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Supreme Court (General Civil Procedure) Rules 2025

S.R. No. 85/2025

Authorised Version incorporating amendments as at 1 January 2026

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Authorised Version No. 003

Supreme Court (General Civil Procedure) Rules 2025

S.R. No. 85/2025

Authorised Version incorporating amendments as at 1 January 2026

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 2025.

(2) The object of these Rules is to 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 8 September 2025.

(2) The Rules listed in Schedule 1 are **revoked**.

Part 2—Application of Rules

1.04 Definitions

In this Part—

commencement date means 8 September 2025;

former Rules means the Supreme Court (General Civil Procedure) Rules 2015;

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 and to any transitional or other provision in these Rules to the contrary, these Rules apply to every civil proceeding commenced in the Court whether before, on 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 does 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 is 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 * * * * *

Note

There are currently no Rules 1.07 to 1.11.

1.12 Order to review

(1) Unless the Court otherwise orders, subject to paragraph (2), these Rules apply, with any necessary modification, 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;

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

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;

judicial officer means—

(a) Judge of the Court;

(b) Associate Judge;

(c) judicial registrar;

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;

pdf., in relation to a document, means portable document format;

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

practice note means any practice note issued from time to time by or on behalf of the Chief Justice;

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;

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;

RedCrest means the electronic filing system in operation in the Court from time to time;

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;

sheriff includes—

(a) the sheriff employed under section 6 of the **Sheriff Act 2009**; and

(b) any person to whom a warrant referred to in these Rules is directed;

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;

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

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

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

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

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

(e) a reference to a judicial officer is a reference to the Court constituted by the relevant judicial officer.

(3) Where these Rules prescribe a form 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—

(a) of its own motion; or

(b) 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.

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 or as the Court otherwise orders, 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 with the Prothonotary; 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 any step taken, or any document, judgment or order in the proceeding, a nullity.

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

(a) set aside the proceeding, either wholly or in part;

(b) set aside any step taken in the proceeding, or any document, judgment or order in the proceeding;

(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 in any proceeding 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, either before or after the occasion for compliance arises.

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 5 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 is a day on which the office of the Court 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.

Note

See also Rule 25.08.

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—

(a) Saturdays and Sundays; and

(b) every day duly appointed as a general public holiday.

3.09 Office hours

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

Order 4—Process in the Court

Part 1—General

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, in particular, may 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, 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, the Court may make any order which the Court might make if the applicant had commenced the proceeding and the application were made in the proceeding.

Part 2—Certifications requirements for proceedings

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.

4.09.1 Certification of prior overarching obligations certification

(1) For the purposes of section 41(5)(a)(i) of the **Civil Procedure Act 2010**, the specified period is the period of 2 years prior to the date of the certification under section 41(5)(b) of that Act.

(2) For the purposes of section 41(5)(b) of the **Civil Procedure Act 2010**, the certification by a legal practitioner as to prior overarching obligations certification in relation to a party referred to in section 41(5)(a) of that Act shall be in Form 4AB.

4.10 Proper basis certification

(1) For the purposes of section 42(1C) of the **Civil Procedure Act 2010**, processes in the Court for the registration or enforcement of judgments are exempt from the proper basis certification requirements under the **Civil Procedure Act 2010**.

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

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, 5E or 5G, 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 or Order 56 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.

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—

(a) the relief or remedy sought and the Act, if any, under which the claim is made; and

(b) 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;

(b) the address of any defendant;

(c) where the plaintiff sues by a solicitor, the name or firm and the business address of the solicitor and also, if the solicitor is the agent of another, the name or firm and the business address of the principal; and

(d) an email address for service on the plaintiff.

(1.1) On the application of the plaintiff, the Prothonotary, at any time, for special reason, may dispense with the requirement in paragraph (1)(a) or (d).

(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.

(1.1) An originating process is filed when the originating process has been dealt with in accordance with Rule 28.02.

(2) The originating process for filing 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 paragraph (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.

(4) In a proceeding commenced by originating motion filed in RedCrest, where the relief or remedy sought includes the construction of any instrument other than an Act, a copy of the instrument or, if it exceeds 25 pages, of the relevant parts shall be filed in RedCrest together with the originating motion.

(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 submitted in RedCrest for filing when it is next possible to do so—

(a) the Court may—

(i) initial the originating process and such number of copies as are required for service; or

(ii) send an email to the plaintiff, with the originating process attached, stating that the originating process is filed pursuant to this Rule and that copies of that originating process with the email attached may be used for service; and

(b) on such initialing or the sending of the email the originating process shall be taken to have been sealed and 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—

(a) adjourn the further hearing; and

(b) direct the plaintiff to give notice to the defendant by summons or otherwise.

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 28.02(2).

(3) To effect personal service it shall not be necessary to show the original document.

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 person under disability referred to in paragraph (b) of the definition of that term 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 that person under disability was party; or

(ii) if there is no such person, the person with whom that person under disability resides or in whose care that person is;

(d) the Crown in right of the Commonwealth or the Commonwealth, on the Attorney-General of the Commonwealth or on a person appointed by the Attorney-General to receive service in accordance with section 63 of the Judiciary Act 1903 of the Commonwealth;

(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—

(i) the business address of that solicitor indorsed on the originating process; or

(ii) where the solicitor acts by an agent, the business address of the agent;

(b) where the plaintiff sues in person, the plaintiff's address 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) On 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.

6.06.2 Email address for service

(1) Subject to Rule 5.07(1.1), the email address for service indorsed on the originating process shall be the email address for service of a plaintiff.

(2) The email address for service of a defendant shall be provided as in Rule 8.06.

6.06.3 Party changing email address for service

(1) If a party's email address for service is changed, the party shall forthwith file notice of the change and serve a copy of the notice on every other party.

(2) On the filing and service of a notice in accordance with paragraph (1), the email address for service of the party shall be the new email address stated in the notice.

6.07 How ordinary service effected

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

(a) by emailing the document to the person's email address in accordance with paragraph (2.2);

(b) 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;

(c) by posting the document to the person to be served at the person's proper address;

(d) 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;

(e) 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.

Note

The **Electronic Transactions (Victoria) Act 2000** applies to enable a document to be served electronically, including facsimile transmission and email, in accordance with that Act.

(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, the individual's usual or last known place of residence or of business;

(b) in the case of individuals suing or being sued in the name of a firm, the principal or last known place of business of the firm;

(c) in the case of a corporation, the registered or principal office of the corporation.

* * * * *

(2.2) For the purposes of paragraph (1)(a), but subject to paragraphs (2.3) and (2.4), a document may be served either by attaching it to an email sent to the person's email address for service or by providing, in an email sent to the person's email address for service, an operative hyperlink (which must not expire before 120 days after the email is sent) to the document, and in either case the email shall state—

(a) the name, address, telephone number and email address of the sender;

(b) the name of the person to be served;

(c) the title and court file number of the proceeding to which the email relates;

(d) the name and number of pages of each document served by means of the email; and

(e) that the email is by way of service under Rule 6.07(1)(a).

(2.3) The file name of the document being served shall be substantially similar to the name of the document as stated in the email pursuant to Rule 6.07(2.2)(d).

(2.4) A document (including any affidavit) that is more than 10 megabytes may be sent—

(a) by multiple emails, none of which exceeds 10 megabytes; or

(b) by operative hyperlink which must not expire before 120 days after the email is sent.

(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 on 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 (b) which is effected after 4.00 p.m., for the purpose of calculating any period of time after that service, shall 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)(c)—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)(e)—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.

(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 be taken to have been served on the person on the day the solicitor made the note, unless the solicitor is shown not to have had authority to accept service.

(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.

(1.1) Unless the Court otherwise orders, where an order under paragraph (1) specifies that a step to be taken includes service by email, the order shall require that the email contain within the body of the email, in the same size font as the rest of that part of the email, the following—

(a) a statement that the email has been sent pursuant to an order of the Supreme Court of Victoria;

(b) the address of the Court's website (www.supremecourt.vic.gov.au), together with a statement that the website may be found by using a search engine without the need to use this address directly;

(c) where applicable, the name of the judicial officer in charge of the conduct of the proceeding, together with the contact details of that judicial officer's associate;

(d) a statement that the judicial officer's associate may be contacted, and that their contact details are available on the Supreme Court website, to verify the existence of the proceeding and the fact that the court order for substituted service has been made;

(e) where applicable—

(i) the name, address and telephone number of the solicitor's firm of the originating party;

(ii) the name and email address of an individual in the firm of solicitors to whom reference can be made in respect of the proceeding;

(f) any other matter that the Court considers should be included in the email.

(1.2) Paragraph (1.1) applies in addition to the requirements for service by email under Rule 6.07(2.2) to (2.4).

(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—

(a) is out of Victoria; or

(b) 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, unless the Court otherwise orders, shall 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 on 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.

(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 copy of the sealed originating process.

Order 7—Service out of Australia

Part 1—Service out of Australia

7.01 Part does not apply to service in New Zealand of documents for or in certain Trans-Tasman proceedings

This Part (which contains rules on service out of Australia) does not apply to service in New Zealand of an originating process for, or of any other document to be served in or for, a proceeding an originating process for which may be served in New Zealand under Division 2 of Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth.

7.02 When allowed without leave

An originating process may be served out of Australia without leave in the following cases—

(a) when the claim is founded on a tortious act or omission—

(i) which was done or which occurred wholly or partly in Australia; or

(ii) in respect of which the damage was sustained wholly or partly in Australia;

(b) when the claim is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a contract which—

(i) was made or entered into in Australia; or

(ii) was made by or through an agent trading or residing within Australia; or

(iii) was to be wholly or in part performed in Australia; or

(iv) was by its terms or by implication to be governed by Australian law or to be enforceable or cognizable in an Australian court;

(c) when the claim is in respect of a breach in Australia of any contract, wherever made, whether or not that breach was preceded or accompanied by a breach out of Australia that rendered impossible the performance of that part of the contract that ought to have been performed in Australia;

(d) when the claim—

(i) is for an injunction to compel or restrain the performance of any act in Australia; or

(ii) is for interim or ancillary relief in respect of any matter or thing in or connected with Australia, where such relief is sought in relation to judicial or arbitral proceedings commenced or to be commenced, or an arbitration agreement made, in or outside Australia (including, without limitation, interim or ancillary relief in relation to any proceedings under the International Arbitration Act 1974 of the Commonwealth or the **Commercial Arbitration Act 2011**; or

(iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under Order 37A

in respect of any matter or thing in or connected with Australia;

(e) when the subject matter of the claim is land or other property situated in Australia, or any act, deed, will, instrument, or thing affecting such land or property, or the proceeding is for the perpetuation of testimony relating to such land or property;

(f) when the claim relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to Australian law;

(g) when any relief is sought against any person domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);

(h) when any person out of Australia is—

(i) a necessary or proper party to a proceeding properly brought against another person served or to be served (whether within Australia or outside Australia) under any other provision of these Rules; or

(ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by a proceeding in the Court;

(i) when the claim is for the administration of the estate of any deceased person who at the time of death was domiciled in Australia or is for any relief or remedy which might be obtained in any such proceeding;

(j) when the claim arises under an Australian enactment and—

(i) any act or omission to which the claim relates was done or occurred in Australia; or

(ii) any loss or damage to which the claim relates was sustained in Australia; or

(iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside Australia in the circumstances alleged; or

(iv) the enactment expressly or by implication confers jurisdiction on the Court over persons outside Australia (in which case any requirements of the enactment relating to service must be complied with);

(k) when the person to be served has submitted to the jurisdiction of the Court;

(l) when a claim is made for restitution or for the remedy of constructive trust and the person to be served's alleged liability arises out of an act or omission that was done or occurred wholly or partly in Australia;

(m) when it is sought to recognise or enforce any judgment;

(n) when the claim is founded on a cause of action arising in Australia;

(o) when the claim affects the person to be served in respect of the person's membership of a corporation incorporated in Australia, or of a partnership or an association formed or carrying on any part of its affairs in Australia;

(p) when the claim concerns the construction, effect or enforcement of an Australian enactment;

(q) when the claim—

(i) relates to an arbitration held in Australia or governed by Australian law; or

(ii) is to enforce in Australia an arbitral award wherever made; or

(iii) is for orders necessary or convenient for carrying into effect in Australia the whole or any part of an arbitral award wherever made;

(r) when the claim is for relief relating to the custody, guardianship, protection or welfare of a minor present in Australia or who is domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);

(s) when the claim, so far as concerns the person to be served, falls partly within one or more of the above paragraphs and, as to the residue, within one or more of the others of the above paragraphs.

Notes

1 Originating process includes a document that commences a proceeding as well as a counter-claim or third party claim.

2 If a proceeding is commenced in the Court and originating process is served out of Australia under this Rule but the Court later decides that it is more appropriate that the proceeding be determined by a court of another Australian jurisdiction, the Court may transfer the proceeding to that other court under the applicable Jurisdiction of Courts (Cross-vesting) Act and may make an order for costs against the party who commenced the proceeding in the Court rather than in the transferee court.

7.03 When allowed with leave

(1) In any proceeding when service is not allowed under Rule 7.02, an originating process may be served out of Australia with the leave of the Court.

(2) An application for leave under this Rule shall be made on notice to every party other than the person intended to be served.

(3) A sealed copy of every order made under this Rule shall be served with the document to which it relates.

(4) An application for leave under this Rule shall be supported by an affidavit stating any facts or matters related to the desirability of the Court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.

(5) The Court may grant an application for leave if satisfied that—

(a) the claim has a real and substantial connection with Australia; and

(b) Australia is an appropriate forum for the trial of the proceeding; and

(c) in all the circumstances the Court should assume jurisdiction.

7.04 Court's discretion whether to assume jurisdiction

(1) On application by a person on whom an originating process has been served out of Australia, the Court may by order set aside the originating process or its service on the person or dismiss or stay the proceeding.

(2) Without limiting paragraph (1), the Court may make an order under this Rule if satisfied—

(a) that service out of Australia of the originating process is not authorised by these Rules; or

(b) that the Court is an inappropriate forum for the trial of the proceeding; or

(c) that the claim has insufficient prospects of success to warrant putting the person served out of Australia to the time, expense and trouble of defending the claim.

7.05 Notice to person served out of Australia

If a person is to be served out of Australia with an originating process, the person shall also be served with a notice in Form 7AAA informing the person of—

(a) the scope of the jurisdiction of the Court in respect of claims against persons who are served out of Australia; and

(b) the grounds alleged by the plaintiff to found jurisdiction; and

(c) the person's right to apply for an order setting aside the originating process or its service on the person or dismissing or staying the proceeding.

7.06 Time for filing appearance

Except when the Court otherwise orders, a defendant who has been served out of Australia shall file an appearance within 42 days from the date of service.

7.07 Leave to proceed where no appearance by person

(1) If an originating process is served on a person out of Australia and the person does not file an appearance, the party serving the document may not proceed against the person served except by leave of the Court.

(2) An application for leave under paragraph (1) may be made without serving notice of the application on the person served with the originating process.

7.08 Service of other documents out of Australia

Any document other than an originating process may be served out of Australia with the leave of the Court, which may be given with any directions that the Court thinks fit.

7.09 Mode of service

A document to be served out of Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

Part 2—Service in foreign country

7.09.1 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.

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.

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;

(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

(b) 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)(b).

7.13 Procedure on lodgment and filing

(1) Where documents are lodged and filed in accordance with Rule 7.10, the Prothonotary shall—

(a) seal the documents lodged with the seal of the Court; and

(b) 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.

Order 7A—Trans-Tasman proceedings

7A.01 Definitions

(1) In this Order—

Trans-Tasman Proceedings Act means the Trans-Tasman Proceedings Act 2010 of the Commonwealth.

(2) An expression used in the Trans-Tasman Proceedings Act has the same meaning in this Order as it has in that Act.

Note

The following expressions used in this Order are defined in section 4 of the Trans-Tasman Proceedings Act—

- audio link
- audiovisual link
- Australian court
- document
- enforcement
- entitled person
- given
- inferior Australian court
- liable person
- NZ judgment
- party
- person named
- procedural rules
- proceeding
- subpoena.

7A.02 Application of Order

This Order applies in relation to any proceeding or matter under the Trans-Tasman Proceedings Act.

7A.03 Commencement of proceeding for order under Trans-Tasman Proceedings Act

(1) Except as otherwise provided by or under the Trans-Tasman Proceedings Act or by this Order, a proceeding for an order under the Trans-Tasman Proceedings Act shall be commenced by originating motion.

(2) The originating motion shall be supported by an affidavit that states the material facts on which the applicant relies that are necessary to give the respondent fair notice of the case to be made against the respondent at the hearing.

7A.04 Interlocutory application under Trans-Tasman Proceedings Act

An interlocutory application of which notice is to be given to any person in a proceeding for an order under the Trans-Tasman Proceedings Act shall be made by summons.

7A.05 Application for interim relief

(1) An application for an order for interim relief under section 25 of the Trans-Tasman Proceedings Act shall be made by filing a summons.

(2) The summons shall be supported by an affidavit stating—

(a) if the applicant has commenced a proceeding in a New Zealand court—

(i) that the person has commenced a proceeding in a New Zealand court; and

(ii) the relief sought in the New Zealand proceeding; and

(iii) the steps taken in the New Zealand proceeding;

(b) if the applicant intends to commence a proceeding in the New Zealand court—

(i) when the intended proceeding will be commenced; and

(ii) the court in which the intended proceeding is to be commenced; and

(iii) the relief to be sought in the intended proceeding;

(c) the interim relief sought;

(d) why the interim relief should be given.

7A.06 Application for leave to serve subpoena in New Zealand

(1) An application under section 31(1) of the Trans-Tasman Proceedings Act for leave to serve a subpoena in New Zealand may be made—

(a) orally to the Court; and

(b) without summons or notice to any person.

(2) The application shall be supported by an affidavit—

(a) stating briefly, but specifically, the following—

(i) the name, occupation and address of the addressee;

(ii) whether the addressee has attained the age of 18 years;

(iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee;

(iv) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the addressee;

(v) the date by which it is intended to serve the subpoena in New Zealand;

(vi) details of the amounts to be given to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;

(vii) details of the way in which the amounts referred to in subparagraph (vi) are to be given to the addressee;

(viii) if the subpoena requires a specified person to give evidence, an estimate of the time that the addressee will be required to attend to give evidence;

(ix) any facts or matters known to the applicant that may be grounds for an application by the addressee to have the subpoena set aside, under section 36(2) or (3) of the Trans-Tasman Proceedings Act; and

(b) exhibiting a copy of the subpoena in relation to which leave is sought.

Note

Pursuant to section 37(4) of the Trans-Tasman Proceedings Act, the Court may make orders to ensure that the person complying with the subpoena receives the amount of the person's reasonable expenses in so complying.

7A.07 Form of subpoena

A subpoena to which this Order applies shall be in accordance with—

(a) Form 7AA, for a subpoena to give evidence;

(b) Form 7AB, for a subpoena to produce documents;

(c) Form 7AC, for a subpoena to give evidence and produce documents.

7A.08 Application to set aside subpoena

(1) An application under section 35 of the Trans-Tasman Proceedings Act to set aside a subpoena served in New Zealand shall be made by filing a summons in the proceeding in which the subpoena was issued.

(2) The summons shall be supported by an affidavit—

(a) stating the material facts on which the application is based;

(b) stating whether the applicant requests that any hearing be held by audio link or audiovisual link; and

(c) exhibiting a copy of the subpoena.

7A.09 Application for issue of certificate of non-compliance with subpoena

(1) A party may apply to the Court for the issue, under section 38 of the Trans-Tasman Proceedings Act, of a certificate of non-compliance with a subpoena.

(2) An application may be made—

(a) orally to the Court; and

(b) without summons or notice to any person.

(3) The application shall be supported by—

(a) an affidavit of service of the subpoena; and

(b) a further affidavit stating the following—

(i) whether any application was made to set aside the subpoena;

(ii) the material in support of any application to set aside the subpoena;

(iii) any order that disposed of any application to set aside the subpoena;

(iv) the material facts relied on for the issue of a certificate of non-compliance.

(4) The affidavit referred to in paragraph (3)(b) shall exhibit—

(a) a copy of the subpoena; and

(b) a copy of the order giving leave to serve the subpoena.

7A.10 Form of certificate of non-compliance

(1) A certificate of non-compliance with a subpoena shall be in Form 7AD.

(2) The certificate of non-compliance may be signed and sealed by the Judge of the Court, the Associate Judge or the judicial registrar who issued the certificate or by the Prothonotary.

7A.11 Application for registration of NZ judgment

(1) An application under section 67 of the Trans-Tasman Proceedings Act for registration under section 68 of that Act of an NZ judgment shall be made to the Prothonotary.

Note

See Regulation 17 and Form 5 of the Trans-Tasman Proceedings Regulation 2012 of the Commonwealth made under the Trans-Tasman Proceedings Act.

(2) Where the Prothonotary registers an NZ judgment, the matter in which the judgment is registered shall, for the purposes of Rules 7A.12, 7A.13(1),

7A.14(1), 7A.15(1) and 7A.16(1), be taken to be a proceeding.

7A.12 Notice of registration of NZ judgment

An entitled person shall not take any step to enforce a registered NZ judgment unless the entitled person has filed an affidavit stating that notice of the registration of the NZ judgment has been given in accordance with—

(a) section 73 of the Trans-Tasman Proceedings Act; and

(b) any regulations made under that Act.

7A.13 Application for extension of time to give notice of registration of NZ judgment

(1) An application by an entitled person for an extension of the time within which to give notice of the registration of an NZ judgment under section 73(3) of the Trans-Tasman Proceedings Act may be made—

(a) orally to the Court in the proceeding in which the judgment is registered; and

(b) without summons or notice to any person.

(2) An application under paragraph (1) shall be supported by an affidavit stating—

(a) briefly, but specifically, the grounds relied on in support of the application;

(b) the material facts relied on in support of the application; and

(c) why notice was not given within time.

7A.14 Application to set aside registration of NZ judgment

(1) An application by a liable person to set aside the registration of an NZ judgment under section 72(1) of the Trans-Tasman Proceedings Act shall be made by filing a summons in the proceeding in which the judgment is registered.

(2) An application under paragraph (1) shall be supported by an affidavit stating—

(a) briefly, but specifically, the grounds on which the registration of the judgment should be set aside; and

(b) the material facts relied on in support of the application.

Note

An application to set aside the registration of an NZ judgment must be made within 30 working days of the Court after the day on which the liable person was served with notice of the registration, or within any shorter or longer period that the Court considers appropriate—see section 72(2) of the Trans-Tasman Proceedings Act.

7A.15 Application for stay of enforcement of registered NZ judgment to enable liable person to appeal

(1) An application by a liable person for a stay of the enforcement of a registered NZ judgment under section 76(1) of the Trans-Tasman Proceedings Act to enable the person to appeal against the judgment shall be made by filing a summons in the proceeding in which the judgment is registered.

(2) An application under paragraph (1) shall be supported by an affidavit stating—

(a) the order sought;

(b) briefly, but specifically, the grounds relied on in support of the order sought; and

(c) the material facts relied on in support of the application.

7A.16 Application for extension of time to apply for stay of enforcement of registered NZ judgment to enable liable person to appeal

(1) An application by a liable person for an extension of the time within which to apply for the stay of enforcement of a registered NZ judgment under section 76(3) of the Trans-Tasman Proceedings Act to enable the person to appeal against the judgment shall be made by filing a summons in the proceeding in which the judgment is registered.

(2) An application under paragraph (1) shall be supported by an affidavit stating—

(a) the order sought;

(b) briefly, but specifically, the grounds relied on in support of the application;

(c) the material facts relied on in support of the application; and

(d) why the application was not made within time.

7A.17 Application for order for use of audio link or audiovisual link

(1) A party may apply for an order that evidence be taken, or submissions be made, by audio link or audiovisual link from New Zealand by filing an application in accordance with section 50 of the Trans-Tasman Proceedings Act.

(2) Paragraph (1) does not apply to a request referred to in Rule 7A.08(2)(b).

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

Rule 8.04(a) substituted by S.R. No. 127/2025 rule 7.

(a) where the originating process is to be served—

(i) in Victoria, not less than 10 days after service;

(ii) out of Victoria and in another part of Australia, 21 days after service;

(b) subject to paragraph (c), where the originating process is to be served out of Australia, 42 days after service;

(c) where the originating process is to be served in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth—

(i) 30 working days (within the meaning of that Act) after service; or

(ii) if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

Example

For example, the times set out in Orders 7 and 7A.

8.05 Mode of filing appearance

(1) An appearance shall be filed by filing a notice of appearance in Form 8A.

* * * * *

(3) On the day the defendant files a notice of appearance, the defendant shall 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—

(i) the address of the defendant;

(ii) the name or firm and the business address of the solicitor;

(iii) if the solicitor is an agent of another, the name or firm and the business address of the principal; and

(iv) an email address for service of the defendant; and

(b) if the defendant appears in person—

(i) the address of the defendant;

(ii) an email address for service of the defendant.

(1.1) On the application of the defendant, the Prothonotary, at any time, for special reason, may dispense with the requirement in paragraph (1)(a)(i) or (iv) or the requirement in paragraph (1)(b)(ii).

(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;

(b) where the defendant appears in person, the address of the defendant 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 or the Trans-Tasman Proceedings Act 2010 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.

(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, on application made by the defendant before filing an appearance, whether conditional or not, may exercise its jurisdiction to—

(a) set aside a writ or originating motion or its service;

(b) make an order under Rule 46.08; or

(c) stay a proceeding.

Order 9—Joinder of claims and parties

9.01 Joinder of claims

A plaintiff may join any number of claims against a defendant—

(a) whether the plaintiff makes the claims in the same or in different capacities; and

(b) 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; or

(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—

(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 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 commenced 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.

(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.

(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 an order granting probate or administration in Victoria or the resealing of a foreign grant in Victoria.

(12) Despite the amendment of the definition of ***grant of representation*** by the Supreme Court (Probate E-filing and Other Amendments) Rules 2019, that definition as in force immediately before that amendment continues to apply in respect of any grant issued before the commencement of Part 2 of those Rules.

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—

(a) that the other person be added as a party to the proceeding or made a party in substitution for the original party; and

(b) 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)—

(a) 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

(b) 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—

(a) if the plaintiff dies, to the defendant against the personal representative of the deceased out of the estate of the deceased;

(b) if the defendant dies, to the personal representative of the deceased against the plaintiff.

(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—

(a) 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

(b) 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 2 or more proceedings are pending in the Court, and—

(a) some common question of law or fact arises in both or all of them;

(b) the rights to relief claimed 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.

(2) Any order for the trial together of 2 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) a proceeding commenced by writ; and

(b) 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—

(a) who is plaintiff to the counterclaim; and

(b) who are defendants to the counterclaim.

(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, on 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.

(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—

(a) in Form 11A; and

(b) 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 Australia—not less than 10 days after service;

(b) where the notice is to be served out of Australia—

(i) the time limited by Rule 8.04(b) or (c) in the case of appearance by a defendant to a writ, whichever is appropriate; or

(ii) 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);

(b) any order under paragraph (2) of this Rule made before the third party notice was filed fixing a period for service of the notice;

(c) any order under paragraph (3) of this Rule;

(d) the writ or other originating process;

(e) 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 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 apply, with any necessary modification, as if the claim by third party notice were a proceeding commenced by writ.

(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 applies 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;

(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 as 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) does 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 applies, with any necessary modification, as if—

(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 applies, 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 applies, 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 a proceeding under this Order;

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.

(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 , on application by the sheriff, may 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

(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; and

(c) on application by the sheriff, the Court 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 5 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 5 days serves on the sheriff notice in writing that the execution creditor disputes the claim—

and, if the claim has not been withdrawn, the Court may 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 referred to in paragraph (1); and

(b) may, if not satisfied on those matters, dismiss the application.

(3) Nothing in this Rule affects 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)—

(a) shall be entitled in all the proceedings in which it is made; and

(b) shall be binding on all the parties to them.

12.12 Trial of interpleader question

(1) Order 49 applies, 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.

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; and

(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.

(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 the defendant relies and a plea that the defendant or the defendant's tenant is in possession of the land 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;

(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 which is alleged; 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.

(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—

(a) has already been served and, if so, when; or

(b) 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 (3), 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.

(2) 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.

(3) 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 operates 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 operates 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 applies, 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, by order, may 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—Persons under disability

15.01 Definition

In this Order, ***person under disability*** means—

(a) a minor; or

(b) a person who is incapable, by reason of injury, disease, senility, illness or physical or mental infirmity, of managing that person's affairs in relation to the proceeding.

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 the person's 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 the person's litigation guardian.

(3) A litigation guardian of a person under disability shall act by a solicitor.

(4) Unless for special reason the Court otherwise orders, the litigation guardian of a person under disability is not personally liable for costs awarded against the person.

15.03 Appointment of litigation guardian

(1) A person may be a litigation guardian of a person under disability if the first-mentioned person—

(a) is not a person under disability; and

(b) has no interest in the proceeding adverse to that of the person under disability.

(2) Where a person is authorised by or under any Act to conduct legal proceedings in the name of or on behalf of a person under disability referred to in paragraph (b) of the definition of that term in Rule 15.01, the person so authorised, unless the Court otherwise orders, shall be entitled to be litigation guardian of the person under disability in any proceeding to which that person's authority extends.

(3) Where after a proceeding is commenced a party to the proceeding becomes a person under disability, 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 person under disability, giving the grounds of the solicitor's knowledge or belief; and

(ii) the litigation guardian of the person under disability has signed the 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 the person's 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 of the money 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 applies, 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.

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 of the class 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 an order in the proceeding shall bind the person or class represented as if the person or class were parties.

(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.

Order 17—Partners and sole proprietors

17.01 Partners

(1) Where 2 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 on 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—

(a) that the person does so as a person served as a partner; and

(b) that the person denies that the person 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 the person 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 the person's 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 an 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 the person's pleading that the person 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 an 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 an 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—

(a) on the judgment debtor; and

(b) 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 an 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.

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 an 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.

(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.

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.

* * * * *

Note

There is no Rule 18A.03.

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.

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, email address and, if applicable, business 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) after a proceeding has been set down for trial; or

(b) 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) after a notice of appeal or an application for leave to appeal to the Court of Appeal has been filed.

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;

(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, by order, may 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) The Court may by order direct what address shall be the address for service of a party for whom a solicitor has ceased to act where the Court—

(a) under Rule 20.03(3) or (4) gives a solicitor leave to file notice that the solicitor has ceased to act; or

(b) under Rule 20.04(1) by order declares that a solicitor has ceased to act.

(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 or Australian Government Solicitor

It shall not be necessary to file and serve notice under Rule 20.01 where—

(a) the person who occupies or acts in the office of Victorian Government Solicitor or the person who occupies or acts in the office of Australian Government Solicitor acts as solicitor for a party in a proceeding; and

(b) the person so acting dies or retires or otherwise ceases to occupy or act in that office.

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 unless Rule 2.07(1) of Chapter II applies.

Note

Rule 2.07(1) of Chapter II provides that, in a Commercial List that is managed by a Commercial List Judge, an order of a Commercial List Judge is required before judgment in default of appearance can be entered.

(3) Judgment shall not be entered or given for the plaintiff unless there is filed—

(a) an affidavit proving service of the writ on the defendant; and

(b) 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 unless Rule 2.07(1) of Chapter II applies.

Note

Rule 2.07(1) of Chapter II provides that, in a Commercial List that is managed by a Commercial List Judge, an order of a Commercial List Judge is required before judgment in default of defence can be entered.

(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) does 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) On 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.

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

Part 1—General

22.01 Scope of Order

This Order applies to all civil proceedings in the Court to which, in accordance with section 4 of the **Civil Procedure Act 2010**, that Act applies.

22.02 Interpretation

(1) In this Order, a reference—

(a) to a plaintiff includes a reference to a plaintiff by counterclaim; and

(b) to a defendant includes a reference to a defendant by counterclaim.

(2) Without limiting paragraph (1), expressions used in this Order, unless the contrary intention appears, have the same meaning as in Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**.

Part 2—Application by plaintiff for summary judgment

22.03 Application by plaintiff for judgment

An application under section 61 of the **Civil Procedure Act 2010** by a plaintiff in a civil proceeding for summary judgment in the proceeding shall be made in accordance with this Part of this Order.

22.04 Summons and affidavit in support

(1) An application 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

(b) stating that in the belief of the deponent the defence to the claim or the defence to the relevant part of the claim—

(i) has no real prospect of success; or

(ii) has no real prospect of success except as to the amount of the claim or as to the amount of the relevant part of the claim.

(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 and of any exhibit referred to in the affidavit or affidavits on the defendant not less than 14 days before the day for hearing named in the summons.

22.05 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 in the affidavit or affidavits on the plaintiff not less than three days before the day for hearing named in the summons.

22.06 Affidavit in reply

(1) Where the defendant serves an affidavit under Rule 22.05, the Court may by order allow the plaintiff to rely upon an affidavit in reply.

(2) Rule 22.04(2) and (3) apply, with any necessary modification, to an affidavit in reply made under this Rule.

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 documents, or copies of or extracts from those documents.

(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 of the corporation or any person purporting to act in any such capacity.

22.08 Hearing of application

(1) Subject to Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**, on the hearing of an application the Court may—

(a) dismiss the application;

(b) give such judgment for the plaintiff against the defendant on the claim or the part of the claim to which the application relates as is appropriate, having regard to the nature of the relief or remedy claimed;

(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 the 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 other claim or counterclaim which remains outstanding in the proceeding as between the relevant parties.

22.09 Assessment of damages

Where the Court gives summary judgment under section 63 of the **Civil Procedure Act 2010** 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 section 61 of the **Civil Procedure Act 2010** for summary 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 summary judgment on the claim under section 63 of that Act, 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 on an application under section 61 of the **Civil Procedure Act 2010** for summary judgment leave is given to defend or summary judgment is given on a claim or part of a claim but execution of the judgment is stayed pending the trial of an outstanding claim or 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—

(a) may direct that an affidavit made under this Order shall serve as a defence or defence and counterclaim;

(b) may order the proceeding to be forthwith set down for trial; and

(c) may define the questions to be tried.

22.12 Continuing for other claim or against other defendant

Where the plaintiff obtains summary judgment under section 63 of the **Civil Procedure Act 2010** 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 summary judgment under section 63 of the **Civil Procedure Act 2010** 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 of the chattel.

22.14 Relief against forfeiture

A tenant may apply for relief after summary judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under section 63 of the **Civil Procedure Act 2010** 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 section 61 of the **Civil Procedure Act 2010**.

Part 3—Application by defendant for summary judgment

22.16 Application by defendant for judgment

An application under section 62 of the **Civil Procedure Act 2010** by a defendant in a civil proceeding for summary judgment in the proceeding shall be made in accordance with this Part of this Order.

22.17 Summons

The application shall be made by summons.

22.18 Affidavit in support

(1) If the defendant intends to rely on an affidavit in support of the application, the affidavit shall be filed with the summons.

(2) Where a statement in a document tends to establish a fact upon which the defendant relies 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 may set forth the statement.

(3) An affidavit relied upon by the defendant 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 defendant shall serve the summons and a copy of any affidavit in support and of any exhibit referred to in the affidavit on the plaintiff not less than 14 days before the day for hearing named in the summons.

22.19 Plaintiff to show cause

(1) The plaintiff 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 plaintiff shall serve a copy of any affidavit and of any exhibit referred to in the affidavit on the defendant not less than three days before the day for hearing named in the summons.

22.20 Affidavit in reply

(1) Where the plaintiff serves an affidavit under Rule 22.19, the Court may by order allow the defendant to rely upon an affidavit in reply.

(2) Rule 22.18(2) and (3) apply, with any necessary modification, to an affidavit in reply made under this Rule.

22.21 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 documents, or copies of or extracts from those documents.

(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 of the corporation or any person purporting to act in any such capacity.

22.22 Hearing of application

Subject to Part 4.4 of Chapter 4 of the **Civil Procedure Act 2010**, on the hearing of an application the Court may—

(a) dismiss the application;

(b) give such judgment for the defendant against the plaintiff on the claim or the part of the claim to which the application relates as is appropriate (including the grant of any appropriate stay of the proceeding), having regard to the nature of the relief or remedy claimed; or

(c) with the consent of all parties, and notwithstanding Rule 77.03(1), dispose of the proceeding finally in a summary manner.

22.23 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 section 62 of the **Civil Procedure Act 2010**.

Part 4—Application by or against third or subsequent party

22.24 Third or subsequent party

(1) A party who has joined a third or subsequent party to a civil proceeding may apply to the Court for summary judgment against the third or subsequent party on the ground that the defence or part of the defence of that party has no real prospect of success.

(2) A party joined as a third or subsequent party to a civil proceeding may apply to the Court for summary judgment on the ground that the claim made against the party or part of that claim has no real prospect of success.

(3) Part 2 of this Order applies, with any necessary modifications, to an application under paragraph (1).

(4) Part 3 of this Order applies, with any necessary modifications, to an application under paragraph (2).

(5) The Court may order that a claim made by or against a third or subsequent party proceed to trial if the Court is satisfied that, despite there being no real prospect of success, the claim should not be disposed of summarily because—

(a) it is not in the interests of justice to do so; or

(b) the dispute is of such a nature that only a full hearing on the merits is appropriate.

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) is scandalous, frivolous or vexatious; or

(b) 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 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.

* * * * *

Note

There is no Rule 23.03.

23.04 Affidavit evidence

(1) On an application under Rule 23.01 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 or Rule 22.21, as the case requires, 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

The Court may order that a proceeding be dismissed for want of prosecution if 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—

(i) file and serve notice of trial; or

(ii) 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).

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 applies, 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 affects the inherent power of the Court—

(a) to dismiss any proceeding for want of prosecution; or

(b) 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 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—

(a) the plaintiff may withdraw a defence to counterclaim or any part of it; and

(b) 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.

(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—

(a) by leave of the Court; or

(b) 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—

(a) by leave of the Court; or

(b) 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.

25.08 Dismissal of inactive proceedings

(1) Where a year or more has elapsed since any party has taken any step in a proceeding, and no party desiring the proceeding to continue has given notice in accordance with Rule 3.06, the Prothonotary may send a notice to all parties who have an address for service stating that—

(a) there has been no activity in relation to the proceeding for at least one year; and

(b) the parties have 30 days from the date the notice is sent to file in RedCrest a notice of intention to continue the proceeding; and

(c) if no notice of intention is filed in accordance with paragraph (b), the proceeding will be dismissed without further notice.

(2) If no notice is filed in RedCrest by any party in accordance with paragraph (1), the proceeding is dismissed without adjudication on its merits.

(3) Unless the Court otherwise orders, the party whose proceeding is dismissed under this Rule shall pay the costs, if any, of any other party in the proceeding.

(4) The Court may reinstate any proceeding dismissed under this Rule, on any terms the Court thinks just, on the application of any party to the dismissed proceeding.

Order 26—Offers of compromise and offers to compromise on appeal

Part 1—Interpretation

26.01 Definitions

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

business day means a day on which the office of the Court is open as specified in Rule 3.08;

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;

ordinarily applicable basis means—

(a) in respect of costs incurred before 1 April 2013, party and party basis;

(b) in respect of costs incurred on or after 1 April 2013, standard basis;

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

Part 2—Offers of compromise

26.02 Offers of compromise generally

(1) A party may, in respect of any claim in a proceeding, serve on another party 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 made in the proceeding between the parties.

(3) An offer of compromise must—

(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.

(4) An offer of compromise must state either—

(a) that the offer is inclusive of costs; or

(b) that costs are to be paid or received, as the case may be, in addition to the offer.

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.

(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 that states that costs are to be paid or received in addition to the offer, then, unless the offer otherwise provides or the Court otherwise orders—

(a) such costs are to be paid or received in respect of the claim up to and including the day the offer was served;

(b) liability for any costs in respect of the claim in relation to any subsequent period shall be in the discretion of the Court; and

(c) any party to the accepted offer may apply for the taxation of the costs.

26.03.1 Time for payment

An offer of compromise providing for payment of a specified sum of money to a party shall, unless it otherwise provides, be taken to be an offer providing for payment of that sum within 28 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) do 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 a person under disability and no acceptance by a person under disability of an offer shall be binding until the Court has approved the compromise.

26.07 Withdrawal of acceptance

(1) A party who has accepted an offer for the payment to that party of a sum of money may withdraw the acceptance if—

(a) the sum of money is not paid—

(i) within the time provided by the offer; or

(ii) where no time is specified by the offer, within 28 days after acceptance of the offer; and

(b) the Court, on the application of the party who accepted the offer, gives leave.

(2) A party seeking the leave of the Court under paragraph (1)(b) may also seek orders—

(a) to restore the parties as nearly as practicable to each party's position in the proceeding at the time of acceptance; and

(b) as to the further conduct of the proceeding.

26.07.1 Failure to comply with accepted offer

If, after acceptance of an offer of compromise, a party to the accepted offer defaults in complying with that party's obligations under the offer, any non-defaulting party to the accepted offer may apply to the Court for an order—

(a) giving effect to the accepted offer;

(b) staying or dismissing the proceeding if the plaintiff is in default;

(c) striking out the defendant's defence if the defendant is in default; or

(d) that a claim, not the subject of the offer, shall proceed.

26.07.2 Multiple defendants

(1) Rule 26.07.1 does not apply if—

(a) two or more defendants are alleged to be jointly, or jointly and severally, liable to the plaintiff for a debt or damages; and

(b) rights of contribution or indemnity appear to exist between the defendants.

(2) Notwithstanding paragraph (1), Rule 26.07.1 applies if—

(a) in the case of an offer made by the plaintiff, the offer—

(i) is made to all defendants; and

(ii) is an offer to compromise the claim against all of them; or

(b) in the case of an offer made to the plaintiff—

(i) the offer is to compromise the claim against all defendants; and

(ii) if the offer is made by two or more defendants, those defendants offer to be jointly, or jointly and severally, liable to the plaintiff for the whole amount of the offer.

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.

(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 before 11.00 a.m. on the second business day after the offer was served, taxed on the ordinarily applicable 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 before 11.00 a.m. on the second business day after the offer was served, taxed on the ordinarily applicable 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 the ordinarily applicable basis.

(4) Where an offer of compromise is made by a defendant and the plaintiff unreasonably fails to accept the offer and the claim to which the offer relates is dismissed or judgment on the claim is entered in favour of the defendant, then unless the Court otherwise orders—

(a) the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim until 11.00 a.m. on the second business day after the offer was made, taxed on the ordinarily applicable basis; and

(b) the defendant shall be entitled to an order against the plaintiff in respect of the defendant's costs after the time referred to in paragraph (a) taxed on an indemnity 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), (3) and (4) 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.

(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.

26.08.1 Pre-litigation offers

(1) If—

(a) a party, before a proceeding has commenced, has made an offer in writing to another party (whether or not expressed to be without

prejudice) to compromise any claim made in the proceeding on the terms specified in the offer; and

(b) the offer was open to be accepted for a reasonable time, but was not accepted; and

(c) the offeror obtains an order or judgment in respect of the claim no less favourable to the offeror than the terms of the offer—

the Court shall take those matters into account in determining what order for costs to make in respect of the costs of the proceeding.

(2) In exercising its discretion as to costs in accordance with paragraph (1), the Court may order that the offeree pay all or part of the offeror's costs of the proceeding taxed on a basis other than the ordinarily applicable basis, from—

(a) the day the offer was made;

(b) the commencement of the proceeding; or

(c) any other time that the Court thinks fit.

* * * * *

Note

There is no Rule 26.09.

26.10 Contributor parties

(1) If 2 or more parties (the ***contributor parties***) may be held liable to contribute towards an amount of debt or damages that may be recovered from the contributor parties, any of those contributor parties may, without prejudice to that contributor party's defence, make an offer to another contributor party, to contribute, to a specified extent, to the amount of the debt or damages.

(2) If an offer is made by a contributor party (the ***first contributor party***) and not accepted by another contributor party, and the first contributor party obtains a judgment against the other contributor party more favourable than the terms of the offer, then, unless the Court otherwise orders, the first contributor party is entitled to an order that the contributor party who did not accept the offer pay the costs incurred by the first contributor party—

(a) before 11.00 a.m. on the second business day after the offer was served—on the ordinarily applicable basis; and

(b) after the time referred to in paragraph (a)—on an indemnity basis.

26.11 Transitional

Order 26 of Chapter I as in force immediately before 1 September 2013 continues to apply to any offer of compromise served under Part 2 or Part 3 of that Order before that date.

Part 3—Offer to compromise on appeal

26.12 Appeal to Court of Appeal

(1) Where a copy of—

(a) an application for leave to appeal;

(b) a notice of appeal to the Court of Appeal;

(c) an application for leave to cross-appeal; or

(d) a notice of cross-appeal to the Court of Appeal—

has been served, a party may serve on another party an offer to compromise the application, appeal or cross-appeal (as the case may be) on the terms specified in the offer.

(2) The offer may be on terms that take into account any application, appeal or cross-appeal of the other party.

(3) Where in relation to a matter being an application for leave to appeal, an appeal, an application for leave to cross-appeal or a cross-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 matter 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 matter no less favourable to that party than the terms of the offer—

the Court of Appeal shall take those things, and also the stage at which the offer was made, into account in determining what order for costs to make in respect of the matter or, where appropriate, in respect of the matter 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 was served pay the costs of the party who made the offer, taxed on a basis other than the ordinarily applicable basis—

(a) from the commencement of the matter;

(b) from the day the offer was served; or

(c) from any other time that the Court thinks fit.

(5) Unless the offer to compromise 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 matter has been determined save as to costs.

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"; 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 an 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 to be filed in the Court shall—

(a) be in pdf;

(b) be fully text searchable;

(c) have consecutive page numbering that corresponds with the display page numbers of the pdf viewer;

(d) be capable of being printed on paper on the size known as International Paper Size A4;

(e) have a left hand margin of at least 25 millimetres and a top margin of 30 millimetres kept clear;

(f) have a space kept clear at the top of the page of at least 55 millimetres and 75 millimetres from the right-hand side; and

(g) have double spacing between the lines.

(2) The text of a document shall be printed or typewritten and clear, sharp and legible.

(3) Subject to Rule 27.02(5) and (6), the heading of the document shall—

(a) be indorsed on the first page of the document; and

(b) be followed immediately by a short description of the document.

(4) The heading shall occupy a space at the top of the first page of the document not exceeding 100 millimetres in depth.

(5) The description of the document, in the case of an affidavit, shall include the name of the deponent.

(6) A document shall also be indorsed on the first page 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, the following particulars—

(i) the name, address, telephone number and code reference of the solicitor's firm; and

(ii) the name and e-mail address of an individual in the firm to whom reference can be made in respect of the proceeding; and

(d) if the party or person on whose behalf the document is filed is acting without a solicitor, the name, address, telephone number and email address of the party or other person on whose behalf the document is filed.

(7) The indorsements referred to in paragraph (6) shall occupy a space immediately following the description of the document and not exceeding 50 millimetres in depth.

(8) The Court may require any document to be prepared in any manner it thinks fit.

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, supply that party with a copy 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.

* * * * *

Note

There is no Rule 27.06. See Order 28.

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, sealing and inspection of documents

Part 1—Filing

28.00 Application of this Order

(1) This Order applies to documents to be filed in the Court in any proceeding to which this Chapter applies.

Notes

1 See Order 1A of Chapter III for filing a document to which Chapter III applies.

2 A document under Order 6 of Chapter VI is filed in the Common Law Division pursuant to this Rule.

3 See Order 2 of Chapter II of the Rules of the Court.

4 See also Order 1A of Chapter VI in relation to filing in RedCrest in criminal proceedings.

(2) Subject to this Order, all documents sought or required to be filed in a proceeding to which this Chapter applies shall be filed in accordance with this Order.

(3) Nothing in this Order affects the filing of originating process pursuant to Rule 5.11(5).

28.01 Definitions

In this Order—

authorised person means a person who has been issued with a username and password to access RedCrest by the Prothonotary or otherwise provided with access to RedCrest;

seal means seal with the seal of the Court.

28.02 How and when a document is filed

(1) A document to be filed in the Court is to be submitted by an authorised person in RedCrest—

(a) in a pdf version; or

(b) in any other form—

(i) in a proceeding in the Trial Division, approved by the Prothonotary; or

(ii) in a proceeding in the Court of Appeal, approved by the Registrar.

(2) A document is filed in the Court when it is sealed by the Prothonotary or the Registrar, as the case requires.

(3) In relation to a proceeding in the Trial Division, the Court may order or the Prothonotary may direct, in relation to any or all documents in a proceeding or part of a proceeding, that the documents be filed in any other manner that the Court or the Prothonotary considers appropriate.

(4) In relation to a proceeding in the Court of Appeal, the Court of Appeal constituted by one or more Judges of Appeal may order, or the Registrar may direct, in relation to any or all documents in a proceeding or part of a proceeding, that the documents be filed in any other manner that the Court or the Registrar considers appropriate.

28.03 Powers of Prothonotary or Registrar

(1) The Prothonotary or the Registrar (in a proceeding in the Court of Appeal) may refuse to seal a document submitted for filing until satisfied that the document—

(a) complies with the Rules; or

(b) complies with an order of the Court.

(2) The Prothonotary or the Registrar may reject a document if the Prothonotary or Registrar considers that—

(a) a document, if it were sealed, would be substantially irregular or constitute an abuse of process; or

(b) there has been a failure to comply with the Rules, an order of the Court or a direction of the Prothonotary or the Registrar after a reasonable opportunity to do so.

(3) If the Prothonotary or the Registrar—

(a) refuses to seal a document; or

(b) rejects the document—

the Prothonotary or the Registrar, as the case requires, shall send an electronic communication to the authorised person or, for filing by a person who is not an authorised person, in writing to that person, advising—

(c) that the document has not been accepted for filing; and

(d) the reason it was not accepted for filing.

(4) Unless the Prothonotary or the Registrar rejects the document under paragraph (2), on sealing, a document is taken to have been filed at the time and on the date it was first submitted for filing in accordance with Rule 28.02.

(5) If the Prothonotary or the Registrar—

(a) fails to seal a document within a reasonable time; or

(b) refuses to seal a document; or

(c) rejects a document—

the Court may—

(d) direct the Prothonotary or the Registrar to seal the document with a filing date, being the date the document was first submitted for filing;

(e) direct the Prothonotary or the Registrar to seal the document with a filing date, being the date the document is so sealed;

(f) if a direction is made under paragraph (d) or (e), make any consequential order or give any direction that it considers appropriate.

(6) For the purposes of paragraph (5), if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal.

28.03.1 Powers of Prothonotary in relation to usernames and passwords

(1) The Prothonotary may—

(a) refuse to issue a person with a username and password;

(b) cancel a username and password;

(c) impose or vary conditions on the use of a username and password.

(2) The Court may give any direction to the Prothonotary that it considers appropriate in relation to any case in which the Prothonotary exercises a power under paragraph (1).

28.03.2 Authentication of judgments and orders

A judgment or an order is authenticated when it is authenticated in accordance with Order 60.

28.03.3 Confidentiality and privacy

(1) The Court may make any order it thinks fit as to confidentiality and privacy in relation to the filing of documents in RedCrest, including directing that particular documents or classes of documents be filed in RedCrest in a redacted form.

(2) For the purposes of paragraph (1), if a direction or order is made by the Court of Appeal, the Court of Appeal may be constituted by one or more Judges of Appeal.

Part 2—Sealing and inspection of Court documents

28.04 Seal of the Court

(1) Any Associate Judge, the Registrar of the Court of Appeal, the Registrar of Criminal Appeals, any other judicial registrar, the Prothonotary, the Registrar of Probates, every associate of a Judge of the Court, every associate of an Associate Judge, any associate of a judicial registrar, any Registrar of a list, any Costs Registrar and any Deputy Costs Registrar shall each have in that person's 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—

(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";

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

(d) the Registrar of the Court of Appeal, the words "Registrar of the Court of Appeal";

(e) the Registrar of Criminal Appeals, the words "Registrar of Criminal Appeals";

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

(g) the Prothonotary, the word "Prothonotary";

(ga) the Registrar of Probates, the words "Registrar of Probates";

(h) an associate of a Judge of the Court, the words "Associate of a Judge of the Court";

(i) an associate of an Associate Judge, the words "Associate of an Associate Judge";

(ia) an associate of a judicial registrar, the words "Associate of a judicial registrar";

(j) a Registrar of a list, the words "Registrar" and the name of the list;

(k) a Costs Registrar, the words "Costs Registrar";

(l) a Deputy Costs Registrar, the words "Deputy Costs Registrar".

(2) Marking a document or a copy of a document with a stamp referred to in paragraph (1) 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.

Note

See also section 76 of the **Constitution Act 1975**.

28.05 Inspection of documents

(1) Subject to this Rule, when the office of the Court is open, any person, on payment of the proper fee, may inspect and obtain a copy of any document filed in a proceeding.

(2) A person not a party may not inspect or obtain a copy of the following documents without leave of the Court—

(a) affidavits;

(b) exhibits to affidavits;

(c) witness statements;

(d) expert reports, including those filed pursuant to Order 33 or Order 44 of these Rules; and

(e) written submissions, outlines of argument and chronologies.

(3) Paragraph (2) does not apply to a document that has been—

(a) read or relied on in open court; or

(b) relied on in an application determined without a hearing.

(4) No person may inspect or obtain a copy of a document which the Court has ordered remain confidential.

(5) 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, or in the case of a document filed in a proceeding in the Court of Appeal, the Registrar of the Court of Appeal, ought to remain confidential to the parties.

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.

29.01.1 Scope of discovery

(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.

(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 the party's 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, by notice for discovery served on any other of those parties, may 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.

29.03 Discovery after notice

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

(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.

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.

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.

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.

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, applies 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, at any stage, may order any party to make discovery of documents.

(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 on 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 on whom a notice to produce is served in accordance with paragraph (1) shall, within 7 days after that service, serve on the party requiring

production a notice appointing a time within 7 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 at a reasonable rate 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, by notice to produce served on that party, may require that party to produce the document for inspection.

(3) Except as provided by paragraph (4), Rule 29.09, with any necessary modification, applies 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

(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, applies 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 of the order 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.

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 unreasonable.

30.03 Statement as to who to answer

Where interrogatories are to be answered by 2 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—

(i) where the party has no information relating to the fact or matter on which to form a belief; or

(ii) 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;

(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 applies, 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.

(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.

(3) A party interrogated shall answer each interrogatory by stating both the question and the answer to that question in the one document.

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.

(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 that person's 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.

(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 7 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, applies 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 of the order 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.

(2) On the tender of the whole or part of an answer to an interrogatory, the Court may look at the whole of the answers and if 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.

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, applies 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, applies 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

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

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

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

(4) The Court—

(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 the person's or the corporation's possession relating to the description of the person concerned;

(b) direct that the examination be held before an Associate Judge.

32.04 Party an applicant

Rule 32.03, with any necessary modification, applies 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, applies where—

(a) the applicant is a party to a proceeding; and

(b) 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.

32.09 Inspection of documents

Rule 29.09, with any necessary modification, applies 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 referred to in Rule 29.09(1).

32.10 Directions as to documents

Rule 29.12, with any necessary modification, applies 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) 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, applies 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 person registered or qualified to be registered under the Health Practitioner Regulation National Law—

(i) to practise in the dentistry profession (other than as a student); and

(ii) in the dentists division of that profession; or

(b) a person entitled to practise dentistry in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, 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 under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student); or

(b) a person entitled to practise medicine in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, 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 person registered or qualified to be registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or

(b) a person who is qualified or registered to practise psychology in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise;

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, on request by the plaintiff whether before or after the plaintiff is examined, shall 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) On 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 on 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.

(2) The plaintiff shall serve the hospital report or medical report—

(a) within 7 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.

(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

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 file a copy of the report for the use of the Court not less than 2 days before the day fixed for trial.

33.11 Medical report admissible

(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 on 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

5 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.

(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

Except 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 that purpose or of a summons for other relief.

(3) The Court, of its own motion, may convene a directions hearing at any time.

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.

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) by order may record any admission or agreement so made.

(2) The Court, by order, may 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.

34.05 Associates may adjourn directions hearings

(1) Where the Court has fixed a time for a directions hearing, including a directions hearing convened on the Court's own motion, the associate of the Judge of the Court, Associate Judge or judicial registrar (as the case requires) who is to conduct the directions hearing or, where the directions hearing is to be conducted within a specialist list, an associate responsible for the specialist list—

(a) may by consent adjourn the directions hearing 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.

(2) If the directions hearing is adjourned under paragraph (1), 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.

(3) Rule 63.22 shall apply to costs reserved under paragraph (1) as if the costs were reserved by order of the Court.

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, by leave of the Court, may 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.

(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, on the application of any other party, may 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, at any stage, may 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—

(a) originating process;

(b) an indorsement of claim on originating process; and

(c) 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) Notwithstanding the expiry of any relevant limitation period after the day a proceeding is commenced, the Court may 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, applies to an application under Rule 14.03(2).

(9) Paragraph (1) does not apply to the amendment of a judgment or an 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 writ or other originating process before service and disallowance of amendment

(1) With leave of the Prothonotary or of the Court, a party may amend a writ or other originating process if—

(a) the writ or other originating process has not been served on the defendant or other party to the proceeding; and

(b) the party seeking to amend files an affidavit stating that service of the original writ or other originating process on the defendant or other party to the proceeding has not occurred.

(2) Each amendment under paragraph (1) shall be made in such a way as to distinguish the amendment from the original writ or other originating process.

(3) Where a party amends a writ or other originating process in accordance with paragraph (1), the Court, on application by any other party made within 21 days after service of the amended writ or other originating process on that party, may—

(a) disallow the amendment; or

(b) allow it either wholly or in part.

36.04 Amendment of pleading and disallowance of amendment

(1) 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.

(2) Where a party amends a pleading in accordance with paragraph (1)(a), the Court, on application by any other party made within 21 days after service of the amended pleading on that party, may—

(a) disallow the amendment; or

(b) 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 an order or an error arising in a judgment or an 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—

(a) the applicant; and

(b) 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—

(a) served on all parties to the proceeding; and

(b) 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.

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, applies 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—Freezing orders

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.

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.

(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.

(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.

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.

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.

(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—

(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.

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.

37A.07 Service

A freezing order—

(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.

Note

An application for a freezing order or an ancillary order may be served on a person who is out of Australia where such service is authorised by or under Part 1 of Order 7: see, in particular, Rule 7.02(d).

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.

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

37B.01 Definitions

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

(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.

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;

(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.

(4) The applicant's solicitor and the independent solicitor must give such undertakings to the Court as the Court considers appropriate.

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.

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.

(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.

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.

37B.08 Service

(1) A search order—

(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.

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 the person is not entitled to act and an information in the nature of quo warranto would, but for paragraph (1), lie against that person, the Court—

(a) may grant an injunction restraining the person from so acting; and

(b) may, if the case so requires, declare the office to be vacant.

Note

A writ of "quo warranto" required a decision maker to show by what authority the person exercised a power.

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 on 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—

(a) may disallow any remuneration claimed by the receiver; and

(b) where the receiver has failed to pay any such amount into court, may 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—

(a) may 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.

(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, at or before the trial of any proceeding, may 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 the deponent's 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

(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 7 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 the person 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.

(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, for the purpose of any proceeding, may make an order for—

(a) the examination of any person before a judicial officer 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.

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 judicial officer, the examiner, on the application of a party to the proceeding, may take the examination of any person not named or described in the order for examination.

(2) Where the examiner is not a judicial officer, the examiner, with the consent in writing of each party to the proceeding, may 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.

41.06 Objection

Where a person being examined before an examiner, not being a judicial officer, 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 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—

(i) the ground for the objection shall be set out in the deposition; and

(ii) 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.

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, if any party so requests, shall 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 the examiner of—

(a) the time occupied in taking the examination; and

(b) 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.

(5) The examiner, unless the Court otherwise orders, shall send any exhibits to the Prothonotary and the Prothonotary shall deal with them as the Court directs.

(6) Paragraphs (3), (4) and (5) do not apply where the examiner is a judicial officer.

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—

(a) on the examination before the examiner; or

(b) 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

(1) Where a person has been required by subpoena to attend before an examiner, not being a judicial officer, 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, at the request of any party, shall give to that party a certificate, signed by the examiner, of the failure or refusal.

(2) On 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, on 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 referred to in subparagraphs (i) and (ii) in accordance with Rule 41.14 or as the Court so orders;

(b) file—

(i) a copy of each of the documents referred to in paragraph (a); and

(ii) an undertaking in accordance with Rule 41.15; and

(c) unless the Court otherwise orders, serve a copy of each of the documents referred to 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—

the 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.

41.20 Directions

Directions under section 8(1) of the Act may be given by an Associate Judge.

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.

Note

There is no Order 41A.

Order 42—Subpoenas

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

(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).

(5) The Prothonotary may issue in RedCrest a subpoena which has been submitted by a party.

42.03 Form of subpoena

(1) A subpoena shall be in accordance with—

(a) Form 42A, for a subpoena to attend to give evidence;

(b) Form 42B, for a subpoena to produce; or

(c) Form 42C, for a subpoena both to attend to give evidence and to produce.

(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.

42.03.1 Alteration of date for attendance or production

(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

(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

(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.

42.06 Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence (a subpoena in Form 42A) or a subpoena both to attend to give evidence and to produce (a subpoena in Form 42C) unless conduct money has been provided 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—

(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

(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 2 clear business 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.

(7) The copy of a document may be—

(a) a photocopy; or

(b) in an electronic form in any of the following electronic formats—

(i) .doc and .docx—Microsoft Word documents;

(ii) .pdf—Adobe Acrobat documents;

(iii) .xls and .xlsx—Microsoft Excel spreadsheets;

(iv) .jpg—image files;

(v) .rtf—rich text format;

(vi) .gif—graphics interchange format;

(vii) .tif—tagged image format; or

(viii) any other format agreed with the issuing party.

42.07 Production otherwise than upon attendance

(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.

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.

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

(1) Unless the Court otherwise orders, the Prothonotary, in the Prothonotary's discretion, may return to the addressee any document or thing produced to the Prothonotary 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.

(3) The addressee of a subpoena which is in accordance with Form 42B or Form 42C must complete the declaration by the addressee provided for in the subpoena.

(4) The completed declaration must be included in the subpoena or copy of the subpoena which accompanies the documents produced under the subpoena.

(5) Subject to paragraph (6), the Prothonotary, upon the expiry of 4 months from the conclusion of the proceeding, may 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.

(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

(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

(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.

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.

Order 42A—Subpoena for production to Prothonotary

42A.01 Application

(1) This Order 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

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

A subpoena under this Order shall be in Form 42AA.

42A.04 Affidavit of service

(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.

(3) A party who serves a copy of a subpoena under this Order shall forthwith file an affidavit of service.

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) 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.

(3) The copy of a document may be—

(a) a photocopy;

(b) in an electronic form in any of the following electronic formats—

(i) .doc and .docx—Microsoft Word documents;

(ii) .pdf—Adobe Acrobat documents;

(iii) .xls and .xlsx—Microsoft Excel spreadsheets;

(iv) .jpg—image files;

(v) .rtf—rich text format;

(vi) .gif—graphics interchange format;

(vii) .tif—tagged image format;

(viii) any other format agreed with the issuing party; or

(c) in any other appropriate form.

(4) Even where a subpoena specifically requires the production of the original, the addressee, with the consent of the issuing party, may produce a copy, instead of the original, of the document required to be produced.

42A.06 Receipt for document

Where a document is produced in compliance with a subpoena under this Order the Prothonotary, if requested to do so, shall give a receipt to the person producing the document.

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

(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 the plaintiff's condition, the plaintiff , before taking objection under paragraph (1), may 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 7 days after the day specified in the subpoena for production of the file or record to the Prothonotary.

42A.09 Procedure after objection

(1) On receiving notice under Rule 42A.07 or 42A.08, the Prothonotary shall refer the subpoena to the Court 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 objection will be heard and that party shall notify the addressee and all other parties accordingly.

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 the Court otherwise orders, by appointment with the Prothonotary, may inspect and take copies of a document produced in compliance with a subpoena under this Order.

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 on 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, in the Prothonotary's discretion, may decline to accede to any application under paragraph (1), unless the Court otherwise orders.

42A.12 Return or disposal of document

(1) Subject to any order of the Court, the Prothonotary—

(a) may in the Prothonotary's discretion return to the addressee any document produced to the Prothonotary in compliance with the subpoena;

(b) shall, on 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 the Prothonotary's 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 the plaintiff's condition, the plaintiff—

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.

(4) The addressee of a subpoena must complete the declaration by the addressee provided for in the subpoena.

(5) The completed declaration must be included in the subpoena or copy of the subpoena which accompanies the documents produced under the subpoena.

(6) Subject to paragraph (7), the Prothonotary, on the expiry of 4 months from the conclusion of the proceeding, may 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.

(7) 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.

42A.13 Production of document at trial

Subject to Rule 42A.12, the Prothonotary, unless otherwise ordered, shall 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.

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

43.00 Definitions for this Order

In this Order—

bundle exhibit means an exhibit containing one or more documents referred to in an affidavit, ordered in the sequence that those documents are referred to;

confidential bundle exhibit means an exhibit containing one or more documents that the party filing the affidavit claims are confidential.

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—

(a) the place of residence of the deponent and the deponent's occupation or, if the deponent has none, the deponent's description; and

(b) that the deponent 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—

(a) the address of the deponent's place of business;

(b) the position the deponent holds; and

(c) the name of the deponent's firm or employer, if any.

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

(5) 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 or affirmed.

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

(7) The person before whom an affidavit is sworn or affirmed shall legibly write, type or stamp below the person's signature in the jurat—

(a) the person's name and address; and

(b) 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 or affirmed that the deponent is illiterate or blind, the person shall certify in or below the jurat that—

(a) the affidavit was read in the person's presence to the deponent;

(b) the deponent seemed to the person perfectly to understand it; and

(c) the deponent made the deponent's signature or mark in the presence of the person before whom the affidavit is sworn or affirmed.

(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.

43.02.1 Affidavit where interpreter required

(1) Where an affidavit is made which requires an interpreter, an accredited interpreter shall include in the jurat of the affidavit, or shall swear or affirm in a separate affidavit, the matters set out in paragraph (2).

(2) The accredited interpreter must verify that—

(a) before sight translating the affidavit, the interpreter—

(i) had read the code of conduct in Form 44AA and agreed to be bound by it; and

(ii) had been given an adequate opportunity to prepare to sight translate the affidavit;

(b) the interpreter sight translated the entire affidavit to the deponent and the deponent then—

(i) informed the person before whom the affidavit is sworn or affirmed through the interpreter that the deponent had understood the interpreter and agreed with the entire contents of the affidavit; and

(ii) swore or affirmed the affidavit in the presence of the interpreter.

(3) In this Rule, ***accredited interpreter*** has the same meaning as it has in Rule 44A.01.

Note

See also the requirements in Rule 44A.06.

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.

(3) Except in relation to an affidavit filed in a proceeding to which Chapter III of the Rules applies, an affidavit that has a bundle exhibit or a confidential bundle exhibit annexed to it shall—

(a) have the pages sequentially numbered from the first page of the affidavit to the last page of the bundle exhibit or the confidential bundle exhibit (as applicable, and if both, whichever is the latter); and

(b) identify, in the body of the affidavit, any reference to a document contained in a bundle exhibit or a confidential bundle exhibit by reference to the page numbers applied to it in accordance with paragraph (a).

43.04 Affidavit by 2 or more deponents

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

43.05 Alterations

(1) Notwithstanding any interlineation, erasure or other alteration in the jurat or body, an affidavit may be filed, unless the Court otherwise orders,

but may not be used without the leave of the Court unless the person before whom it is sworn or affirmed 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 Exhibits

(1) This Rule does not apply to an affidavit filed in a proceeding to which Chapter III of the Rules applies.

(2) Subject to paragraph (3), where one or more documents are referred to in an affidavit, they shall be annexed to the affidavit as a bundle exhibit.

(3) Where one or more documents are referred to in an affidavit and the party filing the affidavit claims that the documents are confidential, they shall be annexed to the affidavit as a confidential bundle exhibit.

(4) A bundle exhibit to an affidavit shall be identified by a certificate annexed to it—

(a) bearing the same heading as the affidavit; and

(b) signed by the deponent and the person before whom the affidavit is sworn or affirmed.

(5) The certificate shall—

(a) be in Form 43A; and

(b) 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 the words "Bundle of documents referred to in the affidavit of" or "Bundle of confidential documents referred

to in the affidavit of" (as applicable) followed by—

(i) the name of the deponent; and

(ii) the date that the affidavit was made.

43.07 Time for swearing

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

43.08 Irregularity

Notwithstanding any irregularity of form an affidavit, with the leave of the Court, may 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.

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 of Order

(1) This Order applies to a proceeding however commenced.

(2) This Order does not apply 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.

(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 clause 3 of the code and deliver a copy for the use of the Court.

* * * * *

(3) If the expert provides to a party a supplementary report, including a report indicating that the expert has changed the expert's 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

Except 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.

(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.

Order 44A—Interpreters

44A.01 Definitions

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

accredited interpreter, in relation to an other language means an interpreter who is accredited, registered or recognised as an interpreter for the language by a recognised agency;

code of conduct means the court interpreters' code of conduct in Form 44AA;

interpret means the process by which spoken or signed language is conveyed from one language (the ***source language***) to another (the ***target language***) orally;

other language means a spoken or signed language other than English;

recognised agency means the National Accreditation Authority for Translators and Interpreters (NAATI);

sight translate means the process by which an interpreter or a translator presents a spoken interpretation of a written text;

translate means the process by which written language is conveyed from one language (the ***source language***) to another (the ***target language***) in written form.

44A.02 When interpreters may be engaged

(1) If the Court is satisfied that a witness cannot understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, questions that may be put to the witness, the witness may give—

(a) oral evidence in the other language that is interpreted into English by an interpreter in accordance with this Order; or

(b) evidence by an affidavit or a statement in English that has been sight translated to the witness by an interpreter in accordance with Rule 44A.06.

Note

Section 30 of the **Evidence Act 2008** provides that a witness may give evidence about a fact through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, questions that may be put about the fact.

(2) The party calling a witness requiring an interpreter is responsible for engaging an interpreter who meets the standards and requirements under this Order.

(3) In any criminal proceeding, the prosecuting agency is responsible for engaging an interpreter who meets the standards and requirements under this Order.

(4) If the Court is satisfied that a party cannot understand and speak the English language sufficiently to enable the party to understand and participate in the proceeding, the Court shall permit the party to use an interpreter who meets the standards and requirements under this Order.

44A.03 Who may act as an interpreter

(1) A person shall not act as an interpreter in a proceeding unless the person—

(a) is currently an accredited interpreter for the spoken or signed language other than English concerned or otherwise satisfies the Court that the person is qualified to act as an interpreter; and

(b) has read and agreed to comply with the code of conduct; and

(c) takes an oath or affirms to interpret accurately to the best of the person's ability.

(2) A person shall not act as an interpreter if the person—

(a) is or may become a party to, or a witness in, the proceeding;

(b) is related to, or has a close personal relationship with, a party or a member of the party's family, or with a witness or potential witness;

(c) has or may have a financial or other interest of any other kind in the outcome of the proceeding, other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of the person's engagement or appointment; or

(d) is or may be unable to fulfil the person's duty of accuracy or impartiality under the code of conduct for any reason including, but not limited to, personal or religious beliefs or cultural or other circumstances.

(3) A person acting as an interpreter shall—

(a) cease to act as an interpreter if the person becomes aware during a hearing of a matter referred to in paragraph (2); and

(b) immediately disclose the matter to the Court.

(4) Despite paragraphs (1) to (3), if it is in the interests of justice, the Court may give permission to a person to act as an interpreter despite not complying with the requirements of those paragraphs if, to the extent practicable—

(a) the Court is satisfied that the person is able to interpret and, if necessary, sight translate accurately to the level the Court considers satisfactory in all the circumstances from the other language into English and from English into the other language; and

(b) the person takes an oath or affirms to interpret accurately to the best of the person's ability; and

(c) the Court is satisfied that the person understands and accepts that, in acting as an interpreter, the person—

(i) is not the agent, assistant or advocate of the witness or the party for which the person is to act as an interpreter; and

(ii) owes a paramount duty to the court to be impartial and accurate to the best of the person's ability; and

(d) the Court directs that the evidence and interpretation be sound recorded for spoken languages and video recorded for signed languages; and

(e) the person is over the age of 18 years.

44A.04 Functions of interpreters

(1) Unless the Court otherwise orders, an interpreter shall—

(a) interpret questions and all other spoken communications in the conduct of the proceeding for the party from English into the other language and from the other language into English; and

(b) subject to paragraph (2), sight translate, whether before or during the course of the witness' evidence, documents shown to the witness.

(2) An interpreter may refuse to sight translate if—

(a) the interpreter considers that the interpreter is not competent to do so; or

(b) the task is too onerous or difficult by reason of the length or complexity of the text.

(3) Unless the Court otherwise orders, an interpreter may not assist a party or the party's legal practitioner in the conduct of the proceeding (including a hearing) except by—

(a) interpreting questions and other spoken or signed communications in connection with the proceeding from English into the other language and from the other language into English; or

(b) sight translating documents in connection with the proceeding from English into the other language and from the other language into English.

44A.05 Code of conduct

(1) An interpreter shall comply with the code of conduct.

(2) Unless the Court otherwise orders, as soon as practicable after an interpreter is engaged or appointed for a proceeding, a copy of the code of conduct is to be provided to the interpreter by—

(a) if an interpreter is engaged by a party, the party; or

(b) as the Court otherwise directs.

(3) Unless the Court otherwise orders, a witness may not give evidence using an interpreter unless the Court is satisfied that the interpreter has read the code of conduct and agreed to be bound by it.

44A.06 Translated evidence

(1) Unless the Court otherwise orders, a party seeking to rely on a translated affidavit who requires an interpreter is not entitled to rely on the affidavit unless it complies with Rule 43.02.1.

(2) Unless the Court otherwise orders, a party seeking to rely on a translated statement of a witness who requires an interpreter is not entitled to rely on the statement unless an accredited interpreter has verified that—

(a) before sight translating the statement to the witness, the interpreter—

(i) had read the code of conduct and agreed to be bound by it; and

(ii) had been given an adequate opportunity to prepare to sight translate the statement;

(b) the interpreter sight translated the entire statement to the witness and the witness then—

(i) informed the person before whom the statement is made through the interpreter that the witness had understood the interpreter and agreed with the entire contents of the statement; and

(ii) where applicable, signed the statement in the presence of the interpreter.

44A.07 Court may give directions concerning interpreters

Without limiting any other power of the Court, the Court, at any time, may give directions concerning all or any of the following matters, having regard to the nature of the proceeding (including the type of allegations made and the characteristics of the parties and witnesses)—

(a) any particular attributes required or not required for an interpreter, including, but not limited to, gender, age or ethnic, cultural or social background so as to accommodate any cultural or other reasonable concerns of a party or the witness;

(b) the number of interpreters required in any proceeding and whether relay interpreting should be used;

(c) establishing the expertise of an interpreter;

(d) the steps to be taken to obtain an interpreter who is an accredited interpreter for the other language concerned or is otherwise qualified to act as an interpreter;

(e) the steps to be taken before permission under Rule 44A.03(4) is given;

(f) what information concerning the proceeding, may be provided to a person in advance of any hearing to assist that person to prepare to act as an interpreter at that hearing, including, but not limited to, pleadings, affidavits, lists of witnesses and other documents;

(g) when, in what circumstances and under what (if any) conditions the information referred to in paragraph (f) may be provided;

(h) whether an interpreter is to interpret the witness' evidence consecutively, simultaneously or in some other way;

(i) other resources, such as dictionaries or other reference works that an interpreter may require to consult in the course of acting as an interpreter;

(j) the length of time for which an interpreter should interpret during a hearing without a break;

(k) security for an interpreter including, where necessary, arrangements to preserve the anonymity of the interpreter;

(l) practical matters concerning an interpreter, such as seating for and the location of the interpreter;

(m) the disqualification, removal or withdrawal of an interpreter, including on the application of the interpreter or any party to the proceeding or on the Court's own motion;

(n) the payment of interpreters;

(o) any other direction the Court considers appropriate.

Order 45—Originating motion

45.01 Application and definitions

(1) This Order applies to any proceeding commenced by originating motion.

(2) In this Order—

judgment includes order.

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 the Court 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 Court.

45.05 Special procedure

(1) In this Rule ***plaintiff*** includes a person who proposes to commence a proceeding by originating motion.

(2) The Court, by order, may —

(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, or an order made, for the relief or remedy sought in the originating motion or otherwise except on application made to the Court, on notice to the defendant in Form 45B.

Order 46—Applications

46.01 Application of this Order

This Order applies to an interlocutory or other application in a proceeding other than an interlocutory or other application in a proceeding in the Court of Appeal.

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.

(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 of summons

A summons shall be in Form 46A.

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, at the request of the party who filed it, may be amended on or before the day for hearing named in the summons to name another day.

(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;

(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;

(c) if the summons is to be heard by the Court constituted by a judicial registrar, by a judicial registrar'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

(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, Associate Judge or judicial registrar (as the case requires) who is to hear the application or, where an application is to be heard within a specialist list, an Associate responsible for the specialist list—

(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.

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 prescribed fees for the purposes of section 24 of the **Juries Act 2000** 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 6.

47.03 Payment of jury fees

(1) A party requiring a proceeding to be tried with a jury shall pay the prescribed fees for the purposes of section 24 of the **Juries Act 2000** to the Prothonotary.

(2) If a proceeding is to be tried with a jury because the defendant so signified by notice in writing, the prescribed fees shall be paid by the defendant to the Prothonotary within 14 days after the date is fixed for the trial of the proceeding.

(3) In case of a default under paragraph (1) or (2), the Court may order that the proceeding be tried without a jury.

Note

See also section 24(5) of the **Juries Act 2000**.

(4) The party requiring a proceeding to be tried with a jury must produce a copy of the receipt for payment of the prescribed fees or other proof of that payment to the associate to the Judge hearing the proceeding—

(a) before the trial commences;

(b) before the trial resumes on each day in relation to which the prescribed fees are payable or, if an order is made under section 24(4) of the **Juries Act 2000**, in accordance with that order.

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, originating motion, notice of appeal or application for leave to appeal.

(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) a Commercial List;

(d) Corporations List;

(e) Intellectual Property List;

(f) Valuation, Compensation and Planning List.

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—

(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.

(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 7 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.

48.04.1 Payment of setting down fees

(1) If not paid earlier, the applicable fee for setting down a proceeding shall be paid at the time of filing a notice of trial.

(2) For the purpose of paragraph (1) the fee shall be paid—

(a) by the plaintiff; or

(b) if Rule 48.04 applies, by the defendant.

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, if it appears to that person to be necessary or desirable, may refer the proceeding to an Associate Judge or a judicial registrar.

(3) On a reference under paragraph (2), the Associate Judge or judicial registrar may make any order or give any direction—

(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—

(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.

(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.

Order 50—References

50.01 Reference to special referee

(1) In any proceeding the Court, subject to any right to a trial with a jury, may 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, on application by a party or by the special referee, may 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 of the receipt of the report 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 3 days' notice to the other party or parties.

50.04 Use of report

The Court, as the interests of justice require, may 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, with or without the consent of any party, may 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, with or without the consent of any party, may 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.

(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.

(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) 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.

(7) The Court or the Costs Court, as the case requires, may order any party to give security for the remuneration of the mediator.

(8) This Rule does not apply to the reference of a proceeding or any part of a proceeding to mediation by—

(a) an Associate Judge under Rule 50.07.1;

(b) a Costs Registrar under Rule 50.07.2;

(c) a Prothonotary or Deputy Prothonotary under Rule 50.07.3; or

(d) a judicial registrar under Rule 50.07.4.

50.07.1 Mediation by Associate Judge

(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—

(a) of the Associate Judge's own motion; or

(b) on the reference of a Judge of the Court or a judicial registrar—

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.

(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.

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 the Costs Registrar's 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.

50.07.3 Mediation by Prothonotary or Deputy Prothonotary

(1) Without limiting Rule 50.07(1), at any stage of a proceeding the Court constituted by a Judge of the Court, an Associate Judge or a judicial registrar, with or without the consent of any party, may order that the proceeding or any part of the proceeding be referred to the Prothonotary or to a Deputy Prothonotary for mediation.

(2) A Prothonotary or Deputy Prothonotary who undertakes a mediation may give any direction with respect to the conduct of the mediation as the Prothonotary or Deputy Prothonotary thinks fit.

(3) Except so far as the Court constituted by a Judge of the Court, an Associate Judge or a judicial registrar otherwise orders, an order for mediation

under this Rule shall not operate as a stay of the proceeding.

50.07.4 Mediation by judicial registrar

(1) Without limiting Rule 50.07(1), at any stage of a proceeding a judicial registrar may, with or without the consent of any party—

(a) of the judicial registrar's own motion; or

(b) on the reference of a Judge of the Court or an Associate Judge—

order that the proceeding or any part of the proceeding be mediated by a judicial registrar.

(2) If a judicial registrar undertakes a mediation, the judicial registrar may give any direction with respect to the conduct of the mediation as the judicial registrar thinks fit.

(3) Except so far as the judicial registrar otherwise orders, an order for mediation under this Rule shall not operate as a stay of the proceeding.

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) The order shall specify either—

(a) that the provisions of the **Commercial Arbitration Act 2011** shall apply, so far as practicable, to the arbitration; or

(b) that the provisions of the International Arbitration Act 1974 of the Commonwealth shall apply, so far as practicable, to the arbitration—

and the order shall have effect accordingly.

(3) The Court may, subject to the provisions of the **Commercial Arbitration Act 2011** or the International Arbitration Act 1974 of the Commonwealth, as the case requires, 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

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 applies, with any necessary modification, as if the assessment were a trial of the proceeding.

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 applies, with any necessary modification, 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

(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 the Associate Judge has determined under paragraph (2) and the application shall not proceed until the order is made.

Order 53—Summary proceeding for recovery of land

53.01 Application of Order

(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.

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 3 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.

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

(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 referred to in 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;

(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—

(i) that the proceeding be stayed for a period specified in the order; and

(ii) 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 under the will or on the intestacy of the deceased or to be beneficially entitled under the trust—

(i) 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

(ii) 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.

(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.

(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 applies, with any necessary modification, 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 filing an originating motion in Form 5G 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.

(5) Without limiting paragraph (6), at the time of filing the originating motion the plaintiff shall file an affidavit setting out the acts, facts, matters and circumstances relied upon in support of the plaintiff's claim.

(5.1) There shall be included as exhibits to the affidavit—

(a) a copy of any judgment, order, conviction, determination or decision in respect of which relief is sought; and

(b) a copy of any reasons given for any such judgment, order, conviction, determination or decision—

or their absence as exhibits shall be accounted for in the affidavit.

(6) 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.

Note

At common law, the remedies referred to in paragraph (1) were:

A writ of certiorari set aside a decision made contrary to the law.

Mandamus was an order compelling or directing a lower court or an administrative decision maker to correctly perform mandatory duties.

A writ of prohibition prohibited a decision maker from commencing the performance of an unlawful act or continuing to perform an unlawful act.

A writ of quo warranto required a decision maker to show by what authority the person exercised a power.

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.

56.03 Service of originating motion and of summons for directions

The plaintiff shall serve the originating motion and a copy of the affidavit referred to in Rule 56.01(5), together with a summons for directions under Rule 56.04(3), on each defendant as soon as practicable after the filing of the originating motion and the filing of the summons for directions.

56.04 Appearance and summons for directions

(1) Rules 45.01, 45.02 and 45.03 apply to an originating motion under this Order, but Rules 45.04 and 45.05 do not so apply.

(2) Where a defendant has filed an appearance pursuant to Order 8, no judgment shall be given for the relief or remedy sought except on application by the plaintiff on further notice to that defendant.

(3) As soon as practicable after the filing of the originating motion, and in any event no later than seven days after the originating motion has been filed, the plaintiff shall apply on summons for directions.

(4) The application for directions is taken to be made when the summons is filed.

(5) Subject to this Rule, Order 46 applies, with any necessary modifications, to an application for directions under this Rule.

56.05 Directions generally

The Court, on application or on its own motion, may conduct a directions hearing in the proceeding at any time.

56.06 Stay

(1) The Court, at any time, may stay the decision or action the subject of the proceeding in order to ensure the effective exercise of the Court's jurisdiction.

(2) A stay order may be granted on such terms, and subject to such conditions and limitations, as the Court thinks fit.

Order 57—Habeas corpus

57.01 Definition

In this Order, ***writ*** means writ of habeas corpus ad subjiciendum.

Note

A writ of habeas corpus ad subjiciendum is an order to someone detaining a person that the detained person is to be brought before the Court to determine whether there is lawful authority to detain that person or restrict their personal liberty. It is based on the legal Latin and can be translated as "that you have the body to submit to" the court.

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 that person's 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)—

(a) the affidavit may be made by another person; and

(b) that affidavit shall show that the person restrained is unable to make the affidavit.

(8) In an urgent case, the Court may dispense with compliance with any of the requirements of paragraphs (4) to (7).

(9) Order 46 applies, with any necessary modification, 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, police officer 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.

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.

57.05 Service

Where the governor of a prison, a police officer 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) affects 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 for it.

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 applies, with any necessary modification, to an application under this Rule.

(3) Nothing in paragraph (1) limits 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.

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.

Note

A writ of ne exeat colonia is an equitable writ restraining a person from leaving the jurisdiction of the Court or the State which may be issued to ensure compliance with a court order. In legal Latin it means "that the person not depart".

(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.

Order 58—Appeals from lower jurisdictions

Part 1—Appeals from the County Court

58.01 Procedure

(1) An appeal under section 74 of the **County Court Act 1958** from the County Court constituted by a Judge shall be in accordance with Order 64, with any necessary modification.

(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—

(a) shall be heard by a Judge of the Court; and

(b) shall be in accordance with Order 4 of Chapter II, with any necessary modification.

Part 2—Appeals from an associate judge of the County Court

58.02 Appeal from associate judge of the County Court by leave

An application under section 75 of the **County Court Act 1958** for leave to appeal from a judgment or order of the County Court constituted by an associate judge of the County Court, and any such appeal, is to be conducted in accordance with Rules 58.03 and 58.04.

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—

(a) shall be brought on for hearing within 5 days of the judgment or order; and

(b) 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—

(a) shall be by notice in writing to attend before a Judge on the day and at the time named in the notice; and

(b) the notice, together with an affidavit complying with paragraph (3), shall be filed within 5 days after the judgment or order and served on every person interested not less than 2 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 reasons why leave should be granted; 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.

58.04 Hearing of appeal

(1) If leave to appeal is given, the appeal may be heard forthwith or otherwise as the Judge of the Court who gives leave directs.

(2) An appeal shall be by a re-hearing de novo of the application to the associate judge of the County Court but each party, subject to any proper objections to admissibility may—

(a) rely on any affidavit used before the associate judge of the County Court and on any evidence given orally before the associate judge;

(b) by special leave of the Judge of the Court hearing the appeal, rely on an affidavit or oral evidence not used or given before the associate judge of the County Court.

58.05 Stay

Except so far as a Judge of the Court or an associate judge of the County Court otherwise orders, an appeal 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

(1) This Part applies to any appeal and to any application for leave to appeal—

(a) under section 109 of the **Magistrates' Court Act 1989**;

(b) under section 329 of the **Children, Youth and Families Act 2005**;

(c) to which by another Act section 109 of the **Magistrates' Court Act 1989** applies.

(2) This Part does not apply to an appeal, or an application for leave to appeal, under any provision referred to in paragraph (1) if the appeal is to the Court of Appeal from—

(a) the Magistrates' Court constituted by the Chief Magistrate who is a dual commission holder; or

(b) the Children's Court constituted by the Chief Magistrate who is a dual commission holder.

(3) Order 64 applies with any necessary modifications to an appeal or application referred to in paragraph (2).

58.07 Commencement of appeal

Except as otherwise provided by any Act or Rule, an appeal under this Part is commenced 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 signed by the appellant or the appellant's solicitor;

(b) set out or state—

(i) whether leave to appeal is required;

(ia) 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.

(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 7 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 7 days after filing notice of appeal, the appellant shall apply on summons for directions and, if necessary, for leave to appeal.

(2) The application under paragraph (1) 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 5 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 Court is satisfied that the hearing of the summons should be expedited, the Court, on the Court's own motion or on application, may bring the summons on for hearing.

(6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal.

(7) If leave to appeal is required, the Court, as appropriate may—

(a) direct that the application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal; or

(b) hear and determine the application for leave to appeal.

(8) If leave to appeal is refused, the Court shall dismiss the appeal.

(9) The Court 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

An appeal commenced 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.

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.

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 on 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

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**.

58.18 Institution of appeal

(1) An appeal to which this Part applies shall be commenced 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.

(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

(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

(1) The appeal shall be heard and determined by a Judge of the Court.

(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

Except so far as a Judge of the Court otherwise orders, an appeal under section 271 of the **Children, Youth and Families Act 2005** does not operate as a stay of the order appealed from.

* * * * *

Note

There are currently no Rules 58.22 to 58.32.

Part 7—Appeals under Part 7 of the Coroners Act 2008

58.33 Definitions

In this Part—

determination includes a refusal, direction, authorisation, findings, decision or order which is subject to appeal under Part 7 of the **Coroners Act 2008**.

58.34 Commencement of appeal

An appeal under Part 7 of the **Coroners Act 2008** is commenced by filing a notice of appeal in the Trial Division.

58.35 Notice of appeal

(1) A notice of appeal under this Part shall—

(a) be signed by the appellant or the appellant's solicitor;

(b) set out or state—

(i) whether leave to appeal out of time in accordance with section 86 of the **Coroners Act 2008** is required;

(ia) 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) where applicable, the question of law on which the appeal is brought and concisely the grounds of appeal;

(iv) where section 87A of the **Coroners Act 2008** applies, the grounds relied on to satisfy the Court that it is necessary or desirable in the interests of justice that the appeal be allowed;

(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 of 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**.

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.

(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 7 days after filing notice of appeal.

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.

58.39 Directions

(1) In the case of an appeal under Part 7 of the **Coroners Act 2008**, other than an appeal under section 79(1), 79(3), 81(1) or 85, within 7 days after filing notice of appeal, the appellant shall apply on summons—

(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 under paragraph (1) 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 58.37 and any exhibit.

(4) Not less than 5 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 Court is satisfied that the hearing of the summons should be expedited, the Court, on the Court's own motion or on application, may bring the summons on for hearing.

(6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal.

(7) If leave to appeal out of time is required, the Court may, as appropriate—

(a) direct that the application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal; or

(b) hear and determine the application for leave to appeal.

(8) If leave to appeal is refused, the Court shall dismiss the appeal.

(9) The Court may dismiss the appeal if satisfied that—

(a) where applicable, 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.

58.40 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.

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 on the report.

Order 59—Judgments and orders

59.01 General relief

The Court, at any stage of a proceeding, on the application of any party, may 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 an 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), where a judgment or an order requires a person to do an act, unless the Court fixes another time or otherwise orders, that act shall be done within 14 days after service of a copy of the judgment or order on the person.

(2) Where a judgment or an order requires a person to do an act within a fixed time, the Court, by order, may 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.

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.

(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.

(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 an 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 an order so authenticated shall be taken to be a judgment given or an 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;

(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 does 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.

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.

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 on 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;

(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 Rules 77.06 to 77.06.9 shall apply, with any necessary modification, as if the appeal were an appeal from an Associate Judge to a Judge of the Court.

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 brought from a judgment or an order shall not be heard until the judgment or order has been authenticated in accordance with this Order or Rule 28.03.2.

(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 or Rule 28.03.2.

60.02 Mode of authentication

(1) Subject to paragraph (4) and to Rule 28.03.2, 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 judicial officer or, in the case of the Costs Court, the costs registrar giving the judgment or making the order.

(2) A judicial officer or costs registrar 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 judicial officer or costs registrar.

(3) Where a judicial officer or a costs registrar is unable to sign a judgment or an order, it may be signed by another judicial officer or costs registrar, 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, on the request of a party, shall 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, by leave of the judicial officer or, in the case of the Costs Court, the costs registrar who gave the judgment or made the order, may 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.

* * * * *

Note

There is currently no Rule 60.04.

60.05 Recitals in judgments and orders

(1) A judgment or an order shall not include by way of recital any matter not provided for in paragraph (2).

(2) A judgment or an order shall by way of recital specify—

(a) the originating or other process on 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 an order by way of annexure, shall identify the evidence before the Court.

* * * * *

Note

There is currently no Rule 60.06 or Rule 60.07.

60.08 Form of judgment or order

The forms of judgments and orders in Forms 60A to 60L shall be used where appropriate.

60.09 Interpretation

In this Order, ***party*** includes a person having a sufficient interest.

Order 61—Judgment debt instalment order

61.01 Definitions

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

judgment includes a judgment or an order for the payment of money into court;

the Act means the **Judgment Debt Recovery Act 1984**.

(2) In this Order, unless the context or subject matter otherwise requires, 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.

(3) An Associate Judge or a judicial registrar shall be the proper officer of the Court for the purpose of the Act.

61.02 Application under section 6 or 8

(1) An application to an Associate Judge or a judicial registrar 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—

(a) where the judgment debtor is—

(i) a natural person, file an affidavit of the judgment debtor's 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 or a judicial registrar 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 or a judicial registrar under section 6(4) of the Act.

(8) Where a notice of objection under section 6(5) of the Act is filed, an Associate Judge or a judicial registrar shall set the matter down for hearing before a Judge of the Court.

(9) A notice by an Associate Judge or a judicial registrar 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 or with a judicial registrar.

(2) Each party shall execute the agreement in the presence of a witness who shall by the witness' signature attest that execution.

(3) An affidavit or affidavits verifying compliance with paragraph (2) shall be filed with the Associate to an Associate Judge or with a judicial registrar.

(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 or a judicial registrar under section 7(4) of the Act shall be in Form 61L.

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 or a judicial registrar for the issue of a summons under section 17(1) of the Act shall be supported by affidavit evidence of—

(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, an Associate Judge or a judicial registrar for the issue of a warrant for the apprehension of a judgment debtor shall be supported by affidavit evidence of—

(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

(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—

(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 the plaintiff's 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, on the application of a defendant, may 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 and reasonable costs of recording and transcript;

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;

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;

(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;

(b) to costs to be taxed in the Court or the Costs Court under any Act; and

(c) to costs to be taxed in the Costs Court under Rule 63.01.1 or under the rules of, or under any order or decision of, the County Court, the Magistrates' Court or VCAT.

63.01.1 Taxing of costs in proceedings in County Court, Magistrates' Court and VCAT

For the purposes of section 17D(1)(b) of the **Supreme Court Act 1986**, costs in proceedings in the County Court, the Magistrates' Court and VCAT are to be taxed in the Costs Court, save to the extent that the rules of the County Court, the rules of the Magistrates' Court or the rules of VCAT, or any order or decision of the County Court, the Magistrates' Court or VCAT, provides to the contrary.

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, in any proceeding, may exercise its power and discretion as to costs—

(a) at any stage of the proceeding; or

(b) 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.

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 judicial registrar, a Costs Registrar, a Deputy Costs Registrar, the Prothonotary or a Deputy Prothonotary, as the case requires.

63.06 Officers of Court to assist each other

A Costs Judge, a judicial registrar, 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.

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.

(3) Unless the Court otherwise orders, the Costs Court may order a gross sum in lieu of taxed costs—

(a) on application by any party; or

(b) on its own motion.

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 judicial registrar, 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 judicial registrar, Costs Registrar, Deputy Costs Registrar or the Prothonotary, as the case requires, did not fix the proper amount.

(3) Rules 77.06 to 77.06.9, with any necessary modification, apply 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

(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.

63.12 Costs in account

Where the Court orders that an account be taken and the account consists in part of costs, the Court, then or thereafter, may 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, unless the Court otherwise orders, shall 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

Where a pleading is amended (whether with or without leave) the costs of and occasioned by the amendment and the costs of any application for leave to make the amendment are the parties' costs in the proceeding, unless the Court otherwise orders.

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

Where an interlocutory or other application is made in a proceeding and—

(a) no order is made on the application; or

(b) the order made is silent as to costs—

the costs are the parties' costs in the proceeding, unless the Court otherwise orders.

63.20.1 Taxation of costs on interlocutory application or hearing

If an order for costs is made on an interlocutory application or hearing, the party in whose favour the order is made shall not tax those costs until the proceeding in which the order is made is completed, unless the Court orders that the costs may be taxed immediately.

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

Where by order of the Court the costs of any interlocutory or other application, or of any step in a proceeding, are reserved, the reserved costs are the parties' costs in the proceeding, unless the Court otherwise orders.

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.

* * * * *

(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 applies, with any necessary modification, to a barrister as it applies to a solicitor.

* * * * *

Note

There are currently no Rules 63.24 and 63.25.

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.

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) the standard basis;

(b) the indemnity basis; or

(c) such other basis as the Court may direct.

* * * * *

Note

There is currently no Rule 63.29.

63.30 Standard basis

On a taxation on the standard 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 the 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.

63.31 Usual basis of taxation

Except as provided by these Rules or any order of the Court, including the Costs Court, costs shall be taxed on the standard basis.

* * * * *

Note

There are currently no Rules 63.32 and 63.33.

63.34 Costs allowable

(1) Subject to paragraph (3), on taxation, the costs to be paid to a party to whom costs are payable in a proceeding are to be taxed in accordance with Appendix A, unless the Court, or in the absence of a determination of the Court, the Costs Court, otherwise orders.

(2) Paragraph (1) applies whether the basis of taxation is the standard basis or the indemnity basis or any other basis that may have been directed.

(3) The Court or, in the absence of a determination of the Court, the Costs Court, on special grounds arising out of the nature and importance or the difficulty or urgency of the case, may allow an increase, not exceeding 30 per cent, of the maximums set out in Sections 1 and 4 of Appendix A with respect to—

(a) the proceeding generally; or

(b) any application, step or other matter in the proceeding.

Part 3A—Costs for pro bono representation

63.34.1 Definitions for this Part

(1) In this Part, unless the context otherwise requires—

assisted party means a party receiving legal assistance provided by a legal practitioner on a pro bono basis;

legal assistance means any legal services provided in connection with a proceeding in the Court;

pro bono costs order means an order made under Rule 63.34.2(1).

(2) For the purposes of this Part, a legal practitioner provides legal assistance on a ***pro bono basis*** when the legal practitioner provides legal assistance on the basis that—

(a) the legal practitioner is to receive no professional fees from or on behalf of the person to or for whom the legal assistance is provided;

(b) the legal practitioner is to receive such professional fees only to the extent that an order for costs covering such professional fees is made in favour of the assisted party; or

(c) the legal practitioner is to receive such professional fees only to the extent that payment is made in satisfaction or part satisfaction of such an order for costs.

63.34.2 Orders for legal costs

(1) If a legal practitioner provides legal assistance to an assisted party in a proceeding on a pro bono basis, the Court may make, in favour of the assisted party, any order for the recovery of the costs of the legal assistance that the Court might have made had the legal assistance been provided not on a pro bono basis but on the basis that the assisted party was under an obligation to pay for the legal assistance in the ordinary way.

(2) When making a pro bono costs order, the Court may order that a party or other person against whom the pro bono costs order is made pay the costs, including any disbursements incurred by the legal practitioner acting on a pro bono basis, directly to the legal practitioner instead of to the assisted party.

(3) A payment made to a legal practitioner acting on a pro bono basis pursuant to an order made under paragraph (2) satisfies the pro bono costs order in favour of the assisted party to the extent of that payment.

63.34.3 Taxation or assessment and recovery of legal costs

(1) On the taxation or assessment of costs payable to or in favour of an assisted party, the Costs Court shall not disallow an item merely because—

(a) the assisted party is, by reason of being an assisted party, under no obligation to pay, in whole or in part, for the service to which the item relates; or

(b) in the case of a disbursement (whether for counsel's fees or otherwise) the amount of the disbursement has not been paid prior to the taxation or assessment.

(2) Rule 63.43 does not apply to the taxation or assessment of costs payable to or in favour of an assisted party.

Part 4—Costs Court

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.

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.

Part 5—Procedure on 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;

(c) the costs of any proceeding in the County Court, the Magistrates' Court or VCAT which are to be taxed in the Court, including the Costs Court.

(2) Subject to Part 6, this Part applies to the taxation of costs payable to a solicitor by the solicitor's client.

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.

(4) Where an application pursuant to Rule 63.07(3) is made for gross sum costs, paragraphs (1) and (2) do not apply.

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.

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) Every item claimed in the bill of costs shall be numbered consecutively and the items shall be set out in chronological order.

(3) For each item claimed under Section 1 of Appendix A, the bill shall—

(a) state the date on which the work was done;

(b) describe briefly the work done;

(c) name the person who did the work;

(d) state the time taken to do the work;

(e) identify, by reference to the relevant paragraph of Section 1.1 or 1.2 (as the case may be) of Appendix A, the category into which the time spent on the work falls;

(f) state the amount actually charged to the party for the work (not including any GST);

(g) state the amount claimed for the item.

(4) For each item claimed under Section 3 of Appendix A, the bill shall—

(a) state the date on which, or the period during which, the work was done;

(b) describe briefly the work done;

(c) name the person or persons who did the work;

(d) state, so far as available records may allow, the time taken to do the work;

(e) identify, by reference to the relevant paragraph of Section 1.1 or 1.2 (as the case may be) of Appendix A, the category into which, if the party had been charged on the basis of hourly rates, the time spent on the work would have fallen;

(f) state the amount actually charged to the party for the work (not including any GST);

(g) state the amount claimed for the item.

(5) For each item claimed under Section 4 of Appendix A, the bill shall—

(a) state the date on which the work was done;

(b) describe briefly the work done;

(c) name the counsel who did the work;

(d) state the time taken to do the work;

(e) state the actual amount of the fee charged by counsel for the work;

(f) state any applicable circuit fee;

(g) state the amount claimed for the item.

(6) For each item claimed under Section 5 of Appendix A, the bill shall—

(a) state the date on which the witness or the interpreter was relevantly involved;

(b) describe briefly what the witness or the interpreter did;

(c) name the witness or the interpreter;

(d) state the time taken by the witness or the interpreter;

(e) state the amount actually charged by, or paid to, the witness or the interpreter;

(f) state the amount claimed for the item.

(7) For each item claimed under Section 7 of Appendix A, the bill shall—

(a) state the date of the travel;

(b) state the mode and the period or periods of the travel;

(c) name the person travelling;

(d) state the amount claimed for the item.

(8) For each item claimed under Section 8 of Appendix A, the bill shall—

(a) state the date on which the documents were reproduced;

(b) give a general description of the documents;

(c) state the amount claimed for the item.

(9) For each item claimed under Section 9 of Appendix A, the bill shall—

(a) state the date on which the disbursement was incurred;

(b) describe briefly the nature of the disbursement;

(c) identify the payee of the disbursement.

(10) Any matters relied on in relation to the determination of reasonableness under Section 2 of Appendix A shall be set out briefly in a separate part of the bill, except where such matter has already been stated or included in the bill pursuant to another requirement of this Rule.

Rule 63.42.1 inserted by S.R. No. 127/2025 rule 5.

63.42.1 Goods and Services Tax

(1) Notwithstanding anything in these Rules or in Appendix A, if—

(a) an amount referable to tax paid or to be paid under the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth has been included in a charge made to a party to whom costs are payable; and

(b) the charge was for work or a disbursement or another thing relevantly referred to in Appendix A; and

(c) the party has no entitlement to an input tax credit in respect of the amount—

the party may, on taxation, make a claim referable to the amount.

(2) If the party satisfies the Court or the Costs Court of the matters set out in paragraphs (1)(a), (b) and (c), the Court or the Costs Court (as the case may be), in its discretion, may allow the amount, or a part of the amount, on taxation.

(3) The Court or the Costs Court may do so even if, as a result, a maximum otherwise fixed by Appendix A is exceeded.

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.

63.44 Charge of legal practitioner for work done out of Victoria

Where a bill includes a charge for work done out of Victoria by a legal practitioner—

(a) so far as is practicable, the charge shall, if allowed, be allowed in an amount appropriate to the place where the work was done; and

(b) except where the work was done by a legal practitioner who is a member of, or employed by, the same legal practice, the charge shall be shown as a disbursement.

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 does not apply to what is agreed, unless the Costs Court otherwise directs;

(b) Rules 63.44 and 63.45 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) also state specifically and concisely the grounds of objection to each item;

(c) state the amount by which it is contended the item should be reduced; and

(d) state any authority on which the party relies.

(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 7 days before the day for hearing named in the summons.

* * * * *

Note

There is currently no Rule 63.48.

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

(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.

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.

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

(c) such other information as the Costs Court may direct.

(3) Unless the Costs Court otherwise orders, service under paragraph (1)(b) shall be personal.

63.53 Application by person liable to pay

(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.

(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.

(2) The Costs Court may—

(a) order the solicitor to pay costs to any party in respect of the proceedings before the Costs Court;

(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.

63.55 Cross costs

(1) If a party entitled to be paid costs is also liable to pay costs, the Costs Court may—

(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.

(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.

* * * * *

Note

There is currently no Rule 63.57.

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

Subject to Rule 63.60, costs payable to a solicitor by the solicitor's client to which this 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 the standard basis as defined by Rule 63.30.

63.60 Taxation between solicitor and client

(1) Costs not reasonably incurred or not of reasonable amount may nevertheless be allowed to a solicitor against a client 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 as between party and party.

(2) An authority for the purpose of this Rule may be express or implied.

(3) Where the client is a person under disability, references to the client in paragraph (1) include references to the litigation guardian of the client.

63.61 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 the standard basis as defined by Rule 63.30.

* * * * *

Note

There is currently no Rule 63.62.

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 apply, with any necessary modification, to the taxation accordingly.

(2) Part 9 applies, in accordance with its tenor, to the taxation of costs under this Part.

* * * * *

Note

There is currently no Rule 63.64.

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.

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—

(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

This Part applies to any taxation of costs in the Court.

* * * * *

Note

There is currently no Rule 63.69.

63.70 Unreasonable and careless work

(1) The Court by order or the Costs Court on a taxation may disallow the costs of any work which is unreasonable or is done without due care.

(2) Where a document is of an unreasonable length, for the purpose of paragraph (1) work which is unreasonable shall include work for that part of the document which is unreasonable.

(3) A party whose costs for work is disallowed under paragraph (1), unless the Court or the Costs Court otherwise orders, shall pay costs for any work by another party occasioned by the work for which the costs were disallowed.

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—

(a) only costs which were reasonable and proper shall be allowed; and

(b) the Costs Court may assess those costs at a gross sum.

(2) The Costs Court may apportion costs assessed under paragraph (1) among different parties.

* * * * *

Note

There are currently no Rules 63.72 to 63.74.

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.

63.76 Defendants with same solicitor

Where 2 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 unreasonable 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—

(a) includes attendance at a conference with counsel before trial; and

(b) 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.

* * * * *

Note

There is currently no Rule 63.79.

63.80 Retainer of counsel

A retaining fee to counsel shall not be allowed on taxation as between party and party.

* * * * *

Note

There are currently no Rules 63.81 and 63.82.

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.

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Note

There are currently no Rules 63.84 and 63.85.

Part 8—Alternative assessment procedure

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.

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 notify the party filing the bill in writing of the date when the Costs Court is to make an estimate; 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

(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

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.

63.89.1 Costs of taxation—alternative assessment procedure

(1) Subject to paragraph (2), a party who files an objection under Rule 63.88(3) shall pay the costs of taxation of all parties from the date on which the Costs Court notified the parties of the estimate under Rule 63.88(2) unless—

(a) if the party is the party who filed the bill—the costs are taxed at more than 115% of the Costs Court's estimate; or

(b) in any other case—the costs are taxed at less than 85% of the Costs Court's estimate.

(2) The Costs Court may order that paragraph (1) does not apply if—

(a) the party had offered to compromise the costs on terms more favourable than the costs were taxed; or

(b) the conduct of any other party at the taxation added significantly to the duration or cost of the taxation.

Part 9—Review, reconsideration and appeal

63.90 Interpretation

In this Part—

determination does not include—

(a) a referral for disciplinary action under section 3.4.46 of the **Legal Profession Act 2004** as in force immediately before its repeal; or

(b) a referral for disciplinary action under section 202 of the **Legal Profession Uniform Law (Victoria)**;

final determination means a determination that, subject only to any applicable right or power of review, reconsideration or appeal, is final, not interlocutory, preliminary or interim.

63.91 Review under section 17H of the Act of costs registrar's determination

(1) An application by a party under section 17H(1) of the Act to the Costs Court constituted by a judicial registrar for a review of a determination made by a costs registrar may only be made where—

(a) the determination—

(i) is a final determination; and

(ii) has been stated in the form of an order; or

(b) the costs registrar who made the determination or the Costs Court constituted by a judicial registrar or by a Costs Judge is satisfied that there are circumstances that warrant a dispensation from the requirements of paragraph (a) and, by order, grants leave to make the application for review accordingly.

(2) An application or proposed application for review under section 17H(1) of the Act shall be made by notice of application for review.

(3) Whether or not leave to make the application or proposed application for review is or was required or has been sought or granted, the notice of application for review shall be filed and a copy served on each party interested within 14 days of the making of the determination of the costs registrar.

(4) The notice of application for review shall—

(a) state the extent to which the determination of the costs registrar is objected to;

(b) state the grounds of the objection;

(c) state whether leave to make the application or proposed application for review is or was required under paragraph (1)(b) or otherwise;

(d) where leave was required and has been granted, give details of the order granting leave; and

(e) where leave is required and is to be sought from the Costs Court constituted by a judicial registrar, state the grounds relied on for a grant of leave.

(5) Without limiting paragraph (4), if the determination of the costs registrar is or includes a determination—

(a) allowing or disallowing, wholly or in part, any item in a bill; or

(b) allowing some amount in respect of any item—

and the party objects to such allowance or disallowance, the notice of application for review shall include—

(c) a list stating each item in the bill in respect of which the party objects to the allowance or disallowance; and

(d) a statement indicating specifically and concisely, item by item, the grounds of objection to the allowance or disallowance and the allowance or disallowance sought in its place.

(6) Where leave to make a proposed application for review is sought from the Costs Court constituted by a judicial registrar—

(a) the Costs Court constituted by a judicial registrar may, in its discretion, hear and determine the application for leave either in advance of or together with the proposed application for review;

(b) if it refuses leave, it shall, by order, make a determination dismissing the application for leave; and

(c) if it grants leave, then, unless it otherwise orders, the applicant is thereupon taken to have duly made an application for review under section 17H(1) of the Act in accordance with the filed notice of application for review and to have duly served a copy of the notice.

(7) To the extent that an application for review relates to a determination of a kind referred to in paragraph (5)(a) or (b) or relates only to the costs of a proceeding or matter which was heard and determined by the costs registrar—

(a) the review shall be a rehearing, not a review de novo;

(b) the determination may only be challenged for alleged error; and

(c) the same restrictions and principles apply to the review of the determination as would apply to a review of, or an appeal from, a like discretionary determination made by any taxing officer.

(8) Subject to paragraph (7), to the extent that a review under section 17H(1) of the Act relates to a determination of a kind referred to in paragraph (5)(a) or (b), the Costs Court constituted by a judicial registrar—

(a) shall review the taxation upon the objections stated;

(b) may, in its discretion, receive further evidence in respect of any objection;

(c) may confirm, set aside or vary the taxation; and

(d) may make such further or other determination as it considers necessary or appropriate.

(9) Except as provided by paragraphs (1), (4), (5), (6), (7) and (8), a review under section 17H(1) of the Act shall be a review de novo.

(10) The Costs Court constituted by the judicial registrar—

(a) shall state its final determination on the review in the form of an order; and

(b) may, and if required by any party within 7 days after making its final determination on the review shall, give written reasons for its final determination.

(11) A review under section 17H(3) of the Act by the Costs Court constituted by a judicial registrar or by a Costs Judge, on the Costs Court's own motion, of a determination of a costs registrar, shall be commenced within 14 days after the making of the determination of the costs registrar.

(12) Where the Costs Court constituted by a judicial registrar or by a Costs Judge conducts a review under section 17H(3) of the Act, on its own motion, of a determination of a costs registrar, it—

(a) shall state its final determination on the review in the form of an order; and

(b) may, and if required by any party within 7 days after making its final determination on the review shall, give written reasons for its final determination.

63.92 Costs Judge may exercise powers under Rule 63.91

The Costs Court constituted by a Costs Judge may exercise all the powers of the Costs Court constituted by a judicial registrar referred to in Rule 63.91 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 the judicial registrar's duties; or

(c) for any other reason the Costs Court constituted by the Costs Judge considers that it is necessary or appropriate that a Costs Judge should exercise those powers.

63.93 Reconsideration of judicial registrar's determination

(1) Any party interested who objects to a determination made by the Costs Court constituted by a judicial registrar, being a determination—

(a) that was made by the Costs Court constituted by the judicial registrar at first instance, and not on a review of a determination made by a costs registrar and not on a reconsideration under this Rule;

(b) that is a final determination; and

(c) that has been stated in the form of an order—

may apply to the Costs Court constituted by that judicial registrar for a reconsideration of the determination.

(2) An application under paragraph (1) shall be made by notice of application for reconsideration.

(3) The notice of application for reconsideration shall be filed and a copy served on each party interested within 14 days of the making of the determination of the Costs Court constituted by the judicial registrar.

(4) Without limiting paragraph (5), the notice of application for reconsideration shall state—

(a) the extent to which the determination of the Costs Court constituted by the judicial registrar is objected to; and

(b) the grounds of the objection.

(5) If the determination of the Costs Court constituted by the judicial registrar is or includes a determination—

(a) allowing or disallowing, wholly or in part, any item in a bill; or

(b) allowing some amount in respect of any item—

the notice of application for reconsideration shall include—

(c) a list stating each item in the bill in respect of which the party objects to the allowance or disallowance; and

(d) a statement indicating specifically and concisely, item by item, the grounds of objection to the allowance or disallowance and the allowance or disallowance sought in its place.

(6) To the extent that the determination under reconsideration is a determination of a kind referred to in paragraph (5)(a) or (b), the Costs Court constituted by the judicial registrar, on the application for reconsideration—

(a) shall reconsider the taxation upon the objections stated in the notice of application for reconsideration;

(b) may, in its discretion, receive further evidence in respect of any objection;

(c) may confirm, set aside or vary the taxation; and

(d) may make such further or other determination as it considers necessary or appropriate.

(7) Except as provided by paragraphs (4), (5) and (6), the reconsideration shall be a de novo reconsideration.

(8) The Costs Court constituted by the judicial registrar—

(a) shall state its final determination on the reconsideration in the form of an order; and

(b) may, and if required by any party within 7 days after making its final determination shall, give written reasons for its final determination.

63.94 Review under section 17HA of the Act of judicial registrar's determination

(1) An application by a party under section 17HA(1) of the Act to the Costs Court constituted by a Costs Judge for a review of a determination made by a judicial registrar may only be made where—

(a) the determination—

(i) is a final determination; and

(ii) has been stated in the form of an order; or

(b) the judicial registrar who made the determination or a Costs Judge is satisfied that there are circumstances that warrant a dispensation from the requirements of paragraph (a) and, by order, grants leave to make the application for review accordingly.

(2) Subject to paragraphs (1), (3) and (4), an application to the Costs Court constituted by a Costs Judge for a review of a determination made by a judicial registrar may be made whether the determination was made—

(a) at first instance;

(b) on a reconsideration under Rule 63.93;

(c) on a review under section 17H(1) of the Act of a costs registrar's determination; or

(d) on a review under section 17H(3) of the Act by the Costs Court constituted by a judicial registrar, on its own motion, of a costs registrar's determination.

(3) Where a determination made by a judicial registrar (***the original determination***) is the subject of a pending application for reconsideration under Rule 63.93 or has been reconsidered under that Rule, the original determination shall not be made the subject of an application under section 17HA(1) of the Act to the Costs Court constituted by a Costs Judge for a review.

(4) Where a determination of a judicial registrar could have been made, but has not been made, the subject of an application for reconsideration under Rule 63.93, the determination shall not be made the subject of an application under section 17HA(1) of the Act to the Costs Court constituted by a Costs Judge for a review unless the judicial registrar who made the determination or the Costs Court constituted by a Costs Judge, by order, gives leave to make the application for review.

(5) An application or proposed application for review under section 17HA(1) of the Act shall be made by notice of application for review.

(6) Whether or not leave to make the application or proposed application for review is or was required or has been sought or granted, the notice of application for review shall be filed and a copy served on each party interested—

(a) within 14 days of the making of the determination of the judicial registrar; or

(b) where the judicial registrar has given written reasons for the determination or has been duly required pursuant to this Part to give such reasons, within 14 days of the giving of the written reasons.

(7) The notice of application for review shall—

(a) state the extent to which the determination of the judicial registrar is objected to;

(b) state the grounds of the objection;

(c) state whether leave to make the application or proposed application for review is or was required under paragraph (1)(b) or (4) or otherwise;

(d) where leave was required and has been granted, give details of the order granting leave; and

(e) where leave is required and is to be sought from the Costs Court constituted by a Costs Judge, state the grounds relied on for a grant of leave.

(8) Without limiting paragraph (7), if the determination of the judicial registrar is or includes a determination—

(a) allowing or disallowing, wholly or in part, any item in a bill;

(b) allowing some amount in respect of any item; or

(c) confirming, setting aside or varying any such allowance or disallowance—

the notice of application for review shall include—

(d) a list stating each item in the bill in respect of which the party objects to the determination; and

(e) a statement indicating specifically and concisely, item by item, the grounds of objection to the determination, and the determination sought in its place.

(9) Where leave to make a proposed application for review is sought from the Costs Court constituted by a Costs Judge—

(a) the Costs Court constituted by a Costs Judge may, in its discretion, hear and determine the application for leave either in advance of or together with the proposed application for a review;

(b) if it refuses leave, it shall, by order, make a determination dismissing the application for leave; and

(c) if it grants leave, then, unless it otherwise orders, the applicant is thereupon taken to have duly made an application for review under section 17HA(1) of the Act in accordance with the filed notice of application for review and to have duly served a copy of the notice.

(10) Unless the Costs Court constituted by a Costs Judge otherwise orders, to the extent that a review under section 17HA(1) of the Act relates to a determination of a kind referred to in paragraph (8)(a), (b) or (c)—

(a) further evidence in that regard shall not be received; and

(b) the applicant shall not raise any ground of review or objection not stated in the notice.

(11) A review under section 17HA(1) of the Act shall be a review in the nature of a rehearing, not a review de novo, and the determination of the judicial registrar may only be challenged for error.

(12) Subject to paragraphs (10), (11) and (13), on the review, the Costs Court constituted by a Costs Judge may—

(a) receive further evidence on questions of fact, whether by oral examination in court, by affidavit or by deposition taken before an examiner; and

(b) draw inferences of fact.

(13) To the extent that the review relates to a determination of a kind referred to in paragraph (8)(a), (b) or (c), or relates only to the costs of a proceeding or matter which was heard and determined by the judicial registrar, the same restrictions and principles apply to the review of the determination as would apply to a review of, or an appeal from, a like discretionary determination made by any taxing officer.

(14) Subject to paragraphs (1), (4), (8), (10), (11), (12) and (13), on the review, the Costs Court constituted by a 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 determination of the judicial registrar;

(c) remit any objection to the Costs Court constituted by a judicial registrar or a costs registrar for determination or redetermination; and

(d) make such further or other determination as it considers necessary or appropriate.

(15) The Costs Court constituted by a Costs Judge—

(a) shall state its final determination on the review in the form of an order; and

(b) may, and if required by any party within 7 days after making its final determination on the review shall, give written reasons for its final determination.

(16) A review under section 17HA(3) of the Act by the Costs Court constituted by a Costs Judge, on its own motion, of a determination of a judicial registrar is to be commenced within 14 days after the making of the determination of the judicial registrar.

(17) Where the Costs Court constituted by a Costs Judge conducts a review under section 17H(3) of the Act, on its own motion, of a determination of a judicial registrar, it—

(a) shall state its final determination on the review in the form of an order; and

(b) may, and if required by any party interested within 7 days after making its final determination shall, give written reasons for its final determination.

63.95 Reconsideration of determinations of Costs Judge

(1) Any party interested who objects to a determination made by the Costs Court constituted by a Costs Judge, being a determination—

(a) that is made by the Costs Court constituted by a Costs Judge at first instance and not on a review of a determination made by a costs registrar or a judicial registrar and not on a reconsideration under this Rule;

(b) that is a final determination; and

(c) that has been stated in the form of an order—

may apply to the Costs Court constituted by that Costs Judge for a reconsideration of the determination.

(2) An application under paragraph (1) shall be made by notice of application for reconsideration.

(3) The notice of application for reconsideration shall be filed and a copy served on each party interested within 14 days of the making of the determination of the Costs Court constituted by the Costs Judge.

(4) Without limiting paragraph (5), the notice of application for reconsideration shall state—

(a) the extent to which the determination of the Costs Court constituted by the Costs Judge is objected to; and

(b) the grounds of the objection.

(5) If the determination of the Costs Court constituted by the Costs Judge is or includes a determination—

(a) allowing or disallowing, wholly or in part, any item in a bill; or

(b) allowing some amount in respect of any item—

the notice of application for reconsideration shall include—

(c) a list stating each item in the bill in respect of which the party objects to the allowance or disallowance; and

(d) a statement indicating specifically and concisely, item by item, the grounds of objection to the allowance or disallowance and the allowance or disallowance sought in its place.

(6) To the extent that the determination under reconsideration is a determination of a kind referred to in paragraph (5)(a) or (b), the Costs Court constituted by the Costs Judge, upon the application for reconsideration—

(a) shall reconsider the taxation upon the objections stated in the notice of application for reconsideration;

(b) may, in its discretion, receive further evidence in respect of any objection;

(c) may confirm, set aside or vary the taxation; and

(d) may make such further or other determination as it considers necessary or appropriate.

(7) Except as provided by paragraphs (4), (5) and (6), the reconsideration shall be a de novo reconsideration.

(8) The Costs Court constituted by the Costs Judge—

(a) shall state its final determination on the reconsideration in the form of an order; and

(b) may, and if required by any party interested within 7 days after making its final determination on the reconsideration shall, give written reasons for its final determination.

63.96 Appeals to the Trial Division

(1) An appeal under section 17I of the Act to the Trial Division constituted by a Judge of the Court from a determination of the Costs Court constituted by a Costs Judge may only be brought where—

(a) the determination of the Costs Court constituted by a Costs Judge—

(i) is a final determination; and

(ii) has been stated in the form of an order; or

(b) the Costs Judge who made the determination or the Trial Division constituted by a Judge of the Court is satisfied that there are circumstances that warrant a dispensation from the requirements of paragraph (a) and, by order, grants leave to appeal accordingly.

(2) Subject to paragraphs (1), (3) and (4), an appeal under section 17I of the Act from a determination of the Costs Court constituted by a Costs Judge may be brought whether the determination was made—

(a) at first instance;

(b) on a reconsideration under Rule 63.95;

(c) in a case where, under Rule 63.92, the Costs Court constituted by a Costs Judge has exercised the power of the Costs Court constituted by a judicial registrar to conduct a review, under section 17H(1) of the Act, of a determination of a costs registrar;

(d) on a review under section 17H(3) of the Act by the Costs Court constituted by a Costs Judge, on its own motion, of a costs registrar's determination;

(e) on a review under section 17HA(1) of the Act of a judicial registrar's determination; or

(f) on a review under section 17HA(3) of the Act, on the Cost Court's own motion, of a judicial registrar's determination.

(3) Where a determination of the Costs Court constituted by a Costs Judge (***the original determination***) is the subject of a pending application for reconsideration under Rule 63.95 or has been reconsidered under that Rule, the original determination shall not be made the subject of an appeal under section 17I of the Act.

(4) An appeal may not be brought under section 17I of the Act from a determination of the Costs Court constituted by a Costs Judge if the determination could have been made, but has not been made, the subject of an application for reconsideration under Rule 63.95, unless the Costs Court constituted by that Costs Judge or the Trial Division constituted by a Judge of the Court, by order, gives leave to appeal.

(5) For the avoidance of doubt—

(a) nothing in Rules 77.06 to 77.07 applies to an appeal under section 17I of the Act; and

(b) an appeal under section 17I of the Act shall be brought and conducted subject to and in accordance with this Rule and Rules 63.97 to 63.106.

63.97 Appeal to be brought by notice of appeal

An appeal or proposed appeal under section 17I of the Act from a determination of the Costs Court constituted by a Costs Judge to the Trial Division constituted by a Judge of the Court is to be brought by notice of appeal.

63.98 Time for notice of appeal

Whether or not leave to appeal is or was required or has been sought or granted, the notice of appeal shall be filed and a copy served on each party interested—

(a) within 14 days after the making of the determination of the Costs Court constituted by a Costs Judge; or

(b) where the Costs Court constituted by a Costs Judge has given written reasons for the determination or has been duly required pursuant to this Part to give such reasons,

within 14 days of the giving of the written reasons.

63.99 Contents of notice of appeal

(1) The notice of appeal shall—

(a) state the extent to which the determination of the Costs Court constituted by a Costs Judge is objected to;

(b) state the grounds of appeal;

(c) state whether leave to appeal is or was required under Rule 63.96(1)(b) or (4) or otherwise;

(d) where leave to appeal was required and has been granted, give details of the order granting leave; and

(e) where leave to appeal is required and is to be sought from the Trial Division constituted by a Judge of the Court, state the grounds relied on for a grant of leave.

(2) Without limiting paragraph (1), to the extent that the appeal or proposed appeal is from a determination—

(a) allowing or disallowing, wholly or in part, any item in a bill;

(b) allowing some amount in respect of any item; or

(c) confirming, setting aside or varying any such allowance or disallowance—

the notice of appeal shall include—

(d) a list stating each item in the bill in respect of which the appellant or proposed appellant objects to the determination; and

(e) a statement indicating specifically and concisely, item by item, the grounds of objection.

63.100 Leave to appeal

Where leave to appeal under Rule 63.96(1) or (4) or otherwise is sought from the Trial Division constituted by a Judge of the Court, the Trial Division constituted by a Judge of the Court—

(a) in its discretion, may hear and determine the application for leave to appeal either in advance of or together with the proposed appeal; and

(b) if it refuses leave, it shall, by order, dismiss the application for leave; and

(c) if it grants leave, then, unless it otherwise orders, the applicant is thereupon taken to have duly brought an appeal under section 17I of the Act in accordance with the filed notice of appeal and to have duly served a copy of the notice.

63.101 Evidence and grounds in appeals against taxation

Unless the Trial Division constituted by a Judge of the Court otherwise orders, to the extent that an appeal under section 17I of the Act is from a determination of a kind referred to in Rule 63.99(2)(a), (b) or (c)—

(a) further evidence in that regard shall not be received; and

(b) the appellant or proposed appellant shall not raise any ground of appeal or objection not stated in the notice of appeal.

63.102 Nature of appeal

(1) An appeal under section 17I of the Act shall be an appeal by way of rehearing, not an appeal de novo, and the determination of the Costs Court constituted by a Costs Judge may only be challenged for error.

(2) Subject to Rule 63.101 and paragraphs (1) and (3), on the appeal, the Trial Division constituted by a Judge of the Court may—

(a) receive further evidence on questions of fact, whether by oral examination in court, by affidavit or by deposition taken before an examiner; and

(b) draw inferences of fact.

(3) To the extent that the appeal relates to a determination of a kind referred to in Rule 63.99(2)(a), (b) or (c), or relates only to the costs of a proceeding or matter which was heard and determined by the Costs Court constituted by a Costs Judge, the same restrictions and principles apply to the appeal as would apply to the review of, or an appeal from, a like discretionary determination made by any taxing officer.

63.103 Powers of the Trial Division

Subject to Rules 63.101 and 63.102, on the appeal, the Trial Division constituted by a Judge of the Court may—

(a) exercise all the powers and discretions of the Costs Court with respect to the subject matter of the appeal;

(b) confirm, set aside or vary the determination;

(c) remit any objection to any item in a bill to the Costs Court constituted by a Costs Judge or by a judicial registrar or by a costs registrar for determination or redetermination; and

(d) make such further or other determination as it considers necessary or appropriate.

63.104 Stay

Except so far as the Costs Court constituted by a Costs Judge or the Trial Division constituted by a Judge of the Court otherwise orders, neither an appeal under section 17I of the Act nor an application for leave to appeal under that section shall operate as a stay of execution or of proceedings under any determination of the Costs Court to which the appeal or application for leave to appeal relates.

63.105 Cross-appeal

(1) Subject to Rule 63.106, a respondent to an appeal under section 17I of the Act or to an application for leave to appeal under that section who desires to appeal or to seek leave to appeal from the determination in question shall do so by—

(a) filing a notice of cross-appeal; and

(b) serving on the appellant or proposed appellant a copy of the notice of cross-appeal—

within 14 days of the service on the respondent of the notice of appeal.

(2) Rules 63.99, 63.100, 63.101, 63.102, 63.103 and 63.104 apply in relation to a cross-appeal or an application for leave to cross-appeal as if it were an appeal or an application for leave to appeal, as the case may be.

63.106 Notice of contention

If a respondent to an appeal under section 17I of the Act or a respondent to an application for leave to appeal under that section does not seek to have the determination actually made by the Costs Court constituted by a Costs Judge set aside or varied, but proposes to contend that it should be affirmed on a ground, whether of fact or law, which—

(a) was not decided;

(b) was erroneously decided; or

(c) was not raised for decision before the Costs Court—

the respondent, not less than 14 days before the day fixed for the hearing of the appeal or the application for leave to appeal (as the case may be) shall file and serve a notice of contention, stating the grounds to be relied on.

Order 64—Appeals and applications to the Court of Appeal

64.01 Definitions

(1) 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 or vary a decision;

(c) an appeal by way of rehearing or judicial review;

(d) a cross-appeal—

and, subject to the **County Court Act 1958**, includes an appeal from the County Court;

decision includes judgment, order, determination, verdict, ruling, finding or declaration;

extension application means an application under Rule 64.08;

notes for guidance means the notes prepared from time to time by the Registrar in accordance with Rule 64.24;

respondent means a person named as a respondent in an application, including for leave to appeal, or a notice of appeal;

written case means the document containing a party's submissions in relation to an application for leave to appeal, an appeal, a cross-application for leave to appeal, a cross-appeal or a notice of contention that must be filed and served as required by this Order or any applicable practice note.

64.02 Commencement of appeal by filing notice of appeal

(1) An appeal to the Court of Appeal is commenced by filing—

(a) a notice of appeal in accordance with Form 64A;

(b) a written case; and

(c) any additional document required by any applicable practice note.

Note

Section 14A of the **Supreme Court Act 1986** provides that any civil appeal to the Court of Appeal requires leave to appeal to be obtained from the Court of Appeal except in the cases specified in section 14A(2) of the Act. See also Rule 64.20.

(2) Each person who was a party to the proceeding or matter in which the decision in question was made and who is affected by the appeal shall be named as a respondent to the appeal.

64.03 Applications, including for leave to appeal

(1) An application for leave to appeal to the Court of Appeal under section 14A or 17A of the Act or under any other Act or otherwise is commenced by filing—

(a) an application in accordance with Form 64A;

(b) a written case; and

(c) any additional document required by any applicable practice note.

(2) Each person who was a party to the proceeding or matter in which the decision in question was made and who is affected by the application for leave to appeal shall be named as a respondent to the application.

(3) An application other than an application for leave to appeal to the Court of Appeal is made by filing—

(a) an application in accordance with Form 64B;

(b) an affidavit in support in accordance with any applicable practice note; and

(c) any additional document required by any applicable practice note.

(4) Each person who is affected by the application shall be named as a respondent to the application.

(5) This Rule does not apply to an application under section 79 of the **Vexatious Proceedings Act 2014**.

Note

See Part 5 of Order 83.

64.04 Contents of application for leave to appeal or notice of appeal

An application for leave to appeal or a notice of appeal shall—

(a) identify the decision to which the application for leave to appeal relates or the decision appealed, as the case may be;

(b) state whether leave is required and—

(i) if not, state why; and

(ii) where leave is required, whether an oral hearing is requested;

(c) in the case of a notice of appeal, set out specifically and concisely—

(i) the grounds of appeal; and

(ii) if the appeal is in the nature of an appeal on a question of law, the question or questions of law on which the appeal is brought;

(d) in the case of an application for leave to appeal, set out specifically and concisely—

(i) the reasons why leave should be granted;

(ii) the proposed grounds of appeal if leave were granted; and

(iii) if the proposed appeal is in the nature of an appeal on a question of law, the question or questions of law on which the appeal is proposed to be brought;

(e) state the decision sought in place of that to which the application or appeal relates;

(f) set out any extension of time requested;

(g) state whether the whole or part only and which part of the decision is sought to be appealed or is being appealed;

(h) state whether a stay is requested;

(i) state whether the application for leave to appeal or the appeal is urgent, and if so, the reasons for the urgency;

(j) identify each party or person on whom it is proposed to serve the application for leave to appeal or the notice of appeal; and

(k) provide the applicant's or appellant's address for service in accordance with these Rules, including an active email address if available.

64.05 Time for filing application for leave to appeal or notice of appeal

(1) An application for leave to appeal or, where leave to appeal is not required, a notice of appeal and the other required documents shall be filed—

(a) subject to paragraph (ab), within 42 days after the decision to which the application or appeal relates was made;

(ab) for the following decisions, within 28 days after the decision to which the application or appeal relates was made—

(i) a decision in an application under section 459G of the Corporations Act;

(ii) a decision concerning an extension of time;

(iii) a decision concerning discovery, including preliminary discovery;

(iv) a decision concerning joinder, removal or substitution of a party;

(v) a decision concerning amendment or striking out of pleadings;

(vi) a decision concerning summary dismissal;

(vii) a decision concerning summary judgment;

(viii) a decision concerning dismissal of, or refusal to dismiss, a proceeding for want of prosecution;

(ix) a decision concerning security for costs;

(x) a decision concerning the stay of part of a proceeding;

(xi) a decision concerning an injunction, including an interlocutory injunction, a freezing order or a search order;

(xii) a decision concerning a stay of execution of a judgment;

(xiii) a decision concerning recusal;

(b) within such further time as the Court of Appeal or the Registrar may allow; or

(c) in the case of a decision of a Judge of the Trial Division, within such further time as that Judge or another Judge of the Trial Division may, before the expiry of the applicable period referred to in paragraph (a) or (ab), allow.

(2) If leave to appeal is required, and a notice of appeal is filed before leave has been granted, any respondent may apply to the Court of Appeal for an order dismissing the appeal as incompetent under Rule 64.33.

(3) This Rule does not apply to an application under section 79 of the **Vexatious Proceedings Act 2014**.

Note

See Part 5 of Order 83.

64.06 Service of applications, notices of appeal and related documents

(1) In the case of an application for leave to appeal or an appeal, the applicant or appellant shall serve on each respondent—

(a) a copy of the application for leave to appeal or notice of appeal;

(b) a copy of the written case of the applicant or appellant; and

(c) a copy of any additional document filed at the time of commencing the application for leave to appeal or appeal.

(2) Notwithstanding paragraph (1), notice need not be given of an application for leave to appeal or a notice of appeal from a decision refusing an application made without notice to any person, unless the Registrar or the Court of Appeal otherwise directs.

(3) In the case of an application other than an application for leave to appeal, the applicant shall serve on each respondent to the application—

(a) a copy of the application;

(b) a copy of the affidavit in support; and

(c) a copy of any additional document filed at the time of commencing the application.

(4) A copy of an application, including for leave to appeal, notice of appeal, written case or other document which is required by this Rule or by another provision of this Order or by any applicable practice note to be served may be served—

(a) on a person or party personally;

(b) at the person's or party's address for service under these Rules, including Rule 1.19; or

(c) at the address for service in the proceeding or matter which is the subject of the application or appeal.

(5) Within 5 days after service, the applicant or appellant shall file a list, in accordance with Form 64C, signed by the applicant or appellant or on behalf of the applicant or appellant, that identifies—

(a) each party or person on whom the relevant documents have been served;

(b) the address of each person served (including email, if available); and

(c) the date of that service.

(6) The Court of Appeal or the Registrar may direct that a copy of an application, including for leave to appeal, notice of appeal, any written case and any other document required by this Order or any applicable practice note be served on any person, whether or not a party to the proceeding.

64.07 Time for service of application, including for leave to appeal, or notice of appeal

Except where this Order otherwise provides, the time for service in accordance with Rule 64.06 shall be—

(a) as soon as practicable after the application or notice of appeal is filed, but not later than 5 days after it is filed; or

(b) within such shorter or longer time as the Court of Appeal or Registrar may specify.

64.08 Extension of time to file or serve application, including for leave to appeal, or notice of appeal

(1) The Court of Appeal or the Registrar may extend the time to file or serve an application, including for leave to appeal, or a notice of appeal, including after the time for filing or service has expired.

(2) An application to extend the time for filing or serving an application, including for leave to appeal, or a notice of appeal is made by filing—

(a) an application in accordance with Form 64B;

(b) an affidavit in support in accordance with any applicable practice note; and

(c) any additional document required by any applicable practice note.

(3) Where the application is to extend the time for filing, or for filing and serving, an application for leave to appeal or a notice of appeal—

(a) the extension application shall be filed at the same time as the application for leave to appeal or notice of appeal and the written case and other documents required by Rule 64.02 or 64.03, as the case may be, are filed; and

(b) a copy of the extension application and of the affidavit in support and of any additional document filed in connection with the extension application shall be served by the applicant or appellant on each respondent at the same time as the documents required by Rule 64.02 or Rule 64.03, as the case may be, are served.

(4) Where the application is only to extend the time for serving an application for leave to appeal or a notice of appeal—

(a) the extension application shall be filed as soon as practicable; and

(b) a copy of the extension application and of the affidavit in support and of any additional document filed in connection with the extension application shall, as soon as practicable, be served by the applicant or appellant on each respondent.

(5) Any respondent to an extension application who opposes the application shall file and serve—

(a) a notice of opposition in accordance with Form 64D;

(b) any affidavit on which the respondent intends to rely in opposition to the application; and

(c) any additional document required by any applicable practice note.

(6) A respondent to an extension application who does not oppose it shall file and serve a notice of intention not to respond or contest in accordance with Form 64E.

(7) A notice under paragraph (5) or (6) shall be filed and served—

(a) within 14 days of service of the extension application; or

(b) within such shorter or longer time as the Court of Appeal or Registrar may specify.

(8) A respondent to an extension application who unreasonably opposes it may be ordered to pay the costs of the extension application.

(9) An extension application is ordinarily to be determined without an oral hearing, unless the Court of Appeal otherwise directs.

(10) Subject to this Rule, Rules 64.06 and 64.07 apply, with any necessary modification, to the service of an extension application.

64.09 Service on non-party

Where an application for leave to appeal or a notice of appeal is served on a person not a party—

(a) that person shall not take any step in the application for leave to appeal or appeal without first filing and serving a notice of address for service (including email, if available);

(b) the Court of Appeal may give any judgment or make any order on the application for leave to appeal or appeal as might have been given or made if the person served with the application for leave to appeal or notice of appeal had originally been a party.

64.10 Application for leave to intervene

(1) A person who was not a party to the proceeding or matter in which the decision sought to be appealed or under appeal was made or a person who does not have an independent right to appear or intervene, may apply to the Court of Appeal for leave to intervene in an application for leave to appeal or an appeal.

(2) An application for leave to intervene is made by filing and serving—

(a) an application in accordance with Form 64B;

(b) an affidavit in support in accordance with any applicable practice note; and

(c) any additional document required by any applicable practice note.

(3) The applicant must satisfy the Court of Appeal—

(a) that the applicant's contribution as an intervener will be useful and different from the contribution of the parties;

(b) that the intervention would not unreasonably interfere with the conduct of the application or appeal; and

(c) of any other matter that the Court of Appeal considers relevant.

(4) When giving leave to intervene, the Court of Appeal may specify—

(a) the form of assistance to be given by the intervener;

(b) the manner of participation of the intervener;

(c) the matters that the intervener may address;

(d) whether the intervener's submissions are to be oral, in writing, or both; and

(e) whether any undertaking as to costs should be given, and if so, in what form.

64.11 Documents to be filed and served in response to application, including for leave to appeal, or appeal

(1) Within 28 days after service of an application for leave to appeal or notice of appeal, or within such shorter or longer time as the Court of Appeal or the Registrar may specify, each respondent to the application for leave to appeal or appeal shall file, and shall serve a copy of—

(a) a written case in response and any additional documents required by any applicable practice note; or

(b) a notice in accordance with Form 64E that the respondent does not intend to respond to or contest the application or the appeal.

(2) A party who has filed a notice of intention not to respond or contest referred to in paragraph (1) may apply to the Court of Appeal for leave to withdraw the notice.

(3) An application under paragraph (2) to withdraw the notice shall be accompanied by an affidavit stating—

(a) briefly but specifically the acts, facts, matters and circumstances relied upon in support of the application for leave to withdraw the notice; and

(b) the party's intentions in relation to the further conduct of the proceeding should leave to withdraw the notice be granted.

(4) Within 14 days after service of an application (other than an application for leave to appeal or an application to set aside or vary a dismissal of an application for leave to appeal) or such shorter or longer time as the Court of Appeal or the Registrar may specify, each respondent who opposes the application shall file, and shall serve a copy of—

(a) a notice of opposition in accordance with Form 64D;

(b) any affidavit on which the respondent intends to rely in opposition to the application; and

(c) any additional document required by any applicable practice note.

(5) Within 14 days after service of an application (other than an application for leave to appeal or an application to set aside or vary a dismissal of an application for leave to appeal) or within such shorter or longer time as the Court of Appeal or the Registrar may specify, each respondent who does not oppose the application shall file, and shall serve a copy of, a notice in accordance with Form 64E that the respondent does not intend to respond to or contest the application.

(6) A respondent who has filed a notice of intention not to respond or contest under paragraph (5), without leave, may withdraw the notice, but in

that event, paragraph (4) of this Rule applies to that respondent.

(7) Subject to this Rule, Rules 64.06 (other than paragraph (5)) to 64.08 apply with any necessary modification to the filing and service of a document to which this Rule relates.

64.12 Amendment of application for leave to appeal or notice of appeal or written case

(1) An application for leave to appeal, a notice of appeal or a written case may be amended by leave or direction of the Court of Appeal or of the Registrar—

(a) in the case of an appeal, before the appeal is listed for hearing;

(b) in the case of an application for leave to appeal, before the Court of Appeal has decided that the application for leave to appeal is to be determined without an oral hearing or, if the application is to be listed for an oral hearing, before it is so listed.

(2) Except by leave of the Court of Appeal, an application for leave to appeal, a notice of appeal or a written case may not be amended—

(a) in the case of an appeal, after the appeal has been listed for hearing;

(b) in the case of an application for leave to appeal, after the Court of Appeal has decided that the application is to be determined without an oral hearing or, if the application is to be listed for an oral hearing, after it is so listed.

64.13 Further evidence in application for leave to appeal or appeal

(1) Unless the Court of Appeal otherwise orders, in an application for leave to appeal or an appeal—

(a) oral evidence shall not be adduced; and

(b) evidence which was not before the court or tribunal whose decision is sought to be appealed or is being appealed shall not be relied on.

(2) A party may apply for the Court of Appeal to receive oral evidence or further evidence, as the case may be.

(3) The application shall—

(a) be in accordance with Form 64B;

(b) be filed and served at least 28 days before the hearing of the application or the appeal;

(c) be accompanied by an affidavit stating—

(i) briefly but specifically, the facts on which the party relies;

(ii) the grounds of the application for leave to appeal or the appeal to which the application relates;

(iii) the evidence that the party wants the Court of Appeal to receive; and

(iv) why the evidence was not adduced in the court or tribunal the decision of which is the subject of the application or appeal; and

(d) be accompanied by any additional document required by any applicable practice note.

(4) Where an application is made under paragraph (2), any other party who seeks to adduce further evidence—

(a) shall make an application in accordance with Form 64B; and

(b) shall file and serve the application and an affidavit addressing the requirements of this Rule at least 21 days before the hearing of the application for leave to appeal or appeal.

64.14 Determination of applications

For the purposes of the determination by the Court of Appeal, constituted by one or more Judges of Appeal, of an application for leave to appeal or any other application, the procedures set out in Rule 64.15 may be followed.

Note

See sections 11 and 14D of the Act. See also Rules 64.27, 64.40 and 64.41 below.

64.15 Procedure for determination of application by single Judge of Appeal

(1) An application, including for leave to appeal, may be referred by the Registrar to a single Judge of Appeal to be considered and dealt with under this Rule.

(2) If the single Judge of Appeal considers that it is necessary or desirable to have an oral hearing to deal with the application, the Judge may direct that there be an oral hearing.

(3) The Registrar shall notify each party of a direction under paragraph (2).

(4) Subject to any contrary direction by the single Judge of Appeal, the time for oral argument on an application is limited—

(a) in the case of the applicant, to 15 minutes; and

(b) in the case of any other party (if appearing) to 10 minutes.

(5) On referral by the Registrar under this Rule, a single Judge of Appeal, without an oral hearing or, where paragraph (2) applies, at or after an oral hearing, by order, may—

(a) determine an application for leave to appeal, and—

(i) grant leave to appeal;

(ii) grant leave to appeal on some grounds of appeal and refuse leave to appeal on other grounds of appeal;

(iii) refuse leave to appeal;

(iv) determine that the application for leave to appeal is totally without merit; or

(v) determine any ancillary application or matter, such as for a stay, as the single Judge considers necessary or appropriate;

(b) determine an application other than for leave to appeal;

(c) refer an application, including for leave to appeal, and any ancillary application or matter for determination by the Court of Appeal constituted by 2 or more Judges of Appeal, of whom the referring Judge of Appeal may be one.

(6) As soon as practicable after the Court of Appeal makes an order on the application, the Registrar shall provide to each party a copy of the order by sending a copy to the party's address for service in the proceeding.

64.16 Procedure for determination of application when referred to Court of Appeal constituted by 2 or more Judges of Appeal

(1) If an application, including for leave to appeal, is referred under Rule 64.15(5)(c) to the Court of Appeal constituted by 2 or more Judges of Appeal, the Court of Appeal so constituted, by order, may exercise—

(a) any power set out in Rule 64.15(5); or

(b) any other power that a single Judge of Appeal would have in relation to the application.

(2) As soon as practicable after the Court of Appeal makes an order on the application, the Registrar shall provide a copy of the order to each party by sending the copy to the party's address for service in the proceeding.

64.17 Finality of dismissal of application for leave to appeal after oral hearing

Where an application for leave to appeal is determined and dismissed by the Court of Appeal, however constituted, following an oral hearing there is no right to apply to the Court to have the dismissal set aside or varied.

64.18 Application to set aside or vary dismissal of application for leave to appeal

(1) Where an application for leave to appeal has been determined and dismissed by an order of the Court of Appeal, however constituted, without an oral hearing, any application to the Court of Appeal under section 14D(2) of the Act to have the order for dismissal set aside or varied shall be made by filing an application in accordance with Form 64F.

Note

Section 14D(3) of the Act provides that if the Court of Appeal dismisses an application for leave to appeal without an oral hearing and has determined that the application is totally without merit, the applicant has no right to apply to have the dismissal set aside or varied.

(2) The application shall be filed within 10 days of the delivery to the applicant's address for service of a copy of the order.

(3) The applicant shall serve a copy of the application on each respondent as soon as practicable after the application has been filed.

(4) The application shall be determined on the basis of—

(a) the application, written cases and documents filed by the parties prior to the decision to dismiss the application for leave to appeal; and

(b) any additional documents ordered by the Court of Appeal or the Registrar.

(5) Further material shall not be relied on except with leave of the Court of Appeal.

(6) The Registrar shall fix a hearing date for the application and advise the parties.

(7) Subject to any contrary direction by the Court of Appeal, the time for oral argument of the application shall be limited—

(a) in the case of the applicant, to 15 minutes; and

(b) in the case of the other party or parties (if appearing) to 10 minutes.

64.19 Application for leave to appeal may be treated as appeal

Subject to section 11(1A) of the Act and this Order, the Court of Appeal constituted by 2 or more Judges of Appeal may treat the hearing of an application for leave to appeal as the hearing of the appeal.

64.20 No notice of appeal or other initiating or responding documents required if leave to appeal granted

If the Court of Appeal gives leave to appeal, then, unless the Court of Appeal otherwise orders—

(a) the appeal is thereupon taken to have been duly commenced;

(b) the application for leave to appeal shall stand as the notice of appeal;

(c) the written case filed under Rule 64.03(1)(b) shall stand as the written case required under Rule 64.02(1)(b);

(d) any additional documents filed under Rule 64.03(1)(c) shall stand as the additional documents (if any) required under Rule 64.02(1)(c)—

and, for the purposes of Rules 64.06 and 64.11—

(e) a copy of the notice of appeal shall be taken to have been duly served on each respondent; and

(f) the written case in response and any additional documents of the kind referred to in Rule 64.11(1)(a) or the notice not to respond or contest (unless the notice is confined to the application for leave to appeal as distinct from the proposed appeal), as the case may be, filed and served by a respondent in response to the application for leave to appeal shall be taken to have been

duly filed and served by that respondent in response to the notice of appeal.

64.21 Management of applications and appeals

(1) The Registrar may require the parties to participate in, and may conduct any conferences and give any directions with respect to, the preparation for hearing or determination of an application or appeal as the Registrar thinks appropriate for the effective, complete and prompt disposition of the proceeding.

(2) The Registrar may conduct any conference with the parties separately—

(a) if an applicant, appellant or a respondent is not represented; or

(b) if the Registrar otherwise considers it expedient to do so.

(3) The Registrar may decide to manage applications and appeals without the requirement of a conference.

(4) Nothing in this Rule limits any other powers of the Registrar to manage applications and appeals.

64.22 Settling contents of application book and appeal book

(1) The Registrar may give such directions as the Registrar thinks appropriate regarding—

(a) the proposed contents of a leave application book or an appeal book;

(b) the settling of the contents of a leave application book or an appeal book; or

(c) the addition to or variation of the contents of those books.

(2) For the purpose of settling the contents of a leave application book or an appeal book, the Registrar may—

(a) consult the parties;

(b) consult the judge or other judicial officer or tribunal member whose decision is the subject of the application for leave to appeal or the appeal;

(c) give directions and, if the Registrar considers it appropriate, require the attendance of the parties;

(d) on an appeal by leave, direct that the contents of the leave application book comprise the whole or part of the appeal book; and

(e) direct that a party file such copies of documents for the use of the Court of Appeal as the Registrar considers appropriate.

(3) Nothing in this Rule limits any powers of the Registrar under Rule 64.21.

64.23 Costs of compliance with directions

Unless the Court of Appeal or the Registrar otherwise orders, the costs of complying with directions given in accordance with Rule 64.21 or Rule 64.22 shall be costs in the application or the appeal, as the case may be.

64.24 Notes for guidance

Subject to the approval of the President, the Registrar, from time to time, may prepare and publish notes for the guidance of parties on the management of applications and appeals.

64.25 Provision of leave application book and appeal book

(1) Once the contents of a leave application book or an appeal book are settled by the Registrar, an applicant for leave to appeal or an appellant shall prepare, and provide to the Registrar, the leave application book or appeal book in accordance with—

(a) the directions of the Registrar; and

(b) the notes for guidance (if any).

(2) The applicant or appellant shall serve each respondent with a copy of the leave application book or appeal book within the time fixed or allowed for that purpose by the Registrar.

(3) If a leave application book or an appeal book does not comply with the requirements of this Order, the Registrar may require the applicant or appellant to amend it to make it compliant.

(4) Where the Registrar requires an applicant or appellant to amend a leave application book or an appeal book, the applicant or appellant, within the time fixed or allowed by the Registrar, shall provide the amended book (or of the amendments, if the Registrar so directs) to—

(a) each respondent; and

(b) the Registrar.

(5) An applicable practice note may require, or the Registrar may direct, an applicant or appellant to provide to a respondent or to the Registrar further copies of a leave application book or an appeal book, including in electronic form, without charge.

(6) The Registrar may direct a party other than the applicant or the appellant to prepare and serve the leave application book or appeal book and this

Rule applies to that party with any necessary modification.

64.26 Costs of leave application book and appeal book

(1) Subject to paragraph (2) and to Rule 64.23, the costs of preparation of a leave application book or an appeal book in the first instance shall be borne by the applicant or appellant unless the Registrar otherwise directs, including where the Registrar directs that a party other than the applicant or appellant prepare the leave application book or appeal book.

(2) Unless the Court of Appeal otherwise orders, the costs of a leave application book or an appeal book—

(a) shall be costs in the appeal; or

(b) where the application is refused, shall be costs in the application.

64.27 Referral of applications to Court of Appeal

(1) Where an application for leave to appeal or other application is to be considered and dealt with by a single Judge of Appeal in accordance with Rule 64.15, the Registrar shall provide the leave application book, if required, to the Judge of Appeal as soon as reasonably practicable after it has been provided to the Registrar under Rule 64.25.

(2) If the single Judge of Appeal directs that there be an oral hearing of the application, the Registrar shall—

(a) list the application for hearing as soon as reasonably practicable; and

(b) give notice of the hearing to each party.

(3) If the single Judge of Appeal determines to proceed without an oral hearing, the Registrar shall notify the parties of the decision to proceed without an oral hearing.

(4) Subject to paragraph (5), if a single Judge of Appeal refers an application for determination by the Court of Appeal constituted by 2 or more Judges of Appeal in accordance with Rule 64.15(5)(c), the Registrar shall—

(a) list the application for hearing by the Court of Appeal as soon as reasonably practicable; and

(b) give notice of the hearing to each party.

(5) If the Court of Appeal constituted by 2 or more Judges of Appeal in accordance with Rule 64.16 determines to proceed without an oral hearing, the Registrar shall notify the parties of the decision to proceed without an oral hearing.

64.28 Registrar may vacate hearing date or refer for dismissal

(1) If the Registrar is satisfied that an applicant or appellant has not complied with the requirements of this Order, these Rules, any applicable practice note or a Registrar's direction, or otherwise determines that it is appropriate to do so, the Registrar may—

(a) vacate any hearing date set for an application, including for leave to appeal, or an appeal; or

(b) refer an application, including for leave to appeal, or an appeal to a Judge of Appeal or the Court of Appeal constituted by 2 or more Judges of Appeal for the applicant or appellant to show cause why the application or appeal should not be dismissed pursuant to Rule 64.46.

(2) Paragraph (1) does not limit any other powers of the Registrar.

64.29 Discontinuance of application or appeal

(1) By filing a notice of discontinuance in appropriate terms, an applicant or appellant, at any time, may discontinue an application, including for leave to appeal, or an appeal—

(a) wholly; or

(b) with respect to—

(i) any part of the decision which is the subject of the application or appeal;

(ii) any respondent, where there are 2 or more respondents.

(2) An applicant or appellant who files a notice of discontinuance shall serve a copy of the notice on each other party to the application or appeal on the same day.

(3) A notice of discontinuance filed by one applicant or appellant does not affect any other applicant or appellant in the matter.

(4) Unless the Court of Appeal constituted by one or more Judges of Appeal otherwise orders or the parties otherwise agree, an applicant or appellant who, under paragraph (1)(a), has filed a notice of discontinuance of the whole of an application or appeal shall pay the costs of each party to the application or appeal.

(5) Where, under paragraph (1)(b), an applicant or appellant discontinues an appeal with respect to part only of the decision which is the subject of the application or appeal, the Court of Appeal constituted by one or more Judges of Appeal may make such order as to costs in relation to the partial discontinuance as it sees fit.

(6) Unless the Court of Appeal constituted by one or more Judges of Appeal otherwise orders or the relevant parties otherwise agree, where an applicant or appellant has, under paragraph (1)(b)(ii), filed a notice of discontinuance of an application or appeal with respect to a particular respondent whereby that respondent wholly ceases to be a party to the application or appeal, the applicant or appellant shall pay the costs of that respondent to the time of the discontinuance.

(7) Notwithstanding the filing of a notice of discontinuance of an application or appeal, the Court of Appeal—

(a) may order that the application or appeal not be discontinued (in accordance with the terms of the notice or at all); and

(b) may make any order as to costs or otherwise that it thinks fit.

64.30 Cross-appeal

(1) Subject to Rules 64.31 and 64.32, a respondent who wishes to appeal from a decision from which an appellant has appealed shall do so by filing—

(a) a notice of cross-appeal in accordance with Form 64A with any necessary modification;

(b) a written case; and

(c) any additional document required by any applicable practice note.

(2) The time for filing a notice of cross-appeal, written case and any additional required document is—

(a) within 28 days after the service or deemed service on the respondent of the notice of appeal; or

(b) within such shorter or longer time as the Court of Appeal or Registrar may specify.

(3) A notice of cross-appeal, written case and any additional required document shall be served on the appellant and any other party to the cross-appeal as soon as practicable after the notice of cross-appeal, written case and any additional required document are filed, but no later than 5 days after they are filed.

(4) Subject to paragraphs (1), (2) and (3), insofar as any provision of this Order applies to appeals, it applies with any necessary modification to cross-appeals.

64.31 Cross-application for leave to appeal

(1) Where an applicant has applied for leave to appeal from a decision, a respondent may seek leave to appeal from that decision by filing—

(a) a cross-application for leave to appeal in accordance with Form 64A with any necessary modification;

(b) a written case; and

(c) any additional document required by any applicable practice note.

(2) The time for filing a cross-application for leave to appeal, a written case and any additional required document is—

(a) within 28 days after the service on the respondent of the application for leave to appeal; or

(b) within such shorter or longer time as the Court of Appeal or Registrar may specify.

(3) A cross-application for leave to appeal, a written case and any additional required document shall be served on the applicant for leave to appeal and

any other party to the cross-application as soon as practicable after the cross-application for leave to appeal, written case and any additional required document are filed but no later than 5 days after they are filed.

(4) Subject to paragraphs (1), (2) and (3), insofar as any provision of this Order applies to applications for leave to appeal, it applies with any necessary modification to cross-applications for leave to appeal.

64.32 Notice of contention

(1) Notwithstanding Rules 64.30 and 64.31, if a respondent to an application for leave to appeal or an appeal does not seek to have the subject decision set aside or varied but proposes to contend that it should be affirmed on a ground of fact or law which was not decided or was erroneously decided or was not raised for decision below—

(a) it is not necessary for the respondent to file a cross-application for leave to appeal or cross-appeal; and

(b) the respondent shall file and serve—

(i) a notice of contention in accordance with Form 64G;

(ii) a written case; and

(iii) any additional document required by any applicable practice note.

(2) A notice of contention, written case and any additional required document shall be filed and served on—

(a) the applicant for leave to appeal or appellant; and

(b) any other party directly affected by the notice of contention.

(3) The time for filing and service of a notice of contention, written case and any additional required document is—

(a) within 28 days after the service on the respondent of the application for leave to appeal or notice of appeal; or

(b) within such shorter or longer time as the Court of Appeal or Registrar may specify.

(4) A notice of contention may be amended with leave of the Court of Appeal.

64.33 Notice of objection to competency of appeal or application

(1) Within 14 days after being served with an application, including for leave to appeal, or being served or being deemed to be served with a notice of appeal, a respondent who objects to the competency of the application or appeal shall file and serve a notice of objection to competency in accordance with Form 64H that, briefly but specifically, states the grounds of the objection.

(2) The applicant or appellant must establish the competency of the application or appeal.

(3) A respondent may apply to the Court of Appeal for the question of competency to be heard and determined before the hearing of the application or appeal.

(4) If a respondent has not filed a notice of objection under paragraph (1), and the application or appeal is dismissed by the Court of Appeal as incompetent, the respondent is not entitled to any costs of the application or appeal, unless the Court of Appeal otherwise orders.

64.34 Effect of cross-application for leave to appeal, cross-appeal and notice of contention

(1) In settling the contents of a leave application book or an appeal book under Rule 64.22, the Registrar shall have regard to any cross-application for leave to appeal, cross-appeal or notice of contention.

(2) Where there is a cross-application for leave to appeal or a cross-appeal and the leave application books or appeal books have not been provided in accordance with Rule 64.25, the respondent may apply to the Registrar for directions.

(3) Where an application for leave to appeal or an appeal is discontinued or is taken to be abandoned—

(a) a respondent who has filed a cross-application for leave to appeal or a notice of cross-appeal may proceed with the cross-application for leave to appeal or cross-appeal; and

(b) the Registrar may give directions for its conduct.

64.35 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.

64.36 Powers of the Court of Appeal

(1) Without limiting Rule 64.12, on an application for leave to appeal or an appeal, the Court of Appeal has the same powers and duties as to amendment or otherwise as the court or tribunal that made the decision the subject of the application for leave or the appeal.

(2) The Court of Appeal has power—

(a) to draw inferences of fact;

(b) to give any judgment and make any order which ought to have been given or made; and

(c) to make any further or other order as the case may require.

(3) Subject to Rule 64.13, the Court of Appeal has power to receive further evidence upon questions of fact—

(a) by oral examination in court;

(b) by affidavit; or

(c) by deposition taken before an examiner.

(4) Where any question arises as to any matter occurring in the proceeding in the court or tribunal that made the decision the subject of the application for leave to appeal or appeal, the Court of Appeal may have regard to—

(a) transcript of that proceeding; and

(b) any other evidence and any other materials as it thinks fit.

(5) Without limiting paragraph (4), the Court of Appeal—

(a) may call for a report from the judge of the court or from the tribunal that made the decision the subject of the application for leave to appeal or appeal; and

(b) if the contents of that report have first been made available to the parties, so far as it thinks fit, may act upon the report.

(6) On an appeal, the powers of the Court of Appeal are not limited by reason of any order made on an

interlocutory application from which there has been no appeal.

(7) Without limiting Rule 64.12, the powers of the Court of Appeal under this Rule may be exercised notwithstanding that—

(a) no application for leave to appeal, appeal, cross-application for leave to appeal or cross-appeal has been commenced in respect of any particular part of the decision the subject of the application for leave to appeal or the appeal or by any particular party to the proceeding in the court or tribunal that made the decision; or

(b) any ground for allowing the application for leave to appeal or the appeal or for affirming or varying the decision the subject of the application or appeal is not specified in an application for leave to appeal, a notice of appeal, a cross-application for leave to appeal or a notice of cross-appeal.

64.37 New trial

(1) On the hearing of an appeal, if 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) Unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been occasioned thereby in the trial, a new trial shall not be granted—

(a) on the ground of misdirection;

(b) on the ground of the improper admission or rejection of evidence; or

(c) because the verdict of the jury was not taken on a question which the trial judge was not asked to leave to it.

(3) If it appears that any substantial wrong or miscarriage referred to in paragraph (2) affects part only of the matter in controversy or some or one only of the parties, the Court of Appeal may—

(a) give final judgment as to part of the matter or as to some or one only of the parties; and

(b) direct a new trial as to the other part only or as to the other party or parties.

(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 the grounds for the new trial, without interfering with the decision on any other question.

(6) A new trial shall not be granted by reason of any ruling—

(a) that the stamp on any document is sufficient; or

(b) that the document does not require a stamp.

(7) The Court of Appeal, in the order granting a new trial, may give all necessary directions for the further conduct of the proceeding.

64.38 Costs

(1) The Court of Appeal may make any order for the whole or any part of the costs of an application or appeal as it thinks fit.

(2) A party may apply to the Court of Appeal for an order—

(a) that the applicant or appellant give security for the costs of the application or appeal, and for the manner, time and terms for giving the security;

(b) that the application or appeal be stayed until security is given; and

(c) that, if the applicant or appellant fails to comply with the order to provide security within the time specified in the order, the application or appeal be dismissed.

(3) An application under paragraph (2) shall be made by filing and serving—

(a) an application in Form 64B;

(b) an affidavit setting out the facts in support of the application; and

(c) any other document required by any applicable practice note.

(4) An order that security be given for the costs of an application or appeal may be made on such terms as the Court of Appeal thinks fit.

(5) Without limiting the powers of the Court of Appeal, an order under paragraph (4) may make provision for any matter set out in paragraph (2), including that security be given by payment into court to the Senior Master or in any other form satisfactory to the Senior Master or Registrar, without further specification.

(6) An application or appeal is stayed if the applicant or appellant fails to comply with an order for security for costs, unless the Court of Appeal orders otherwise.

64.39 Stay of execution

Except so far as the Court of Appeal otherwise orders—

(a) an application for leave to appeal or appeal shall not operate as a stay of execution or of proceedings under the decision appealed from; and

(b) no intermediate act or step shall be invalidated.

64.40 Jurisdiction and powers exercisable by a single Judge of Appeal

In addition to any other power conferred on a single Judge of Appeal, but subject to this Order (including in particular Rule 64.15), a single Judge of Appeal may constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal in or in relation to—

(a) any application to the Court of Appeal, including any application for leave to appeal; and

(b) the making of any order by consent in or in relation to any proceeding in the Court of Appeal, including an order by consent dealing with or disposing of the whole or any part of an application, including for leave to appeal or an appeal.

64.41 Jurisdiction and powers exercisable by 2 Judges of Appeal

In addition to the case of an appeal in respect of which the President has made a determination under section 11(1A) of the Act and in addition to any other power conferred on the Court of Appeal constituted by 2 Judges of Appeal, the Court of Appeal constituted by 2 Judges of Appeal may

exercise all the jurisdiction and powers of the Court of Appeal in or in relation to—

(a) appeals where all the parties consent to the hearing and determination of the appeal by two Judges of Appeal;

(b) appeals from judgments or orders in interlocutory applications;

(c) any application to the Court of Appeal, including any application for leave to appeal; and

(d) the making of any order by consent in or in relation to any proceeding in the Court of Appeal, including an order by consent dealing with or disposing of the whole or any part of an application, including for leave to appeal, or an appeal.

64.42 Powers of and directions given by Associate Judges and Registrar

(1) Without limiting any other power of an Associate Judge or the Registrar, an Associate Judge or the Registrar, at any time, may make procedural orders or give directions in relation to—

(a) any application in the Court of Appeal, including for leave to appeal;

(b) an appeal to the Court of Appeal;

(c) a cross-application for leave to appeal to the Court of Appeal;

(d) a cross-appeal to the Court of Appeal; or

(e) any other proceeding in the Court of Appeal.

(2) An order or direction under paragraph (1) may be made—

(a) of the Associate Judge's or Registrar's own motion; or

(b) on the application of a party.

(3) An Associate Judge or the Registrar may make any order for costs as the Associate Judge or the Registrar thinks fit in relation to the exercise of any power conferred upon the Associate Judge or the Registrar by this Order.

(4) The Court of Appeal, an Associate Judge or the Registrar, with or without the consent of any party, may order that an application for leave to appeal, an appeal, a cross-application for leave to appeal, a cross-appeal or other proceeding in the Court of Appeal be referred to a mediator.

(5) Rules 50.07, 50.07.1, 50.07.3 and 50.07.4 apply with any necessary modification to a proceeding in the Court of Appeal which is referred to a mediator in accordance with paragraph (4).

(6) An Associate Judge or the Registrar, in or in relation to any proceeding in the Court of Appeal, may make any order by consent of all the parties, including any order by consent of all the parties dealing with or disposing of the whole or any part of an application, including for leave to appeal, or an appeal.

(7) Notwithstanding any direction given or order made by an Associate Judge or the Registrar, the Court of Appeal constituted by one or more Judges of Appeal may at any time, of its own motion or on application, give directions or make orders in relation to any application, including for leave to appeal, or appeal before it.

(8) Without limiting paragraph (7), the Court of Appeal constituted by one or more Judges of Appeal may set aside or vary any direction given or order made by an Associate Judge or the Registrar.

(9) Subject to paragraph (10), an application for an order under paragraph (8) shall be dealt with on the basis of the application, written cases (if applicable) and documents filed by the parties prior to the decision of the Associate Judge or the Registrar.

(10) Further material shall not be relied on except with leave of the Court of Appeal.

(11) If an application under paragraph (8) is refused, the party making the application shall pay each opposing party's costs of the application on an indemnity basis, unless the Court of Appeal otherwise orders.

64.43 Further powers of Registrar

(1) The Registrar may refuse to accept for filing any application, including for leave to appeal, notice of appeal or other notice, written case, written case in response, affidavit or other document if the Registrar considers that the document is frivolous or vexatious on its face or by reference to any materials already filed or submitted for filing.

(2) The Registrar may refuse to accept for filing any application, including for leave to appeal, notice of appeal or other notice, written case, written case in response, affidavit or other document if—

(a) it is not complete;

(b) it is not properly signed, if required to be signed;

(c) it is not accompanied by all the documents required by this Order or any applicable practice note; or

(d) any applicable fee has not been paid.

(3) In addition to any other power conferred on the Registrar by the Act or these Rules, the Registrar may—

(a) within the period specified by Rule 64.12(1), determine an application for leave to amend—

(i) a notice of appeal;

(ii) an application;

(iii) an application for leave to appeal; or

(iv) a written case; and

(b) determine an application by a solicitor for leave to file a notice of ceasing to act.

(4) The Registrar's powers under paragraphs (1) and (2) are in addition to, and do not affect Rule 28.03.

(5) The Court of Appeal constituted by one or more Judges of Appeal may direct the Registrar to accept for filing any document which the Registrar has refused to accept under this Rule.

64.44 Exercise of powers and functions of the Court of Appeal by Associate Judge or Registrar

(1) For the purpose of exercising any power or performing any function conferred on an Associate Judge or the Registrar by or under this Order or Rule 2.04(2), the Associate Judge or 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) For the purposes of paragraph (1), the powers of the Court of Appeal to hear and determine all matters or proceedings arising under this Order or Rule 2.04(2) are delegated to the Registrar.

64.45 Application or appeal taken to be abandoned

(1) Without limiting or affecting any power of the Court of Appeal or any order that the Court of Appeal may make in relation to compliance with the requirements of these Rules (including this Order) or compliance with any direction given or order made in or in relation to a proceeding in the Court of Appeal, an application, including for leave to appeal, or an appeal is taken to be abandoned if an applicant or appellant does not—

(a) take any step required to be taken by or under this Order within 30 days after the expiry of the time fixed or allowed by or under this Order;

(b) comply with any direction given or order made by the Court of Appeal (constituted by one or more Judges of Appeal) or by an Associate Judge or by the Registrar within 30 days after the expiry of the time fixed or allowed by the direction or order.

(2) If an applicant or appellant does not provide to the Registrar a leave application book or an appeal book as required or directed by or under Rule 64.25 or does not serve the leave application book or appeal book within the time fixed or allowed by the Registrar, the application or appeal—

(a) is taken to be abandoned; and

(b) may be referred for dismissal under Rule 64.46.

(3) If an application for leave to appeal or an appeal is taken to be abandoned in accordance with paragraph (1) or (2), the applicant or appellant shall pay each respondent's costs of the application for leave to appeal or appeal on an

indemnity basis, unless the Court of Appeal otherwise orders.

(4) Notwithstanding paragraphs (1) and (2)—

(a) the Court of Appeal may at any time order that an application, including for leave to appeal, or an appeal is not taken to be abandoned;

(b) within 28 days after the day on which an application, including for leave to appeal, or appeal is taken to be abandoned, the Registrar may order by consent of all the parties that the application or appeal is not taken to be abandoned.

64.46 Dismissal for want of prosecution or non-compliance

(1) The Court of Appeal constituted by one or more Judges of Appeal may make an order dismissing an application, including for leave to appeal, or appeal for—

(a) failure to comply with an order or direction of the Court of Appeal or of the Registrar;

(b) failure to comply with any provision of these Rules;

(c) failure to attend a hearing relating to the application or appeal; or

(d) want of prosecution.

(2) An order under paragraph (1) may be made—

(a) of the Court of Appeal's own motion; or

(b) on the application of a party.

(3) If an application or appeal is dismissed pursuant to this Rule, the applicant or appellant shall pay each other party's costs of the application or

appeal on an indemnity basis, unless otherwise ordered by the Court of Appeal.

64.47 Expedition

(1) In relation to an application to the Court of Appeal (other than an application for leave to appeal or an application to set aside or vary a dismissal of an application for leave to appeal), where the Court of Appeal constituted by one or more Judges of Appeal is satisfied that injustice would or might be entailed—

(a) in requiring that documents relating to the application be filed in accordance with Rule 64.03(3);

(b) in requiring that copies of documents relating to the application be served in accordance with Rule 64.06; or

(c) in requiring that any notice of the application be given to any party or person—

the Court so constituted may hear and determine the application notwithstanding—

(d) that relevant documents have not been filed in accordance with Rule 64.03(3);

(e) that relevant documents have not been served in accordance with Rule 64.06; or

(f) that no notice of the application has been given to any party or person—

as the case may be, and the Court so constituted may make an order on the application upon such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.

(2) The Court of Appeal constituted by one or more Judges of Appeal may set aside any order made under paragraph (1) on the application of any party or person affected.

Order 65

Note

There is no Order 65.

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;

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).

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

(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 , subject to Rule 66.10, may 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 that person's production before the Court or before an examiner or other person for the purpose of the proceeding and for that person's 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 that person's production before the Court or before an examiner or other person for the purpose of the proceeding and for that person's 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 apply, with any necessary modification, 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 affects 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.

(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.

(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—

(a) whether any and, if so, what debts are owing to the person bound;

(b) whether the person bound has any and, if so, what other property or means of satisfying the judgment; and

(c) 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, on application by a person entitled to enforce a judgment, may 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 a judicial officer.

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—

(a) on the person bound; and

(b) on any other person ordered to attend or to produce any document or thing.

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.

67.06 Record of examination

The judicial officer 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;

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 6 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;

(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 the person liable 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.

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) submits for filing a form of the warrant with the Court; and

(b) 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.

(3.1) For the purposes of section 52(2) of the **Transfer of Land Act 1958**, if the person requesting the issue of a warrant of seizure and sale satisfies the Prothonotary, by evidence on affidavit, that the judgment debtor is the registered proprietor of land referred to in a folio or folios of the Register kept under that Act, then the warrant of seizure

and sale shall include a statement to the effect that that land is affected by the warrant.

Note

See Rule 69.04(3) as to sale of land under a warrant of seizure and sale.

(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)(b) 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, from time to time by order, may 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.

(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 applies, with any necessary modification, 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;

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, the sheriff shall take or sell so much of the property as appears to the sheriff to be sufficient.

(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, as the sheriff thinks fit, may sell the property either by private contract or public auction.

(3) Rule 69.06 does 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

(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 3 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.

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 on 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 taken to be registered under the Co-operatives National Law (Victoria) 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 does 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) applies, 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, on the application of a judgment creditor, may 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, as the case requires—

(i) a debt is due or accruing to the judgment debtor from the garnishee; or

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

(2) Where an application is made for an order under Rule 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 on 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, not less than 7 days before the day for hearing named in the garnishee summons, shall 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, on service of the summons on the garnishee, shall be attached and bound in the hands of the garnishee to the extent of the amount specified in the summons.

(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 , in the event that the debt becomes due or accrues before the day for hearing named in the summons, 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.

(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) on 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 on 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—

(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) Subject to Rule 15.09, 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 of the money 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 7 days before the day for hearing named in the summons.

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;

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 the judgment debtor's employer or, if the judgment debtor has more employers than one, of

each of the judgment debtor's employers;

(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 on 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).

(5) Where the Court considers an application in the absence of the judgment debtor or the judgment debtor's spouse and the Court has before it sufficient evidence in the opinion of the Court on which to specify a protected earnings rate and a normal deduction rate, the Court shall so specify those rates, but where the Court does not have sufficient evidence, the Court, without specifying such rates, may 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, being 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—

(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) a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force; and

(b) a lower normal deduction rate to apply to subsequent pay-days.

(3) An attachment of earnings order shall also specify the protected earnings rate, being the rate below which, having regard to the resources and needs of the judgment debtor and of any other person for whom the judgment debtor 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.

(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—

(a) on the judgment debtor; and

(b) 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 , instead of making any other order, may 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, on the application of the judgment creditor or the judgment debtor, may discharge, suspend or vary the order.

(2) An order suspending or varying an attachment of earnings order shall be served on—

(a) the respondent to the application; and

(b) 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 7 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) on being discharged under Rule 72.10; or

(b) unless the Court otherwise orders, on 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.

(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 7 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 2 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 , forthwith after service of the order, shall 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 , on the application of the person to whom an attachment of earnings order is directed, shall 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.

(3) Paragraph (2) does not apply in respect of any payment made after—

(a) an application is withdrawn; or

(b) an appeal from an order made on the application is abandoned.

72.16 Service

An order or a 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.

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 taken to be registered under the Co-operatives National Law (Victoria) 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) any stock issued by or any funds of or annuity granted by the Commonwealth or by any State of the Commonwealth or any Territory; and

(b) any stock of any corporation registered or formed under any general Commonwealth Act or under any general Act of any State of the Commonwealth or any Territory; and

(c) any dividend or interest payable on any stock referred to in paragraph (a) or (b);

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) on 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) on 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, not less than 7 days before the day for hearing named in the charging summons, shall serve on the judgment debtor and personally on the government or corporation—

(a) the summons; and

(b) 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 on any of those securities—

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 on 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) Subject to Rule 15.09, 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 apply, with any necessary modification, to an application for an order under paragraph (1).

(3) The judgment creditor, forthwith on the making of an order that a summons for an order under paragraph (1) be filed and served, shall 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.

73.12 Stop order for funds in court

(1) The Court may make an order that funds in court, or any part of funds in court, or the income on funds in court, shall not be transferred, sold, delivered out, paid or otherwise dealt with unless notice is first given to the person applying for the order.

(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 Commonwealth Act or under any general Act of any State of the Commonwealth or any Territory.

(2) Any person ("***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 on the stock 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 in the stock 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 on the stock.

(2) The Court may vary or discharge an order made under paragraph (1).

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

(1) 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 the arrest of the respondent.

(2) A warrant for the arrest of the respondent may be issued—

(a) where the arrest is ordered by a Judge of the Court, under the hand of the Judge;

(b) where the arrest is ordered by the Court of Appeal, under the hand of the presiding Judge.

(3) A warrant issued under paragraph (1)(b) may be directed to any one or more of the following—

(a) the sheriff;

(b) a named police officer;

(c) all police officers;

(d) any named person authorised by law to execute a warrant to arrest; or

(e) all persons authorised by law to execute a warrant to arrest.

(4) The warrant may be 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 King 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.

(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, by order, may 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

(1) 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 the respondent's arrest and detention in custody until the respondent is brought before the Court to answer the charge, unless the respondent gives security, as the Court directs, for the respondent's attendance in person to answer the charge and to submit to the judgment of the Court.

(2) A warrant for the arrest of the respondent may be issued—

(a) where the arrest is ordered by a Judge of the Court, under the hand of the Judge;

(b) where the arrest is ordered by the Court of Appeal, under the hand of the presiding Judge.

(3) A warrant issued under paragraph (1) may be directed to any one or more of the following—

(a) the sheriff;

(b) a named police officer;

(c) all police officers;

(d) any named person authorised by law to execute a warrant to arrest; or

(e) all persons authorised by law to execute a warrant to arrest.

(4) The warrant may be in Form 75B.

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.

(1.1) A warrant for the arrest of the person may be issued—

(a) where the arrest is ordered by a Judge of the Court, under the hand of the Judge;

(b) where the arrest is ordered by the Court of Appeal, under the hand of the presiding Judge.

(1.2) A warrant issued under paragraph (1) may be directed to any one or more of the following—

(a) the sheriff;

(b) a named police officer;

(c) all police officers;

(d) any named person authorised by law to execute a warrant to arrest; or

(e) all persons authorised by law to execute a warrant to arrest.

(1.3) The warrant may be in Form 75BA.

(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 the person give security for the person's attendance in person to answer a charge of contempt.

* * * * *

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.

(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 the respondent's 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 4 persons as sequestrators and provide that the sequestrators, or any 2 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—

(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).

Order 77—Authority of Associate Judges

77.01 Authority

(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) Part I and Part IV of the **Administration and Probate Act 1958**;

(ii) sections 3, 4, 5 and 6 of the **Administrative Law Act 1978**;

(iii) sections 126 and 143 of the **Associations Incorporation Reform Act 2012**;

(iiia) the **Civil Procedure Act 2010**;

(iiib) section 143 of the **Confiscation Act 1997**;

(iv) Divisions 1, 1A, 1B and 1C of Part I and section 42E of the **Evidence (Miscellaneous Provisions) Act 1958**;

(v) section 179 of the **Guardianship and Administration Act 2019**;

(vi) sections 5, 6, 7 and 13(1) of the **Instruments Act 1958**;

(vii) sections 49, 84 and 85 of the **Property Law Act 1958** and Part IV of that Act;

(viii) 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;

(xi) Part IV of the **Trustee Act 1958**;

(xii) section 3.4.33 of the **Legal Profession Act 2004** as in force immediately before its repeal, as continued in operation by clause 18 of Schedule 4 to the **Legal Profession Uniform Law Application Act 2014**;

(xiii) section 134AB(30) and (31) of the **Accident Compensation Act 1985**;

(xiv) section 344(6) and (7) of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

(xv) section 90(3) of the **Transfer of Land Act 1958**;

(xvi) sections 9 and 31 of the **Wills Act 1997**;

(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;

(g) any application to stay or dismiss a proceeding commenced by a law practice to recover legal costs where the application is brought on the ground that the proceeding has been commenced in contravention of section 194 of the Legal Profession Uniform Law (Victoria).

77.02 Limitation on authority

(1) Subject to paragraph (2) and Rules 12.12, 22.08(1)(d), 22.22(c), 32.08(3) and 77.01(2)(a), (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) subject to paragraph (d), any proceeding relating to the liberty of the subject;

(d) any criminal proceeding, other than an appeal or an application for leave to appeal to which Order 3A of Chapter VI applies;

(e) any application under section 28 or 54 of the **Vexatious Proceedings Act 2014**;

(f) any application or proceeding under Part 2 or Part 2A of the **Confiscation Act 1997**.

(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

(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 referred to in Rule 77.06;

(d) the trial of the proceeding.

(3) This Rule does not apply to a proceeding to which any of the following applies—

(a) Order 56;

(b) Part 3, 4, 5 or 7 of Order 58;

(c) Order 4 of Chapter II of the Rules of the Supreme Court; or

(d) Order 3A of Chapter VI of the Rules of the Supreme Court.

77.04 Reference by Associate Judge to Judge of the Court

(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.

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**.

77.06 Appeal to Trial Division constituted by Judge of the Court

Subject to Rule 77.07, an appeal under section 17(3) of the **Supreme Court Act 1986** to the Trial Division constituted by a Judge of the Court from a determination of the Trial Division constituted by an Associate Judge shall be brought in accordance with Rules 77.06.1 to 77.06.9.

Note

Special provision is made in Rule 16.5(1) of Chapter V in relation to Corporations matters.

77.06.1 Bringing an appeal

An appeal referred to in Rule 77.06 shall be brought by notice in accordance with this Order.

77.06.2 Time for filing of notice of appeal or application for leave to appeal

(1) Subject to paragraph (2), a notice of appeal shall be filed—

(a) within 14 days after the day the judgment or order of the Associate Judge was given or made; or

(b) if leave to appeal is necessary, within 14 days of leave being granted.

(2) A notice of appeal from an order dismissing an application made without notice to any person shall be filed—

(a) within 14 days after the order was made; or

(b) if leave to appeal is necessary, within 14 days of leave being granted.

(3) An application for leave to appeal shall be filed within 14 days after the day the judgment or order of the Associate Judge was given or made.

(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 a Judge of the Court for an order dismissing the appeal as incompetent.

(5) The hearing of an application for leave to appeal may be treated as the hearing of the appeal.

(6) A Judge of the Court or an Associate Judge may extend the time allowed under this Rule at any time.

77.06.3 Contents of notice of appeal

(1) A notice of appeal shall state—

(a) whether the whole or part only and, if as to part, which part, of the judgment or order of the Associate Judge is the subject of the appeal; and

(b) specifically and concisely the grounds of appeal 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.

(3) A notice of appeal may be amended at any time by leave of a Judge of the Court.

77.06.4 Service of notice of appeal

(1) Subject to paragraph (2), a notice of appeal shall be served on all parties affected by the appeal within 5 days of the filing of the notice of appeal.

(2) A notice of appeal under Rule 77.06.2(2) shall not be served.

(3) Despite paragraphs (1) and (2), a Judge of the Court may direct that notice of appeal be served on—

(a) any party to the proceeding; or

(b) 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 77A; and

(b) a Judge of the Court may give any judgment or make any order on the appeal that might have been given or made if the person served with the notice of appeal had been originally a party.

(6) Where notice of appeal is served, the appellant shall, within 5 days after service, file a list signed by or on behalf of the appellant of—

(a) the persons upon whom the notice has been served; and

(b) the dates of such service.

* * * * *

77.06.6 Stay

Unless a Judge of the Court otherwise orders—

(a) an appeal referred to in Rule 77.06 shall not operate as a stay of execution, or of proceedings, under the judgment or order;

(b) no intermediate act or step shall be invalidated.

77.06.7 Cross-appeal

(1) Subject to Rule 77.06.8, a respondent to an appeal referred to in Rule 77.06 who desires to appeal from the decision from which the appellant has appealed shall do so by notice of cross-appeal.

(2) Within 14 days after the service on the respondent of the notice of appeal, the respondent shall file any notice of cross-appeal.

(2.1) Within 5 days after the filing of a notice of cross-appeal, the respondent shall serve a copy of that notice on—

(a) the appellant; and

(b) any other party directly affected by the cross-appeal.

(3) Rule 77.06.3 and Rule 77.06.4(3), (4) and (5) apply to a notice of cross-appeal as if it were a notice of appeal.

(4) A cross-appeal may be discontinued.

(5) Within 5 days after service of the notice of cross-appeal, the respondent shall file a list signed by or on behalf of the respondent of—

(a) the persons upon whom the notice has been served; and

(b) the dates of such service.

(6) Where an appeal is discontinued or is taken to be abandoned—

(a) a respondent who has given notice of cross-appeal may proceed with the cross-appeal; and

(b) a Judge of the Court may give directions for its conduct.

77.06.8 Notice of contention

If a party to an appeal referred to in Rule 77.06 does not seek to have the judgment or order actually given or made by the Associate Judge discharged or varied, but proposes to contend that it should be affirmed on a ground, whether of fact or law, which—

(a) was not decided; or

(b) was erroneously decided; or

(c) was not raised for decision before the Associate Judge—

the party, not less than 14 days before the day fixed for the hearing of the appeal, shall file and serve a notice of contention, stating the ground to be relied upon.

77.06.9 Powers of Judge of the Court hearing appeal

(1) On an appeal referred to in Rule 77.06, a Judge of the Court shall have all the powers of the Court constituted by an Associate Judge.

(2) The Judge of the Court shall have power to—

(a) receive further evidence upon questions of fact, whether by oral examination in court, by affidavit, or by deposition taken before an examiner;

(b) draw inferences of fact;

(c) give any judgment and make any order which ought to have been given or made; and

(d) make any further or other order as the case may require.

(3) The powers of a Judge of the Court under this Rule may be exercised notwithstanding—

(a) that no notice of appeal has been given in respect of any particular part of the judgment or order of the Associate Judge which is the subject of the appeal or by any particular party to the proceeding before the Associate Judge; or

(b) that any ground for allowing the appeal or for affirming or varying the judgment or order of the Associate Judge is not specified in the notice of appeal.

77.07 Appeal to the Court of Appeal

(1) For the purposes of sections 10(1)(ab) and 17(3) of the **Supreme Court Act 1986**—

(a) an appeal lies to the Court of Appeal (and not to the Trial Division) from the Trial Division constituted by an Associate Judge in respect of a matter referred to an Associate Judge under Rule 77.05;

(b) the appeal to the Court of Appeal may extend to any determination of the Trial Division constituted by the Associate Judge in respect of any matter related to the referred matter, even if the matter was within the authority of an Associate Judge apart from the referral; and

(c) if the referred matter was of a kind from which an appeal would lie from the determination of a Judge of the Court only 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 sections 10(1)(ab) and 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—

(a) under Part 3.2 or Part 3.3 of Chapter 3 of the **Relationships Act 2008**;

(b) under sections 49, 84, 85 or Part IV of the **Property Law Act 1958**;

(c) for the recovery of land under Order 53;

(d) under Part I and Part IV of the **Administration and Probate Act 1958**;

(e) subject to paragraph (2.1), under Part IV of the **Trustee Act 1958**;

(f) section 90(3) of the **Transfer of Land Act 1958**; or

(g) sections 9 and 31 of the **Wills Act 1997**.

(2.1) Paragraph (2)(e) does not apply to an order made by the Senior Master or any other person acting as, or performing the duties of, the Senior Master pursuant to section 105A(1) or (2) of the **Supreme Court Act 1986** in respect of money or assets held or to be held on behalf of a person under disability.

(3) Order 64 applies to an appeal referred to in paragraph (1) or paragraph (2) with any necessary modification.

Note

Special provision is made in Rule 16.5(3) of Chapter V in relation to Corporations matters.

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.

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 direct—

(a) a party to—

(i) 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) 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 direct—

(a) a party to—

(i) 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) a party to file an affidavit stating the party's conclusions and reasons.

(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 7 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, unless the Court otherwise orders, shall 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 8 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.

78.07 Associate Judge's order

(1) The result of proceedings before an Associate Judge under a judgment shall be stated in the form of an order.

(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.

(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.

(4) The Associate Judge may give directions as to the further consideration of the proceeding.

78.08 Appeal from Associate Judge

Rules 77.06 to 77.06.9 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;

the judicial registrar means the judicial registrar assigned by the Chief Justice to Funds in Court.

Part 2—General

79.02 Application of money

(1) This Rule applies where money is paid into court under—

(a) an order of the Court; or

(b) section 39C of the **County Court Act 1958**; or

(c) section 101B of the **Magistrates' Court Act 1989**; or

(d) section 70A of the **Victims of Crime Assistance Act 1996**; or

(da) section 70(2) of the **Victims of Crime (Financial Assistance Scheme) Act 2022**; or

(e) section 69 of the **Trustee Act 1958**.

(2) Subject to paragraph (3), money paid into court and any interest allocated or received in respect of that money 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 of that money may be paid out by the Senior Master on 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, as soon as practicable, shall procure its authentication in accordance with these Rules.

(2) As soon as practicable after authentication the Prothonotary shall provide to the Senior Master—

(a) a copy of the order; and

(b) if appropriate, 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, as soon as practicable, shall 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 provide a copy to the Senior Master.

(3) The party ordered to pay into court shall—

(a) pay the money to the Senior Master; and

(b) within 7 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, as soon as practicable, shall 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; or

(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 Rules 77.06 to 77.06.9 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.

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 Investments on separate account

(1) Where, pursuant to section 113 of the **Supreme Court Act 1986** or any corresponding previous enactment or otherwise, the Senior Master has invested on separate account in real or other property (including real property used or to be used as a residence by a person under disability for whose benefit the investment was made) and the property is being held by a trustee or trustees appointed by or accountable to the Senior Master, the Senior Master may require the trustee or trustees to transfer the property into the

name "The Senior Master of the Supreme Court of Victoria" and the Senior Master may hold the property in that name.

(2) Where, pursuant to section 113 of the **Supreme Court Act 1986** or otherwise, the Senior Master invests on separate account in real or other property (including real property used or to be used as a residence by a person under disability for whose benefit the investment is being made), the investment may be made, and the property may be held, in the name "The Senior Master of the Supreme Court of Victoria".

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 **Supreme Court Act 1986** at the last rate fixed under that section.

(2) Where moneys are paid out of a common fund interest shall be allocated and paid on those moneys from the preceding 31 May to the date of the payment out at the last rate fixed under section 113(14) of the **Supreme Court Act 1986**.

Part 4—Proceeding in another court

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.

Part 5—Authority of the judicial registrar

79.11 References to Senior Master include other Associate Judges

For the purposes of this Part (other than Rule 79.16(3)), in the absence of the Senior Master, a reference to the Senior Master includes a reference to another Associate Judge.

79.12 Authority

(1) The judicial registrar may make any order under Rule 79.02(2) other than an order involving a determination that an applicant for payment out of money in court is not a person who is incapable, by reason of injury, disease, senility, illness or physical or mental infirmity, of managing that person's affairs.

(2) The judicial registrar may order payment into Court of funds for any person, estate or trust if the Senior Master holds funds in Court for that person, estate or trust.

79.13 Reference by Senior Master to the judicial registrar

(1) If an application for an order under Rule 79.02(2) before the Senior Master, which would otherwise not be within the authority of the judicial registrar under Rule 79.12, appears to the Senior Master to be proper for determination by the judicial registrar, the Senior Master, by order, may refer the application to the judicial registrar.

(2) If the Senior Master refers an application under paragraph (1), the judicial registrar may—

(a) determine the application, subject to any directions in the order referring the application; or

(b) refer the application back to the Senior Master in accordance with Rule 79.15.

79.14 Powers

For the purposes of Rules 79.12 and 79.13—

(a) the judicial registrar may constitute the Trial Division of the Court; and

(b) the power of the Trial Division of the Court to make an order under those Rules is delegated to the judicial registrar.

79.15 Reference by the judicial registrar to Senior Master

(1) Where an application for a payment under Rule 79.02(2) appears to the judicial registrar to be proper for the determination of the Senior Master rather than the judicial registrar, the judicial registrar shall refer the application to the Senior Master.

(2) The Senior Master may—

(a) determine the application; or

(b) refer the application back to the judicial registrar with directions.

(3) The judicial registrar may refer any question arising on an application to the judicial registrar to the Senior Master for directions.

79.16 Appeals

(1) Any person aggrieved by an order of the judicial registrar dismissing, or dismissing in part, an application for a payment under Rule 79.02(2) may appeal that dismissal to the Court constituted by the Senior Master within one month of the notification of the order to the applicant.

(2) Within 5 days of the making of an order by the judicial registrar granting, or granting in part, an application for a payment under Rule 79.02(2), any person aggrieved by the order may appeal that grant to the Court constituted by the Senior Master on the ground that the payment would not be in the best interests of the person for whom the Senior Master holds money in court.

(3) The Senior Master, from time to time, may publish directions regarding the institution of an appeal under this Rule.

(4) Unless the Senior Master otherwise directs, an appeal under this Rule shall be determined without the attendance of, and without hearing, the parties.

(5) In determining an appeal under this Rule, the Senior Master may exercise all the powers of an Associate Judge and may—

(a) dismiss the appeal;

(b) allow the appeal and—

(i) set aside or vary the order of the judicial registrar; or

(ii) substitute a different order; or

(iii) refer the application back to the judicial registrar for further determination;

(c) make any other order that the Senior Master considers appropriate.

(6) Unless the Senior Master otherwise orders, an appeal under paragraph (2) operates as a stay of execution of the order of the judicial registrar.

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

Information about the Hague Convention, including a copy of the Hague Convention, a list of all Contracting States, details of declarations and reservations made under the Hague Convention by each of those States and the names and addresses of the central and other authorities of each of those States, can be found at the website of the Hague Conference on Private International Law.

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.

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.

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;

(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 the translator's qualifications for making the translation.

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

(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.

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.

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.

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.

(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

(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.

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

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 the translator's qualifications for making the translation.

80.14 Certain documents to be referred back to the Attorney-General's Department of the Commonwealth

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.

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

(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 court or 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.

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 judicial officer, an order were made under Rule 41.01(1)(a) for the examination of a person before a judicial officer.

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) Rule 41.08(4) and (5) do 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

On 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.

Order 82—Procedure under the Open Courts Act 2013

82.01 Definitions

An expression used in the **Open Courts Act 2013** has the same meaning in this Order as it has in that Act.

82.02 Notice of application for suppression order

(1) A notice under section 10 of the **Open Courts Act 2013** of the making of an application for a suppression order in a proceeding to which these Rules apply—

(a) shall be generally in accordance with Form 82A; and

(b) for the purposes of section 10(1)(a) of the **Open Courts Act 2013**, is to be emailed to the Court at media@supcourt.vic.gov.au or such other email address as the Court may from time to time specify, by practice note or otherwise, for the purposes of this Rule.

(2) A copy of the notice shall be filed by the applicant as soon as practicable after the notice has been emailed to the Court.

Order 83—Procedure under the Vexatious Proceedings Act 2014

Part 1—Preliminary

83.01 Definitions

(1) In this Order, unless the context otherwise requires—

litigation order means—

(a) a litigation restraint order;

Note

This is a defined term in the **Vexatious Proceedings Act 2014** which encompasses a limited litigation restraint order, an extended litigation restraint order and a general litigation restraint order.

(b) an acting in concert order; and

(c) an appeal restriction order.

respondent means a person against whom a litigation order may be made;

Vexatious Proceedings Act means the **Vexatious Proceedings Act 2014**.

(2) An expression used in the **Vexatious Proceedings Act 2014** has the same meaning in this Order as it has in that Act.

Part 2—Applications generally

83.02 Applications for litigation restraint orders by person requiring leave

(1) This Rule applies to—

(a) an application under section 10(1) of the Vexatious Proceedings Act for a limited litigation restraint order against a person who is a party to a proceeding in the Court by—

(i) a person against whom the party has made a vexatious application; or

(ii) a person with a sufficient interest in the matter;

Note

See section 10(2) of the Vexatious Proceedings Act for limitations on these applications.

(b) an application under section 16(1) of the Vexatious Proceedings Act for an extended litigation restraint order against a person by—

(i) a person against whom the person who is the subject of the application has commenced or conducted a vexatious proceeding; or

(ii) a person with a sufficient interest in the matter.

Note

See section 16(2) of the Vexatious Proceedings Act for limitations on these applications.

(2) An application to which this Rule applies shall be by summons accompanied by a supporting affidavit.

(3) The summons shall—

(a) seek leave to apply for the type of litigation order sought;

(b) seek directions from the Court; and

(c) specify the type of litigation order sought.

(4) If leave to apply is granted, the summons and a copy of the supporting affidavit shall be served personally on the respondent, unless the Court otherwise orders.

83.03 Applications by Attorney-General for litigation restraint orders

(1) An application under section 10(1) of the Vexatious Proceedings Act by the Attorney-General for a limited litigation restraint order against a person who is a party to a proceeding in the Court shall be by summons accompanied by a supporting affidavit.

(2) An application under section 16(1) of the Vexatious Proceedings Act by the Attorney-General for an extended litigation restraint order against a person shall be by originating motion accompanied by a supporting affidavit.

(3) An application under section 28 of the Vexatious Proceedings Act by the Attorney-General for a general litigation restraint order shall be by originating motion accompanied by a supporting affidavit.

(4) The summons or originating motion (as the case requires) and a copy of the supporting affidavit shall be served personally on the respondent, unless the Court otherwise orders.

Part 3—Own motion procedure

83.04 Application of this Part

This Part applies to the exercise by the Court of its own motion power in respect of—

(a) a limited litigation restraint order under section 11(4)(a) of the Vexatious Proceedings Act;

(b) an extended litigation restraint order under section 17(4)(a) of the Vexatious Proceedings Act;

(c) a general litigation restraint order under section 29(4)(a) of the Vexatious Proceedings Act;

(d) an acting in concert order under section 35(2)(a) of the Vexatious Proceedings Act;

(e) an appeal restriction order under section 37 of the Vexatious Proceedings Act.

83.05 Application by Prothonotary for litigation order—own motion of Court

(1) Where the Court is considering the exercise of an own motion power under the Vexatious Proceedings Act, the Court, by order, may direct the Prothonotary to apply by originating motion accompanied by a supporting affidavit for one or more of the following orders in respect of a party to a proceeding—

(a) a limited litigation restraint order under section 11(4)(a) of that Act;

(b) an extended litigation restraint order under section 17(4)(a) of that Act;

(c) a general litigation restraint order under section 29(4)(a) of that Act;

(d) an acting in concert order under section 35(2)(a) of that Act;

(e) an appeal restriction order under section 37 of that Act.

(2) The originating motion and a copy of the affidavit shall be served personally on the respondent, unless the Court otherwise orders.

(3) The originating motion shall specify the type of litigation order to which this Part applies in respect of which the Court is exercising its own motion power.

83.06 Costs

(1) The costs of an application for a litigation order to which this Part applies shall be in the discretion of the Court, whether an order to which this Part applies is made or not.

(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 the Court thinks fit.

Part 4—Applications where litigation orders are in force

83.07 Application for leave to proceed under limited litigation restraint order

An application under section 50 of the Vexatious Proceedings Act by a person subject to a limited litigation restraint order for leave to make or continue an interlocutory application in the proceeding to which the limited litigation restraint order relates shall be in Form 83A.

83.08 Application for leave to proceed under extended litigation restraint order

An application under section 52(1) of the Vexatious Proceedings Act by a person subject to an extended litigation restraint order for leave to commence or continue a proceeding shall be—

(a) in Form 83B, in the case of an application to continue a proceeding; and

(b) in Form 83C, in the case of an application to commence a proceeding.

83.09 Application for leave to proceed under general litigation restraint order

An application under section 54 of the Vexatious Proceedings Act by a person subject to a general litigation restraint order for leave to commence or continue a proceeding shall be—

(a) in Form 83D, in the case of an application to continue a proceeding; and

(b) in Form 83E, in the case of an application to commence a proceeding.

83.10 Notice of application for leave to proceed

(1) Notice required to be given by a direction of the Court under section 60(2) of the Vexatious Proceedings Act shall be in Form 83F.

(2) The notice shall be accompanied by a copy of every order made or direction given by the Court in the application to which the notice relates.

Note

Further requirements are stated in section 60(4) of the Vexatious Proceedings Act.

83.11 Application for leave to apply for variation or revocation of litigation restraint order

An application under section 65(1) of the Vexatious Proceedings Act by a person subject to a litigation restraint order for leave to apply to vary or revoke the order shall be in Form 83G.

83.12 Application to vary or revoke litigation restraint order

An application under section 65(1) of the Vexatious Proceedings Act by a person subject to a litigation restraint order to vary or revoke the order shall be in Form 83H.

83.13 Notice of application to vary or revoke litigation restraint order

(1) Notice required to be given by a direction of the Court under section 67(2) of the Vexatious Proceedings Act shall be in Form 83I.

(2) The notice shall be accompanied by a copy of every order made or direction given by the Court in the application to which the notice relates and in the preceding leave application.

Note

Further requirements are stated in section 67(4) of the Vexatious Proceedings Act.

83.14 Power of Prothonotary under Rule 28.03 not limited

Nothing in this Order limits the powers of the Prothonotary under Rule 28.03.

Part 5—Appeals on a question of law under Part 10 of the Vexatious Proceedings Act

83.15 Application for leave to appeal under Part 10 of Vexatious Proceedings Act

(1) An application for leave to appeal a decision of a Victorian court or tribunal on a question of law under section 79 of the Vexatious Proceedings Act shall be made by filing an application in Form 83J.

(2) The application for leave to appeal shall be made—

(a) to the Trial Division, in the case of a decision of a Victorian court or tribunal other than the Supreme Court constituted by a Judge of the Court; and

(b) to the Court of Appeal, in the case of a decision of—

(i) a Victorian court or tribunal other than the Supreme Court constituted by a Judge of the Court who is the President of VCAT or a dual commission holder; or

(ii) the Supreme Court constituted by a Judge of the Court.

(3) The application for leave to appeal shall be made within 28 days of the decision of the Victorian court or tribunal.

(4) As soon as practicable after filing the application for leave to appeal, the applicant shall deliver a sealed copy of the application to the registrar or other proper officer of the Victorian court or tribunal.

(5) At the time of filing the application for leave to appeal, the applicant shall file an affidavit in support of the application, together with the requisite exhibits.

(6) The affidavit shall set out the acts, facts, matters and circumstances relating to—

(a) the order of the Victorian court or tribunal; and

(b) the grounds in the proposed notice of appeal.

(7) There shall be included as exhibits to the affidavit—

(a) a copy of the application (if any) in relation to which the order of the Victorian court or tribunal was made, together with a copy of the affidavit (if any) that accompanied that application;

(b) a copy of the order from which the appeal is to be brought;

(c) a copy of any reasons given for the order; and

(d) a copy of the proposed notice of appeal—

or their absence as exhibits shall be accounted for in the affidavit.

(8) Subject to Part 10 of the Vexatious Proceedings Act, the Court may give any directions as to the further conduct of the application for leave to appeal including, if thought fit, a direction that the application and any appeal for which leave may be granted be determined together or at the same time.

83.16 Notice of application for leave to appeal

(1) Notice required to be given by a direction of the Court under section 81(2) or 82(2) of the Vexatious Proceedings Act shall be in Form 83K.

(2) The notice shall be accompanied by a copy of the affidavit in support of the application (including exhibits) and a copy of every order made or direction given by the Court in the application to which the notice relates.

Note

Further requirements are stated in sections 81(4) and 82(4) of the Vexatious Proceedings Act.

Order 84—Authority of judicial registrars

84.01 Interpretation

In this Order, a reference to a determination is a reference to a judgment, order or direction.

84.02 Authority of judicial registrars

(1) Without limiting any other powers of a judicial registrar, a judicial registrar, subject to this Order, may hear and determine any application or matter under an Order, a Rule or a provision of an Act listed in column 1 of the Table at the end of this Order, including an application under, or constituted by, a proposed exercise (whether on the Court's own motion or otherwise) of the Court's powers under such an Order, Rule or provision.

(2) For the purposes of hearing and determining an application or matter referred to in paragraph (1)—

(a) the judicial registrar constitutes the Court; and

(b) all the powers of the Court in relation to the hearing and determination of such an application or matter are delegated to the judicial registrar.

(3) Nothing in this Rule authorises a judicial registrar—

(a) to hear or determine any application or other matter which (without referral under Rule 77.05) would not be within the authority of an Associate Judge;

(b) to conduct the trial of a proceeding;

(c) to give any judgment or make any order at the trial of a proceeding.

Note

A judicial registrar in the Costs Court may perform the functions and exercise the powers conferred on a judicial registrar by and under Division 2B of Part 2 of the Act. A judicial registrar who is the Registrar of the Court of Appeal has the duties, powers and authorities imposed or conferred on the Registrar of the Court of Appeal by or under section 113O of the Act and Order 64 of these Rules. A judicial registrar who is the Registrar of Criminal Appeals has the duties, powers and authorities imposed or conferred on the Registrar of Criminal Appeals by or under section 113P of the Act and Chapter VI of the Rules of the Supreme Court.

By virtue of Order 61 of these Rules, a judicial registrar is the proper officer of the Court for the purposes of the **Judgment Debt Recovery Act 1984** and in that capacity has the powers and duties conferred by Order 61 on a judicial registrar.

See also the further powers of a judicial registrar set out in Order 67 or Order 79 of these Rules and in Chapter V of the Rules of the Supreme Court.

Additional powers are conferred on judicial registrars under Order 3A of Chapter VI of the Rules of the Supreme Court and under Part 3 of Order 4 of that Chapter.

84.03 Reference by Judge of the Court to judicial registrar

(1) If a matter (whether civil or criminal) before a Judge of the Court, which matter would not otherwise be within the authority of a judicial registrar, appears to the Judge to be proper for determination by a judicial registrar, the Judge, by order, may refer the matter to a judicial registrar.

(2) If a Judge of the Court refers a matter to a judicial registrar, the judicial registrar 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 for determination.

(3) In hearing and determining a matter referred by a Judge of the Court to a judicial registrar—

(a) the judicial registrar constitutes the Court for that purpose; and

(b) subject to any directions in the order referring the matter, all the powers of the Court in relation to the hearing and determination of such a matter are delegated to the judicial registrar.

(4) Despite paragraph (1), a Judge of the Court shall not refer to a judicial registrar any matter under Part 2 or Part 2A of the **Confiscation Act 1997**.

84.04 Reference by Associate Judge to judicial registrar

(1) If a matter (whether civil or criminal) before an Associate Judge, which matter would not otherwise be within the authority of a judicial registrar, appears to the Associate Judge to be proper for determination by a judicial registrar, the Associate Judge, by order, may refer the matter to a judicial registrar.

(2) If an Associate Judge refers a matter to a judicial registrar, the judicial registrar 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 Associate Judge for determination.

(3) In hearing and determining a matter referred by an Associate Judge to a judicial registrar—

(a) the judicial registrar constitutes the Court for that purpose; and

(b) subject to any directions in the order referring the matter, all the powers of the Court in relation to the hearing and

determination of such a matter are delegated to the judicial registrar.

(4) Despite paragraph (1), an Associate Judge shall not refer to a judicial registrar any matter referred to an Associate Judge under Rule 77.05.

84.05 Appeal from determination by a judicial registrar

(1) Subject to paragraph (2), this Rule applies to any determination given or made by the Court constituted by a judicial registrar (including a determination in a matter referred to a judicial registrar under Rule 84.03 or 84.04).

(2) This Rule does not apply to any determination given or made or any other thing done by a judicial registrar where the judicial registrar is—

(a) acting as a judicial registrar in the Costs Court pursuant to Division 2B of Part 2 of the Act;

(b) acting as the Registrar of the Court of Appeal or as the Registrar of Criminal Appeals pursuant to Division 2B of Part 7 of the Act;

(c) acting as the proper officer of the Court for the purposes of the **Judgment Debt Recovery Act 1984**; or

(d) acting as the judicial registrar under Order 79 (Funds in Court).

(3) Subject to sections 14A and 17A of the Act and without limiting section 11(5) of the Act, an appeal from any determination to which this Rule applies lies to the Trial Division constituted by a Judge of the Court, except in the case of a determination of the Court of Appeal constituted by a judicial registrar in which case an appeal lies to the Court of Appeal constituted by a Judge of Appeal.

(4) An appeal under this Rule shall be conducted by way of hearing de novo.

(5) An appeal under this Rule shall be—

(a) brought by filing a notice of appeal in accordance with this Order; and

(b) otherwise in accordance with this Order.

84.06 Filing of notice of appeal

(1) A notice of appeal, including a notice of appeal from a determination of a judicial registrar dismissing an application made without notice to any person, shall be filed—

(a) within 14 days after the determination was given or made; or

(b) if leave to appeal is necessary, within 14 days of leave being granted.

(2) If leave to appeal is necessary, an application for leave to appeal shall be made within 14 days after the determination of the judicial registrar was given or made.

(3) An application for leave to appeal shall be made by summons supported by affidavit and a draft notice of appeal shall be exhibited to the affidavit.

(4) On an application for leave to appeal, the Court shall be constituted in the same way as it would be constituted for an appeal from the determination of the judicial registrar.

(5) If the Court as so constituted thinks fit, the hearing of an application for leave to appeal may be treated as the hearing of the appeal.

84.07 Contents of notice of appeal

(1) A notice of appeal shall state—

(a) whether the whole or part only and, if as to part, which part, of the determination is the subject of the appeal; and

(b) what determination is sought in place of the determination 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.

(3) In the case of an appeal to the Trial Division constituted by a Judge of the Court, a notice of appeal may be amended at any time by leave of a Judge of the Court or an Associate Judge.

(4) In the case of an appeal to the Court of Appeal constituted by a Judge of Appeal, a notice of appeal may be amended at any time by leave of a Judge of Appeal or an Associate Judge.

84.08 Service of notice of appeal

(1) Subject to paragraph (2), a copy of the notice of appeal shall be served on all parties affected by the appeal within 5 days of the filing of the notice of appeal.

(2) A copy of a notice of appeal from a determination of a judicial registrar dismissing an application made without notice to any person shall not be served.

(3) Despite paragraphs (1) and (2), a Judge of the Court (in the case of an appeal to the Trial Division constituted by a Judge of the Court) or a Judge of Appeal (in the case of an appeal to the Court of Appeal constituted by a Judge of Appeal) may direct that a copy of the notice of appeal be served on—

(a) any party to the proceeding; or

(b) a person not a party—

and may specify a time to be allowed for such service.

(4) A copy of the 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 a copy of the 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 84A; and

(b) on the appeal, the Court may give or make any determination that might have been given or made if the person served with the notice of appeal had been originally a party.

84.09 Extension of time

A Judge of the Court or an Associate Judge (in the case of an appeal to the Trial Division constituted by a Judge of the Court) or a Judge of Appeal or an Associate Judge (in the case of an appeal to the Court of Appeal constituted by a Judge of Appeal) may extend the time allowed by or under this Order for the filing of a notice of appeal or for the service of a copy of the notice of appeal, either before or after the expiry of that time.

84.10 Evidence

On the appeal, each party, subject to any proper objections to admissibility, may—

(a) rely on any affidavit used before the judicial registrar and on any evidence given orally before the judicial registrar;

(b) by leave of the Court, rely on an affidavit or oral evidence not used or given before the judicial registrar.

84.11 Appeal incompetent

If leave to appeal is necessary and a notice of appeal is filed before leave has been granted, any person on whom a copy of the notice of appeal has been served may apply for an order dismissing the appeal as incompetent—

(a) in the case of an appeal to the Trial Division, to a Judge of the Court; or

(b) in the case of an appeal to the Court of Appeal, to a Judge of Appeal.

84.12 Appeal does not operate as stay

Except so far as the Court otherwise orders, an appeal under Rule 84.05 shall not operate as a stay of execution or of proceedings under the determination by the judicial registrar.

84.13 Judicial registrar may act for another

A judicial registrar may hear and determine an application instead of the judicial registrar by whom it would otherwise be heard and determined.

Table of applications and matters that may be heard and determined by judicial registrar

Item No.	*Column 1* *Rule, provision of Act or power of the Court*	*Column 2* *Description*
CHAPTER I		
1	Rule 5.12	For extension of the period of validity for service of a writ or an originating motion that has not been served
2	Rule 6.10	For substituted service

Item No.	*Column 1* *Rule, provision of Act or power of the Court*	*Column 2* *Description*
3	Order 9	Joinder of claims and parties
4	Rule 11.05(2)(b)	For leave to file third party notice out of time
5	Rule 11.07(2)	Fix period to serve third party notice
6	Rule 11.07(3)	For extension of period to serve a third party notice
7	Rule 11.13(1)(d)	For third party directions
8	Rule 15.03	For appointment of a litigation guardian of a person under disability
9	Rule 15.08	For approval of compromises for persons under disability
10	Rule 16.01	For appointment of representatives for unascertained persons
11	Rule 16.03	For appointment of representatives for deceased persons
12	Rule 20.03 (except paragraph (4)) and Rule 20.04	For leave for a solicitor to cease to act for a party in a proceeding and for the removal of a solicitor from record.
13	Order 25 (where all parties who have appeared consent)	Discontinuance and withdrawal
14	Rule 28.03.3 and Rule 28.05	Confidentiality orders
15	Order 29	For discovery and inspection of documents
16	Order 30	For interrogatories
17	Rule 31.07	For order for attendance for examination for failure to attend an examination
18	Rule 31.12	For determination of objection to answering a question on examination

Item No.	*Column 1* *Rule, provision of Act or power of the Court*	*Column 2* *Description*
19	Rule 31.13	For order that the party examined answer question
20	Order 34	To give directions and to convene directions hearings.
21	Rule 36.01 (where all parties who have appeared consent)	Amendment of pleadings
22	Rule 36.03(1)	Amendment before service of proceeding
23	Rule 36.07	Amendment of order (slip rule)
24	Rule 41.01	To order witness examination.
25	Order 42	Subpoenas
26	Order 42A	Subpoena for production to Prothonotary
27	Order 47	To fix place and mode of trial
28	Order 48, except Rule 48.04(1)(b) and (2)(b)	To fix a date for trial
29	Rule 56.02(3)	To extend time to commence proceeding for judicial review
30	Rule 56.04(3)	To give directions on application
31	Rule 56.05	To conduct a directions hearing
32	Part 3 of Order 58, except Rule 58.10(7)(b), (8) and (9)	Appeals on a question of law
33	Part 7 of Order 58, except Rule 58.39(7)(b), (8) and (9)	Appeals under Part 7 of the **Coroners Act 2008**
34	Rule 62.02	To order security for costs
35	Rule 62.05	To set aside or vary an order for security of costs
36	Rule 67.02 or 67.03	For an order that a person bound by a judgment attend for examination or produce documents or things

Item No.	*Column 1* *Rule, provision of Act or power of the Court*	*Column 2* *Description*
37	Rule 68.02	For leave to issue a warrant of execution
38	Rule 68.05	To extend the period of validity of a warrant of execution
39	Rule 68.06	For exclusion of costs of prior execution from warrant of execution
40	Rule 69.03	For leave to issue a warrant while another warrant issued in respect of the same judgment is in force
41	Rule 69.06(5)	To dispense with service of a copy of an advertisement for sale by the sheriff
42	Rule 71.04	For the filing and service of a garnishee summons
43	Rule 72.02	For an attachment of earnings order
44	Rule 72.04	For an order for the attendance of or giving of information about a judgement debtor
45	Rule 72.10	For the discharge, suspension or variation of an attachment of earnings order
46	Rule 72.15	For the determination of earnings
47	Order 81	Obtaining evidence for external court or tribunal
48	Rule 85.04	Application under section 8 of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018** for order that associated trust be proper defendant
CHAPTER II OF THE RULES OF THE SUPREME COURT		
49	Order 4, except Rule 4.08(7)(b), (8) and (9)	Appeals from Tribunals
ACCIDENT COMPENSATION ACT 1986		

Item No.	*Column 1* *Rule, provision of Act or power of the Court*	*Column 2* *Description*
50	s. 134AB(30)	To award costs in respect of costs referred to in section 134A(30)
51	s. 134AB(31)	To determine the amount of costs to be awarded
ADMINISTRATION AND PROBATE ACT 1958		
52	Subdivision 3 of Division 7 of Part I	To allow commission to executors, administrators and trustees of deceased persons
		To order reduction or repayment of fees, commissions, costs, expenses or disbursements
CIVIL PROCEDURE ACT 2010		
53	s. 47, except subsection (3)(f)	To make orders, give directions and actively manage civil proceedings for purposes of case management
54	s. 48	To order and direct pre-trial procedures
55	s. 50	To order or direct preparation of a statement of issues or settle a statement of issues
56	s. 50A, except subsection (1)(b)	To use a statement of issues in pre-trial procedures
57	s. 52	To revoke or vary a direction or order
58	s. 65I	To give directions to expert witnesses in relation to conferences and joint experts reports
59	s. 66	To order referral to appropriate dispute resolution
COURTS (CASE TRANSFER) ACT 1991		
60	Part 6	To order transfer of a proceeding to a lower court.
EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1958		

Item No.	*Column 1* *Rule, provision of Act or power of the Court*	*Column 2* *Description*
61	Section 42E	Application for appearance by audio visual link or audio link
WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013		
62	s. 344(6) and (7)	To determine an amount of costs to be awarded to a person representing or acting on behalf of a worker
OTHER POWERS		
63	An application for an order for the payment, or taxation and payment, of costs, including any reserved costs	
64	An application made by consent of the parties for— (a) judgment for the recovery of any debt or damages together with interest or damages in the nature of interest; (b) an order for the striking out or dismissal of the proceeding; (c) 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); (d) an order staying the execution of any judgment or order.	

Order 85—Procedure under the Legal Identity of Defendants (Organisational Child Abuse) Act 2018

85.01 Definitions

An expression used in the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018** has the same meaning in this Order as it has in that Act.

85.02 Nomination of proper defendant

(1) A nomination of an entity to act as a proper defendant to a claim and consent under section 7 of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018**, made after the commencement of a proceeding, shall be in Form 85A and include an address for service.

(2) The nomination shall be filed with the Prothonotary and served on each party to the proceeding and on the entity nominated to act as a proper defendant within 7 days of the nomination being filed.

Note

See section 13 of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018** as to commencement of a proceeding pending the nomination of a proper defendant under section 7 of the Act or the appointment of a proper defendant under section 8 of that Act.

85.03 Amendment, filing and service of originating process and statement of claim

Where a proper defendant is nominated under section 7 of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018**, unless the court otherwise directs, within 28 days after the service of a nomination on the plaintiff—

(a) the plaintiff shall file with the Prothonotary an amended originating process and statement of claim identifying the proper defendant to the claim acting on behalf of the NGO; and

(b) shall serve any party with the amended originating process and statement of claim sealed in accordance with Rule 5.11.

Note

NGO means a non-government organisation that is an unincorporated association or body: see section 5 of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018**.

85.04 Application for order that associated trust be proper defendant

An application under section 8 of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018** shall be made by summons.

Note

See section 8(9) of the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018** as to the on-going obligations of an NGO in relation to the conduct of the proceeding.

Appendix A substituted by S.R. No. 127/2025 rule 6.

Appendix A—Supreme Court Scale of Costs

Scale of costs to be paid to a party to whom costs are payable in respect of work done on and after 1 January 2026 in relation to matters in the Supreme Court of Victoria.

The costs in this Scale are exclusive of GST.

Note

See Rule 63.42.1.

SECTION 1: WHERE THE PARTY ENTITLED TO COSTS IS CHARGED ON THE BASIS OF HOURLY RATES

This Section does not apply to counsel's fees (see SECTION 4 of this Scale) or the costs of winding up orders (see SECTION 6 of this Scale).

To the extent that a party to whom costs are payable in a proceeding is charged on the basis of hourly rates for work done, the costs payable to that party for doing the work are to be allowed on the basis of hourly rates according to the time spent on the work, as follows—

1.1 (a) Time spent by a legal practitioner of 10 or more years post-admission experience, doing work requiring legal skill or knowledge—

(in 6 minute units), a reasonable hourly rate, as allowed, up to a maximum of $918 per hour;

(b) Time spent by a legal practitioner of between 5 and 9 years post-admission experience, doing work requiring legal skill or knowledge—

(in 6 minute units), a reasonable hourly rate, as allowed, up to a maximum of $663 per hour;

(c) Time spent by a legal practitioner of less than 5 years post-admission experience, doing work requiring legal skill or knowledge—

(in 6 minute units), a reasonable hourly rate, as allowed, up to a maximum of $459 per hour.

1.2 Time spent by an employee of a law practice (including a law graduate) who is not a legal practitioner—

(a) doing work requiring legal skill or knowledge—

(in 6 minute units), a reasonable hourly rate, as allowed, up to a maximum of $398 per hour;

(b) doing work not requiring legal skill or knowledge, capable of performance by a clerk—

(in 6 minute units), a reasonable hourly rate, as allowed, up to a maximum of $296 per hour;

(c) exercising professional skills and expertise complementing or supporting the delivery of legal services, including but not limited to accountants, financial advisors, information technology specialists, data analysts or forensic analysts—

a reasonable hourly rate, as allowed, up to a maximum of $677 per hour.

SECTION 2: DETERMINING REASONABLENESS

In determining reasonableness for the purposes of Sections 1, 3 or 4 of this Scale, the Court or the Costs Court (as the case may be) may have regard to any of the following matters as may be relevant—

(a) the actual hourly rates or amounts charged to the party (exclusive of GST);

(b) the complexity of the matter;

(c) the importance of the issues in dispute;

(d) the difficulty or novelty of the questions involved in the matter;

(e) the amount of money or value of the property involved;

(f) the number and importance of the documents prepared and examined, regardless of length;

(g) the skill and specialised knowledge of the legal practitioner including the practitioner's accreditation as a specialist in the relevant area of practice by a recognised professional association or body mandated to give such accreditation;

(h) the responsibility involved, including delegation to and supervision of legal practitioners;

(i) the time and labour expended by the legal practitioner;

(j) the extent to which the legal practitioner appears as counsel;

(k) research and consideration of questions of law and fact;

(l) the general care and conduct of the legal practitioner, having regard to the instructions in all relevant circumstances;

(m) the time within which the work was required to be done;

(n) any other relevant matter.

SECTION 3: WHERE THE PARTY ENTITLED TO COSTS IS NOT CHARGED ON THE BASIS OF HOURLY RATES

To the extent that a party to whom costs are payable in a proceeding is not charged on the basis of hourly rates for work done, a reasonable amount for doing the work is to be allowed, and in determining a reasonable amount the Court or the Costs Court (as the case may be) may have regard to such of the matters listed in SECTION 2 as may be relevant.

SECTION 4: COUNSEL'S FEES

4.1 Subject to Section 4.2, the fees to be allowed in relation to counsel's fees are reasonable amounts up to the following maximums—

	Junior Counsel	*Senior Counsel*
(a) For appearances (including any conferences, preparation, advice or other work on the day of hearing), per day	**$7442**	**$11 163**
(b) For conferences, preparation, advice or other work on other days, per hour	**$744**	**$1116**

4.2 Circuit fees are additional and are to be based on current allowances as provided for in Schedule 1 to Chapter I of the Rules of the County Court.

SECTION 5: WITNESSES' EXPENSES AND INTERPRETERS' ALLOWANCES

To be allowed at reasonable amounts as disbursements.

SECTION 6: CORPORATIONS SHORT FORM BILL

6.1 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—**$7029**.

6.2 Such additional costs as may be allowed for any adjournments.

Note

See Rule 17.7 of Chapter V of the Rules of the Supreme Court.

SECTION 7: TRAVELLING

7.1 Time spent by persons (other than counsel) travelling for the purposes of a proceeding, after the first hour, may be allowed at a reasonable hourly rate.

7.2 Out-of-pocket expenses for persons (other than counsel) travelling for the purposes of a proceeding may be allowed as disbursements.

SECTION 8: REPRODUCTION OF DOCUMENTS

8.1 By photocopy or other machine made copy including hard copies of electronic documents, if separately chargeable—for each printed side of a page, at the discretion of the Costs Court.

SECTION 9: DISBURSEMENTS GENERALLY

9.1 Subject to this Scale, disbursements reasonably incurred may be allowed at reasonable amounts.

Form 4A—Overarching obligations certification

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,
or if party has no meaningful control of the proceeding
by virtue of a statute or a contract of insurance,
by the person in control of the proceeding
by virtue of the statute or contract of insurance]

Form 4AB—Certification of prior overarching obligations certification

Rule 4.09.1

CERTIFICATION OF PRIOR OVERARCHING OBLIGATIONS CERTIFICATION

[*heading as in originating process*]

In accordance with section 41(5)(b) of the **Civil Procedure Act 2010**, I [*name of legal practitioner*] certify to the Court that [*name of party*] is currently involved, or has been involved, in more than one civil proceeding and has personally made the overarching obligations certification in other civil proceedings in the Court within 2 years prior to the date of this certification.

Date:

Signed

[*To be signed by legal practitioner representing party who has previously made overarching obligations certification in other civil proceedings in the Court*]

Form 4B—Proper basis certification

Rule 4.10(2)

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 [*identify document to which certification relates*] filed on behalf of [*specify party*], on the factual and legal material available to me at present:

[*in a civil proceeding which involves allegations of fact*:]

*(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.

[*in a civil proceeding commenced by originating motion seeking a particular legal relief or remedy*:]

*(a) each claim in the document has a proper basis;

*(b) each response in the document to a claim has a proper basis;

*(c) each question posed to the Court in the document has a proper basis;

*(d) each response in the document to each question posed to the Court has a proper basis.

Date:

Signed

*Delete if not applicable

Form 5A—Writ

Form 5A amended by S.R. No. 127/2025 rule 8(a).

Rule 5.02(1)

WRIT

IN THE SUPREME COURT
OF VICTORIA

20 No.

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" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; 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—

(i) in Victoria, within 10 days after service; or

(ii) out of Victoria and in another part of Australia, within 21 days after service;

(b) subject to paragraph (c), where you are served with the writ out of Australia, within 42 days after service;

(c) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

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 [*insert date*]

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 personally;

(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—

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*.]

6. The email address for service of the plaintiff is—

7. 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 amended by S.R. No. 127/2025 rule 8(b).

Form 5B—Originating motion between parties

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" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; 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—

(i) in Victoria, within 10 days after service; or

(ii) out of Victoria and in another part of Australia, within 21 days after service;

(b) subject to paragraph (c), where you are served with the originating motion out of Australia, within 42 days after service;

(c) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of

that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

FILED [*insert date*].

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 personally;

(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*.]

5. The email address for service of the plaintiff is—

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 originating motion."]

** [*Complete or strike out as appropriate.*]

Form 5C—Originating motion between parties

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 [*insert date*].

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—Originating motion

Rule 5.02(2)

ORIGINATING MOTION

(*where no defendant*)

IN THE SUPREME COURT
OF VICTORIA

20 No.

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 [*insert date*] 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 [*insert date*].

Prothonotary

The address of the plaintiff is:

Form 5E—Originating motion for recovery of land under Order 53

Rules 5.02(2), 53.02(3)

ORIGINATING MOTION FOR RECOVERY OF LAND UNDER ORDER 53

IN THE SUPREME COURT
OF VICTORIA

20 No.

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 the Supreme Court in Court No. [*insert address or other location details of hearing*] 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 Court may hear an application by the plaintiff for judgment.

IF YOU ARE NAMED AS DEFENDANT AND INTEND TO DEFEND THIS PROCEEDING you must:

(a) give notice of your intention by filing an appearance on or before the day specified above; and

(b) attend before the Court as specified above.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

(a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; 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 Court 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 Court 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 personally;

(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*.]

5. The email address for service of the plaintiff is—

6. [*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.*]

* * * * *

Note

There is no Form 5F.

Form 5G amended by S.R. No. 127/2025 rule 8(c).

Form 5G—Originating motion for judicial review

Rules 5.02(2), 56.01(2)

[*heading as in Form 5A*]

ORIGINATING MOTION FOR JUDICIAL REVIEW

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been commenced 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" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; 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 further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows:

(a) where you are served with the originating motion—

(i) in Victoria, within 10 days after service; or

(ii) out of Victoria and in another part of Australia, within 21 days after service;

(b) subject to paragraph (c), where you are served with the originating motion out of Australia, within 42 days after service;

(c) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

FILED [*insert date*].

Prothonotary

Page 2

THE PLAINTIFF CLAIMS:

[*Set out 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*.]

THE GROUNDS RELIED ON ARE:

[*State the grounds on which the relief or remedy is sought, and where any mistake or omission in any judgment, order or other proceeding in respect of which relief or remedy is sought is a ground, specify the mistake or omission*.]

EXTENSION OF TIME**

[*If an extension of time is required under Rule 56.02 of Chapter I of the Rules of the Supreme Court or otherwise, say so and state briefly the circumstances relied upon for the extension of time sought*.]

FURTHER PARTICULARS of the claim appear in the affidavit made in support of the claim. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

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 personally;

(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*.]

5. The email address for service of the plaintiff is—

6. The address of the defendant is—

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* [*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 7AAA—Service out of Australia—Notice to defendant served out of Australia

Rule 7.05

NOTICE TO DEFENDANT SERVED OUT OF AUSTRALIA

To the Defendant:

1. You have been served with an originating process out of Australia under Rules 7.01 to 7.09 of the Rules of the Supreme Court of Victoria. A copy of those Rules is enclosed for your information. They show the scope of the jurisdiction of the Court in respect of claims against persons who are served out of Australia.
2. The grounds alleged by the plaintiff to support its claim to be entitled to serve you out of Australia are:

   [*specify grounds*]
3. If you do not file an appearance (or if you file a conditional appearance and apply by summons within 14 days of filing the conditional appearance) the Court may, on application made by you, make an order setting aside the originating process or its service on you or dismissing or staying the proceeding. Without limiting the Court's powers in this regard, the Court may make such an order if satisfied that—
   (a) the service was not authorised by the Rules of the Court; or
   (b) this Court is an inappropriate forum for the trial of the proceeding; or
   (c) the claim has insufficient prospects of success to warrant putting you to the time, expense and trouble of defending the claim.
4. Alternatively you may file an unconditional appearance (in the form prescribed by the Rules of the Court) within the time required under the Rules of the Court.
5. If you file an unconditional appearance, additional procedural obligations (such as an obligation to file a defence or an affidavit) may apply to you in accordance with the Rules of the Court.
6. If you do not file an unconditional appearance within the time required under the Rules of the Court and you have not made an application of a kind referred to in paragraph 3, the Court may give leave to the plaintiff to proceed against you without further notice.

Form 7A—Letter of request for service of document

Rule 7.13(2)

LETTER OF REQUEST FOR SERVICE OF DOCUMENT

[*heading as in originating process*]

To

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 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 .

I , the Prothonotary of the Supreme Court of Victoria, request that for the reasons stated above and for the assistance of the Court you will be pleased to cause the document [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 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:

Prothonotary of the Supreme
Court of the State of Victoria.

Form 7AA—Subpoena to give evidence (New Zealand)

Rule 7A.07(a)

SUBPOENA TO GIVE EVIDENCE (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s)*]

RESPONDENT[S] [*Name of Respondent(s)*]

Notice to Witness

Trans-Tasman Proceedings Act 2010

This Notice is very important.

Please read it and the attached document or documents very carefully.

If you have any trouble understanding these documents you should get legal advice as soon as possible.

Attached to this notice is a subpoena.

The subpoena has been issued by the Supreme Court of Victoria.

The subpoena may be served in New Zealand under New Zealand law (see section 163 of the Evidence Act 2006 (New Zealand)).

This notice:

- sets out your rights relating to the subpoena; and
- sets out your obligations relating to the subpoena; and
- includes information about the way in which you may make an application to have the subpoena set aside.

Filed on behalf of [*name and role of party*]

Prepared by [*name of person/lawyer*]

Law firm [*if applicable*]

Tel Fax

Email

Address for service
[*include State and postcode*]

Your rights

1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.
2. An amount of money, or money and vouchers that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: '**Your obligations**').
3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Supreme Court of Victoria that you be paid the additional amount you incurred.
4. You may apply to the Supreme Court of Victoria to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible.
5. An application can be made and determined by that Court without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand.

Note: Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.

Your obligations

1. Unless the subpoena is set aside, you must comply with the attached subpoena if:
   (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either:
      (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
      (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and
   (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and
   (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and

(d) service of the subpoena complied with any other conditions specified in the order; and

(e) you are 18 years of age or older.

Failure to comply with the subpoena

If you do not comply with the subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ$10 000 may be imposed.

Grounds for setting aside a subpoena

1. The Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and:

   (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or

   (b) if you complied with the subpoena—you would be liable to be detained for the purpose of serving a sentence; or

   (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or

   (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the Australian Consumer Law); or

   (e) you are subject to a restriction on your movements imposed by law or an order of a Court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence).

2. The grounds on which the Court may set aside the subpoena include:

   (a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;

   (b) compliance with the subpoena would cause you hardship or serious inconvenience;

   (c) if the subpoena requires you to produce a document or thing and:

      (i) that document or thing should not be taken out of New Zealand; and

(ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means.

Note: The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.

Procedure for applying to set aside a subpoena

1. Application must be made to the Supreme Court of Victoria.
2. You may email your application to that Court at the email address [*email address of the Court*].
3. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, emailed or posted to you at that address.
4. The Prothonotary will arrange for service of your application and of any affidavit you lodge with the Court with your application.
5. The Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing.
6. If there is a hearing the Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand.
7. If, in your application or within a reasonable time after lodging your application, you request that the hearing be held by video link or telephone, the Court must hold a hearing by video link or telephone. However, in such a case, the Court will determine which of video link or telephone will be used.

SUBPOENA TO GIVE EVIDENCE (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s*)]

RESPONDENT[S] [*Name of Respondent(s*)]

TO: [*name and address*]

You are ordered to attend to give evidence. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under section 165 of the Evidence Act 2006 (New Zealand).

Please read Notes 1 to 8 at the end of this subpoena.

The last date for service of this subpoena is [*date*]. (See Note 2)

Date:

Signed by Prothonotary

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

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.

Notes

Leave to serve subpoena

1. You need not comply with this subpoena unless it is accompanied by:
    (a) a copy of the order giving leave to serve this subpoena in New Zealand; and
    (b) a notice in the prescribed form that:
        (i) sets out your rights and obligations in relation to this subpoena; and
        (ii) includes information about the way in which an application to have this subpoena set aside may be made.

Last day for service

2. You need not comply with this subpoena unless it is served on you on or before the date specified in this subpoena as the last date for service of this subpoena.

Informal service

3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of this subpoena, actual knowledge of this subpoena and of its requirements.

Addressee a corporation

4. If this subpoena is addressed to a corporation, the corporation must comply with this subpoena by its appropriate or proper officer.

Applications in relation to subpoena

5. You have the right to apply to the Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of this subpoena.

Loss or expense of compliance

6. 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 this subpoena.

Contempt of court—arrest

7. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 165 of the Evidence Act 2006 (New Zealand).

8. Note 7 is 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.

*Delete if not applicable.

Form 7AB—Subpoena to produce documents (New Zealand)

Rule 7A.07(b)

SUBPOENA TO PRODUCE DOCUMENTS (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s)*]

RESPONDENT[S] [*Name of Respondent(s)*]

Notice to Witness

Trans-Tasman Proceedings Act 2010

This Notice is very important.

Please read it and the attached document or documents very carefully.

If you have any trouble understanding these documents you should get legal advice as soon as possible.

Attached to this notice is a subpoena.

The subpoena has been issued by the Supreme Court of Victoria.

The subpoena may be served in New Zealand under New Zealand law (see section 163 of the Evidence Act 2006 (New Zealand)).

This notice:

- sets out your rights relating to the subpoena; and
- sets out your obligations relating to the subpoena; and
- includes information about the way in which you may make an application to have the subpoena set aside.

Filed on behalf of [*name and role of party*]

Prepared by [*name of person/lawyer*]

Law firm [*if applicable*]

Tel Fax

Email

Address for service
[*include State and postcode*]

Your rights

1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.
2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: '**Your obligations**').
3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Supreme Court of Victoria that you be paid the additional amount you incurred.
4. You may apply to the Supreme Court of Victoria to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible.
5. An application can be made and determined by that Court without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand.

Note: Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.

Your obligations

1. Unless the subpoena is set aside, you must comply with the attached subpoena if:
   (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either:
      (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
      (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and
   (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and
   (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and

(d) service of the subpoena complied with any other conditions specified in the order; and

(e) you are 18 years of age or older.

2. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court or tribunal that issued the subpoena.

You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena.

When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court or tribunal that issued the subpoena. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

Failure to comply with the subpoena

If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ$10 000 may be imposed.

Grounds for setting aside a subpoena

1. The Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and:

(a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or

(b) if you complied with the subpoena—you would be liable to be detained for the purpose of serving a sentence; or

(c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or

(d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the Australian Consumer Law); or

(e) you are subject to a restriction on your movements imposed by law or an order of a Court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence).

2. The grounds on which the Court may set aside the subpoena include:

(a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;

(b) compliance with the subpoena would cause you hardship or serious inconvenience;

(c) if the subpoena requires you to produce a document or thing and:

(i) that document or thing should not be taken out of New Zealand; and

(ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means.

Note: The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.

Procedure for applying to set aside a subpoena

1. Application must be made to the Supreme Court of Victoria.
2. You may email your application to that Court at the email address [*email address of the Court*].
3. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, emailed or posted to you at that address.
4. The Prothonotary will arrange for service of your application and of any affidavit you lodge with the Court with your application.
5. The Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing.
6. If there is a hearing the Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand.
7. If, in your application or within a reasonable time after lodging your application, you request that the hearing be held by video link or telephone, the Court must hold a hearing by video link or telephone. However, in such a case, the Court will determine which of video link or telephone will be used.

SUBPOENA TO PRODUCE DOCUMENTS (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s*)]

RESPONDENT[S] [*Name of Respondent(s*)]

TO: [*name and address*]

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under section 165 of the Evidence Act 2006 (New Zealand).

Please read Notes 1 to 16 at the end of this subpoena.

The last date for service of this subpoena is [*date*]. (See Note 2)

Date:

Signed by Prothonotary

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena

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:

(i) the Prothonotary at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production; or

(ii) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. (See Notes 6–12)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Prothonotary

Supreme Court of Victoria

[*address*]

Schedule

The documents and things you must produce are as follows:

[*If insufficient space attach list*]

Notes

Leave to serve subpoena

1. You need not comply with this subpoena unless it is accompanied by:
   (a) a copy of the order giving leave to serve the subpoena in New Zealand; and
   (b) a notice in the prescribed form that:
      (i) sets out your rights and obligations in relation to this subpoena; and
      (ii) includes information about the way in which an application to have this subpoena set aside may be made.

Last day for service

2. You need not comply with this subpoena unless it is served on you on or before the date specified in this subpoena as the last date for service of the subpoena.

Informal service

3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of this subpoena, actual knowledge of this subpoena and of its requirements.

Addressee a corporation

4. If this subpoena is addressed to a corporation, the corporation must comply with this subpoena by its appropriate or proper officer.

Production of subpoena or copy of it and documents or things by delivery or post

5. In so far as this subpoena requires production of this subpoena or a copy of it and a document or thing, instead of attending to produce this subpoena or a copy of it and the document or thing, you may comply with this subpoena by delivering or sending this subpoena or a copy of it and the document or thing to:

   (a) the Prothonotary at the address specified in this subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 2 clear business days before the date specified in this subpoena for attendance and production; or

   (b) the Registrar of the High Court of New Zealand at the address specified in this subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 10 clear days before the date specified in this subpoena for attendance and production.

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 this subpoena being inspected by any party to the proceeding, the Prothonotary may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

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.

Production of copy instead of original

9. 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.

9A. The copy of a document may be:

(a) a photocopy; or

(b) in an electronic form that the issuing party has indicated will be acceptable.

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.

11. If you have so informed the Court, the Prothonotary may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. You have the right to apply to the Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of this subpoena.

Loss or expense of compliance

13. 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 this subpoena.

Banker's book

14. In so far as this subpoena requires production of this subpoena or a copy of it and a banker's book, if section 19 and other applicable provisions of the Evidence Act 2006 (New Zealand) would have applied if this subpoena has been issued in a New Zealand proceeding, instead of producing the banker's book, you may produce proof of the relevant entries in accordance with the applicable provisions of the Evidence Act 2006 (New Zealand).

Contempt of court—arrest

15. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 165 of the Evidence Act 2006 (New Zealand).

16. Note 15 is 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.

*Delete if not applicable.

Form 7AC—Subpoena to give evidence and produce documents (New Zealand)

Rule 7A.07(c)

SUBPOENA TO GIVE EVIDENCE AND PRODUCE DOCUMENTS (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s)*]

RESPONDENT[S] [*Name of Respondent(s)*]

Notice to Witness

Trans-Tasman Proceedings Act 2010

This Notice is very important.

Please read it and the attached document or documents very carefully.

If you have any trouble understanding these documents you should get legal advice as soon as possible.

Attached to this notice is a subpoena.

The subpoena has been issued by the Supreme Court of Victoria.

The subpoena may be served in New Zealand under New Zealand law (see section 163 of the Evidence Act 2006 (New Zealand)).

This notice:

- sets out your rights relating to the subpoena; and
- sets out your obligations relating to the subpoena; and
- includes information about the way in which you may make an application to have the subpoena set aside.

Filed on behalf of [*name and role of party*]

Prepared by [*name of person/lawyer*]

Law firm [*if applicable*]

Tel Fax

Email

Address for service
[*include State and postcode*]

Your rights

1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.
2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: '**Your obligations**').
3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Supreme Court of Victoria that you be paid the additional amount you incurred.
4. You may apply to the Supreme Court of Victoria to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible.
5. An application can be made and determined by that Court without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand.

Note: Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.

Your obligations

1. Unless the subpoena is set aside, you must comply with the attached subpoena if:
   (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either:
      (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
      (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and
   (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and

(c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and

(d) service of the subpoena complied with any other conditions specified in the order; and

(e) you are 18 years of age or older.

2. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court or tribunal that issued the subpoena.

You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena.

When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court or tribunal that issued the subpoena. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

Failure to comply with the subpoena

If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ$10 000 may be imposed.

Grounds for setting aside a subpoena

1. The Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and:

(a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or

(b) if you complied with the subpoena—you would be liable to be detained for the purpose of serving a sentence; or

(c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or

(d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the Australian Consumer Law); or

(e) you are subject to a restriction on your movements imposed by law or an order of a Court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence).

2. The grounds on which the Court may set aside the subpoena include:

(a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;

(b) compliance with the subpoena would cause you hardship or serious inconvenience;

(c) if the subpoena requires you to produce a document or thing and:

(i) that document or thing should not be taken out of New Zealand; and

(ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means.

Note: The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.

Procedure for applying to set aside a subpoena

1. Application must be made to the Supreme Court of Victoria.
2. You may email your application to that Court at the email address [*email address of the Court*].
3. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, emailed or posted to you at that address.
4. The Prothonotary will arrange for service of your application and of any affidavit you lodge with the Court with your application.
5. The Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing.
6. If there is a hearing the Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand.

7. If, in your application or within a reasonable time after lodging your application, you request that the hearing be held by video link or telephone, the Court must hold a hearing by video link or telephone. However, in such a case, the Court will determine which of video link or telephone will be used.

SUBPOENA TO GIVE EVIDENCE AND PRODUCE DOCUMENTS (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s*)]

RESPONDENT[S] [*Name of Respondent(s*)]

TO: [*name and address*]

You are ordered 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 next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under section 165 of the Evidence Act 2006 (New Zealand).

Please read Notes 1 to 16 at the end of this subpoena.

The last date for service of this subpoena is [*date*]. (See Note 2)

Date:

Signed by Prothonotary

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena to give evidence

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

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.

Details of subpoena to produce documents

In so far as you are required by this subpoena to produce this 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:

(i) the Prothonotary at the address specified in this subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 2 clear business days before the date specified in this subpoena for attendance and production; or

(ii) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 10 clear days before the date specified in this subpoena for attendance and production. (See Notes 6–12)

Date, time and place at which you must attend to produce this subpoena or a copy of it and documents or things:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Prothonotary

Supreme Court of Victoria

[*address*]

Schedule

The documents and things you must produce are as follows:

[*If insufficient space attach list*]

Notes

Leave to serve subpoena

1. You need not comply with this subpoena unless it is accompanied by:
   (a) a copy of the order giving leave to serve this subpoena in New Zealand; and
   (b) a notice in the prescribed form that:
      (i) sets out your rights and obligations in relation to this subpoena; and
      (ii) includes information about the way in which an application to have this subpoena set aside may be made.

Last day for service

2. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of this subpoena, actual knowledge of this subpoena and of its requirements.

Addressee a corporation

4. If this subpoena is addressed to a corporation, the corporation must comply with this subpoena by its appropriate or proper officer.

Production of subpoena or copy of it and documents or things by delivery or post

5. In so far as this subpoena requires production of this subpoena or a copy of it and a document or thing, instead of attending to produce this subpoena or a copy of it and the document or thing, you may comply with this subpoena by delivering or sending this subpoena or a copy of it and the document or thing to:

(a) the Prothonotary at the address specified in this subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified in this subpoena for attendance and production; or

(b) the Registrar of the High Court of New Zealand at the address specified in this subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in this subpoena for attendance and production.

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 this subpoena being inspected by any party to the proceeding, the Prothonotary may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

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.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that this subpoena requires you to produce.

9A. The copy of a document may be:

(a) a photocopy; or

(b) in an electronic form that the issuing party has indicated will be acceptable.

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.

11. If you have so informed the Court, the Prothonotary may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. You have the right to apply to the Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of this subpoena.

Loss or expense of compliance

13. 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 this subpoena.

Banker's book

14. In so far as this subpoena requires production of this subpoena or a copy of it and a banker's book, if section 19 and other applicable provisions of the Evidence Act 2006 (New Zealand) would have applied if this subpoena has been issued in a New Zealand proceeding, instead of producing the banker's book, you may produce proof of the relevant entries in accordance with the applicable provisions of the Evidence Act 2006 (New Zealand).

Contempt of court—arrest

15. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 165 of the Evidence Act 2006 (New Zealand).

16. Note 15 is 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.

*Delete if not applicable.

Form 7AD—Certificate of non-compliance with subpoena (New Zealand)

Rule 7A.10

CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA (NEW ZEALAND)

IN THE SUPREME COURT
OF VICTORIA

No. of 20

APPLICANT[S] [*Name of Applicant(s*)]

RESPONDENT[S] [*Name of Respondent(s*)]

TO THE HIGH COURT OF NEW ZEALAND

The Supreme Court of Victoria certifies that:

(a) the Court gave leave to serve a subpoena in New Zealand under the Trans-Tasman Proceedings Act 2010 of the Commonwealth on [*insert date of leave*]; and

(b) [*person named in subpoena*] has failed to comply with the subpoena.

A copy of the subpoena and a copy of the order giving leave to serve in New Zealand are annexed to this certificate.

*No application to set aside the subpoena either wholly or in part has been made.

OR

*An application to set aside the subpoena was dismissed by order made on [*insert date*]. A copy of this order is annexed to this certificate.

Date:

Signed

*Delete if not applicable.

Filed on behalf of [*name and role of party*]

Form 7AD—Certificate of non-compliance with subpoena (New Zealand)

Prepared by [*name of person/lawyer*]

Law firm [*if applicable*]

Tel Fax

Email

Address for service
[*include State and postcode*]

Form 8A—Notice of appearance

Rule 8.05(1)

NOTICE OF APPEARANCE

[*heading as in originating process*]

FILE an appearance for [*full name of defendant*] the abovenamed defendant.

Dated:

[*Signed*]

The address of the defendant is

[*insert address*].

*[*Where the Service and Execution of Process Act 1992 of the Commonwealth applies*] The address for service of the defendant within Australia is [*insert address*].

*[*Where the Trans-Tasman Proceedings Act 2010 of the Commonwealth applies*] The address for service of the defendant in Australia or New Zealand is [*insert address*].

*[*Where neither of those Acts applies and the defendant appears in person and the address of the defendant is outside Australia*] The address of the defendant within Australia for service is [*insert address*].

*[*Where neither of those Acts applies and the defendant appears by a solicitor*] The name or firm and the business address within Australia of the solicitor for the defendant is [*insert name or firm and business address*].

*[*Where neither of those Acts applies and the solicitor is an agent of another*] The name or firm and business address of the principal is [*insert name or firm and business address*].

The email address for service of the defendant is

*delete if not applicable.

Form 8B—Notice of conditional appearance

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 [*insert date*].

[*Signed*]

[*continue as in Form 8A*]

Form 10A—Heading and notice on counterclaim where defendant new party

Form 10A amended by S.R. No. 127/2025 rule 8(d).

Rule 10.04(5)

HEADING AND NOTICE ON COUNTERCLAIM WHERE DEFENDANT NEW PARTY

IN THE SUPREME COURT
OF VICTORIA

20 No.

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.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

(a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; 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—

(i) in Victoria, within 10 days after service; or

(ii) out of Victoria and in another part of Australia, within 21 days after service;

(b) subject to paragraph (c), where you are served with the counterclaim out of Australia, within 42 days after service;

(c) where you are served with the counterclaim in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

COUNTERCLAIM

[*Set out in separate, consecutively numbered paragraphs all the material facts relied on 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—Notice of appearance to counterclaim

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 [*insert date*].

[*Signed*]

[*continue as in Form 8A*]

Form 11A amended by S.R. No. 127/2025 rule 8(e).

Form 11A—Third party notice

Rule 11.15(4)(a)

THIRD PARTY NOTICE

IN THE SUPREME COURT
OF VICTORIA

20 No.

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 with this notice, 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" with the Prothonotary by submitting the Notice of Appearance for filing electronically. See www.supremecourt.vic.gov.au; 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—

(i) in Victoria, within 10 days after service; or

(ii) out of Victoria and in another part of Australia, within 21 days after service;

(b) subject to paragraph (c), where you are served with the notice out of Australia, within 42 days after service;

(c) where you are served with the notice in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed.

FILED [*insert date*].

Prothonotary

Page 2

STATEMENT OF CLAIM

[*Set out in separate, consecutively numbered paragraphs all the material facts relied on for the claim against the third party and state precisely the relief claimed*.]

Page 3

1.** This notice was filed—

(a) by the defendant personally;

(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—

3A. The email address for service of the defendant is—

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—Notice by one tortfeasor claiming contribution against another

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 the defendant 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 [*insert date*]

Prothonotary

Form 12A—Notice of claim to goods taken in execution

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 5 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 5 days after service of this notice serve notice on the sheriff stating that you admit the claim or if within the period of 5 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 [*insert date*].

Sheriff

Form 15A—Order approving compromise of claim of minor

Rule 15.08(6)

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.

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 on the plaintiff attaining the age of 18 years.

6. On 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 provided to the Senior Master.

DATE AUTHENTICATED:

Prothonotary

Form 15B—Order approving compromise of claim under Part III of Wrongs Act for benefit of minor

Rule 15.08(6)

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.

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 the minor attaining the age of 18 years.

[*continue as in Form 15A*]

Form 18AA—Notice of consent to be a group member

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: [*insert date*]

[*Signed*]

Signature of person consenting or that person's solicitor

Address of person consenting:

Position of person consenting:

Form 18AB—Notice of opting out by group member

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: [*insert date*]

[*Signed*]

Signature of group member or the group member's solicitor:

Address of group member:

Form 19A—Notice of a constitutional matter

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 [*insert date*].

[*Signed*]

To the Prothonotary

And to

Form 29A—Notice for discovery

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 [*insert date*].

[*Signed*]

Form 29B—Affidavit of documents

Rule 29.04

AFFIDAVIT OF DOCUMENTS

[*heading as in originating process*]

I, the abovenamed , *make oath/*affirm 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*.]

SCHEDULE 1

Part 1

1.

2.

3.

Part 2

4.

5.

6.

7.

SCHEDULE 2

8.

*Sworn/*Affirmed, etc.

*Delete if not applicable.

Form 29C—Notice to produce

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 [*insert date*].

[*Signed*]

Form 29D—Notice of default in making discovery of documents

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 [*insert date*].

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 [*insert date*].

[*Signed*]

Form 30A—Notice of default in answering interrogatories

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 [*insert date*].].

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 [*insert date*].

[*Signed*]

Form 35A—Notice to admit

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 on you, serve a notice on 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 [*insert date*].

[*Signed*]

Form 35B—Notice of dispute

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 [*insert date*].

[*Signed*]

Form 37AA—Freezing order

Rule 37A.02

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 order[1].

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 INFORMATION[4]

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.

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.

(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 effect[5] 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 B[7]

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—

Form 37AA—Freezing order

[*Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail*]

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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.

Form 37BA—Search order

Rule 37B.02

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—

(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;

(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.

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.

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

(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.

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 will[3]—

(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.

(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.

(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:

Name of deponent	*Date affidavit was made*	*Exhibits numbered*
(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.

Form 39A—Deed of guarantee

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.

By an order of the Supreme Court of the State of Victoria made [*insert date of order*], 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 pursuant to the said order the receiver is required to give security approved by the Court.

And 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 of this deed.

This guarantee witnesses that the guarantor promises the Prothonotary that if the receiver does not account to the Court for what the receiver receives as receiver or does not deal with what the receiver 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)

affixed to this deed in)

the presence of)

Form 41A—Order for examination within Victoria

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—Order for examination out of Victoria

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 in the depositions, or certified copies of such documents, or of extracts from those documents, be sent by the examiner, under seal, to the Prothonotary of the Supreme Court of Victoria, [*insert address*], on or before , 20 or such further day as may be ordered, to be filed .
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—Order for letter of request to judicial authority out of Victoria

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 Supreme Court of Victoria.

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—Letter of request for examination of witness

Rule 41.13(2)

LETTER OF REQUEST FOR EXAMINATION OF WITNESS

[*heading as in originating process*]

To [*the competent judicial authority*] of .

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 it has been represented to the 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 on 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/*an Associate Judge/*a judicial registrar of the Supreme Court of the State of Victoria request that for the reasons set out above and for the assistance of the 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 on 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 [on interrogatories and orally on 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 [on cross-interrogatories and orally] and the party producing the witness for examination to re-examine the witness 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 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 [*insert date*].

*delete if not applicable

Form 42A—Subpoena to attend to give evidence

Rule 42.03(1)(a)

[*heading as in originating process*]

SUBPOENA TO ATTEND TO GIVE EVIDENCE

To [*name*]

of [*address*]:

YOU ARE ORDERED to attend to give evidence: see below for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

You should read all of the Notes set out at the end of this subpoena.

The last day for service of this subpoena is: [*date*]. (*See Note 1*)

Date:

[*Seal of the Court*]

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena

You are required by this subpoena to attend to give evidence and you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case, the later date or time is substituted:

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.

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 date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date 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 requirements of the subpoena unless a sum of money or its equivalent (such as pre-paid travel) sufficient to meet your reasonable expenses of attending as required by the subpoena and returning after so attending is provided or tendered to you a reasonable time before the day on which your attendance is required.

Applications in relation to subpoena

5. 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 any claim you may have for privilege, public interest immunity or confidentiality in relation to any evidence you may be required to give under the subpoena.

Loss or expense of compliance

6. 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 any loss or expense, including any legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

8. Note 7 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—Subpoena to produce

Rule 42.03(1)(b)

[*heading as in originating process*]

SUBPOENA TO PRODUCE

To [*name*]

of [*address*]:

YOU ARE ORDERED to attend to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents: see below for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

You should read all of the Notes set out in this subpoena. Also, you must complete the Declaration by Addressee (Subpoena Recipient) set out at the end of this subpoena.

The last day for service of this subpoena is: [*date*]. (*See Note 1*)

Date:

[*Seal of the Court*]

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena

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 of documents 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 of documents below to the Prothonotary at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than two clear business days before the date specified for attendance and production. (*See Notes 4 to 10*)

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things unless you receive notice of a later date or time from the issuing party, in which case, the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or sent:

The Prothonotary

[Supreme Court of Victoria
Electronic filing at subpoenas@supcourt.vic.gov.au or
in person at the Principal Registry, 450 Little Bourke Street, Melbourne.
See www.supremecourt.vic.gov.au]

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows:

[*List the documents or things. Attach list if insufficient space.*]

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date 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.

Production of subpoena or copy of it and documents or things by delivery or post

4. Instead of attending to produce this subpoena (or a copy of it) and the documents or things required to be produced, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the documents or things to the Prothonotary—

   (a) at the address specified in the subpoena for the purpose; or

   (b) if more than one address is specified, at any of those addresses—

so that they are received not less than two clear business days before the date specified in the subpoena for attendance and production or if you receive notice of a later date or time from the issuing party, before the later date or time.

5. 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.

6. 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.

Production of a number of documents or things

7. 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

8. Unless the subpoena specifically requires you to produce an original, you may produce a copy of any document that the subpoena requires you to produce. If you are producing copies, you are encouraged to produce them in electronic form.

9. Electronic copies of documents can be provided on a memory card or stick in any of the formats referred to in paragraph 10(b) below.

10. A copy of a document may be—

(a) a photocopy; or

(b) in an electronic form in any of the following electronic formats—

.doc and .docx—Microsoft Word documents

.pdf – Adobe Acrobat documents

.xls and .xlsx – Microsoft Excel spreadsheets

.jpg – image files

.rtf – rich text format

.gif – graphics interchange format

.tif – tagged image format

any other format agreed with the issuing party.

Applications in relation to subpoena

11. 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 any claim you may have for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

12. 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 respect of any loss or expense, including any legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

13. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

14. Note 13 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.

DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

You must complete the declaration below. The completed declaration must be included in the subpoena or in the copy of the subpoena when you produce the subpoena or the copy with the documents required by 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 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 you declare that the material you produce 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.

[*tick the relevant option below, provide your address as appropriate, sign and date*]

☐ **All copied documents**
All of the material I am providing in compliance with this 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 original documents**
Some or all of the material I am providing in compliance with this 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*].

Date:

[*signature of addressee*]

[*name of addressee*]

Form 42C—Subpoena both to attend to give evidence and to produce

Rule 42.03(1)(c)

[*heading as in originating process*]

SUBPOENA BOTH TO ATTEND TO GIVE EVIDENCE AND TO PRODUCE

To [*name*]

of [*address*]:

YOU ARE ORDERED both to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents: see below for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

You should read all of the Notes set out in this subpoena. Also, you must complete the Declaration by Addressee (Subpoena Recipient) set out at the end of this subpoena.

The last day for service of this subpoena is: [*date*]. (*See Note 1*)

Date:

[*Seal of the Court*]

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows unless you receive notice of a later date or time from the issuing party, in which case, the later date or time is substituted:

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.

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 of documents 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 of documents below to the Prothonotary at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than two clear business days before the date specified for attendance and production. (*See Notes 5 to 11*).

Date, time and place at which to attend to produce the subpoena or a copy of it and the documents or things unless you receive notice of a later date or time from the issuing party, in which case, the later date or time is substituted:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or sent:

The Prothonotary

[Supreme Court of Victoria
Electronic filing at subpoenas@supcourt.vic.gov.au or
in person at the Principal Registry, 450 Little Bourke Street, Melbourne.
See www.supremecourt.vic.gov.au]

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows:

[*List the documents or things. Attach list if insufficient space*.]

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date 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 requirements of the subpoena unless a sum of money or its equivalent (such as pre-paid travel) sufficient to meet your reasonable expenses of attending as required by the subpoena and returning after so attending is provided or tendered to you a reasonable time before the day on which your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

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 to that extent by delivering or sending the subpoena (or a copy of it) and the document or thing to the Prothonotary—

    (a) at the address specified in the subpoena for the purpose; or

    (b) if more than one address is specified, at any of those addresses—

    so that they are received not less than two clear business days before the date specified in the subpoena for attendance and production or if you receive notice of a later date or time from the issuing party, before the later date or time.

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.

Production of a number of documents or things

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.

Production of copy instead of original

9. Unless the subpoena specifically requires you to produce an original, you may produce a copy of any document that the subpoena requires you to produce. If you are producing copies, you are encouraged to produce them in electronic form.

10. Electronic copies of documents can be provided on a memory card or stick in any of the formats referred to in paragraph 11(b) below.

11. A copy of a document may be—

(a) a photocopy; or

(b) in an electronic form in any of the following electronic formats—

.doc and .docx—Microsoft Word documents

.pdf—Adobe Acrobat documents

.xls and .xlsx—Microsoft Excel spreadsheets

.jpg—image files

.rtf—rich text format

.gif—graphics interchange format

.tif—tagged image format

any other format agreed with the issuing party.

Applications in relation to subpoena

12. 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 any claim you may have for privilege, public interest immunity or confidentiality in relation to any evidence you may be required to give under the subpoena or any document or thing the subject of the subpoena.

Loss or expense of compliance

13. 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 any loss or expense, including any legal costs, reasonably incurred in complying with the subpoena.

Contempt of court—arrest

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

15. Note 14 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.

DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

You must complete the declaration below. The completed declaration must be included in the subpoena or in the copy of the subpoena when you produce the subpoena or the copy with the documents required by 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 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 you declare that the material you produce 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.

[*tick the relevant option below, provide your address as appropriate, sign and date*]

☐ **All copied documents**
All of the material I am providing in compliance with this 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 original documents**
Some or all of the material I am providing in compliance with this 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*].

Date:

[*signature of addressee*]

[*name of addressee*]

Form 42AA—Subpoena for production to Prothonotary

Rule 42A.03

[*heading as in originating process*]

SUBPOENA FOR PRODUCTION TO PROTHONOTARY

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 of documents: see below for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

You should read all of the Notes set out in this subpoena. Also, you must complete the Declaration by Addressee (Subpoena Recipient) set out at the end of this subpoena.

The last day for service of this subpoena is: [*date*]. (See Note 1)

Date:

[*Seal of the Court*]

Issued at the request of [*name of party*], whose address for service is:

Place:

Email:

Details of subpoena

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 of documents 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
Electronic filing at subpoenas@supcourt.vic.gov.au or
in person at the Principal Registry, 450 Little Bourke Street, Melbourne.
See www.supremecourt.vic.gov.au]

SCHEDULE OF DOCUMENTS

The documents and things you must produce are as follows:

[*List the documents or things. Attach list if insufficient space.*]

NOTES

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

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 date 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.

Question concerning subpoena

4. 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

5. 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 that party's solicitor, and copies taken.

Objection by addressee to production or inspection

6. 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 the Court.

Objection by party served with subpoena to inspection

7. 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 the Court.

Objection by plaintiff to production of hospital or medical file or record

8. 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

9. 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

10. 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 on 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

11. 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

12. Unless the subpoena specifically requires you to produce an original, you may produce a copy of any document that the subpoena requires you to produce. Even if the subpoena required the production of the original, you may, if you have the consent of the issuing party, produce a copy, instead of the original, of the document. If you are producing copies of documents, you are encouraged to produce them in electronic form.

13. Electronic copies of documents can be provided on a memory card or stick in any of the formats referred to in paragraph 14(b) below.

14. A copy of a document may be—

(a) a photocopy;

(b) in an electronic form in any of the following electronic formats—

.doc and .docx—Microsoft Word documents

.pdf—Adobe Acrobat documents

.xls and .xlsx—Microsoft Excel spreadsheets

.jpg—image files

.rtf—rich text format

.gif—graphics interchange format

.tif—tagged image format

any other format agreed with the issuing party; or

(c) in any other appropriate form.

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 any claim you may have 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 respect of any loss or expense, including any 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.

DECLARATION BY ADDRESSEE (SUBPOENA RECIPIENT)

You must complete the declaration below. The completed declaration must be included in the subpoena or in the copy of the subpoena when you produce the subpoena or the copy with the documents required by 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 4 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 you declare that the material you produce 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.

[*tick the relevant option below, provide your address as appropriate, sign and date*]

☐ **All copied documents**
All of the material I am providing in compliance with this 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 original documents**
Some or all of the material I am providing in compliance with this 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*].

Date:

[*signature of addressee*]

[*name of addressee*]

Form 43A—Certificate identifying exhibit or exhibits

Rule 43.06(5)

CERTIFICATE IDENTIFYING EXHIBIT OR EXHIBITS

[*heading as in affidavit*]

*This is the exhibit marked [*e.g. "ABC1"*]/*These are the exhibits marked [*list exhibits in bundle of documents or bundle of confidential documents as applicable e.g. "ABC1, DEF2 etc*] now produced and shown to [*identify deponent*] at the time of swearing or affirming the person's affidavit on [*date*].

[*Signature of deponent*]

[*Signature of person taking affidavit*]

[*state distinguishing mark of exhibit or exhibits and briefly and specifically described each exhibit, bundle of documents or bundle of confidential documents, as applicable* [*use a schedule if insufficient space*]*: e.g. Exhibit "ABC1" Letter BHP to CRA 15/6/09*]†

[*name of deponent*]

†*print distinguishing mark and description in bold type and in a font size not less than 20 points in bottom right hand corner of the page.*

*Delete if not applicable

Form 44A—Expert witness code of conduct

Rule 44.01

EXPERT WITNESS CODE OF CONDUCT

Application of Code

1. This Code of Conduct applies to any expert witness engaged or appointed—

   (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or

   (b) to give opinion evidence in proceedings or proposed proceedings.

General Duties to the Court

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

Content of Report

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide—

   (a) the name and address of the expert;

   (b) an acknowledgment 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 assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed);

   (e) the reasons for and any literature or other materials utilised in support 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) to the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and opinion expressed by that other person;

(i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report) and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

Supplementary Report Following Change of Opinion

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in 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), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.

5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

Duty to Comply with the Court's Directions

6. If directed to do so by the Court, an expert witness shall—

   (a) confer with any other expert witness;

   (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; and

   (c) abide in a timely way by any direction of the Court.

Conference of Experts

7. Each expert witness shall—

   (a) 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; and

   (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

Form 44AA—Court interpreters' code of conduct

Rule 44A.01

COURT INTERPRETERS' CODE OF CONDUCT

Application of code

1. This code of conduct applies to any person (the ***interpreter***) who, whether or not for fee or any other reward, is engaged, appointed, volunteers or otherwise becomes involved in a proceeding or proposed proceeding to act as an interpreter by interpreting or sight translating from any spoken or signed language (the ***other language***) into English and from English into the other language for any person.

General duty to the Court

2. An interpreter has an overriding duty to assist the Court impartially.

3. An interpreter's paramount duty is to the Court and not to any party to or witness in the proceeding, including the person retaining or paying the interpreter.

4. An interpreter is not an advocate, agent or assistant for a party or witness.

Duty to comply with directions

5. An interpreter must comply with any direction of the Court.

Duty of accuracy

6. An interpreter must at all times use the interpreter's best judgment to be accurate in the interpreter's interpretation or sight translation.

7. In this code, ***accurately***, in relation to interpreting or translating, means optimally and completely transferring the meaning of the other language into English and of English into the other language, preserving the content and intent of the other language or English (as the case may be) without

omission or distortion and including matters that may be considered inappropriate or offensive.

8. If an interpreter considers that the interpreter's interpretation or sight translation is or could be in any way inaccurate or incomplete or requires qualification or explanation (including, without limitation, where the other language is ambiguous or otherwise unclear for any reason), then the interpreter must—

   (a) immediately inform the party who engaged them and provide the necessary correction, qualification or explanation to that party; and

   (b) if the evidence is being given or was given in court, immediately inform the Court and provide the necessary correction, qualification or explanation to the Court.

Duty of impartiality

9. An interpreter must at all times act impartially so as to be without bias in favour of or against any person including but not limited to the witness whose evidence the interpreter is interpreting, the party who has engaged or is remunerating the interpreter or any other party to or person involved in the proceeding or proposed proceeding.

10. Unless the Court otherwise orders, an interpreter must not accept an engagement or appointment to act as an interpreter in relation to a proceeding or proposed proceeding if the interpreter—

    (a) is or may become a party or a witness; or

    (b) is related to, or has a close personal relationship with, a party or a member of the party's family, or with a witness or potential witness; or

    (c) has or may have a financial or other interest of any other kind in the outcome of the proceeding or proposed proceeding (other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of the interpreter's engagement or employment; or

    (d) is or may be unable to fulfil the interpreter's duty of accuracy or impartiality for any reason including, without limitation, personal or religious beliefs or cultural or other circumstances.

11. Other than carrying out an engagement or appointment as an interpreter, the interpreter must not provide any other assistance, service or advice (including by way of elaboration) to—

    (a) the party, legal practitioner or other person who has engaged them; or

    (b) any witness or potential witness, in relation to the proceeding or proposed proceeding.

Duty of competence

12. An interpreter must only undertake work the interpreter is competent to perform in the languages for which the interpreter is qualified by reason of the interpreter's training, qualifications or experience.

13. If it becomes apparent in the course of a matter that expertise beyond the interpreter's competence is required, the interpreter must inform the Court immediately and work to resolve the situation, either withdrawing from the matter or following another strategy acceptable to the Court.

Confidentiality

14. Subject to compulsion of law, an interpreter must keep confidential any information that the interpreter acquires in the course of the engagement or appointment as an interpreter (including any communication subject to client legal privilege) unless—

    (a) that information is in, or comes into, the public domain other than by an act of the interpreter in breach of this duty of confidentiality; or

    (b) the beneficiary of the client legal privilege has waived that privilege.

Form 45A—Summons on originating motion—proceedings after appearance

Rule 45.04(2)

SUMMONS ON ORIGINATING MOTION—PROCEEDINGS AFTER APPEARANCE

[*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 in respect of the relief or remedy sought in the originating motion as follows: [*describe the judgment or relief or remedy sought*].

The application will be heard before the Court in Court No. , Supreme Court, Melbourne, on [*insert date*] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

FILED [*insert date*].

This summons was filed by of , solicitor for the plaintiff.

Form 45B—Summons on originating motion—special procedure

Rule 45.05(6)

SUMMONS ON ORIGINATING MOTION—SPECIAL PROCEDURE

[*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 by the Courton [*insert date*] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

FILED [*insert date*].

This summons was filed by of , solicitor for the plaintiff.

*Delete if not applicable

Form 46A—Summons

Rule 46.04(1)

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 Court at the Supreme Court [*insert address*], on [*insert date*] at a.m. [or p.m.] or so soon afterwards as the business of the Court allows.

FILED [*insert date*].

This summons was filed by of , solicitor for the [*identify party*].

Form 48A—Notice of trial

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 on 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*]

Form 48B—Notice of trial

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—Judgment in summary proceeding for recovery of land

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*]

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* [*Note: The land should be so described as to be physically identifiable.*]

Form 53B—Warrant of possession in summary proceeding for recovery of land

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 [*insert date*] 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 [*insert date*].

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—Writ of habeas corpus

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 [*insert date*] and thereafter submit to the further order of the Court as to the custody of the plaintiff [*or name of person restrained, if not the plaintiff*].

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 [*insert date*].

By the Court

Form 58A—Notice of appeal

Rule 58.18

IN THE SUPREME COURT
OF VICTORIA

20 No.

In the matter of *section 271 of/*clause 13 of Schedule 1 to/*clause 18 of Schedule 1 to 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/*clause 13 of Schedule 1 to/*clause 18 of Schedule 1 to 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 [*insert date*] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

*1. [*Where the Appellant is not represented* by *a solicitor*] Appellant's personal address for service:

*2. [*Where the Appellant is represented by a solicitor*] Appellant's solicitor's name and address for service:

3. The email address for service of the Appellant is:

*delete if not applicable

Signed by the Appellant
or the Appellant's solicitors

Form 59A—Notice of judgment

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 [*insert date*] 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 that person] 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 [*insert date*].

[*Signed*]

Form 60A—General form of judgment given

Rule 60.08

GENERAL FORM OF JUDGMENT GIVEN

[*heading as in originating process*]

JUDGMENT

JUDGE OF THE COURT [*or* ASSOCIATE JUDGE *or* JUDICIAL REGISTRAR]:

DATE GIVEN: [*insert date*]

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—General form of judgment entered

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

Form 60C—General form of order

Rule 60.08

GENERAL FORM OF ORDER

[*heading as in originating process*]

ORDER

JUDGE OF THE COURT [*or* ASSOCIATE JUDGE *or* JUDICIAL REGISTRAR]:

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*]

3.

DATE AUTHENTICATED:

Prothonotary

Form 60D—Judgment at trial without a jury

Rule 60.08

JUDGMENT AT TRIAL WITHOUT A JURY

[*heading as in originating process*]

JUDGE [*or* ASSOCIATE JUDGE]:

DATE GIVEN:

ORIGINATING PROCESS:

HOW OBTAINED: Trial without a jury, commenced on [*insert date*].

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

Form 60E—Judgment at trial by Judge with a jury

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 6, 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—Judgment or Order at trial of preliminary question

Rule 60.08

JUDGMENT OR ORDER AT TRIAL OF PRELIMINARY QUESTION

[*heading as in originating process*]

JUDGE [*or* ASSOCIATE 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

Form 60G—Default judgment for debt

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—Default judgment for recovery of land

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

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* [*Note: The land should be so described as to be physically identifiable.*]

Form 60J—Interlocutory or interlocutory and final judgment for damages in default

Rule 60.08

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 *or* JUDICIAL REGISTRAR]:

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.*]

Form 60K—Final judgment for damages or value in default

Rule 60.08

FINAL JUDGMENT FOR DAMAGES OR VALUE IN DEFAULT

[*heading as in originating process*]

JUDGE OF THE COURT [*or* ASSOCIATE JUDGE *or* JUDICIAL REGISTRAR]:

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—Interlocutory or interlocutory and final judgment for detention of goods in default

Rule 60.08

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 *or* JUDICIAL REGISTRAR]:

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—Application for order for payment of judgment debt by instalments

Rule 61.02(1)(a)

APPLICATION FOR ORDER FOR PAYMENT OF JUDGMENT DEBT BY INSTALMENTS

[*heading as in originating process*]

This application is made to *an Associate Judge/*a judicial registrar 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 [*insert date*] 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 [*insert date*].

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.*]

*Delete if not applicable

Form 61B—Application for order in substitution for order for payment of judgment debt by instalments

Rule 61.02(1)(b)

APPLICATION 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/*a judicial registrar 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 [*insert date*] 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 .

Dated [*insert date*].

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.*]

*Delete if not applicable

Form 61C—Application to the Court for variation or cancellation of order for payment of judgment debt by instalments

Rule 61.02(2)

APPLICATION TO THE COURT FOR VARIATION OR CANCELLATION OF 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 [*insert date*] 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].

TAKE NOTICE that the application will be heard before Court No. , at the Supreme Court, [*insert address*], on [*insert date*]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 [*insert date].*

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—Order relating to payment of judgment debt by instalments

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 [*insert date*] 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 [*insert date*]:

[*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 [*insert date*] 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 [*insert date*] be cancelled [*or* be confirmed and the application dismissed].

Form 61E—Notice of order or refusal of order for payment of judgment debt by instalments

Rule 61.02(6)

NOTICE OF ORDER OR REFUSAL OF ORDER 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 [*insert date*] 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 [*insert date*].

Dated [*insert date*]

*Associate Judge/*Judicial Registrar

Note: If you are dissatisfied with the order or refusal referred to in this Notice you may file a Notice of Objection with *an Associate Judge/*a judicial registrar 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.

*Delete if not applicable

Form 61F—Notice of objection

Rule 61.02(7)

NOTICE OF OBJECTION

[*heading as in originating process*]

To *Associate Judge/*Judicial Registrar

TAKE NOTICE that the [*judgment creditor or judgment debtor*] of [*usual place of residence or of business or registered office*] 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 [*insert date*]

Signature of objector or objector's solicitor

*Delete if not applicable

Form 61G—Notice of hearing of objection

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/*Judicial Registrar made on 20 on the application of the [*judgment creditor or judgment debtor*] that [*complete appropriately*] [or to the refusal by *Associate Judge/*Judicial Registrar on 20 of an application by the [*judgment creditor or judgment debtor*] for an order that [*complete appropriately*].

The objection will be heard before at the Supreme Court, [*insert address*], on [*insert date*] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

Dated [*insert date*]

*Associate Judge/*Judicial Registrar

*Delete if not applicable

Form 61H—Notice by Court relating to payment of judgment debt by instalments

Rule 61.02(10)

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 [*insert date*] by which it was adjudged that the [*judgment debtor*] pay to the [*judgment creditor*] $ and costs.

[*to be completed where an Associate Judge or a judicial registrar has refused to order the payment of the judgment debt by instalments*]

On 20 *Associate Judge/*Judicial Registrar 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/*judicial registrar 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 or a judicial registrar has ordered the payment of the judgment debt by instalments*]

On 20 *Associate Judge/*Judicial Registrar , 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*].

Form 61H—Notice by Court relating to payment of judgment debt by instalments

TAKE NOTICE that the [*judgment creditor or judgment debtor*] filed notice of objection to the order of the *Associate Judge/*judicial registrar and that on 20 the Court made an order that the order of the *Associate Judge/*judicial registrar be confirmed [*or* varied as follows: *complete appropriately*] [*or* cancelled].

Dated [*insert date*]

By the Court
Prothonotary

*Delete if not applicable

Form 61J—Instalment agreement

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 [*insert date*] 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: _____

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 of the agreement he, she or it may be required to attend before the Court.

Dated [*insert date*]

Signed by the judgment creditor:

Witness:

Signed by the judgment debtor:

Witness:

Form 61K—Order for instalment payment of judgment debt after agreement

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 [*insert date*], 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—Notice of order for instalment payment of judgment debt after agreement

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 [*insert date*] 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 [*insert date*]

*Associate Judge/*Judicial Registrar

*Delete if not applicable

Form 61M—Summons to attend for oral examination

Rule 61.04(1)

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 [*insert date*] 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 [*insert date*].

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 of the Court/*Associate Judge/*Judicial Registrar at [*insert address or other location details of hearing*], on [*insert date*] at a.m. [*or* p.m.] or so soon afterwards as the business of the Court allows.

Issued [*insert date*].

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.

*Delete if not applicable.

Form 61N—Warrant of apprehension on disobedience to summons

Rule 61.04(4)

WARRANT OF APPREHENSION ON DISOBEDIENCE TO SUMMONS

[*heading as in originating process*]

To all police officers of the State of Victoria.

[*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 that person's financial circumstances:

I 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] where 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 that person and to bring that person before the [*continue as in Form 61M, specifying the time and place as required by section 14(3) or 17(3)*].

Issued [*insert date*].

By the Court
Prothonotary

Form 61P—Notice to judgment creditor of summons or warrant to judgment debtor

Rule 61.04(6)

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 [*insert date*] for $ and costs.

or

TAKE NOTICE that on 20 a warrant was issued for the apprehension of the [*judgment debtor*] for that person's failure to comply with a summons requiring that person 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 [*insert date*] 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 [*insert date*]

*Associate Judge/*Judicial Registrar

*Delete if not applicable

Form 61Q—Notice by Court of confirmation, variation or cancellation of judgment debt instalment order

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 [*insert date*].

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 [*insert date*]

By the Court
Prothonotary

Form 61R—Certificate of payment

Rule 61.07(2)

CERTIFICATE OF PAYMENT

[*heading as in originating process*]

To the Governor of the prison at
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 [*insert place*].

This certifies 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 [*insert date*]

Associate Judge

*Delete if not applicable

Form 63A—Summons for taxation of costs

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 [*insert date*] 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* with this summons].

Filed [*insert date*].

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 7 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—Application for leave to appeal/notice of appeal/cross-application for leave to appeal/notice of cross-appeal

Rules 64.02, 64.03, 64.30, 64.31

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

***APPLICATION FOR LEAVE TO APPEAL/*NOTICE OF APPEAL/*CROSS-APPLICATION FOR LEAVE TO APPEAL/*NOTICE OF CROSS-APPEAL**

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

1. Decision from which the *application for leave/*appeal is made:

Judicial Officer:

*Court/*Tribunal:

Date of decision made:

*Court/*Tribunal file number:

Is the whole of the decision sought to be appealed or being appealed?

*YES/*NO

[*If no, state which part of the decision is sought to be appealed or appealed against.*]

2. Is leave to appeal required?

*YES/*NO

3. If leave to appeal is not required, state why:

4. Is an oral hearing of *leave application/*cross-application for leave requested?

*YES/*NO

5. Reasons for granting leave to appeal:

[*If leave is required, set out specifically and concisely the reasons why leave should be granted.*]

1.

2.

6. Grounds or proposed grounds of appeal and (where required) question(s) of law:

(a) [*Set out specifically and concisely the grounds or proposed grounds of appeal*.]

1.

2.

(b) [*Where applicable*, s*et out specifically and concisely the question or questions of law on which the appeal is brought or proposed to be brought, as the case requires*.]

1.

2.

7. Orders sought:

8. Other applications:

[*Identify any other applications you are filing with this application for leave or appeal: see Rule 64.03(3) for the requirements*.]

9. Extension of time requested:

*YES/*NO

[*If yes, an extension application, supporting affidavit and any additional documents required to be filed by any applicable practice note or by Rule 64.08 should be filed with this form.*]

10. Stay applied for:

*YES/*NO

[*If yes, an application for stay, supporting affidavit and any additional documents required to be filed by any applicable practice note should be filed with this form: see Rule 64.03(3). Note also that an application for stay may be made to the lower court judge in the first instance.*]

11. Is the application for leave or appeal urgent?

*YES/*NO

[*If yes, state why*.]

12. Persons to be served with notice:

[*Identify all parties on whom it is proposed to serve this form and related documents. Note that a list of all parties served must be filed within 7 days after service: see Rule 64.06(5).*]

[*Note to party completing this Form:*

Under the Rules, a written case is required to be filed with this notice and other documents may also be required to be filed in accordance with any applicable practice note.]

Date:

Signed

[*Name of lawyer/self-represented party*]

*delete if inapplicable

Form 64B—Application other than for leave to appeal or to cross-appeal

Rules 64.03, 64.08, 64.10, 64.13, 64.38

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

APPLICATION OTHER THAN FOR LEAVE TO APPEAL OR TO CROSS-APPEAL

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the respondent [*name and address*]

I wish to apply for the following order:

This application is made on the following grounds:

[*insert as applicable*]

Date:

Signed

[*Name of lawyer /self-represented party*]

*delete if inapplicable.

Note:

An application other than for leave to appeal or cross-appeal must be filed with an affidavit and any additional documents required to be filed, at the time of commencing the application, by any applicable practice note.

An application must be accompanied by the applicable filing fee.

Form 64C—List of persons served

Rule 64.06

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

LIST OF PERSONS SERVED

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Pursuant to Rule 64.06(5) of Chapter I of the Rules of the Supreme Court, the undersigned states that a copy of the *Application for Leave to Appeal/*Notice of Appeal and all other documents required by the rules or any applicable practice note were served on the following parties:

[*list the parties (e.g. first respondent, second respondent etc and the firm names of their solicitors if represented or their details if self-represented), their addresses (including email addresses) and the date served*].

Example

Person served	Party	Solicitor	Date served
A Smith	First respondent	A Brown & Co Solicitors 100 Beach St Mentone VIC 3194 Email: reception@brownsolicitors.com.au	1 February 2014

Date:

Signed

[*Name of lawyer/self-represented party*]

*delete if inapplicable.

Form 64D—Notice of opposition to application other than for leave to appeal

Rules 64.08, 64.11

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF OPPOSITION TO APPLICATION OTHER THAN FOR LEAVE TO APPEAL

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant/*respondent

Form 64D—Notice of opposition to application other than for leave to appeal

TAKE NOTICE that the *applicant/*appellant/*respondent opposes the application *to/*for [*insert brief description of application*] filed on [*date*] for the following reasons:

[*state briefly but specifically the reasons for the opposition*]

1.

2.

Note:

This notice must be accompanied by any affidavit on which the *applicant/*appellant/*respondent intends to rely in opposition to the application and any additional document required by any applicable practice note.

Date:

Signed

[*Name of lawyer /self-represented party*]

*delete if inapplicable.

Form 64E—Notice of intention not to respond or contest

Rule 64.08, 64.11

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF INTENTION NOT TO RESPOND OR CONTEST

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant/*respondent

TAKE NOTICE that the *applicant/*appellant/*respondent *does not intend to respond to/*does not contest the [*appeal/*application] filed on [*date*].

Date:

Signed

[*Name of lawyer /self-represented party*]

*delete if inapplicable.

Form 64F—Application to have dismissal of application for leave set aside or varied

Rule 64.18

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

APPLICATION TO HAVE DISMISSAL OF APPLICATION FOR LEAVE SET ASIDE OR VARIED

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

Form 64F—Application to have dismissal of application for leave set aside or varied

TO: the Registrar

I, [*full name*], having received the Registrar's notification that my application for leave to appeal has been determined and dismissed by the Court of Appeal without an oral hearing and without that Court making a determination that the application was completely without merit, apply to have the dismissal set aside or varied at a hearing of my application.

Date:

Signed

[*Name of lawyer /self-represented party*]

*delete if inapplicable.

Note:

The Court will determine an application to have the dismissal set aside or varied on the basis of the application, written cases and documents filed by the parties prior to the decision to dismiss the application and any additional documents ordered by the Court or the Registrar**.** Further material will not be considered except with the Court's leave.

Form 64G—Notice of contention

Rule 64.32

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF CONTENTION

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant

The respondent contends that the judgment of the [*court or tribunal appealed from*] should be affirmed on a ground of fact or law which *was not decided/*was erroneously decided/*was not raised for decision in the court or tribunal.

The respondent does not seek to cross-appeal from any part of the judgment.

Grounds:

[*Specifically and concisely identify the legal reasons to support the judgment of the court or tribunal*]

1.

2.

Date:

Signed

[*Name of lawyer /self-represented party*]

*delete if inapplicable.

Note:

This notice must be accompanied by a written case and other documents specified by any applicable practice note.

Form 64H—Notice of objection to competency

Rule 64.33

IN THE SUPREME COURT OF VICTORIA

IN THE COURT OF APPEAL

File No.

BETWEEN

Applicant/Appellant

and

Respondent

NOTICE OF OBJECTION TO COMPETENCY

Date of Document:

Filed on behalf of:

*Applicant/*Appellant's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Respondent's or lawyer's name and address:

Solicitor Code:

Tel:

Ref:

Email:

Details of additional parties (if any) are attached:

*YES/*NO

TO: the Registrar

AND TO the *applicant/*appellant

The [*e.g. first respondent*] objects to the competency of [**application/*appeal*].

Grounds:

[*Briefly but specifically state the grounds of objection*]

1.

2.

*Further, the respondent applies for the question of competency to be heard and determined before the hearing of the *application/*appeal.

Date:

Signed

[*Name of lawyer/ self-represented party*]

*delete if inapplicable.

Form 68A—Warrant of seizure and sale

Rule 68.08

WARRANT OF SEIZURE AND SALE

[*heading as in originating process*]

TO THE SHERIFF:

In respect of the judgment [*or* order] dated [*insert date*] 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 the sum of—

(a) $, being the amount now due and payable for which judgment was entered or given;

(b) $, being the amount now due and payable in respect of costs;

(c) $, being the amount due and payable for interest accrued in respect of the judgment amount and the amount of costs at the date of the issue of the warrant, at the rate fixed in accordance with law;

(d) $, [*insert amount of interest payable per day*], being the amount of interest, if any, for each day which, subject to any future payment under the judgment, will accrue from the date of the issue of the warrant until the execution of the 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*].

*For the purposes of section 52(2) of the **Transfer of Land Act 1958**, the land in the folio or folios of the Register kept under that Act identified by folio number(s) [*insert relevant folio number(s) or certificate of title Vol. Fol*] is affected by this warrant.

Issued [*insert date*]

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].

*Delete if not applicable.

Form 68B—Warrant of possession

Rule 68.08

WARRANT OF POSSESSION

[*heading as in originating process*]

TO THE SHERIFF:

In respect of the judgment dated [*insert date*] 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 [*insert date*].

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—Warrant of delivery

Rule 68.08

WARRANT OF DELIVERY

[*heading as in originating process*]

TO THE SHERIFF:

In respect of the judgment [*or* order] dated [*insert date* 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 [*insert date*] 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*].

SCHEDULE

[*Describe goods as in judgment*]

Issued [*insert date*].

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—Advertisement of sale by the sheriff

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 on 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—Garnishee summons

Rule 71.06(2)

GARNISHEE SUMMONS

Between

A.B.	Judgment creditor
and	
C.D.	Judgment debtor
and	
X.Y.	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 [*insert date*] 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 [*insert date*].

The application will be heard on etc. [*continue as in Form 46A*].

[*insert the following at end of summons*]

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—Garnishee order

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 that person 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 that person 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 that person under this order in priority to the judgment debt and interest.

Form 71C—Garnishee order

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 that person 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 that person 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 that person to the judgment debtor.

Form 72A—Attachment of earning summons

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 [*insert date*] 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—Affidavit in support of application for attachment of earnings order

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/*affirm and say that:

1. By a judgment dated [*insert date*] 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/*affirmed *etc*.

*delete if inapplicable.

Form 72C—Judgment debtor's statement of financial situation

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 [*insert date 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:

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:

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:

(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:

Form 72D—Summons for an order to attend for examination or furnish particulars

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—Affidavit in support of summons for an order to attend for examination or furnish particulars

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/*affirm and say that:

1. By a judgment dated [*insert date*] 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 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 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/*affirmed *etc*.

*delete if inapplicable.

Form 72F—Order that judgment debtor attend or give statement

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 [*insert date*] for $ together with costs.

THE COURT ORDERS THAT:

The [*judgment debtor*] attend before the *Associate Judge/*Judicial Registrar at [*insert address or other location details of hearing*], on [*insert date*] 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 [*insert date*] a statement in writing signed by the [*judgment debtor*] setting forth the following particulars, namely:

[*complete appropriately*].

*Delete if not applicable.

Form 72G—Order that person indebted to or employer of judgment debtor give statement

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 [*insert date*] 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 [*insert date*] 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—Attachment of earnings order

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 [*insert date*] 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 [*insert date*] 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 7 days after the day on which the order is served on the person to whom the order is directed.

Form 72J—Notice to employer

Rule 72.06(3)

NOTICE TO EMPLOYER

[*heading as in originating process*]

The attachment of earnings order served with this notice 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 2 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.

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 the employee's employment or alters the employee's position to the employee's 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 [*insert date*].

Prothonotary

Form 72K—Notice by employer that judgment debtor is not in employer's employ

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*].

An order was made on [*insert date*] that I make payments to the [*judgment creditor*] out of the earnings of the [*judgment debtor*] I give notice that I am not the employer of the [*judgment debtor*] [or I ceased to be the employer of the [*judgment debtor*] on [*insert date*].]

Dated [*insert date*].

[*Signature of Employer*]

Form 72L—Notice of cessation of attachment of earnings order

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 [*insert date*] by which 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 [*insert date*] because [*state reason*].

Dated [*insert date*].

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 7 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—Charging summons

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 [*insert date*] 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 [*insert date*].

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 on any of those securities.

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*].

Form 73B—Affidavit as to stock

Rule 73.13(2)(a)(i)

AFFIDAVIT AS TO STOCK

IN THE SUPREME COURT

OF VICTORIA

In the matter of [*identify the document comprising the stock under which the claimant's interest arises*].

I, of *make oath/*affirm 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

*delete if inapplicable.

Form 73C—Notice as to stock

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 on the stock [*or also the payment of any dividend or interest on the stock*].

[*Signature of claimant, or solicitor where affidavit made by solicitor*]

Form 75A—Arrest warrant in summary proceedings for contempt in face of Supreme Court

Rule 75.02(4)

ARREST WARRANT IN SUMMARY PROCEEDINGS FOR CONTEMPT IN FACE OF SUPREME COURT

IN THE SUPREME COURT

OF VICTORIA

TO:

*the sheriff

*[*insert name of police officer*]

*all police officers

*[*insert name and position of person authorised by law to execute a warrant to arrest*]

*all persons authorised by law to execute a warrant to arrest

Arrest [*insert name of person*] and bring that person before the Court forthwith to answer a charge of contempt, and if it is not practicable to bring that person before the Court forthwith, detain that person in custody, and when it is practicable to bring that person before the Court, do so forthwith.

Dated [*insert date*].

Judge

*delete if not applicable

Form 75B—Arrest warrant in contempt proceedings by summons or originating motion

Rule 75.08(4)

ARREST WARRANT IN CONTEMPT PROCEEDINGS BY SUMMONS OR ORIGINATING MOTION

[*heading as in summons or originating motion*]

TO:

*the sheriff

*[*insert name of police officer*]

*all police officers

*[*insert name and position of person authorised by law to execute a warrant to arrest*]

*all persons authorised by law to execute a warrant to arrest

Arrest [*insert name of person*] and bring that person before the Court to answer a charge of contempt, detaining that person in custody in the meantime, unless by paying $ into Court [*or as the case may be*], that person gives security for that person's attendance in person before the Court to answer the charge and to submit to the judgment of the Court.

Dated [*insert date*]

Judge

*delete if not applicable

Form 75BA—Arrest warrant pending contempt hearing

Rule 75.08.1(1.3)

ARREST WARRANT PENDING CONTEMPT HEARING

[*heading as in originating process*]

TO:

*the sheriff

*[*insert name of police officer*]

*all police officers

*[*insert name and position of person authorised by law to execute a warrant to arrest*]

*all persons authorised by law to execute a warrant to arrest

Arrest [*insert name of person*] and bring that person before the Court forthwith to answer a charge of contempt, and if it is not practicable to bring that person before the Court forthwith, detain that person in custody, and when it is practicable to bring that person before the Court, do so forthwith.

Dated [*insert date*].

Judge

*delete if not applicable

Form 75C—Committal warrant

Rule 75.13

COMMITTAL WARRANT

[*heading as in Form 75A, 75B or 75BA, as appropriate*]

TO THE SHERIFF

Take [*name*] to the prison at and deliver that person to the Governor of that prison.

or

Arrest [*name*] and take that person to the prison at and deliver that person to the Governor of that prison.

To the Governor of the prison at

Receive [*name*] into your custody and keep that person until the further order of this Court [*as the case may be*].

The committal of [*name*] is for contempt of court in that [*name*] [*state nature of that person's contempt*].

Dated [*insert date*].

Judge

Form 77A—Notice of address for service

Rule 77.06.4(5)(a)

NOTICE OF ADDRESS FOR SERVICE

[*Heading as in notice of appeal or notice of contention*]

The address in Australia 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 Australia of the solicitor for [*full name of person or party*] is:

Dated:

[*Signed*]

Form 80A—Request for service abroad of judicial documents and certificate

Rules 80.04, 80.06 and 80.16

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 [*Central Authority/additional authority*]

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, i.e.:

(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.

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*.

Annexes

Documents returned:

In appropriate cases, documents, establishing the service:

Done at , the

Signature or stamp (or both).

*Delete if inappropriate.

Form 80B—Summary of the document to be served

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 [*person to be served*]:

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:

**JUDICIAL DOCUMENT

Nature and purpose of the document:

Form 80B—Summary of the document to be served

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:

Form 82A—Notice of application for suppression order

Rule 82.02

NOTICE OF APPLICATION FOR SUPPRESSION ORDER

[*heading as in originating process*]

To: The Supreme Court of Victoria at [*appropriate email address*]

And to: [*identify other proposed recipients of the notice*]

[*Applicant*] hereby gives notice of the making of an application for a suppression order under the **Open Courts Act 2013** in this proceeding.

*The application is the subject of a summons filed on [*date*] returnable before [*identify relevant judicial officer*] in [*identify relevant court room*] at [*time*] on [*date*].

OR

*The applicant proposes to make the application orally before [*identify relevant judicial officer*] in [*identify relevant court room*] at [*time*] on [*date*].

The application is for an order in the following terms:

[*Set out the proposed wording of the order to be sought*].

The applicant proposes to rely upon [*insert brief description of material to be relied upon*]

For further information, please contact:

[*Name of applicant or applicant's representative for enquiries*]

Tel: [*insert number*]

Mobile No.: [*insert number*]

Email:

*delete whichever is inapplicable.

Form 83A—Application for leave to make or continue interlocutory application in proceeding by person subject to limited litigation restraint order

Rule 83.07

[*heading as in originating process*]

APPLICATION FOR LEAVE TO MAKE OR CONTINUE INTERLOCUTORY APPLICATION IN PROCEEDING BY PERSON SUBJECT TO LIMITED LITIGATION RESTRAINT ORDER

(Section 50 of the **Vexatious Proceedings Act 2014**)

I, [*name*], a person subject to a limited litigation restraint order [*identify the relevant order*], apply under section 50 of the **Vexatious Proceedings Act 2014** for leave to *make/*continue an interlocutory application in this proceeding.

In accordance with section 51 of that Act, I contend that the interlocutory application is not a vexatious application and that there are reasonable grounds for the application, namely that: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks—

1. leave to *make/*continue the following interlocutory application [*specify*];
2. [*set out any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit disclosing the details required under section 56 of the **Vexatious Proceedings Act 2014** as follows—

(a) details of each application for leave to proceed made by the applicant;

(b) details of each application for leave to commence or continue a proceeding made by the applicant under section 21 of the **Supreme Court Act 1986**, as in force immediately before its repeal;

(c) details of each interlocutory application made or proceeding commenced or conducted by the applicant—

(i) that is a vexatious application or a vexatious proceeding (as defined in the Act); or

(ii) which has been stayed or dismissed on the basis of being made, commenced or conducted without merit;

(d) an explanation as to how the application for leave to proceed is materially different to each application referred to in paragraph (a), (b) or (c) (if any);

(e) all other facts material to the application, whether in support of or adverse to the application, which are known to the applicant.

FILED [*insert date*]

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83B—Application for leave to continue proceeding by person subject to extended litigation restraint order

Rule 83.08

*[*heading as in originating process*]/*[*heading in accordance with Rule 27.02*]

APPLICATION FOR LEAVE TO CONTINUE PROCEEDING BY PERSON SUBJECT TO EXTENDED LITIGATION RESTRAINT ORDER

(Section 52(1) of the **Vexatious Proceedings Act 2014**)

I, [*name*], a person subject to an extended litigation restraint order [*identify the relevant order*], apply under section 52(1) of the **Vexatious Proceedings Act 2014** for leave to continue *this proceeding/*a proceeding to which the order relates, namely [*identify the relevant proceeding*].

In accordance with section 53 of that Act, I contend that *this proceeding/*the proceeding is not a vexatious proceeding and that there are reasonable grounds for the proceeding, namely that: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks—

1. leave to continue *this proceeding/*a proceeding, namely [*identify relevant proceeding*];
2. [*set out any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit disclosing the details required under section 56 of the **Vexatious Proceedings Act 2014** as follows—

(a) details of each application for leave to proceed made by the applicant;

(b) details of each application for leave to commence or continue a proceeding made by the applicant under section 21 of the **Supreme Court Act 1986**, as in force immediately before its repeal;

(c) details of each interlocutory application made or proceeding commenced or conducted by the applicant—

(i) that is a vexatious application or a vexatious proceeding (as defined in the Act); or

(ii) which has been stayed or dismissed on the basis of being made, commenced or conducted without merit;

(d) an explanation as to how the application for leave to proceed is materially different to each application referred to in paragraph (a), (b) or (c) (if any);

(e) all other facts material to the application, whether in support of or adverse to the application, which are known to the applicant.

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83C—Application for leave to commence proceeding by person subject to extended litigation restraint order

Rule 83.08

IN THE SUPREME COURT
OF VICTORIA

20 No.

IN THE MATTER of an application under section 52(1) of the **Vexatious Proceedings Act 2014**.

APPLICATION FOR LEAVE TO COMMENCE PROCEEDING BY PERSON SUBJECT TO EXTENDED LITIGATION RESTRAINT ORDER

I, [*name*], a person subject to an extended litigation restraint order [*identify the relevant order*], apply under section 52(1) of the **Vexatious Proceedings Act 2014** for leave to commence a proceeding *against a person or other entity protected by the order/*in respect of a matter described in the order.

In accordance with section 53 of that Act, I contend that the proposed proceeding would not be a vexatious proceeding and that there are reasonable grounds for the proposed proceeding, namely that: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks—

1. leave to commence a proceeding, namely [*set out full details of proposed proceeding for which leave is sought, including the names and addresses of all proposed parties*];
2. [*set out any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit disclosing the details required under section 56 of the **Vexatious Proceedings Act 2014** as follows—

(a) details of each application for leave to proceed made by the applicant;

(b) details of each application for leave to commence or continue a proceeding made by the applicant under section 21 of the **Supreme Court Act 1986**, as in force immediately before its repeal;

(c) details of each interlocutory application made or proceeding commenced or conducted by the applicant—

(i) that is a vexatious application or a vexatious proceeding (as defined in the Act); or

(ii) which has been stayed or dismissed on the basis of being made, commenced or conducted without merit;

(d) an explanation as to how the application for leave to proceed is materially different to each application referred to in paragraph (a), (b) or (c) (if any);

(e) all other facts material to the application, whether in support of or adverse to the application, which are known to the applicant.

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83D—Application for leave to continue proceeding by person subject to general litigation restraint order

Rule 83.09

*[*heading as in originating process*]/*[*heading in accordance with Rule 27.02*]

APPLICATION FOR LEAVE TO CONTINUE PROCEEDING BY PERSON SUBJECT TO GENERAL LITIGATION RESTRAINT ORDER

(Section 54 of the **Vexatious Proceedings Act 2014**)

I, [*name*], a person subject to a general litigation restraint order [*identify the relevant order*], apply under section 54 of the **Vexatious Proceedings Act 2014** for leave to continue *this proceeding/*a proceeding, namely [*identify relevant proceeding*].

In accordance with section 55 of that Act, I contend that *this proceeding/*the proceeding is not a vexatious proceeding and that there are reasonable grounds for the proceeding, namely that: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks—

1. leave to continue *this proceeding/*a proceeding, namely [*identify the proceeding*];
2. [*set out any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit disclosing the details required under section 56 of the **Vexatious Proceedings Act 2014** as follows—

(a) details of each application for leave to proceed made by the applicant;

(b) details of each application for leave to commence or continue a proceeding made by the applicant under section 21 of the **Supreme Court Act 1986**, as in force immediately before its repeal;

(c) details of each interlocutory application made or proceeding commenced or conducted by the applicant—

(i) that is a vexatious application or a vexatious proceeding (as defined in the Act); or

(ii) which has been stayed or dismissed on the basis of being made, commenced or conducted without merit;

(d) an explanation as to how the application for leave to proceed is materially different to each application referred to in paragraph (a), (b) or (c) (if any);

(e) all other facts material to the application, whether in support of or adverse to the application, which are known to the applicant.

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83E—Application for leave to commence proceeding by person subject to general litigation restraint order

Rule 83.09

IN THE SUPREME COURT
OF VICTORIA

20 No.

IN THE MATTER of an application under section 54 of the **Vexatious Proceedings Act 2014**.

APPLICATION FOR LEAVE TO COMMENCE PROCEEDING BY PERSON SUBJECT TO GENERAL LITIGATION RESTRAINT ORDER

I, [*name*], a person subject to a general litigation restraint order [*identify the relevant order*], apply under section 54 of the **Vexatious Proceedings Act 2014** for leave to commence a proceeding.

In accordance with section 55 of that Act, I contend that the proposed proceeding would not be a vexatious proceeding and that there are reasonable grounds for the proposed proceeding, namely that: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks—

1. leave to commence a proceeding, namely [*set out full details of proposed proceeding for which leave is sought, including the names and addresses of all proposed parties*];
2. [*set out any other orders sought*].

ACCOMPANYING AFFIDAVIT

This application is accompanied by an affidavit disclosing the details required under section 56 of the **Vexatious Proceedings Act 2014** as follows—

(a) details of each application for leave to proceed made by the applicant;

(b) details of each application for leave to commence or continue a proceeding made by the applicant under section 21 of the **Supreme Court Act 1986**, as in force immediately before its repeal;

(c) details of each interlocutory application made or proceeding commenced or conducted by the applicant—

(i) that is a vexatious application or a vexatious proceeding (as defined in the Act); or

(ii) which has been stayed or dismissed on the basis of being made, commenced or conducted without merit;

(d) an explanation as to how the application for leave to proceed is materially different to each application referred to in paragraph (a), (b) or (c) (if any);

(e) all other facts material to the application, whether in support of or adverse to the application, which are known to the applicant.

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83F—Notice of application for leave to proceed

Rule 83.10

[*heading as used in application for leave to proceed*]

NOTICE OF APPLICATION FOR LEAVE TO PROCEED

(Section 60 of the **Vexatious Proceedings Act 2014**)

TO:

(a) the Attorney-General;

(b) [*name of person to be given notice of the application in accordance with the Court's direction, and if more than one, list separately*].

TAKE NOTICE that [*name*] of [*address*], a person subject to a litigation restraint order, has made an application to the Court for leave to proceed as follows: [*describe the relief sought in the application*].

Under section 60(2) of the **Vexatious Proceedings Act 2014**, the Court has directed that notice of the application for leave to proceed be given to you.

This notice is accompanied by a copy of the application for leave to proceed and by a copy of every order made or direction given by the Court in the application to which this notice relates.

You are entitled to make submissions in relation to the application.

Date:

Any Questions?
If you have any questions, please contact the Prothonotary's Office at the Supreme Court [*insert address*] Melbourne, Tel: [*insert telephone number*] Hours: 9:30 am to 4:00 pm each business day.

*delete if inapplicable

Form 83G—Application for leave to apply to vary or revoke litigation restraint order

Rule 83.11

*[*heading as in originating process*]/*[*heading in accordance with Rule 27.02*]

APPLICATION FOR LEAVE TO APPLY TO VARY OR REVOKE LITIGATION RESTRAINT ORDER

(Section 65(1) of the **Vexatious Proceedings Act 2014**)

I, [*name*], a person subject to *a limited litigation restraint order/*an extended litigation restraint order/*a general litigation restraint order [*identify the relevant order*] apply for leave to apply to *vary/*revoke that order under section 65(1) of the **Vexatious Proceedings Act 2014**.

I contend that leave to apply should be given to *vary the order/*revoke the order, on the following grounds: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks leave to apply for—

*1. variation of the order in the following manner [*specify variation of order sought*];

*1. revocation of the order;

2. [*set out any other orders sought*].

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

Form 83G—Application for leave to apply to vary or revoke litigation restraint order

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83H—Application to vary or revoke litigation restraint order

Rule 83.12

*[*heading as in originating process*]/*[*heading in accordance with Rule 27.02*]

APPLICATION TO VARY OR REVOKE LITIGATION RESTRAINT ORDER

(Section 65(1) of the **Vexatious Proceedings Act 2014**)

I, [*name*], a person subject to *a limited litigation restraint order/*an extended litigation restraint order/*a general litigation restraint order [*identify the relevant order*] apply to *vary/*revoke that order under section 65(1) of the **Vexatious Proceedings Act 2014**.

I contend that the order should be *varied in the manner set out below/*revoked, on the following grounds: [*set out the grounds in numbered paragraphs*].

ORDERS SOUGHT

The applicant seeks—

*1. variation of the order in the following manner [*specify variation of order sought*];

*1. revocation of the order;

2. [*set out any other orders sought*].

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83I—Notice of application to vary or revoke litigation restraint order

Rule 83.13

[*heading as used in application for leave to vary or revoke litigation restraint order*]

NOTICE OF APPLICATION TO VARY OR REVOKE LITIGATION RESTRAINT ORDER

(Section 67 of the **Vexatious Proceedings Act 2014**)

TO:

(a) the Attorney-General;

(b) [*name of person to be given notice of the application in accordance with the Court's direction, and if more than one, list separately*].

TAKE NOTICE that [*name*] of [*address*], a person subject to a litigation restraint order, has made an application to the Court to *vary the litigation restraint order in the following manner [*describe variation sought*]/*revoke the litigation restraint order.

Under section 67(2) of the **Vexatious Proceedings Act 2014**, the Court has directed that notice of the application for *variation/*revocation be given to you.

This notice is accompanied by a copy of the application for *variation/*revocation and by a copy of every order made or direction given by the Court in the application for *variation/*revocation and in the preceding leave application.

You are entitled to make submissions in relation to the application for *variation/*revocation.

Date:

Any Questions?

If you have any questions, please contact the Prothonotary's Office at the Supreme Court [*insert address*] Melbourne, Tel: [*insert telephone number*] Hours: 9:30 am to 4:00 pm each business day.

*delete if inapplicable

Form 83J—Application for leave to appeal on question of law

Rule 83.15

IN THE SUPREME COURT
OF VICTORIA

20 No.

IN THE

*TRIAL DIVISION/*COURT OF APPEAL

IN THE MATTER of an application by [*name of applicant*] for leave to appeal under section 79 of the **Vexatious Proceedings Act 2014**.

APPLICATION FOR LEAVE TO APPEAL ON QUESTION OF LAW

(Section 79 of the **Vexatious Proceedings Act 2014**)

I, [*name*], apply for leave under section 79 of the **Vexatious Proceedings Act 2014** to appeal on a question of law arising in the decision of [*specify relevant Victorian court or tribunal which made the decision*] in the matter of [*state the title and file number of the proceeding in the Victorian court or tribunal*] on [*date*] to—

*refuse leave to apply for a litigation restraint order;

*make a litigation restraint order or an acting in concert order;

*refuse to make a litigation restraint order or an acting in concert order;

*vary or revoke a litigation restraint order;

*refuse to vary or revoke a litigation restraint order;

*refuse an application for leave to proceed.

[*In a case relating to a refusal of an application for leave to proceed, state whether there is any appeal restriction order in place and, if so, identify the order and its terms*].

ACCOMPANYING AFFIDAVIT

Filed with this application is an affidavit and exhibits in accordance with Rule 83.09(6) and (7) of Chapter I of the Rules of the Supreme Court.

FILED [*insert date*].

This application was filed—

*(a) by the applicant personally.

*(b) for the applicant by [*name or firm of solicitor*], solicitor, of [*business address of solicitor*].

*(c) for the applicant 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*].

The address of the applicant is:

The address for service of the applicant is:

Date:

Signed

*delete if inapplicable

Form 83K—Notice of application for leave to appeal on a question of law

Rule 83.16

[*heading as used in application for leave to appeal*]

NOTICE OF APPLICATION FOR LEAVE TO APPEAL ON A QUESTION OF LAW

(Section *81/*82 of the **Vexatious Proceedings Act 2014**)

TO:

*(a) the Attorney-General;

(b) [*name of person to be given notice of the application in accordance with the Court's direction under section *81(2)/*82(2) of the Act and if more than one, list separately*].

TAKE NOTICE that [*name*] of [*address*], has made an application to the *Trial Division of the Supreme Court/*Court of Appeal for leave to appeal as follows: [*describe the relief sought in the application*].

Under section *81(2)/*82(2) of the **Vexatious Proceedings Act 2014**, the Court has directed that notice of the application for leave to appeal be given to you.

This notice is accompanied by a copy of the application for leave to appeal, by a copy of the affidavit in support (and exhibits) and by a copy of every order made or direction given by the Court in the application to which this notice relates.

You are entitled to be heard in relation to the application but, under section 84 of the Act, the Court may determine the application for leave to appeal on the basis of written submissions without the appearance of parties.

Date:

Any Questions?

If you have any questions, please contact the *Prothonotary's Office/*Court of Appeal Registry at the Supreme Court [*insert address*] Melbourne, Tel: [*insert telephone number*] Hours: 9:30 am to 4:00 pm each business day.

*delete if inapplicable

Form 84A—Notice of address for service

Rule 84.08(5)(a)

NOTICE OF ADDRESS FOR SERVICE

[*Heading as in notice of appeal*]

The address in Australia 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 Australia of the solicitor for [*full name of person or party*] is:

Dated:

[*Signed*]

Form 85A—Nomination of proper defendant

Rule 85.02

NOMINATION OF PROPER DEFENDANT UNDER SECTION 7 OF THE LEGAL IDENTITY OF DEFENDANTS (ORGANISATIONAL CHILD ABUSE) ACT 2018

[*heading as in originating process*]

To: The Prothonotary

The Plaintiff

The Proper Defendant

NOMINATION OF PROPER DEFENDANT

[*Insert name of non-government organisation that is an unincorporated association or body*], a non-government organisation that is an unincorporated association or body *(the "NGO")* to which the **Legal Identity of Defendants (Organisational Child Abuse) Act 2018** applies, under section 7 of that Act, nominates [*insert name of entity that is capable of being sued*] as a proper defendant under the Act.

[*Name of entity*]

is an entity that is capable of acting as a proper defendant to the claim on behalf of the NGO.

[*Signed*]

Signature of NGO or the NGO's solicitor:

Address of NGO:

CONSENT OF NOMINATED ENTITY TO BE PROPER DEFENDANT

[*Name of entity nominated as proper defendant*] consents to this nomination.

[*Signed*]

Signature of nominated entity or the nominated entity's solicitor:

Address for service of nominated entity:

Date: [*insert date*]

Filed: [*insert date filed*]

Schedule 1—Revoked Statutory Rules

Rule 1.03(2)

S.R. No.	*Title*
103/2015	Chapter I of the Rules of the Supreme Court, the Supreme Court (General Civil Procedure) Rules 2015
143/2015	Supreme Court (Miscellaneous Amendments) Rules 2015
144/2015	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2015
14/2016	Supreme Court (Appeals to the Court of Appeal and Other Amendments) Rules 2016
51/2016	Supreme Court (Chapter I Judicial Review Amendment) Rules 2016
52/2016	Supreme Court (Chapter I Expert Witness Code Amendment) Rules 2016
106/2016	Supreme Court (Chapter I Court of Appeal Amendments) Rules 2016
108/2016	Supreme Court (Powers of Judicial Registrars and Other Amendments) Rules 2016
109/2016	Supreme Court (Service Out of Australia Amendment) Rules 2016
138/2016	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2016
139/2016	Supreme Court (Chapter I Litigation Guardian Amendment) Rules 2016
14/2017	Supreme Court (Chapter I Recovery of Pro Bono Costs Amendment) Rules 2017
15/2017	Supreme Court (E-Filing Amendments) Rules 2017
32/2017	Supreme Court (Chapter I Email Service Amendment) Rules 2017
33/2017	Supreme Court (Chapter I Senior Master's Powers Amendment) Rules 2017
97/2017	Supreme Court (Chapters I and II Amendment) Rules 2017
98/2017	Supreme Court (Harmonised Subpoenas Amendment) Rules 2017

S.R. No.	*Title*
124/2017	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2017
125/2017	Supreme Court (Chapter I Order 42A Amendment) Rules 2017
127/2017	Supreme Court (E-Filing Further Amendment) Rules 2017
32/2018	Supreme Court (Appeals to the Trial Division, Judicial Review and Further Powers of Judicial Registrars Amendment) Rules 2018
33/2018	Supreme Court (Chapters I and VI Miscellaneous Amendments) Rules 2018
58/2018	Supreme Court (E-Filing and Other Amendments) Rules 2018
131/2018	Supreme Court (Chapter I Costs Court Amendment) Rules 2018
132/2018	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2018
168/2018	Supreme Court (Chapters I, IV and VI Further Amendment) Rules 2018
19/2019	Supreme Court (Chapters II and III Miscellaneous Amendments) Rules 2019
21/2019	Supreme Court (E-filing in Criminal Proceedings and Other Matters Amendment) Rules 2019
38/2019	Supreme Court (Hague Convention and Powers of Judicial Registrars Amendments) Rules 2019
73/2019	Supreme Court (Court of Appeal E-Filing and Other Amendments) Rules 2019
90/2019	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2019
122/2019	Supreme Court (Chapter I Warrant of Seizure and Sale Amendment) Rules 2019
124/2019	Supreme Court (Probate E-Filing and Other Amendments) Rules 2019
29/2020	Supreme Court (Chapter I Interpreters Amendment) Rules 2020
30/2020	Supreme Court (Chapter I Legal Identity of Defendants (Organisational Child Abuse) Amendment) Rules 2020

S.R. No.	*Title*
57/2020	Supreme Court (Chapter I Miscellaneous Amendments) Rules 2020
98/2020	Supreme Court (Chapters I and II Judicial Registrars, Admission to Legal Profession and Public Notaries Amendment) Rules 2020
16/2021	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2021
17/2021	Supreme Court (Chapters I and VI Suppression Orders Amendment) Rules 2021
105/2021	Supreme Court (Chapter I (Inspection and Affidavits) Amendment) Rules 2021
144/2021	Supreme Court (Chapter I Appendices A and B) Amendment Rules 2021
34/2022	Supreme Court (Chapters I and VI Dual Commission Holder and Joinder Amendments) Rules 2022
132/2022	Supreme Court (Chapter I Substituted Service Amendment) Rules 2022
133/2022	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2022
21/2023	Supreme Court (DX, Address and References to the Sovereign Amendments) Rules 2023
95/2023	Supreme Court (Chapters I and V and Library Amendments) Rules 2023
123/2023	Supreme Court (Chapter I Interrogatories Amendment) Rules 2023
124/2023	Supreme Court (Chapter I Appendices A and B Amendment) Rules 2023
14/2024	Supreme Court (Chapter I Vexatious Proceedings Amendment) Rules 2024
78/2024	Supreme Court (Chapter I Judicial Review Amendment) Rules 2024
83/2024	Supreme Court (Chapter I Costs Amendment) Rules 2024
6/2025	Supreme Court (Chapters I, V and VI Amendments) Rules 2025

Dated: 28 August 2025

R. NIALL, C.J.

DAVID F. R. BEACH, J.A.

S. G. E. McLEISH, J.A.

K. WALKER, J.A.

L. A. TAYLOR, J.A.

R. J. ORR, J.A.

MELINDA RICHARDS, J.

JAMES D. ELLIOTT, J.

MELANIE SLOSS, J.

CHRISTOPHER W. BEALE, J.

JANE DIXON, J.

A. J. KEOGH, J.

S. J. MOORE, J.

ANDREW J. TINNEY, J.

JACINTA FORBES, J.

L. M. NICHOLS, J.

J. DELANY, J.

KATHRYN STYNES, J.

JAMES GORTON, J.

MICHAEL OSBORNE, J.

S. A. O'MEARA, J.

RICHARD ATTIWILL, J.

AMANDA FOX, J.

ANDREA TSALAMANDRIS, J.

P. MATTHEWS, J.

P. R. D. GRAY, J.

I. WALLER, J.

C. M. HARRIS, J.

A. J. WATSON, J.

P. COSGRAVE, J.

ADRIAN FINANZIO, J.

L. J. HANNON, J.

R. G. CRAIG, J.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Supreme Court (General Civil Procedure) Rules 2025, S.R. No. 85/2025 were made on 28 August 2025 by the Judges of the Supreme Court under section 25 of the **Supreme Court Act 1986**, No. 110/1986 and came into operation on 8 September 2025: rule 1.03(1).

The Supreme Court (General Civil Procedure) Rules 2025 will sunset 10 years after the day of making on 28 August 2035 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms.
See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the Supreme Court (General Civil Procedure) Rules 2025 by statutory rules, subordinate instruments and Acts.

Supreme Court (Chapter I Costs and Other Amendments) Rules 2025, S.R. No. 127/2025

Date of Making:	27.11.25
Date of Commencement:	Rules 7, 8 on 1.12.25: rule 3(1); rules 5, 6 on 1.1.26: rule 3(2)

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3 Explanatory details

No entries at date of publication.