicial authority for the examination of the following witnesses, namely:
E.F. of *[address]*
G.H. of *[address]*
 2. The depositions taken of the examination be filed in the office of the Prothonotary.
 3. The trial of the proceeding be stayed until the depositions are filed or further order.
 4. The costs of this application and the letter of request and examination be costs in the proceeding.
-

FORM 41D

Rule 41.13(2)

LETTER OF REQUEST FOR EXAMINATION OF WITNESS

[heading as in originating process]

To *[the competent judicial authority]* of .

Whereas a civil proceeding is now pending in the Supreme Court of the State of Victoria in which is plaintiff and defendant and in which the plaintiff claims .

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the questions in dispute between the parties in the proceeding that the following persons should be examined as witnesses upon oath or affirmation touching such questions, namely, of and of and it appears that such witnesses are resident within your jurisdiction.

Now I a Judge of the Supreme Court of the State of Victoria hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses [and such other witnesses as the agents of the said plaintiff and defendant humbly request you in writing so to summon] to attend at such time and place as you appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined orally [or upon the interrogatories which accompany this letter of request] touching the said questions in the presence of the agents of the plaintiff and defendant or such of them as attend the examination on due notice given.

And I further request that you will permit the agents of both the plaintiff and the defendant or such of them as are present to examine [upon interrogatories and orally upon the subject matter thereof or arising out of the answers thereto] such witnesses as are, after due notice in writing, produced on their behalf, and the other party to cross-examine the said witnesses [upon cross-interrogatories and orally] and the party producing the witness for examination to re-examine him orally.

And I further request that you will be pleased to cause the evidence of the said witnesses [or the answers of the said witnesses and all additional oral questions, whether on examination, cross-examination or re-examination] to be reduced into writing and all books, documents and things produced on such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it together with [the interrogatories and cross-interrogatories and] a note of the charges and expenses payable in respect of the execution of this request

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 41D

through the _____ from whom the same was received for
transmission to the Supreme Court of the State of Victoria.

And I further request that you will cause the agents of the parties if
appointed, or in default of appointment will cause me, to be informed of the
date and place where the examination is to take place.

Dated [*e.g.* 15 June 20 ____].

Form 41AA

Form 41AA
amended by
S.R. Nos
100/2008
rule 12(f),
146/2009
rule 9.

FORM 41AA

Rule 41A.02

**NOTICE OF APPLICATION UNDER SECTION 42E(1) OF THE
EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1958**

[heading as in originating process]

PART 1—PARTICULARS OF APPLICATION

I, *[name of applicant]*

of *[address of applicant or firm of solicitor for applicant]*

hereby request an *audio visual/*audio link in accordance with the following details—

1. *Audio visual/*Audio link—
From *[originating city/town]*
To *[receiving city/town]*
2. Type of hearing—*[e.g. *Hearing/*Practice Court Hearing/*Directions Hearing/*Taxation of Costs/*Other]*
3. Number of persons to appear before, or give evidence by *audio visual/*audio link—
4. Suggested time *(if any)* for link—
5. Estimate of duration of link—
6. Is this application being made with the consent of the parties to the proceeding?—
7. If the answer to question 6 is No, what parties have not given consent?—
8. If a hearing date has been fixed, what is the date of the hearing?—

I hereby undertake to pay, in the first instance, the appropriate amount prescribed by the regulations under section 42H(1) of the Act.

Date:

[Signature]

*strike out as appropriate.

PART 2—PARTICULARS OF HEARING

(to be completed by the Prothonotary)

The application will be heard before the Judge in the Practice Court, Supreme Court, William Street, Melbourne [*or* the Associate Judge in Court No. , Supreme Court, 436 Lonsdale Street, Melbourne] on [*e.g.* 20 June 20] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

FILED [*e.g.* 15 June 20].

*strike out as appropriate.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 42A

Form 42A
substituted by
S.R. No.
169/2006
rule 6,
amended by
S.R. Nos
149/2008
rule 7, 23/2010
rule 8.

FORM 42A

Rule 42.03(1)

SUBPOENA

[heading as in originating process]

To [name]

of [address]:

YOU ARE ORDERED:

- ☐ *to attend to give evidence—see section A of this form;
- ☐ *to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see section B of this form; or
- ☐ *to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule—see section C of this form

**Select one only of these three options*

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

The last day for service of this subpoena is:

(See Note 1)

Please read Notes 1 to 13 at the end of this subpoena.

[Seal of the Court]

Date:

Issued at the request of [name of party], whose address for service is:

A. Details of subpoena to attend to give evidence only

Date, time and place at which you must attend to give evidence:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Alternatively, if notice of a later day is given to you by the issuing party, you must attend on that day until you are excused from further attending.

B. Details of subpoena to produce only

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Prothonotary at the address below so that they are received not less than three days before the day specified for attendance and production.
(See Notes 5 to 9)

Alternatively, if notice of a later day is given to you by the issuing party, you must attend and produce the subpoena, or a copy of it, with the required documents or things on that day.

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things:

Date:

Time:

Place:

Address to which the subpoena (or copy) and documents or things may be delivered or sent:

The Prothonotary

[Supreme Court of Victoria
436 Lonsdale Street
Melbourne]

SCHEDULE

The documents and things you must produce are as follows:

[If insufficient space attach list]

Form 42A

C. Details of subpoena both to attend to give evidence and to produce

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Alternatively, if notice of a later day is given to you by the issuing party, you must attend on that day until you are excused from further attending.

In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Prothonotary at the address below so that they are received not less than three days before the day specified for attendance and production.
(See Notes 5 to 9)

Alternatively, if notice of a later day is given to you by the issuing party, you must attend and produce the subpoena, or a copy of it, with the required documents or things on that day until you are excused from further attending.

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things:

Date:

Time:

Place:

Address to which the subpoena or a copy of it and documents or things must be delivered or sent:

The Prothonotary

[Supreme Court of Victoria
436 Lonsdale Street
Melbourne]

SCHEDULE

The documents and things you must produce are as follows:

[If insufficient space attach list]

NOTES

Last day for service

1. Subject to Note 2, you need not comply with the subpoena unless it is served on you on or before the day specified in the subpoena as the last day for service of the subpoena.
2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the day on which your attendance is required.

Production to the Prothonotary

5. In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the Prothonotary at the address specified in the subpoena for the purpose so that they are received not less than three days before the day specified in the subpoena for attendance and production or if you receive notice of a later day from the issuing party, before the later day.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the Prothonotary in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the Prothonotary may permit the parties to the proceeding to inspect the document or thing.

Form 42A

-
8. If you produce more than one document or thing, you must, if requested by the Prothonotary, produce a list of the documents or things produced.
 9. If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
 - 9A. The copy of a document may be—
 - (a) a photocopy; or
 - (b) in PDF format on a CD-Rom.

Applications in relation to subpoena

10. You have the right to apply to the Court—
 - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs reasonably incurred in complying with the subpoena.

Contempt of court—arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
 13. Note 12 is without prejudice to any power of the Court under any Rules of the Supreme Court (including any Rules of the Supreme Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.
- _____

FORM 42B

Rule 42.10(3)

New
Form 42B
inserted by
S.R. No.
23/2010 rule 9.

NOTICE TO ADDRESSEE AND DECLARATION

[heading as in originating process]

To: *[name of person to whom the subpoena is addressed and who will be the recipient of the subpoena]*

of *[address]*:

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be—

- (a) a photocopy; or
- (b) in PDF format on a CD-Rom.

You must complete the declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, the Prothonotary may, without further notice to you, destroy the copies after the expiry of a period of four months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

[tick the relevant option below, provide your address as appropriate, sign and date]

- ☐ **All** of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.
- ☐ **Some or all** of the material I am providing to the Court in compliance with the attached subpoena is an **original** document. Once the material is no longer required, all of the material should be returned to me at the following address—

[insert address for return of material].

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 42B

Date:

[signature of addressee]

[name of addressee]

FORM 42AA

Rule 42A.03

SUBPOENA FOR PRODUCTION TO PROTHONOTARY

[heading as in originating process]

To *[name]*

of *[address]*:

YOU ARE ORDERED:

To produce to the Prothonotary this subpoena or a copy of it and the documents or things specified in the Schedule.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

The last day for service of this subpoena is:

Please read Notes 1 to 18 at the end of this subpoena.

[Seal of the Court]

Date:

Issued at the request of *[name of party]*, whose address for service is:

You must comply with this subpoena by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Prothonotary at the address below so that they are received on or before the date for production specified below.

Date for production:

The address of the Prothonotary to which the subpoena (or copy) and documents or things must be delivered or sent is:

The Prothonotary

[Supreme Court of Victoria
436 Lonsdale Street
Melbourne]

Form 42AA
inserted by
S.R. No.
169/2006
rule 6,
amended by
S.R. No.
100/2008
rule 12(g).

SCHEDULE

The documents and things you must produce are as follows:

[If insufficient space attach list]

NOTES

Last day for service

1. Subject to Note 2, you need not comply with the subpoena unless it is served on you on or before the day specified in the subpoena as the last day for service of the subpoena.
2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last day for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Document not in writing

4. If compliance with the subpoena requires the production of a document which is not in writing (such as a photograph, computer disk, diskette, audio-tape, video-tape etc.: see section 38 of the **Interpretation of Legislation Act 1984**) then, provided the original is held by you until trial, a copy only need be produced to the Prothonotary. If a copy is produced, it must be clearly marked as such and it may be used by the Prothonotary for the purposes of inspection and, if necessary, copying.

Question concerning subpoena

5. Any question concerning this subpoena should be directed not to the Court but to the solicitor for the party at whose request the subpoena was issued.

Availability of documents for inspection and at trial

6. All documents produced in compliance with this subpoena will be available, unless earlier returned, at the trial of the proceeding and, subject to the following, may be inspected in the meantime by each party to the proceeding and his, her or its solicitor, and copies taken.

Objection by addressee to production or inspection

7. If you are the person required by this subpoena to produce documents, and you object to producing the documents or to their being inspected by any one or more of the parties to the proceeding, you must notify the Prothonotary in writing of your objection and the grounds of that objection before the day specified in the subpoena for the production of the documents. The party at whose request this subpoena is issued is required to inform you of the time and place when your objection will be heard by a Judge or an Associate Judge of the Court.

Objection by party served with subpoena to inspection

8. If you are a party to the proceeding and have been served with a copy of this subpoena, and you object to the documents being inspected by another party to the proceeding, you must notify the Prothonotary of your objection and the grounds of that objection before the day specified in the subpoena for the production of the documents. The party at whose request this subpoena is issued is required to inform you of the time and place when your objection will be heard by a Judge or an Associate Judge of the Court.

Objection by plaintiff to production of hospital or medical file or record

9. If you are the plaintiff in this proceeding and this subpoena seeks from another person the production of a hospital or medical file or record concerning you or your condition, you may, before taking objection, inspect the file or record produced to the Prothonotary and, after such inspection, notify any objection you may have to inspection of that file or record by any other party, provided that you make your inspection and notify your objection and the grounds of that objection, if any, in writing within seven days after the day specified in the subpoena for production.

Obligation of issuing party after objection

10. If you are the party at whose request the subpoena was issued and any objection is taken, either to the production of the documents or to their being inspected, you will be informed by the Prothonotary of the objection and of the time and place when the objection will be heard. You are required promptly to inform the addressee in the subpoena and all other parties to the proceeding accordingly so that they may be heard, if they wish, before the objection is determined.

Removal of document

11. Documents produced in compliance with this subpoena may not be removed from the custody of the Prothonotary, even for the purpose of their being photocopied, except upon application in writing signed by a solicitor for a party. Rule 42A.11(2) of Chapter I of the Rules of the Supreme Court is then relevant:
- "(2) A solicitor who signs an application under paragraph (1) and removes a document from the office of the Prothonotary, undertakes to the Court by force of this Rule that—
- (a) the document will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and
 - (b) the document will be returned to the office of the Prothonotary in the same condition, order and packaging in which it was removed, as and when directed by the Prothonotary."

A breach of this undertaking may be dealt with as a contempt of court.

Production of a number of documents or things

12. If you produce more than one document or thing, you must, if requested by the Prothonotary, produce a list of the documents or things produced.

Production of copy instead of original

13. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

Return of documents or copies

14. Any documents produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena (or a copy) request that the documents be posted to you at another address given by you or that you be informed when they are available to be collected by you.

Applications in relation to subpoena

15. You have the right to apply to the Court—
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

16. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to any conduct money or witnesses' expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

17. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
18. Note 17 is without prejudice to any power of the Court under any Rules of the Supreme Court (including any Rules of the Supreme Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

* * * * *

Forms
42B–42F
revoked by
S.R. No.
169/2006
rule 7.

Form 43A

FORM 43A

Rule 43.06(3)

CERTIFICATE IDENTIFYING EXHIBIT

[heading as in affidavit]

This is the exhibit marked [*e.g. "ABC1"*] now produced and shown to
[*identify deponent*] at the time of swearing the person's affidavit on [*date*].

[Signature of person taking affidavit]

*[state distinguishing mark of exhibit
and briefly and specifically described exhibit:*

*e.g. Exhibit "ABC1"
Letter BHP to CRA 15/6/09]**

** print distinguishing mark and description in bold type and in a font size not less
than 20 points in lower right hand corner of the page.*

FORM 44A

Rule 44.01

EXPERT WITNESS CODE OF CONDUCT

1. A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.
2. An expert witness is not an advocate for a party.
3. Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide—
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
 - (e)
 - (i) the reasons for,
 - (ii) any literature or other materials utilised in support of,
 - (iii) a summary of—each such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and
 - (j) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 44A

-
4. Where an expert witness has provided to a party (or that party's legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i) and (j) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
 5. If directed to do so by the Court, an expert witness shall—
 - (a) confer with any other expert witness; and
 - (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.
 6. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement.
-

FORM 45A

Rule 45.04(2); 45.05(6)

Form 45A
amended by
S.R. No.
100/2008
rule 12(h).

SUMMONS ON ORIGINATING MOTION

[heading as in originating process]

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party.]*

You are summoned to attend before the Court on the hearing of an application by the plaintiff for judgment or an order in respect of the relief or remedy sought in the originating motion as follows: *[describe the judgment or order sought]*.

The application will be heard before the Associate Judge in Court No. , Supreme Court, 436 Lonsdale Street, Melbourne, on *[e.g. 20 June 20]* at a.m. *[or p.m.]* or so soon afterwards as the business of the Court allows.

The Associate Judge may, as appropriate—

- (a) where he or she has authority to give the judgment or make the order sought by the plaintiff, hear and determine the application or refer it to another Associate Judge for hearing and determination;
- (b) by consent of the defendant, give the judgment or make the order;
- (c) refer the application to a Judge of the Court for hearing and determination;
- (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.

FILED *[e.g. 15 June 20]*.

This summons was filed by _____ of _____, solicitor for the plaintiff.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 46A

Form 46A
amended by
S.R. No.
100/2008
rule 12(i).

Rule 46.04(1)

FORM 46A

SUMMONS

[heading as in originating process]

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party]*.

You are summoned to attend before the Court on the hearing of an application by the _____ for *[describe the order sought]*.

The application will be heard before the Judge in the Practice Court *[or the Associate Judge in Court No. _____, Supreme Court, 436 Lonsdale Street, Melbourne]*, Supreme Court, William Street, Melbourne, on *[e.g. 20 June 20__]* at _____ a.m. *[or p.m.]* or so soon afterwards as the business of the Court allows.

FILED *[e.g. 15 June 20__]*.

This summons was filed by _____ of _____, solicitor for the *[identify party]*.

FORM 48A

Rule 48.03

NOTICE OF TRIAL

[heading as in originating process]

To the *[identify parties]*

TAKE NOTICE that this proceeding is ready for trial in that to the best of the knowledge, information and belief of the *plaintiff/*defendant—

- (1) the trial is to proceed without pleadings *OR* pleadings are closed and it is not proposed to apply before trial for any amendment;
- (2) particulars are not being sought *OR* all particulars of the defence/statement of claim that have been sought have been served (**save as to damages, in so far as these are to be updated closer to trial*) and it is not proposed to seek further particulars;
- (3) it is not proposed to interrogate *OR* interrogatories have been served and answers obtained and it is not proposed to seek to serve further interrogatories or to seek further answers;
- (4) it is not proposed to serve a notice for discovery *OR* discovery has been obtained and inspection had and it is not proposed to seek further discovery or further inspection of documents.

As for the trial itself—

- (5) this proceeding is defended by *[insert names of parties defending]* *OR* this proceeding is undefended;
- (6) the *plaintiff/*defendant is ready to proceed to trial upon not less than 14 days' notice;
- (7) the trial is to be conducted at *[insert place of trial]*;
- (8) the trial can reasonably be expected to take *[insert number]* days and no longer.

Dated *[insert date]*

* delete if inapplicable

[Signed]

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 48B

FORM 48B

Rule 48.03

NOTICE OF TRIAL

[heading as in originating process]

To the *[identify parties]*

TAKE NOTICE that this proceeding is fixed for trial on
the day of 20 .

Dated *[insert date]*

[Signed]

Form 53A
amended by
S.R. No.
44/2009
rule 11(d).

FORM 53A

Rule 53.07

**JUDGMENT IN SUMMARY PROCEEDING FOR RECOVERY OF
LAND**

[heading as in Form 5E]

[other particulars as in Form 60A]

THE JUDGMENT OF THE COURT IS THAT:

The plaintiff recover possession of the land described in the originating
motion 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].

[other particulars as in Form 60D]

* *[Note: The land should be so described as to be physically identifiable.]*

FORM 53B

Rule 53.08(3)

**WARRANT OF POSSESSION IN SUMMARY PROCEEDING FOR
RECOVERY OF LAND**

[heading as in Form 5E]

TO THE SHERIFF:

In respect of the judgment dated [*e.g.* 20 April 20] by which it was adjudged 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 68A as for a levy for costs only*] and indorse [*continue as in Form 68A*].

SCHEDULE

[Describe land as in judgment]

Issued [*e.g.* 15 June 20].

By the Court
Prothonotary

Issued at the request of the plaintiff.

[where there is a defendant] The last known address of the defendant
[continue as in Form 68A].

Form 57A

FORM 57A

Rule 57.03(3)

WRIT OF HABEAS CORPUS

[heading as in Form 5A]

TO THE DEFENDANT:

of *[address]*

HAVE the plaintiff *[or name of person restrained, if not the plaintiff]* before the Judge in the Practice Court, Supreme Court, William Street, Melbourne, on *[e.g. 20 June 20]* and thereafter submit to the further order of the Court as to his or her custody.

YOU are required to make a return to this writ by filing a notice stating the grounds of detention of the plaintiff *[or as the case may be]* and serving a copy on the plaintiff at or before the time referred to above.

TAKE NOTICE that disobedience to this writ is a contempt of court which may be punished by imprisonment or fine or both.

Issued *[e.g. 15 June 20]*.

By the Court

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58A

FORM 58A

Rule 58.18

Form 58A
amended by
S.R. No.
91/2007
rule 12(a).

IN THE SUPREME COURT OF VICTORIA 20 No.

AT MELBOURNE

In the matter of section 271 of the **Children, Youth and Families Act 2005**

BETWEEN *AB* Appellant
AND *CD* Respondent

NOTICE OF APPEAL

Date of document:

Filed on behalf of the Appellant

Prepared by: *[insert details]*

TAKE NOTICE that the abovementioned appellant appeals to the Supreme Court under section 271 of the **Children, Youth and Families Act 2005** against the decision of the Children's Court of Victoria made on *[insert date]*.

The order appealed against was that *[insert details of order made]*

OR

was as attached *[attach copy of order]*

The appellant appeals against the whole of that order

OR

against that part of the order by which it was provided *[identify that part of the order which is appealed against]*.

The appellant appeals on the following grounds: *[insert concisely and in numbered paragraphs the grounds of appeal relied upon]*.

This appeal will be heard before the Judge in the Practice Court, Supreme Court, William Street, Melbourne on the day of 20 at a.m.
[or p.m.] or so soon afterwards as the business of the Court allows.

Signed by the Appellant
or the Appellant's solicitors

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58B

Form 58B
amended by
S.R. Nos
91/2007
rule 12(b),
55/2010
rule 26(a).

FORM 58B

Rule 58.24

NOTICE OF APPEAL AND UNDERTAKING TO PROSECUTE

[under section 328 of the **Children, Youth and Families Act 2005**]

The name of the appellant is:

The name and address of the respondent is:

1. To the Registrar of the Children's Court at:
2. To the Prothonotary at:
3. And to the abovenamed respondent:

A. The proceeding(s) appealed from—

1. Venue of the Children's Court appealed from:
2. Date(s) of order(s) made in the Children's Court:
3. Particulars of order(s) [*if space insufficient attach extra page(s)*]

B. The appeal is to be heard by the Supreme Court *at a.m.
[or p.m.] on [date], at , [or] *at a time and place
to be fixed by the Prothonotary.

C. General Grounds of Appeal

[insert particulars]

D. 1. Appellant's personal address for service:

2. Solicitor's name and address for service:

E. The appellant requests the Prothonotary to list the appeal.

Dated:

Signature of *Appellant/*Solicitor for Appellant

* Delete if inapplicable.

UNDERTAKING TO PROSECUTE

I, *[name]*

of *[address]*

UNDERTAKE to

- (i) (a) *appear at the Supreme Court to prosecute the appeal at a.m.
[or p.m.] on *[date]* , at 210 William Street, Melbourne, to
appear in the Supreme Court for the duration of the appeal; and

OR

- (b) *appear at the Supreme Court sitting at to prosecute the
appeal on a day to be fixed by the Prothonotary and to appear for
the duration of the appeal; and
- (ii) to notify the Prothonotary in writing of any change of address
from that appearing in the notice of appeal.

Dated:

Signature of appellant

In the presence of:

* Delete if inapplicable.

* * * * *

Form 58C
revoked by
S.R. No.
55/2010
rule 26(b).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58D

Form 58D
amended by
S.R. No.
55/2010
rule 26(c).

FORM 58D

Rule 58.27(2)

NOTICE OF ABANDONMENT OF APPEAL

IN THE SUPREME COURT

OF VICTORIA

AT

The name of the appellant is:

The name and address of the respondent is:

1. To the Prothonotary at:
2. To the abovenamed respondent:

I wish to abandon my appeal against the order(s) made by the Children's Court.

I give notice of the abandonment of the appeal, particulars of which are set out below:

1. Venue of Children's Court at which order(s) made:
2. *Date of application/order to which appeal relates:
3. Nature of application/order (*e.g. protection order, irreconcilable differences application, therapeutic treatment order etc.*) (state shortly):
4. Date of order(s) appealed from:
5. Particulars of order(s) [*if space insufficient attach extra page(s)*]

I acknowledge that the order(s) appealed from shall now take effect.

Dated:

Signature of appellant

* Delete if inapplicable.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58E

* * * * *

Form 58E
amended by
S.R. Nos
91/2007
rule 12(c),
100/2008
rule 12(j),
revoked by
S.R. No.
132/2009
rule 21(2).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58F

FORM 58F

Rule 58.29(1)

NOTICE OF SUPREME COURT'S DECISION ON APPEAL

To the Prothonotary at:

To the Registrar of the Children's Court at:

Regarding an appeal from order(s) recorded at the Children's Court at
on [date]

<i>Appellant</i>	<i>Respondent</i>

The details are as follows:

Before the Honourable Justice at on [date] .

<i>Registrar's Number</i>	<i>Order(s) Appealed Against</i>	<i>Result of Appeal</i>

[When a custodial sentence was imposed or confirmed—the appellant
*has/*has not been returned to custody]

Associate

* Delete if inapplicable.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58G

FORM 58G

Rule 58.30

Form 58G
amended by
S.R. No.
55/2010
rule 26(d).

**APPLICATION TO SET ASIDE ORDER STRIKING OUT APPEAL
FOR FAILURE TO APPEAR**

Appeal No:

[date]

To: The Prothonotary

at

and

To: The Respondent
of

Appellant's name

Address

CHILDREN'S COURT APPEALED FROM:

I hereby apply for an order setting aside an order made on [insert date of order] striking out my appeal for my failure to appear.

The application is made on the ground that my failure to appear was not due to fault or neglect on my part.

(Give details here of reasons for non-appearance)

Dated:

Signature of Appellant

[Notice of this application must be served on the respondent a reasonable time before making of the application and in the same way as a notice of appeal]

If the Supreme Court grants the application it must order the reinstatement of the appeal subject to the payment of any costs that the Court thinks fit. The Court may also require the appellant to give a further undertaking to prosecute the appeal.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58G

[Office use only]

To: 1. The Appellant
2. Prosecuting Agency
3. The Registrar of the Children's Court at

The Application for rehearing is listed for _____ at _____ a.m.
Prothonotary

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58H

FORM 58H

Rule 58.31(1)

APPLICATION FOR REHEARING OF APPEAL

[Appeals under section 328 of the **Children, Youth and Families Act 2005**]

Form 58H
amended by
S.R. Nos
91/2007
rule 12(d),
55/2010
rule 26(e).

Appeal No:

[*date*]

To: The Prothonotary

at

and

To: The Respondent

of

Appellant's name

Address

CHILDREN'S COURT APPEALED FROM:

I hereby apply for a rehearing of my appeal which was heard and determined on [*insert date*] in my absence.

The application is made on the ground that my failure to appear was not due to fault or neglect on my part.

(*Give details here of reasons for non-appearance*)

Dated:

Signature of Appellant

[Notice of this application must be served on the respondent a reasonable time before the making of the application and in the same way as a notice of appeal]

If the Supreme Court grants the application it must order the reinstatement of the Children's Court order and reinstatement of the appeal subject to the payment of any costs that the Court thinks fit. The Court may also require the appellant to give a further undertaking to prosecute the appeal.

The granting of the application for rehearing acts as a stay of the order of the Children's Court or the dismissal of the application by the Children's Court.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58H

[Office use only]

To: 1. The Appellant
2. Prosecuting Agency
3. The Registrar of the Children's Court at

The Application for rehearing is listed for at a.m.
Prothonotary

Form 58J

FORM 58J

Rule 58.31(2)

**APPLICATION FOR LEAVE TO APPLY OUT OF TIME FOR
REHEARING OF APPEAL**

[Appeals under section 328 of the **Children, Youth and Families Act 2005**]

Form 58J
amended by
S.R. Nos
91/2007
rule 12(e),
55/2010
rule 26(f).

Appeal No:

[date]

To: The Prothonotary

at

and

To: The Respondent
of

Appellant's name

Address

CHILDREN'S COURT APPEALED FROM:

I hereby seek leave to apply outside the prescribed period of 30 days from the date of hearing of the appeal for the rehearing of the appeal.

My appeal was heard and determined on [insert date] in my absence.

The application is made on the ground that my failure to apply for a rehearing of the appeal within 30 days after being notified in writing of the determination of the appeal was due to the following exceptional circumstances.

State here the exceptional circumstances relied upon

Dated:

Signature of Appellant

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 58J

[Notice of this application must be served on the respondent a reasonable time before the making of the application and in the same way as a notice of appeal—section 89A(4)(b) of the **Magistrates' Court Act 1989**]

[Office use only]

To: 1. The Appellant
2. Prosecuting Agency
3. The Registrar of the Children's Court at

The Application for Leave is listed for _____ at _____ a.m.

Prothonotary

FORM 59A

Rule 59.05(4)

NOTICE OF JUDGMENT

[heading as in originating process]

To *[name]*

of *[address]*

TAKE NOTICE that—

1. A judgment *[or An order]* of the Court was given *[or made]* on *[e.g. 20 April 20]* by which it was *[state substance of judgment or order]*.
2. From the time of service of this notice you *[or some other person, naming that person, as the case may be]* will be bound by the judgment *[or order]* to the same extent as you *[or that person]* would have been if you *[or he]* were a party on the day the judgment *[or order]* was given *[or made]*.
3. Without filing an appearance, you *[or the other person]* may apply by summons filed within 28 days after service of this notice for an order that the judgment *[or order]* be set aside or varied.
4. After filing an appearance, you *[or the other person]* may attend on the taking of the account or the making of the inquiry under the judgment *[or order]*.

Dated *[e.g. 15 June 20]*.

[Signed]

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 60A

Form 60A
amended by
S.R. No.
100/2008
rule 12(k).

Rule 60.08

FORM 60A

GENERAL FORM OF JUDGMENT GIVEN

[heading as in originating process]

JUDGMENT

JUDGE OF THE COURT *[or ASSOCIATE JUDGE]*:

DATE GIVEN: *[e.g. 20 June 20]*

ORIGINATING PROCESS: *[e.g. Writ] [state whether by writ, by originating motion or otherwise]*

HOW OBTAINED: *[e.g. By plaintiff's summons dated 15 June 20] [state whether on application by or without summons before trial with date of summons or application, or at trial with date of commencement of trial]*

ATTENDANCE: *[set out attendance or non-attendance of any person entitled to attend and, if attending, whether by counsel or solicitor]*

OTHER MATTERS: *[state any finding of jurisdictional fact, undertaking of party or other matter as directed by Court]*

THE JUDGMENT OF THE COURT IS THAT:

- 1.
2. *[terms of judgment]*
- 3.

DATE AUTHENTICATED:

Prothonotary

FORM 60B

Rule 60.08

GENERAL FORM OF JUDGMENT ENTERED

[heading as in originating process]

JUDGMENT

DATE ENTERED:

ORIGINATING PROCESS: *[state whether by writ, by originating motion or otherwise]*

HOW OBTAINED: *[state whether in default of appearance or defence or otherwise]*

THE JUDGMENT OF THE COURT IS THAT:

- 1.
2. *[terms of judgment]*
- 3.

Prothonotary

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 60C

Form 60C
amended by
S.R. Nos
100/2008
rule 12(l),
44/2009
rule 11(e).

Rule 60.08

FORM 60C

GENERAL FORM OF ORDER

[heading as in originating process]

ORDER

JUDGE OF THE COURT *[or ASSOCIATE JUDGE]*:

DATE MADE:

ORIGINATING PROCESS: *[state whether by writ, by originating motion or otherwise]*

HOW OBTAINED: *[state whether on application by or without summons, identifying party filing summons or, if no summons, making application, and whether application made before trial with date of summons or application, or at trial with date of commencement of trial]*

ATTENDANCE: *[set out attendance or non-attendance of any person entitled to attend and, if attending, whether by counsel or solicitor]*

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]*

DATE AUTHENTICATED:

Prothonotary

FORM 60D

Rule 60.08

JUDGMENT AT TRIAL BY JUDGE WITHOUT A JURY

[heading as in originating process]

JUDGE:

DATE GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Trial without a jury, commenced on [*e.g.* 15 June 20].

ATTENDANCE:

OTHER MATTERS:

THE JUDGMENT OF THE COURT IS THAT:

[e.g.]

The defendant personally and by the defendant's servants and agents be perpetually restrained from [*as the case may be*].

or

There be judgment for the defendant together with costs to be taxed.

DATE AUTHENTICATED:

Prothonotary

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 60E

FORM 60E

Rule 60.08

JUDGMENT AT TRIAL BY JUDGE WITH A JURY

[heading as in originating process]

JUDGE:

DATE GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Trial with a jury of six, commenced on , 20 .

ATTENDANCE:

OTHER MATTERS: *[set out findings of jury]*

THE JUDGMENT OF THE COURT IS THAT:

[e.g.]

The defendant pay the plaintiff \$ and costs to be taxed.

or

There be judgment for the defendant together with costs to be taxed.

DATE AUTHENTICATED:

Prothonotary

FORM 60F

Rule 60.08

JUDGMENT OR ORDER AT TRIAL OF PRELIMINARY QUESTION

[heading as in originating process]

JUDGE:

DATE GIVEN *[or MADE]*:

ORIGINATING PROCESS:

HOW OBTAINED: Trial of question pursuant to order *[identify order]*,
commenced on

ATTENDANCE:

OTHER MATTERS: The Court finds that:

[state findings of Court]

THE JUDGMENT OF THE COURT IS THAT:

[e.g.]

The defendant pay the plaintiff \$ and costs to be taxed.

or

There be judgment for the defendant together with costs to be taxed.

[or THE COURT ORDERS THAT:]

[e.g.]

The proceeding be set down for trial at *[or as the case may be]*

DATE AUTHENTICATED:

Prothonotary

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 60G

FORM 60G

Rule 60.08

DEFAULT JUDGMENT FOR DEBT

[heading as in originating process]

DATE ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

[e.g.] The defendant pay the plaintiff \$ and \$ costs *[or costs to be taxed]*.

Prothonotary

FORM 60H

Rule 60.08

DEFAULT JUDGMENT FOR RECOVERY OF LAND

[heading as in originating process]

DATE ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

The plaintiff recover possession of the land described in the indorsement of claim on the writ as *[description of land*]* and that the defendant pay the plaintiff \$ costs *[or pay the plaintiff's costs to be taxed]*.

Prothonotary

* *[Note: The land should be so described as to be physically identifiable.]*

FORM 60J

Rule 60.08

Form 60J
amended by
S.R. Nos
100/2008
rule 12(l),
44/2009
rule 11(e).

**INTERLOCUTORY OR INTERLOCUTORY AND FINAL
JUDGMENT FOR DAMAGES IN DEFAULT**

[heading as in originating process]

DATE INTERLOCUTORY JUDGMENT ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance *[or defence]*.

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff damages to be assessed and \$
costs *[or costs to be taxed]*.

JUDGE OF THE COURT *[or ASSOCIATE JUDGE]*:

DATE FINAL JUDGMENT GIVEN:

HOW OBTAINED: Assessment of damages pursuant to interlocutory
judgment.

ATTENDANCE:

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff \$, the amount of the assessed damages
and costs to be taxed *[or as the case may be]*

DATE AUTHENTICATED:

Prothonotary

*[Note: This form is a combined form of interlocutory and final judgment. The
plaintiff may at the plaintiff's option enter interlocutory judgment by omitting
the words below the line in the form and obtain the authentication of a
separate final judgment in Form 60K.]*

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 60K

Form 60K
amended by
S.R. Nos
100/2008
rule 12(l),
44/2009
rule 11(e).

FORM 60K

Rule 60.08

FINAL JUDGMENT FOR DAMAGES OR VALUE IN DEFAULT

[heading as in originating process]

JUDGE OF THE COURT [*or* ASSOCIATE JUDGE]:

DATE FINAL JUDGMENT GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Assessment of damages [*or* value] pursuant to
interlocutory judgment entered on in default of appearance [*or*
defence].

ATTENDANCE:

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff \$, the amount of the assessed damages
[*or* the assessed value of \$] and costs to be taxed [*or as the case may*
be].

DATE AUTHENTICATED:

Prothonotary

FORM 60L

Rule 60.08

Form 60L
amended by
S.R. Nos
100/2008
rule 12(l),
44/2009
rule 11(e).

**INTERLOCUTORY OR INTERLOCUTORY AND FINAL
JUDGMENT FOR DETENTION OF GOODS IN DEFAULT**

[heading as in originating process]

DATE INTERLOCUTORY JUDGMENT ENTERED:

ORIGINATING PROCESS:

HOW OBTAINED: In default of appearance [*or* defence].

THE JUDGMENT OF THE COURT IS THAT:

The defendant deliver to the plaintiff the goods described in the indorsement of claim on the writ as [*description of goods*] or pay the plaintiff the value of the goods to be assessed [and also damages for their detention to be assessed] and \$ costs [*or* costs to be taxed].

or

The defendant pay the plaintiff the value of the goods described in the indorsement of claim on the writ to be assessed [and also damages for their detention to be assessed] and \$ costs [*or* costs to be taxed].

JUDGE OF THE COURT [*or* ASSOCIATE JUDGE]:

DATE FINAL JUDGMENT GIVEN:

HOW OBTAINED: Assessment of [*complete appropriately*] pursuant to interlocutory judgment.

ATTENDANCE:

THE JUDGMENT OF THE COURT IS THAT:

The defendant pay the plaintiff \$, the amount of the assessed value of \$ [and the assessed damages or the assessed damages] and costs to be taxed [*as the case may be*]

DATE AUTHENTICATED:

Prothonotary

[Note: This form is a combined form of interlocutory and final judgment. The plaintiff may at the plaintiff's option enter interlocutory judgment by omitting the words below the line in the form and obtain the authentication of a separate final judgment in Form 60K.]

Form 61A

Form 61A
(Heading)
amended by
S.R. No.
100/2008
rule 12(m).
Form 61A
amended by
S.R. No.
100/2008
rule 12(n).

FORM 61A

Rule 61.02(1)(a)

**APPLICATION TO ASSOCIATE JUDGE FOR ORDER FOR
PAYMENT OF JUDGMENT DEBT BY INSTALMENTS**

[heading as in originating process]

This application is made to an Associate Judge by the *[judgment creditor or judgment debtor]* of *[usual place of residence or of business or registered office]* with respect to the judgment for the *[judgment creditor]* against the *[judgment debtor]* in the Supreme Court dated the *[e.g. 20 June 20]* for \$ and costs.

\$ is now owing under the judgment, being—

- (a) \$, the amount due under the judgment;
- (b) \$, the amount of costs;
- (c) \$, the amount of interest *[if capable of calculation where the judgment debtor applies]*.

The *[judgment creditor or judgment debtor]* hereby applies for an order for the payment by instalments of the sum owing under the judgment as follows:

[state amount of each instalment, weekly, monthly or other period for payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid].

The grounds on which the application is made are *[complete appropriately]*.

The address for service of the *[judgment creditor or judgment debtor]* is .

The usual or last known place of residence or of business or registered office of the *[judgment debtor or judgment creditor]* is .

Dated 20 .

Signature of Applicant or Applicant's Solicitor

[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 72C.]

FORM 61B

Rule 61.02(1)(b)

**APPLICATION TO ASSOCIATE JUDGE FOR ORDER IN
SUBSTITUTION FOR ORDER FOR PAYMENT OF JUDGMENT
DEBT BY INSTALMENTS**

[heading as in originating process]

This application is made to an Associate Judge by the *[judgment creditor or judgment debtor]* of *[usual place of residence or of business or registered office]* with respect to the judgment for the *[judgment creditor]* against the *[judgment debtor]* in the Supreme Court dated *[e.g. 20 June 20]* for \$ and costs.

On 20 an order was made that the *[judgment debtor]* pay \$, the sum then owing under the judgment, by instalments as follows: *[insert terms of order]*. The *[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 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;
- (c) \$, the amount of interest *[if capable of calculation where the judgment debtor applies]*.

The *[judgment creditor or judgment debtor]* hereby applies, for an order in substitution for the order made on 20 , namely, for an order for the payment of \$, the sum owing under the judgment, by instalments as follows: *[state amount of each instalment, weekly, monthly or other period for payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid]*.

The grounds on which the application is made are

[include particulars of any material change in the circumstances of the judgment debtor since the date of the order].

The address for service of the *[judgment creditor or judgment debtor]* is .

The usual or last known place of residence or of business or registered office of the *[judgment debtor or judgment creditor]* is .

Form 61B
(Heading)
amended by
S.R. No.
100/2008
rule 12(m).
Form 61B
amended by
S.R. No.
100/2008
rule 12(n).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61B

Dated 20 .

Signature of Applicant or Applicant's Solicitor

[Note that where the application is made by a judgment debtor, the judgment debtor must file an affidavit of the judgment debtor's financial situation which gives the information required by Form 72C.]

FORM 61C

Rule 61.02(2)

**APPLICATION TO THE COURT FOR VARIATION OR
CANCELLATION OR ORDER FOR PAYMENT OF JUDGMENT
DEBT BY INSTALMENTS**

[heading as in originating process]

This application is made to the Court by the *[judgment creditor or judgment debtor]* of *[usual place of residence or of business or registered office]* with respect to the judgment for the *[judgment creditor]* against the *[judgment debtor]* in the Supreme Court dated *[e.g. 20 June 20]* for \$ and costs.

On 20 an order was made that the *[judgment debtor]* pay \$, the sum then owing under the judgment, by instalments as follows: *[insert terms of order]*. The *[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 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;
- (c) \$, the amount of interest *[if capable of calculation where the judgment debtor applies]*.

The *[judgment creditor or judgment debtor]* hereby applies for an order that the order made on 20 be varied as follows: *[give particulars of variation sought stating amount of each instalment, weekly, monthly or other period for payment, number of instalments, date of payment of first and last instalment, 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 was inaccurate].

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61C

TAKE NOTICE that the application will be heard before the Judge in the Practice Court, Supreme Court, William Street, Melbourne, on 20 at a.m. [or p.m.] or so soon afterwards as the business of the Court allows.

The address for service of the [*judgment creditor or judgment debtor*] is

The usual or last known place of residence or of business or registered office of the [*judgment debtor or judgment creditor*] is .

Dated 20 .

Signature of Applicant or Applicant's Solicitor

[*Note that where the application is made by a judgment debtor, the judgment debtor must file an affidavit of the judgment debtor's financial situation which gives the information required by Form 72C.*]

FORM 61D

Rule 61.02(5)

**ORDER RELATING TO PAYMENT OF JUDGMENT DEBT BY
INSTALMENTS**

[heading as in originating process]

[follow Form 60C except as below]

THE COURT ORDERS THAT:

The *[judgment debtor]* pay to the *[judgment creditor]* \$, being the sum owing in respect of a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* by instalments as follows:

[state amount of each instalment, weekly, monthly or other period for payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid].

or

The following order be substituted for the order made on , 20 that the *[judgment debtor]* pay by instalments \$ which was then owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]*:

[complete appropriately]

or

The order made on 20 that the *[judgment debtor]* pay by instalments \$ which was then owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* be varied as follows:

[complete appropriately]

or

The order made on 20 that the *[judgment debtor]* pay by instalments \$ which was then owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* be cancelled *[or be confirmed and the application dismissed]*.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61E

Form 61E
(Heading)
amended by
S.R. No.
100/2008
rule 12(m).
Form 61E
amended by
S.R. No.
100/2008
rule 12(o).

FORM 61E

Rule 61.02(6)

**NOTICE OF ORDER OR REFUSAL OF ORDER BY ASSOCIATE
JUDGE FOR PAYMENT OF JUDGMENT DEBT BY INSTALMENTS**

[heading as in originating process]

To the *[judgment creditor]*

And to the *[judgment debtor]*

TAKE NOTICE that on 20 I made an order on the application of the *[judgment creditor or judgment debtor]* that the *[judgment debtor]* pay to the *[judgment creditor]* \$, being the sum owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* by instalments as follows: *[state amount of each instalment, weekly, monthly or other period of payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid]*.

or

that on 20 I refused an application by the *[judgment creditor or judgment debtor]* for an order that the *[judgment debtor]* pay by instalments \$, being the sum owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]*.

Dated 20 .

Associate Judge

Note: If you are dissatisfied with the order or refusal referred to in this Notice you may file a Notice of Objection with the Associate of the Associate Judge within 14 days after receipt by you of this Notice. The Notice of Objection should be in Form No. 61F of Chapter I of the Rules of the Supreme Court.

FORM 61F

Rule 61.02(7)

Form 61F
amended by
S.R. No.
100/2008
rule 12(p).

NOTICE OF OBJECTION

[heading as in originating process]

To Associate Judge

TAKE NOTICE that the *[judgment creditor or judgment debtor]* of *[usual place of residence or of business or registered office]* hereby objects to the order made on 20 that *[complete appropriately]*.

or

to the refusal on 20 of an application by the *[judgment creditor or judgment debtor]* for an order that *[complete appropriately]*.

The address for service of the *[judgment creditor or judgment debtor]* is .

Dated 20 .

Signature of Objector or Objector's Solicitor

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61G

Form 61G
amended by
S.R. No.
100/2008
rule 12(q).

FORM 61G

Rule 61.02(9)

NOTICE OF HEARING OF OBJECTION

[heading as in originating process]

To the *[judgment creditor]*

And to the *[judgment debtor]*

TAKE NOTICE that the *[judgment creditor or judgment debtor]* has filed notice of objection to an order of Associate Judge made on 20 on the application of the *[judgment creditor or judgment debtor]* that *[complete appropriately]* [or to the refusal by Associate Judge on 20 of an application by the *[judgment creditor or judgment debtor]* for an order that *[complete appropriately]*].

The objection will be heard before the Judge in the Practice Court, Supreme Court, William Street, Melbourne, on 20 at a.m. [*or p.m.*] or so soon afterwards as the business of the Court allows.

Dated 20 .

Associate Judge

FORM 61H

Rule 61.02(10)

Form 61H
amended by
S.R. No.
100/2008
rule 12(r).

**NOTICE BY COURT RELATING TO PAYMENT OF JUDGMENT
DEBT BY INSTALMENTS**

[heading as in originating process]

To the *[judgment creditor]*

And to the *[judgment debtor]*

THIS NOTICE is given in relation to the judgment dated *[e.g. 20 June 20]* by which it was adjudged that the *[judgment debtor]* pay to the *[judgment creditor]* \$ and costs.

[to be completed where an Associate Judge has refused to order the payment of the judgment debt by instalments]

On 20 Associate Judge refused an application by the *[judgment creditor or judgment debtor]* for an order that the *[judgment debtor]* pay the sum owing under the judgment by instalments.

TAKE NOTICE that the *[judgment creditor or judgment debtor]* filed notice of objection to the refusal of the Associate Judge and that on 20 the Court made an order that the *[judgment debtor]* pay to the *[judgment creditor]*

\$, being the sum owing under the judgment by instalments as follows: *[state amount of each instalment, weekly, monthly or other period for payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid]* *[or the Court refused to make an order that the [judgment debtor] pay the sum owing under the judgment by instalments].*

[to be completed where an Associate Judge has ordered the payment of the judgment debt by instalments]

On 20 Associate Judge , on the application of the *[judgment creditor or judgment debtor]*, made an order that the *[judgment debtor]* pay the sum owing under the judgment by instalments as follows: *[state amount of each instalment, weekly or monthly or other period for payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid].*

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61H

TAKE NOTICE that the [*judgment creditor or judgment debtor*] filed notice of objection to the order of the Associate Judge and that on 20 the Court made an order that the order of the Associate Judge be confirmed [*or varied as follows: complete appropriately*] [*or cancelled*].

Dated 20 .

By the Court
Prothonotary

FORM 61J

Rule 61.03(1)

INSTALMENT AGREEMENT

[heading as in originating process]

1. This agreement is made between the *[judgment creditor]* of *[usual place of residence or of business or registered office]* and the *[judgment debtor]* of *[usual place of residence or of business or registered office]* with respect to the judgment for the *[judgment creditor]* against the *[judgment debtor]* in the Supreme Court dated *[e.g. 20 June 20]* 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 the *[judgment debtor]* shall pay and the *[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: _____
 - (d) Date of payment of—
first instalment: _____
last instalment: _____
 - (e) Name and address of person to whom payment to be made: _____

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61J

-
4. The [*judgment debtor*] acknowledges that he, she or it 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, she or it may be required to attend before the Court.

Dated 20 .

Signed by the judgment creditor:

Witness:

Signed by the judgment debtor:

Witness:

FORM 61K

Rule 61.03(4)

**ORDER FOR INSTALMENT PAYMENT OF JUDGMENT DEBT
AFTER AGREEMENT**

[heading as in originating process]

[follow Form 60C except as below]

THE COURT ORDERS THAT:

In accordance with an agreement dated 20 made between the
[*judgment creditor*] and the [*judgment debtor*] under the **Judgment Debt
Recovery Act 1984** and filed the [*judgment debtor*] pay to the [*judgment
creditor*] \$, being the sum owing under a judgment for the [*judgment
creditor*] against the [*judgment debtor*] dated [e.g. 20 June 20], by
instalments as follows: [*state amount of each instalment, weekly, monthly or
other period for payment, number of instalments, date of payment of first and
last instalment, name and address of person to be paid*].

Form 61L

Form 61L
amended by
S.R. No.
100/2008
rule 12(s).

FORM 61L

Rule 61.03(5)

**NOTICE OF ORDER FOR INSTALMENT PAYMENT OF
JUDGMENT DEBT AFTER AGREEMENT**

[heading as in originating process]

To the *[judgment creditor]*

And to the *[judgment debtor]*

TAKE NOTICE that on 20 , in accordance with an agreement dated 20 made between the *[judgment creditor]* and the *[judgment debtor]* under the **Judgment Debt Recovery Act 1984** and filed, I made an order that the *[judgment debtor]* pay to the *[judgment creditor]* the sum of \$, being the sum owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* by instalments as follows: *[state amount of each instalment, weekly, monthly or other period for payment, number of instalments, date of payment of first and last instalment, name and address of person to be paid]*.

Dated 20 .

Associate Judge

FORM 61M

Rule 61.04(1)

Form 61M
amended by
S.R. No.
100/2008
rule 12(s).

SUMMONS TO ATTEND FOR ORAL EXAMINATION

(Judgment Debt Recovery Act 1984)

[heading as in originating process]

To the *[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 the *[judgment creditor]* dated *[e.g. 20 June 20]* under which judgment \$ is owing.

Your examination is required for the purpose of your application *[or an application by the judgment creditor]* for an order that the sum of \$ be paid by instalments *[or for an order that an order made on 20 that the [judgment debtor] pay by instalments \$, being the sum owing under the judgment, be confirmed or varied or cancelled].*

or

Your examination is required with respect to an allegation made by the *[judgment creditor]* that you have defaulted in the payment of instalments under an order made on 20 that you pay by instalments \$, being the sum owing under a judgment against you in favour of the *[judgment creditor]* dated *[e.g. 20 June 20]*.

You are required to produce to the Court on the examination the following documents: *[description of documents]*.

The examination will be held before the Judge in the Practice Court, Supreme Court, William Street, Melbourne *[or the Associate Judge in Court No. , Supreme Court, 436 Lonsdale Street, Melbourne]*, on 20 at a.m. *[or p.m.]* or so soon afterwards as the business of the Court allows.

Issued 20 .

By the Court
Prothonotary

Note: If you do not attend the Court as directed by this summons, the Court may issue a warrant for your arrest.

Form 61N

FORM 61N

Rule 61.04(4)

**WARRANT OF APPREHENSION ON DISOBEDIENCE TO
SUMMONS**

[heading as in originating process]

To all members of the Police Force of the State of Victoria.

Whereas *[name of judgment debtor]* of *[address]* has failed to attend before
the Supreme Court at the time and place appointed by the summons issued on
20 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, tenement, ship or place whatsoever *[or the dwelling-house
or tenement or ship situated at]* wherein the said person is
suspected to be *[or to be concealed or to be unlawfully detained]* 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
*[continue as in Form 61M, specifying the time and place as required by
section 14(3) or 17(3)]*.

Issued 20 .

By the Court
Prothonotary

FORM 61P

Rule 61.04(6)

Form 61P
amended by
S.R. No.
100/2008
rule 12(s).

**NOTICE TO JUDGMENT CREDITOR OF SUMMONS OR
WARRANT TO JUDGMENT DEBTOR**

[heading as in originating process]

To the *[judgment creditor]*

of *[address]*

TAKE NOTICE that on 20 a summons was issued requiring the *[judgment debtor]* to attend before the Court to be orally examined for the purpose of an application by the *[judgment creditor or judgment debtor]* with respect to the payment by instalments of the sum owing under the judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* for \$ and costs.

or

TAKE NOTICE that on 20 a warrant was issued for the apprehension of the *[judgment debtor]* for his or her failure to comply with a summons requiring him or her to attend before the Court on 20 to be orally examined for the purpose of an application by the *[judgment creditor or judgment debtor]* with respect to the payment by instalments of the sum owing under the judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]* for \$ and costs.

By the summons *[or the warrant]* the *[judgment debtor]* is required to attend *[or be brought]* before the *[continue as in Form 61M, specifying the time and place as required by section 14(3) or 17(3)]*.

Dated 20 .

Associate Judge

Form 61Q

FORM 61Q

Rule 61.05

**NOTICE BY COURT OF CONFIRMATION, VARIATION OR
CANCELLATION OF JUDGMENT DEBT INSTALMENT ORDER**

[heading as in originating process]

To the *[judgment creditor]*

And to the *[judgment debtor]*

THIS NOTICE is given in relation to the default by the *[judgment debtor]* in the payment of instalments under an order made on 20 that the *[judgment debtor]* pay by instalments \$, being the sum owing under a judgment for the *[judgment creditor]* against the *[judgment debtor]* dated *[e.g. 20 June 20]*.

TAKE NOTICE that on 20 , after examining the *[judgment debtor]*, the Court made an order that the said order for payment by instalments be confirmed *[or varied as follows: complete appropriately]* *[or cancelled]*.

Dated 20 .

By the Court
Prothonotary

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 61R

FORM 61R

Rule 61.07(2)

Form 61R
amended by
S.R. No.
100/2008
rule 12(s).

CERTIFICATE OF PAYMENT

[heading as in originating process]

To the Governor of the prison at

Whereas by virtue of an order for imprisonment made by the Supreme Court
on 20 *[name of judgment debtor]* of *[address]* was
committed to prison at : This is therefore to certify that the said
[name of judgment debtor] has paid the instalments of which default was
made and is now entitled to be discharged out of custody.

Dated 20 .

Associate Judge

Form 63A

Form 63A
amended by
S.R. No.
97/2009
rule 38.

FORM 63A

Rule 63.38(3)

SUMMONS FOR TAXATION OF COSTS

[heading as in originating process]

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party]*.

You are summoned to attend before the Costs Court *[insert address]* on 20 at a.m. *[or p.m.]* on the hearing of an application by *[identify party]* for the costs which are payable to *[that party]* by *[identify party liable for costs]* under *[identify the judgment, etc. by which payable]* to be taxed in accordance with the bill of costs served on 20 *[or herewith]*.

Filed *[e.g. 15 June 20]*.

This summons was filed by of , solicitor for the .

TAKE NOTICE that whether or not you attend on the day for hearing referred to above the costs claimed in the bill may be allowed unless at least seven days before that day you file and serve on the *[identify party]* a notice identifying each item in the bill to which you object.

FORM 64A

Rule 64.04(5)

NOTICE OF ADDRESS FOR SERVICE

[Heading as in notice of appeal or cross-appeal]

The address in Victoria for service of *[full name of person or party]* is:

[If the person or party is legally represented] The name or firm and the business address within Victoria of the solicitor for *[full name of person or party]* is:

Dated: *[e.g. 15 June 20]*.

[signed]

FORM 68A

Rule 68.08

WARRANT OF SEIZURE AND SALE

[heading as in originating process]

TO THE SHERIFF:

In respect of the judgment *[or order]* dated *[e.g. 20 June 20]* 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 the rate or rates 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 the rate or rates fixed in accordance with law, on *[amount of taxed costs]* from 20 *[date of taxation of costs];*
- (d) \$, being the costs of this *[and of any prior]* warrant and
- (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 20 .

By the Court
Prothonotary

Issued at the request of *[judgment creditor]*.

The last known address of *[judgment debtor]* is *[add if it is different]* and the address of the place where it is believed the property of *[judgment debtor]* may be found is].

Form 68B

FORM 68B

Rule 68.08

WARRANT OF POSSESSION

[heading as in originating process]

TO THE SHERIFF:

In respect of the judgment dated [e.g. 20 June 20] by which it was adjudged that *[identify party or other person for whom judgment was entered or given]* recover possession of the land described in the schedule and that *[identify party or other person against whom judgment was entered 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 taken in execution for *[continue as in Form 68A according to whether the levy is for a judgment amount and costs or for costs only]* And Indorse *[continue as in Form 68A]*.

SCHEDULE

[Describe land as in judgment]

Issued 20 .

By the Court
Prothonotary

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 68A]*.

FORM 68C

Rule 68.08

WARRANT OF DELIVERY

[heading as in originating process]

TO THE SHERIFF:

In respect of the judgment *[or order]* dated *[e.g. 20 June 20]* 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 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 68A according to whether the levy is for a judgment amount and costs or for costs only]* And Indorse *[continue as in Form 68A]*.

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 20]* by which it was adjudged *[or ordered]* that *[identify party or other person]* do 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 68A according to whether the levy is for interest on damages and costs or on costs only] And Indorse *[continue as in Form 68A]*.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 68C

SCHEDULE

[Describe goods as in judgment]

Issued 20 .

By the Court
Prothonotary

Issued at the request of *[identify party or other person]*.

The last known address of *[continue as in Form 68A]*.

FORM 69A

Rule 69.06(3)

ADVERTISEMENT OF SALE BY THE SHERIFF

On 20 at a.m. [*or* p.m.] at (unless process is stayed or
satisfied) all the estate and interest (if any) of the [*debtor*] of
as [proprietor of an estate in fee simple in the land described in Certificate of
Title Volume Folio
upon which is erected a brick factory known as No.
Street].

[Registered Mortgage No. affects the said estate and interest].

Terms: Cash only.

Sheriff

Form 71A

FORM 71A

Rule 71.06(2)

GARNISHEE SUMMONS

Between

<i>A.B.</i>	Judgment creditor
and	
<i>C.D.</i>	Judgment debtor
and	
<i>X.Y.</i>	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

20] [*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 20] or so much thereof 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 20] 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 \$, being—

- (a) \$, the amount due and unpaid under the judgment;
- (b) \$, the amount of interest accrued and accruing;
- (c) \$, the costs of the garnishee proceedings.

The debt in respect of which this summons is filed and served is [*identify the debt in accordance with Rule 71.06(1)*].

This summons is filed and served by order of the Court made on ,
20 .

The application will be heard on etc. [*continue as in Form 46A*].

[*insert the following at end of summons*]

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 71A

TAKE NOTICE [*where the debt is due or accruing*] that upon service of this summons the debt shall be bound in your hands to the extent of the whole amount of the debt, namely, \$ [*or to the extent of \$*] to answer the sum of \$ required to satisfy the judgment, interest and costs.
[*or where the debt is not yet due or accruing*]

TAKE NOTICE that in the event that the debt becomes due or accrues before the day for hearing named in the summons upon its becoming due or accruing the debt shall be bound in your hands to the extent of the whole amount of the debt, namely, \$ [*or to the extent of \$*] to answer the sum of \$ required to satisfy the judgment, interest and costs.

Form 71B

FORM 71B

Rule 71.09(4)

GARNISHEE ORDER

(where garnishee debt less than judgment debt, interest and judgment creditor's costs)

[heading as in Form 71A]

[other particulars as in Form 60L]

THE COURT ORDERS THAT:

1. The garnishee [*where appropriate insert here* (after deducting therefrom \$ for the garnishee's costs of the garnishee application)] do forthwith pay to the judgment creditor \$, the debt due from him, her or it to the judgment debtor and that in default of payment execution may issue against the garnishee.

[or where the debt is not due but accruing]

do pay to the judgment creditor \$, the debt accruing from him, her or it 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 execution may issue against the garnishee.

2. \$, the costs of the judgment creditor of the garnishee application, be added to the judgment debt and the interest accrued thereon and be retained by the judgment creditor out of the money recovered by him, her or it under this order in priority to the judgment debt and interest.

FORM 71C

Rule 71.09(4)

GARNISHEE ORDER

(where garnishee debt greater than judgment debt, interest and judgment creditor's costs)

[heading as in Form 71A]

[other particulars as in Form 60C]

THE COURT ORDERS THAT:

1. The garnishee do forthwith pay to the judgment creditor \$, being so much of the debt due from him, her or it to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued thereon and the costs of the judgment creditor of the garnishee proceedings and that in default of payment execution may issue against the garnishee.

[or where the debt is not due but accruing]

do pay to the judgment creditor \$, being so much of the debt accruing from him, her or it to the judgment debtor as is sufficient to satisfy the judgment debt, the interest accrued thereon 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 execution may issue against the garnishee.

[where appropriate add]

2. The garnishee be at liberty to retain \$ for the garnishee's costs of the garnishee proceedings out of the balance of the debt due *[or accruing]* from him, her or it to the judgment debtor.

Form 72A

FORM 72A

Rule 72.02(3)

ATTACHMENT OF EARNINGS SUMMONS

[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 the *[judgment creditor]* for an order that the earnings of the *[judgment debtor]* be attached to satisfy the judgment against the *[judgment debtor]* in favour of the *[judgment creditor]* in the Supreme Court dated *[e.g. 20 June 20]* for \$, in respect of which judgment \$ is due and unpaid, being—

- (a) \$, the amount due under the judgment;
- (b) \$, the amount of costs;
- (c) \$, the amount of interest.

The application will be heard *[continue as in Form 46A]*.

FORM 72B

Rule 72.02(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 20__]* it was adjudged that the *[judgment debtor]* should pay to me the sum of \$ _____ together with costs.
2. \$ _____ is due and unpaid in respect of the judgment, being—
 - (a) \$ _____, the amount due under the judgment;
 - (b) \$ _____, the amount of costs;
 - (c) \$ _____, the amount of interest.

or

The *[judgment debtor]* has persistently failed to comply with an order with respect to the judgment made by the Supreme Court on ____ 20__ that the *[judgment debtor]* *[insert terms of order not complied with]*.

3. The *[judgment debtor]* is employed by _____ of _____ as a *[occupation]*.
4. No warrant committing the *[judgment debtor]* to prison under the **Imprisonment of Fraudulent Debtors Act 1958** has been issued.

or

A warrant committing the *[judgment debtor]* to prison under the **Imprisonment of Fraudulent Debtors Act 1958** has been issued and has not been executed.

Sworn *etc.*

Form 72C

FORM 72C

Rule 72.02(4)

JUDGMENT DEBTOR'S STATEMENT OF FINANCIAL SITUATION

[heading as in originating process]

To the *[judgment debtor]*:

of *[address]*

TAKE NOTICE that you should complete this form by giving the information requested below. The completed form signed by you must be sent to the *[judgment creditor]* at *[address for service]* before 20 *[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 solicitor:

1. Amount and Source of Weekly Income

Occupation: _____

If working for an employer:

Name and address of employer:

Gross wage:

Current overtime (if any):

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 earned: _____

Pension or other benefit received:

Workers' compensation received:

Maintenance received:

Superannuation received:

Board or rent received:

Average weekly interest on bank or other authorised deposit-taking institution deposit, debentures etc.:

Average weekly dividend on shares:

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 72C

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: _____

Market value: _____

Amount owing to finance company:

Net value:

Deposit in bank, other authorised deposit-taking institution, etc.:

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:

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:

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Form 72C

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 for 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:

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Form 72C

(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 above 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:

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 72D

FORM 72D

Rule 72.04(7)

**SUMMONS FOR AN ORDER TO ATTEND FOR EXAMINATION OR
FURNISH PARTICULARS**

[heading as in originating process]

To: the *[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 the *[judgment creditor]* for an order that *[set out the order sought]*.

The application will be heard *[continue as in Form 46A]*.

FORM 72E

Rule 72.04(7)

**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 20____] it was adjudged that the *[judgment debtor]* should pay to me \$ _____ together with costs.
2. \$ _____ is due and unpaid in respect of the judgment the sum, being—
 - (a) \$ _____, the amount due under the judgment;
 - (b) \$ _____, the amount of costs;
 - (c) \$ _____, the amount of interest.

or

The *[judgment debtor]* has persistently failed to comply with an order with respect to the judgment made by the Supreme Court on _____ 20____ that the *[judgment debtor]* [*insert terms of order not complied with*].

3. I seek to obtain an order for the attachment of the earnings of the *[judgment debtor]*.
4. The place of residence of the *[judgment debtor]* is _____.
5. On _____ 20____ I was informed by _____ of _____ and verily believe that the *[judgment debtor]* is employed by _____ of _____ as a [*occupation*] and is a person to whom earnings are payable or likely to become payable by the said employer.

or

On _____ 20____ I was informed by _____ of _____ and verily believe that the *[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 or whereabouts of the employer of the *[judgment debtor]* or what the earnings of the *[judgment debtor]* are.

Sworn *etc.*

Supreme Court (General Civil Procedure) Rules 2005
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Form 72F

Form 72F
amended by
S.R. Nos
100/2008
rule 12(t),
44/2009
rule 11(f).

FORM 72F

Rule 72.04(8)

**ORDER THAT JUDGMENT DEBTOR ATTEND OR GIVE
STATEMENT**

[heading as in originating process]

[Follow Form 60C except as below.]

HOW OBTAINED:

Summons by the *[judgment creditor]* dated 20 in aid of an application for an attachment of earnings order against the *[judgment debtor]* in respect of a judgment dated *[e.g. 20 June 20]* for \$ together with costs.

THE COURT ORDERS THAT:

The *[judgment debtor]* attend before the Associate Judge in Court No. , Supreme Court, 436 Lonsdale Street, Melbourne, on 20 at a.m. to be examined concerning the means and ability of the *[judgment debtor]* or comply with the judgment *[or to state to the Court the following particulars, namely:*

[complete appropriately].

or

The *[judgment debtor]* furnish to the Court on or before 20 a statement in writing signed by the *[judgment debtor]* setting forth the following particulars, namely:

[complete appropriately].

FORM 72G

Rule 72.04(8)

**ORDER THAT PERSON INDEBTED TO OR EMPLOYER OF
JUDGMENT DEBTOR GIVE STATEMENT**

[heading as in originating process]

[Follow Form 60C except as below.]

HOW OBTAINED:

Summons by the *[judgment creditor]* dated 20 in aid of an application for an attachment of earnings order against the *[judgment debtor]* in respect of a judgment dated *[e.g. 20 June 20]* for \$ together with costs.

OTHER MATTERS:

It was made to appear to the Court that is indebted to *[or is the employer of]* the *[judgment debtor]*.

THE COURT ORDERS THAT:

give to the Court on or before 20 a statement in writing signed by that person or on that person's behalf containing the following particulars of that person's indebtedness to the *[judgment debtor]* that became payable during the period 20 to 20 .

[complete appropriately].

FORM 72H

Rule 72.05(6)

ATTACHMENT OF EARNINGS ORDER

[heading as in originating process]

[Follow Form 60C except as below.]

OTHER MATTERS:

The Court finds that:

1. By a judgment dated [e.g. 20 June 20] it was adjudged that the [judgment debtor] pay to the [judgment creditor] \$ together with costs.
2. \$ is due and unpaid in respect of the judgment.

or

2. The [judgment debtor] has persistently failed to comply with an order with respect to the judgment made by the Court on 20 that the [judgment debtor] [insert terms of order not complied with].
3. The [judgment debtor] was served with a copy of the summons herein and has had a reasonable opportunity of attending the hearing.
4. The [judgment debtor] is employed by at in the State of Victoria as a [occupation] and is a person to whom earnings are payable or are likely to become payable by that employer.

THE COURT ORDERS THAT:

1. the abovenamed employer on each pay-day whilst the [judgment debtor] is employed by the employer or until this order ceases to have effect do make payments out of the earnings of the [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 securing payment of \$, 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 20 and thereafter \$ each pay-day].
3. The protected earnings rate, that is, the rate below which the earnings of the [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 the [*judgment debtor*] exceed the sum of—

- (a) the protected earnings of the [*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 the [*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.

Note: an attachment of earnings order does not come into force until the expiration of seven days after the day on which the order is served on the person to whom the order is directed.

FORM 72J

Rule 72.06(3)

NOTICE TO EMPLOYER

[heading as in originating process]

The attachment of earnings order served herewith requires you to deduct from any earnings becoming payable to the *[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 the *[judgment debtor]* means any amounts payable to the *[judgment debtor]*—

- (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 any pension payable to the *[judgment debtor]* under the Social Security Act 1991 of the Commonwealth or the Veterans' Entitlements Act 1986 of the Commonwealth.

Where two or more attachment of earnings orders are directed to you with respect to earnings payable or likely to become payable by you to the *[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
- (b) comply with any order as if the earnings to which it relates were the residue of the earnings of the *[judgment debtor]* after the making of any payment under an earlier order.

You are required to give the *[judgment debtor]* a notice specifying particulars of the payments made by you under the attachment of earnings order.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 72J

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 from the earnings of the *[judgment debtor]* towards the clerical and administrative costs of making payments under the order. You are required to give the *[judgment debtor]* notice of the amount deducted for this purpose.

If you are in doubt whether payments to the *[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 Prothonotary—

- (a) if you are not the employer of the judgment debtor at the time the order is served, forthwith after service;
- (b) if you are the employer of the judgment debtor at the time the order is served, but cease to be employer thereafter, forthwith after you cease to be employer.

Any person who dismisses an employee, injures an employee 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 20 .

Prothonotary

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 72K

FORM 72K

Rule 72.06(3)

**NOTICE BY EMPLOYER THAT JUDGMENT DEBTOR IS NOT IN
EMPLOYER'S EMPLOY**

[heading as in originating process]

To the Prothonotary,

And to the *[judgment creditor]*

of *[address]*.

Whereas an order was made on 20 that I make payments to the
[judgment creditor] out of the earnings of the *[judgment debtor]* I hereby give
notice that I am not the employer of the *[judgment debtor]* [or I ceased to be
the employer of the *[judgment debtor]* on 20 .]

Dated 20 .

[Signature of Employer]

FORM 72L

Rule 72.11(3)

**NOTICE OF CESSATION OF ATTACHMENT OF EARNINGS
ORDER**

[heading as in originating process]

To: *[employer]* of _____, the employer of the *[judgment debtor]*.

TAKE NOTICE that the attachment of earnings order made on _____ 20____
whereby you were ordered to make payments for or towards securing
payment of the amount due and unpaid in respect of a judgment in favour of
the *[judgment creditor]* out of the earnings payable to the *[judgment debtor]*,
ceased to have effect on _____ 20____ because *[state reason]*.

Dated _____ 20____.

Prothonotary

Note: Where the order ceases to have effect, you will not incur
any liability in consequence of your treating it as still in
force at any time before the expiration of seven days after
this notice or a copy of the order discharging the earlier
order, as the case may be, is served on you.

Form 73A

FORM 73A

Rule 73.05(2)

CHARGING SUMMONS

[heading as in originating process]

To *[name]*

of *[address]*.

And to the *[judgment debtor]*.

YOU are summoned to attend before the Court on the hearing of an application by the *[judgment creditor]* for an order that certain securities *[or as the case may be]* in which the *[judgment debtor]* has a beneficial interest, namely, *[give particulars sufficient to identify the securities and the interest of the judgment debtor]*, stand charged to the extent of the value of the entire beneficial interest of the *[judgment debtor]* in the securities or of so much of that value 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 20] for \$, interest accrued and accruing on the judgment and the costs of the *[judgment creditor]* of the charging order proceedings. The sum required to satisfy the judgment, interest and costs is \$, being—

- (a) \$, the amount due and unpaid under the judgment;
- (b) \$, the amount of interest accrued or estimated to accrue;
- (c) \$, the estimated costs of the charging order proceedings.

This summons is filed and served by order of the Court made on 20 .

The application will be heard etc. *[continue as in Form 46A]*.

[insert the following at the end of the summons]

To *[name]*

of *[address]*

TAKE NOTICE that upon service of this summons you shall not, except by order of the Court, cause or permit any transfer of any of the abovementioned securities to be made or pay to any person any dividend or interest thereon.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 73A

To the [*judgment debtor*].

TAKE NOTICE that, unless the Court otherwise orders, no disposition by you of your interest in any of the abovementioned securities made after service of this summons and before the application for the charging order is heard by the Court shall be valid as against the [*judgment creditor*].

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 73B

FORM 73B

Rule 73.13(2)(a)(i)

AFFIDAVIT AS TO STOCK

IN THE SUPREME COURT

OF VICTORIA

AT

In the matter of [*identify the document comprising the stock under which the claimant's interest arises*].

I, of make oath and say that according to the best of my knowledge, information and belief I have [*or if the affidavit is made by the solicitor, name of claimant of has*] a beneficial interest in the stock specified in the notice filed with this affidavit as [*describe the interest of the claimant in the stock and identify any document under which it arises*].

This affidavit is filed on behalf of [*name of claimant*] of

FORM 73C

Rule 73.13(2)(a)(ii)

NOTICE AS TO STOCK

[heading as in Form 73B]

[To be filed with Form 73B.]

To *[name]*

of *[address]*.

TAKE NOTICE that the stock comprised in and subject to the trusts of the settlement *[or as the case may be]* referred to in the affidavit filed with this notice consists of the following, namely *[identify the stock, stating the names in which it stands]*.

This notice is intended to stop the transfer of the stock and not the payment of any dividend or interest thereon *[or also the payment of any dividend or interest thereon]*.

*[Signature of claimant, or solicitor
where affidavit made by solicitor]*

Form 75A

FORM 75A

Rule 75.02(b)

**ARREST WARRANT IN SUMMARY PROCEEDINGS FOR
CONTEMPT IN FACE OF SUPREME COURT**

IN THE SUPREME COURT

OF VICTORIA

AT

TO THE SHERIFF

Arrest and bring him or her before the Court forthwith to answer
a charge of contempt, and if it is not practicable to bring him or her before the
Court forthwith, detain him or her in custody, and when it is practicable to
bring him or her before the Court, do so forthwith.

Dated [e.g. 15 June 20].

Judge

FORM 75AA

Rule 75.08.1

ARREST WARRANT PENDING CONTEMPT HEARING

[heading as in originating process]

TO THE SHERIFF

Arrest and bring him or her before the Court forthwith to answer
a charge of contempt, and if it is not practicable to bring him or her before the
Court forthwith, detain him or her in custody, and when it is practicable to
bring him or her before the Court, do so forthwith.

Dated [e.g. 15 June 20].

Judge

FORM 75B

Rule 75.09(2)

**ARREST WARRANT IN CONTEMPT PROCEEDINGS BY
SUMMONS OR ORIGINATING MOTION**

[heading as in summons or originating motion]

TO THE SHERIFF

Arrest and bring him or her before the Court to answer a charge of contempt, detaining him or her in custody in the meantime, unless by paying \$ into Court *[or as the case may be]*, he or she gives security for his or her attendance in person before the Court to answer the charge and to submit to the judgment of the Court.

Dated [e.g. 15 June 20].

Judge

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 75C

FORM 75C

Rule 75.13

COMMITTAL WARRANT

[heading as in Form 75A, 75AA or 75B, as appropriate]

TO THE SHERIFF

Take to the prison at and deliver him or her to the
Governor of that prison.

or

Arrest and take him or her to the prison at and deliver him
or her to the Governor of that prison.

To the Governor of the prison at

Receive into your custody and keep him or her until the further
order of this Court [*as the case may be*].

His or her committal is for contempt of court in that he or she [*state nature of
his or her contempt*].

Dated [e.g. 15 June 20].

Judge

FORM 80A

Rules 80.04, 80.06 and 80.16

Form 80A
inserted by
S.R. No.
60/2009 rule 9.

**REQUEST FOR SERVICE ABROAD OF JUDICIAL DOCUMENTS
AND CERTIFICATE**

**PART 1—REQUEST FOR SERVICE ABROAD OF JUDICIAL
DOCUMENTS**

Convention on the Service Abroad of Judicial and
Extrajudicial Documents in Civil or Commercial Matters,
done at The Hague on 15 November 1965

Identity and address of the forwarding authority requesting service	Identity and address of receiving authority [<i>Central Authority/additional authority</i>]
---	--

The undersigned forwarding authority (on the application of [*name and address of applicant on whose behalf forwarding authority requests service*]) has the honour to transmit—in duplicate—the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, ie:

(identity and address)

- (a) in accordance with the provisions of subparagraph (a) of the first paragraph of Article 5 of the Convention*:
- (b) in accordance with the following particular method (subparagraph (b) of the first paragraph of Article 5*):
- (c) by delivery to the addressee, if the addressee accepts it voluntarily (second paragraph of Article 5).*

The receiving authority [*Central Authority/additional authority*] is requested to return or to have returned to the forwarding authority a copy of the documents—and of the annexes*—with a certificate as provided in Part 2 of this Form on the reverse side.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 80A

List of documents

Done at _____, the

Signature or stamp (or both) of forwarding authority.

*Delete if inappropriate.

PART 2—CERTIFICATE

Convention on the Service Abroad of Judicial and
Extrajudicial Documents in Civil or Commercial Matters,
done at The Hague on 15 November 1965

The undersigned authority has the honour to certify, in conformity with
Article 6 of the Convention:

1. that the documents listed in Part 1 have been served*
the (date)
at (place, street, number)
in one of the following methods authorised by Article 5:
 - (a) in accordance with the provisions of subparagraph (a) of the first
paragraph of the Article 5 of the Convention*:
 - (b) in accordance with the following particular method*:
 - (c) by delivery to the addressee, who accepted it voluntarily*.

The document referred to in the request, has been delivered to:

(identity and description of person)
relationship to the addressee (family, business or other)

2. that the document has not been served, by reason of the following facts*:

In conformity with the second paragraph of Article 12 of the Convention,
the forwarding authority is requested to pay or reimburse the expenses
detailed in the attached statement*.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 80A

Annexes

Documents returned:

In appropriate cases, documents, establishing the service:

Done at _____, the
Signature or stamp (or both).

*Delete if inappropriate.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 80B

Form 80B
inserted by
S.R. No.
60/2009 rule 9.

FORM 80B

Rule 80.04

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the Service Abroad of Judicial and
Extrajudicial Documents in Civil or Commercial Matters,
done at The Hague on 15 November 1965

(Article 5, fourth paragraph)

Identity and address of the addressee [*Central Authority/additional
authority*]:

--

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE SUMMARY OF THE DOCUMENT TO BE SERVED WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

SUMMARY OF THE DOCUMENT TO BE SERVED

Name and address of the forwarding authority:

Particulars of the parties:

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Form 80B

****JUDICIAL DOCUMENT**

Nature and purpose of the document:

Nature and purpose of the proceedings and, when appropriate, the amount in dispute:

Date and place for entering appearance:

Court in which proceedings pending/judgment given:

****Date of judgment (if applicable):**

Time limits stated in the document:

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

App. A
substituted by
S.R. Nos
162/2006
rule 5,
128/2007
rule 4,
amended by
S.R. No.
100/2008
rule 13,
substituted by
S.R. No.
151/2008
rule 4,
amended by
S.R. Nos
44/2009
rule 11(a)-(c),
97/2009 rule
39(1),
substituted by
S.R. Nos
144/2009
rule 4,
142/2010
rule 4.

APPENDIX A

SCALE OF COSTS

Instructions

- | | | |
|----|---|----------|
| 1. | To institute or defend any proceeding or appeal | \$286.00 |
| 2. | To make or oppose any interlocutory application | \$68.00 |
| 3. | For statement of claim whether indorsed on writ or third party notice or served separately, or counterclaim | \$141.00 |
| 4. | For any other pleading, particulars in lieu of pleading or amended pleading | \$68.00 |
| 5. | For counsel to advise or give an opinion | \$68.00 |
| 6. | For counsel to make an interlocutory application where no other brief | \$68.00 |
| 7. | For witness statements, summaries of evidence or like documents, interrogatories, answers to interrogatories, oral examination for discovery, affidavit or other document for filing on an interlocutory application other than a short, formal affidavit or other document | \$141.00 |
| 8. | For a necessary document not otherwise provided for, such fee as may be reasonable in the circumstances

No allowance for instructions shall be made under the above items where an allowance for the work is claimed in detail and allowed on that basis

Instead of the fees for instructions above, such larger sum may be allowed as the Costs Court thinks reasonable in the circumstances | |
| 9. | Instructions for brief on trial of proceedings, including an assessment of damages or value or a trial before special referee, or an appeal, such allowances as the Costs Court thinks reasonable in the circumstances | |

Originating Process

- | | | |
|-----|---|----------|
| 10. | Writ or originating motion or summons (where filed as originating process) | \$165.00 |
| 11. | If any of the above exceed three folios (when not drawn by counsel) for each extra folio | \$30.00 |
| | The above allowances include all indorsements of claim, copy for filing and one copy for service and attendance to file, but not Court fees | |

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

Corporations Short Form Bill

- 11A. Costs of obtaining a winding-up order up to and including authentication, filing and service of the order under section 470 of the Corporations Act and the obtaining from the Costs Court of an order as to costs \$3293.00

Additional costs are allowable for any adjournment in accordance with item 34 or 35 in respect of which costs have been reserved by the Court

Interlocutory Process

12. Summons before Judge of the Court or Associate Judge \$141.00
13. Subpoena \$83.00
If a subpoena exceeds three folios, for each extra folio \$11.00

These allowances include preparation of document, copy for filing and one copy for service and attendance to file

Execution Process

14. Warrant of execution \$165.00

This allowance includes preparation of the warrant, copy for filing and one copy for service and attendance to file

Notices and Memoranda

15. Notice to produce or any other necessary or proper notice or memorandum not otherwise provided for, or any demand \$57.00

This allowance does not apply to a short notice or memorandum indorsed on another document, but an allowance may be made therefore as part of the allowance for the document

16. If the notice is special, or necessarily exceeds three folios, for each folio
The above allowances include preparation of the notice and one copy for filing or service \$30.00

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

Appearance

- | | | |
|-----|---|---------|
| 17. | Preparing and attending filing notice of appearance
(including one copy for service) | \$99.00 |
|-----|---|---------|

Drawing Pleadings and Other Documents

- | | | |
|-----|--|----------|
| 18. | (a) Pleadings, including petitions, indorsement
constituting statement of claim on writ or third party
notice, including particulars | \$141.00 |
| | (b) If exceeding three folios, for each extra folio | \$30.00 |
| 19. | Any other necessary document, per folio | \$30.00 |

No allowance is to be made to a solicitor for drawing a document drawn by counsel, but a fee may be allowed for drawing matter necessary to instruct counsel

In allowing for drawing, the Costs Court may disallow anything which is a repetition or adaptation of matter for the drawing of which allowance has otherwise been made in the proceeding. The Costs Court may increase these allowances if in the circumstances the Costs Court thinks it reasonable to do so

- | | | |
|-----|----------------------------|--------|
| 20. | For preparing each exhibit | \$5.90 |
|-----|----------------------------|--------|

Engrossment and Copies

- | | | |
|-----|---|--------|
| 21. | Engrossment of documents, per folio | \$5.90 |
| 22. | (a) Copy or photocopy of document, per page | \$2.10 |
| | (b) Reproduction of document from microfiche,
microfilm or like process, per page, the actual cost or | \$2.10 |
| 23. | Where under the Rules or any order of the Court or for other sufficient cause any document is printed out and it would not have been reasonable to send the original to the printer, a copy for the printer shall be allowed, per page | \$2.10 |
| 24. | Where more than ten copies of the same document are required, the amount actually and properly paid to a printer (in addition to all necessary attendances on the printer), or, if reproduced by the solicitor, the equivalent amount or such lesser amount as the Costs Court considers fair and reasonable having regard to commercial rates for similar services, shall be allowed | |
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Where it is necessary to print any part of a document in a foreign language, or as a facsimile, or in any unusual or special manner, or where any alteration in the document printed becomes necessary after the first proof, such further allowance shall be made as the Costs Court thinks reasonable

Perusals

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|-----|--|---------|
| 25. | Of all pleadings, amendments of pleadings (which exceed three folios), applications by summons, notice or otherwise, third party notices, interrogatories, answers thereto, transcripts of discovery by oral examination, notices, affidavits, draft orders submitted for approval by another party, drafts of documents to be settled by an officer of the Court, orders (unless an allowance has been made previously for perusal of a draft), opinions or advices of counsel where requested, bills of costs necessarily perused by the solicitor for the party on whom it was served | \$43.00 |
| | Or per folio | \$6.00 |
| 26. | Of all other documents, including deeds, correspondence (including incoming correspondence), exhibits, per folio | \$5.00 |
| | If the solicitor is or ought to be familiar with the contents of the document or if it is not necessary to read all of it carefully, the Costs Court shall allow such smaller amount as it thinks reasonable. No allowance shall be made for the solicitor perusing letters which he or she receives unless the Costs Court considers there are special circumstances for doing so | |
| 27. | Alternatively, for examining a document or checking a proof or print or examining an appeal book | |
| | Solicitor, per quarter hour | \$68.00 |
| | Clerk, per quarter hour | \$40.00 |

Service

- | | | |
|-----|---|---------|
| 28. | Service of any document where necessary, and not able to be served by post | \$67.00 |
| | Or such charge as is reasonable having regard to the number of necessary attendances, the time taken, the distance travelled and any expense incurred | |

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

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29. Where by reason of the location of the person to be served it is proper to effect service through an agent, instead of an allowance for service—
- (a) for correspondence with the agent \$43.00
- (b) the amount actually and reasonably charged by the agent
- Where more than one attendance is necessary to effect service, or to ground an application for substituted service, the Costs Court may make such further allowance under items 28 and 29 as the Costs Court considers reasonable
- For service out of Victoria, the Costs Court shall make such allowance as the Costs Court considers reasonable
30. Service of document on a party by filing or leaving at the office of the party's solicitor or other address for service, where that mode of service is necessary \$40.00
31. Service of document on a party by post or leaving at document exchange \$24.00
- Only one fee for service shall be allowed where two or more documents are or could have been served together
- Attendances*
32. (a) On counsel with brief on trial of proceeding, including an assessment of damages or value or a trial before a special referee or an appeal \$84.00
- (b) On counsel with any other brief or papers or to appoint consultation or conference (including all attendances to settle counsel's fees) \$57.00
33. (a) On consultation or conference with counsel \$141.00
- (b) Where a consultation or conference occupies more than one half hour, if the Costs Court considers it reasonable, for each subsequent half hour \$141.00
- (c) If the solicitor does not attend personally, the allowance shall be as the Costs Court considers reasonable, but not exceeding, for—
- the first half hour \$68.00
- each half hour thereafter \$68.00
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Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

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| 34. | On any application or attendance before a Judge of the Court, an Associate Judge, the Costs Court or Prothonotary, examination of a witness, discovery by oral examination, assessment of damages or value, trial or inquiry, trial of a proceeding or hearing of an appeal, where in list or likely to be heard | \$141.00 |
| 35. | (a) At trial or hearing, for each hour | \$286.00 |
| | But, according to circumstances, not to exceed per day of six hours (including luncheon and dinner adjournments) | \$1372.00 |
| | or, | |
| | If attended by clerk | \$682.00 |
| | (b) To hear reserved judgment, for each half hour | \$141.00 |
| | (c) By appointment or on short or formal application to a Judge of the Court or an Associate Judge, the Costs Court or Prothonotary | \$141.00 |
| 36. | Where in the opinion of the Costs Court the attendance of two principals or of a solicitor and clerk at trial is necessary, an additional allowance may be made not exceeding per day of six hours (including luncheon and dinner adjournments) | \$1372.00 |
| 37. | To settle judgment or order, per half hour | \$141.00 |
| 38. | In addition to reasonable expenses for travel and sustenance, allowance may be made for a solicitor travelling to a place more than 50 kilometres distant from his or her place of residence or business where— | |
| | (a) the journey was necessary and proper for the purpose of the proceeding and what was done by the solicitor could not have been done satisfactorily by an agent; and | |
| | (b) the solicitor was necessarily absent from his or her office, and for that time no charge could otherwise be made, and having regard to what other allowances may be made to the solicitor in the proceeding | |
| | Not exceeding per day | \$1372.00 |
| | If the journey is not undertaken solely for the purpose of the proceeding, the Costs Court may allow a proportion of the fee as the Costs Court considers reasonable | |
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Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

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| 39. | To file or lodge any document, to obtain an appointment from an officer of the Court, or to insert an advertisement or other attendance of a similar nature capable of performance by a junior clerk | \$40.00 |
| 40. | If the exercise of skill or legal knowledge is involved so as to require the personal attendance of the solicitor, per quarter hour | \$68.00 |
| | Or, if attendance by solicitor's clerk, per quarter hour | \$40.00 |
| | Or such larger amount as the Costs Court thinks reasonable having regard to the importance or difficulty of the subject matter of attendance | |
| 41. | Making an appointment or similar attendance by telephone, at the discretion of the Costs Court | \$12.00 |
| 42. | Arranging attendance of a witness or any attendance for which no other provision is made, per quarter hour | \$40.00 |
| 43. | Sending or receiving telex, telegram or facsimile documents | \$40.00 |
| | Or such larger amount as is reasonable in the circumstances having regard to the length | |
| | <i>Correspondence</i> | |
| 44. | Letter making an appointment or forwarding document without explanation or the like | \$21.00 |
| 45. | Letter, ordinary | \$36.00 |
| 46. | Letter, special | \$47.00 |
| | Or such amount as the Costs Court thinks reasonable | |
| 47. | Circular letter, after the first | \$11.00 |
| | For each additional page after the first page, the photocopying charge shall apply | |
| | The above allowances include the standard surface rate of postage, but, if any communication is necessarily made by telex, telegram or transmission of a facsimile, the appropriate statutory charges may be allowed as a disbursement | |
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Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

App. A

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48. Where any agent is employed, for correspondence with the agent which the Costs Court thinks reasonable, per quarter of the year \$68.00 to \$286.00
- Or, if special or extensive, in the discretion of the Costs Court.
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App. B

App. B
substituted by
S.R. Nos
162/2006
rule 5,
128/2007
rule 4,
151/2008
rule 4,
amended by
S.R. No.
97/2009
rule 39(2),
substituted by
S.R. Nos
144/2009
rule 4,
142/2010
rule 4.

APPENDIX B

WITNESSES' EXPENSES AND INTERPRETERS' ALLOWANCES

WITNESSES' EXPENSES

- | | |
|---|---|
| 1. Professional person including pharmaceutical and analytical chemists, psychologists, actuaries, valuers and accountants (carrying on business as principals) | per hour or part thereof necessarily absent from professional rooms or place of business (during normal hours of business), \$164–\$328, but not in any event to exceed \$2050 in any one day |
| 2. Person other than a professional person who is engaged in business as a principal on his or her own behalf | \$102 per hour, or such fee as is reasonable in the circumstances but not in any event to exceed \$342 per half day or part thereof or \$615 in any one day |
| 3. Any other witness | per day, \$102 |
| But if the witness is remunerated in any employment by wages, salary or fees | the amount lost by the attendance, but not in any event to exceed \$342 per half day or part thereof or \$615 in any one day |
| The Costs Court may allow in addition any appropriate necessary expense incurred by the witness, e.g. child minding expenses | |

A witness attending in more than one proceeding shall be entitled to a proportionate part only of the expense of the proceeding.

The Costs Court may allow a country witness, in addition to the above expense, a reasonable sum for the actual expense of travel to and from the place of trial or hearing and for maintenance or sustenance. For this purpose a witness who does not reside within 50 kilometres of the place of trial or hearing is a country witness.

Where a witness gives evidence as an expert, the Costs Court may allow an amount reasonably and properly incurred and paid to the witness for qualifying to give that evidence.

Notwithstanding anything in the above scale, the Costs Court may allow to an expert witness a special fee for any attendance at court not covered by the scale when the witness assists counsel or solicitors as an expert for a period during the trial or hearing. Nothing in the scale shall affect the existing practice of allowing qualifying fees to witnesses.

INTERPRETERS' ALLOWANCES

- | | |
|---|---|
| 1. Attending professional,
scientific or expert witness
qualifying to give evidence,
attending conference with
solicitor or counsel | \$48 for each hour or part thereof
but not in any event to exceed \$297
in any one day |
| 2. Attending court | for absence from place of residence
or business \$170 for four hours or
less and thereafter \$48 per hour, or
part thereof, but not in any event to
exceed \$297 in any one day |

The Costs Court may allow a country interpreter, in addition to the above allowances, a reasonable sum for the actual expense of travel to and from the place of trial or hearing and for maintenance and sustenance. For this purpose, an interpreter who does not reside within 50 kilometres of the place of trial or hearing is a country interpreter.

Notwithstanding anything in the above scale, the Costs Court may allow an increased amount to a professional interpreter in special circumstances.

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Sch.

SCHEDULE

Rule 1.03(2)

REVOKED STATUTORY RULES

<i>S.R. No.</i>	<i>Title</i>
19/1996	Chapter I of the Rules of the Supreme Court, the Supreme Court (General Civil Procedure) Rules 1996
137/1996	Supreme Court (Chapter I Amendment No. 1) Rules 1996
138/1996	Supreme Court (Chapter I Amendment No. 2) Rules 1996
31/1997	Supreme Court (Chapter I Amendment No. 3) Rules 1997
137/1997	Supreme Court (Chapter I Amendment No. 4) Rules 1997
138/1997	Supreme Court (Chapter I Amendment No. 5) Rules 1997
14/1998	Supreme Court (Chapter I Amendment No. 6) Rules 1998
100/1998	Supreme Court (Chapter I Amendment No. 7) Rules 1998
121/1998	Supreme Court (Chapter I Amendment No. 8) Rules 1998
150/1998	Supreme Court (Chapter I Amendment No. 9) Rules 1998
96/1999	Supreme Court (Chapter I Amendment No. 10) Rules 1999
131/1999	Supreme Court (Chapter I Amendment No. 11) Rules 1999
36/2000	Supreme Court (Chapter I Amendment No. 12) Rules 2000
63/2000	Supreme Court (Chapter I Amendment No. 13) Rules 2000
75/2000	Supreme Court (Chapter I Amendment No. 14) Rules 2000
120/2000	Supreme Court (Chapter I Amendment No. 15) Rules 2000
26/2001	Supreme Court (Chapter I Amendment No. 16) Rules 2001
50/2001	Supreme Court (Chapter I Amendment No. 17) Rules 2001
111/2001	Supreme Court (Chapter I Amendment No. 18) Rules 2001
130/2001	Supreme Court (Chapter I Amendment No. 19) Rules 2001
36/2002	Supreme Court (Chapter I Amendment No. 20) Rules 2002
91/2002	Supreme Court (Chapter I Amendment No. 21) Rules 2002
121/2002	Supreme Court (Chapter I Amendment No. 22) Rules 2002
95/2003	Supreme Court (Chapter I Amendment No. 23) Rules 2003
102/2003	Supreme Court (Chapter I Amendment No. 24) Rules 2003

Supreme Court (General Civil Procedure) Rules 2005
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<i>S.R. No.</i>	<i>Title</i>
142/2003	Supreme Court (Chapter I Amendment No. 25) Rules 2003
100/2004	Supreme Court (Chapter I Amendment No. 26) Rules 2004
144/2004	Supreme Court (Chapter I Amendment No. 27) Rules 2004
145/2004	Supreme Court (Chapter I Amendment No. 28) Rules 2004
125/2005	Supreme Court (Chapter I Amendment No. 29) Rules 2005

Dated: 24 November 2005

M. L. WARREN, *C.J.*

CHRISTOPHER MAXWELL, *P.*

W. F. ORMISTON, *J.A.*

STEPHEN CHARLES, *J.A.*

PETER BUCHANAN, *J.A.*

G. M. EAMES, *J.A.*

GEOFFREY NETTLE, *J.A.*

P. D. CUMMINS, *J.*

JOHN COLDREY, *J.*

DAVID BYRNE, *J.*

H. R. HANSEN, *J.*

PHILIP MANDIE, *J.*

MURRAY B. KELLAM, *J.*

BERNARD D. BONGIORNO, *J.*

D. J. HABERSBERGER, *J.*

R. S. OSBORN, *J.*

K. WILLIAMS, *J.*

STUART MORRIS, *J.*

STEPHEN KAYE, *J.*

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Sch.

ELIZABETH HOLLINGWORTH, *J.*
KEVIN H. BELL, *J.*
KIM HARGRAVE, *J.*

ENDNOTES

1. General Information

The Supreme Court (General Civil Procedure) Rules 2005, S.R. No. 148/2005 were made on 24 November 2005 by the Judges of the Supreme Court under section 25 of the **Supreme Court Act 1986**, No. 110/1986 and came into operation on 1 January 2006: rule 1.03(1).

The Supreme Court (General Civil Procedure) Rules 2005 will sunset 10 years after the day of making on 24 November 2015 (see section 5 of the **Subordinate Legislation Act 1994**).

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the Supreme Court (General Civil Procedure) Rules 2005 by statutory rules, subordinate instruments and Acts.

Supreme Court (Chapter I Amendment No. 1) Rules 2006, S.R. No. 43/2006

Date of Making: 27.4.06

Date of Commencement: 8.5.06: rule 3

Supreme Court (Chapter I Amendment No. 2) Rules 2006, S.R. No. 98/2006¹

Date of Making: 27.7.06

Date of Commencement: 1.9.06: rule 3

Supreme Court (Chapter I Amendment No. 3) Rules 2006, S.R. No. 102/2006

Date of Making: 10.8.06

Date of Commencement: Rules 1–5 on 31.8.06: rule 3(2); rules 6–8 on 1.9.06: rule 3(1)

Supreme Court (Chapter I Amendment No. 4) Rules 2006, S.R. No. 162/2006

Date of Making: 26.10.06

Date of Commencement: 1.1.07: rule 3

Supreme Court (Chapter I Amendment No. 5) Rules 2006, S.R. No. 169/2006

Date of Making: 30.11.06

Date of Commencement: 1.2.07: rule 3

Supreme Court (Chapter I Amendment No. 6) Rules 2006, S.R. No. 171/2006

Date of Making: 15.12.06

Date of Commencement: 29.1.07: rule 3

Supreme Court (Chapter I Amendment No. 7) Rules 2007, S.R. No. 5/2007

Date of Making: 22.2.07

Date of Commencement: 15.3.07: rule 3

Supreme Court (Chapter I Amendment No. 8) Rules 2007, S.R. No. 27/2007

Date of Making: 26.4.07

Date of Commencement: 1.5.07: rule 3

Supreme Court (Chapter I Amendment No. 9) Rules 2007, S.R. No. 91/2007

Date of Making: 30.8.07

Date of Commencement: 3.9.07: rule 3

Supreme Court (Chapter I Amendment No. 10) Rules 2007, S.R. No. 128/2007

Date of Making: 29.11.07

Date of Commencement: 1.1.08: rule 3

Supreme Court (Chapter I Amendment No. 11) Rules 2008, S.R. No. 32/2008

Date of Making: 23.4.08

Date of Commencement: 12.5.08: rule 3

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Endnotes

Supreme Court (Associate Judges Amendment) Rules 2008, S.R. No. 100/2008

Date of Making: 28.8.08
Date of Commencement: 17.12.08: rule 3

Supreme Court (Chapter I Amendment No. 12) Rules 2008, S.R. No. 149/2008

Date of Making: 27.11.08
Date of Commencement: 1.1.09: rule 3

Supreme Court (Chapter I Amendment No. 13) Rules 2008, S.R. No. 151/2008

Date of Making: 27.11.08
Date of Commencement: 1.1.09: rule 3

Supreme Court (Chapter II Amendment No. 1) Rules 2009, S.R. No. 30/2009

Date of Making: 26.3.09
Date of Commencement: 19.6.09: rule 3

Supreme Court (Associate Judges Amendment) Rules 2009, S.R. No. 44/2009

Date of Making: 30.4.09
Date of Commencement: 4.5.09: rule 3

Supreme Court (Chapter I Amendment No. 14) Rules 2009, S.R. No. 60/2009 (as amended by S.R. No. 100/2010)

Date of Making: 28.5.09
Date of Commencement: 1.11.10: rule 3

Supreme Court (Cost Court Amendments) Rules 2009, S.R. No. 97/2009

Date of Making: 27.8.09
Date of Commencement: Rules 5–40 on 31.12.09: rule 3

Supreme Court (Chapter I Amendment No. 15) Rules 2009, S.R. No. 109/2009

Date of Making: 24.9.09
Date of Commencement: 1.11.09: rule 3

Supreme Court (Criminal Procedure Amendment) Rules 2009, S.R. No. 132/2009

Date of Making: 29.10.09
Date of Commencement: Rules 20, 21 on 1.1.10: rule 3

Supreme Court (Chapter 1 Amendment No. 16) Rules 2009, S.R. No. 144/2009

Date of Making: 26.11.09
Date of Commencement: 1.1.10: rule 3

Supreme Court (Evidence Amendments) Rules 2009, S.R. No. 146/2009

Date of Making: 26.11.09
Date of Commencement: Rules 4–9 on 1.1.10: rule 3

Supreme Court (Chapter 1 Amendment No. 17) Rules 2010, S.R. No. 22/2010

Date of Making: 29.4.10
Date of Commencement: 1.5.10: rule 3

Supreme Court (Subpoena, Search Order and Freezing Order Amendment)
Rules 2010, S.R. No. 23/2010

Date of Making: 29.4.10
Date of Commencement: Rules 5–9, 13, 14 on 3.5.10: rule 3

Supreme Court (Chapter 1 Amendment No. 18) Rules 2010, S.R. No. 53/2010

Date of Making: 24.6.10
Date of Commencement: 1.1.11: rule 3

Supreme Court (General Civil Procedure) Rules 2005
S.R. No. 148/2005

Endnotes

Supreme Court (Criminal Procedure Amendment) Rules 2010, S.R. No. 55/2010

Date of Making: 24.6.10

Date of Commencement: Rules 22–26 on 1.7.10: rule 3

Supreme Court (Chapter I Amendment No. 19) Rules 2010, S.R. No. 100/2010

Date of Making: 30.9.10

Date of Commencement: Rules 5, 6 on 1.11.10: rule 3(2); rules 8, 9 on 1.1.11: rule 3(3)

Supreme Court (Chapter I Amendment No. 20) Rules 2010, S.R. No. 142/2010

Date of Making: 28.10.10

Date of Commencement: 1.1.11: rule 3

Supreme Court (Chapter I Amendment No. 21) Rules 2010, S.R. No. 143/2010

Date of Making: 28.10.10

Date of Commencement: 1.1.11: rule 3

Supreme Court (Judicial Registrars Amendments) Rules 2010, S.R. No. 144/2010

Date of Making: 28.10.10

Date of Commencement: 1.1.11: rule 3

Supreme Court (Chapter I Amendment No. 22) Rules 2010, S.R. No. 147/2010

Date of Making: 17.12.10

Date of Commencement: 1.1.11: rule 3

Supreme Court (Judicial Registrars Further Amendment) Rules 2010,
S.R. No. 148/2010

Date of Making: 17.12.10

Date of Commencement: Rules 4–10 on 1.1.11: rule 3

3. Explanatory Details

¹ Table of Amendments: The Supreme Court (Chapter I Amendment No. 2) Rules 2006, S.R. No. 98/2006 were revoked on 31 August 2006 by rule 5 of the Supreme Court (Chapter I Amendment No. 3) Rules 2006, S.R. No. 102/2006.