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RULES OF COURT

UNIFORM CIVIL RULES 2020

SOUTH AUSTRALIA

Made under the:

Supreme Court Act 1935
District Court Act 1991
Magistrates Court Act 1991

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The numbering convention adopted in these Rules provides for a gap in the numbering of rules between chapters. The rule numbering in each chapter begins with a new factor of ten. For example, the last rule in Chapter 1 is rule 4 but the first rule in Chapter 2 is rule 11.

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Chapter 1—General

Part 1—Introduction

1.1—Title

These Rules may be cited as the *Uniform Civil Rules 2020*.

1.2—Commencement

These Rules come into effect—

(a) subject to subrule (b), on the date of their publication in the Gazette;

(b) if these Rules are published in the Gazette on a day other than a Monday, these Rules come into effect on the date that is the first Monday following that publication.

1.3—Repeal

The Previous Rules are repealed.

1.4—Transition

(1) Unless the Court otherwise orders—

(a) these Rules apply to—

(i) a proceeding commenced; and

(ii) a step in a proceeding taken,

on or after the commencement date; and

(b) the Previous Rules continue to govern a step in a proceeding taken before the commencement date.

(2) If the time to commence or take a step in a proceeding under the Previous Rules has not expired as at the commencement date, the time to commence or take a step in the proceeding continues to be governed by the Previous Rules (unless these Rules provide for a longer time).

(3) Unless the Court otherwise orders, a proceeding instituted before the commencement date—

(a) is to be regarded as a claim if it was progressing on the basis of pleadings;

(b) is to be regarded as an originating application if it was progressing on the basis of affidavits or statutory declarations and not pleadings; and

(c) subject to paragraphs (a) and (b)—is to be regarded as either a claim or an originating application according to these Rules as if it had been instituted after the commencement date.

(4) In respect of a proceeding instituted before the commencement date—

(a) a party who was a plaintiff is now an applicant;

(b) a party who was a defendant is now a respondent; and

(c) a party who was an intervenor is now an interested party.

(5) Unless the Court otherwise orders, in respect of a proceeding instituted on or after the commencement date and before 1 August 2020—

(a) if the applicant would not have been required under the Previous Rules to serve a notice before action providing details of the claim or making an offer to settle, the applicant may, but is not required to, serve a pre-action claim under Chapter 7 Part 1 or Part 2 or Chapter 24 Part 2;

(b) if the applicant serves a notice before action providing details of the claim and, when required, making an offer to settle in accordance with the Previous Rules, the applicant may, but is not required to, serve a pre-action claim under Chapter 7 Part 1 or Part 2 or Chapter 24 Part 2; and

(c) if the proceeding is by way of claim and the applicant elects pursuant to paragraph (a) or (b) not to serve a pre-action claim under Chapter 7 Part 1 or Part 2 or Chapter 24 Part 2, the applicant may answer the questions relating to pre-action steps as defined in rule 61.2 in the Claim and plead in the statement of claim in relation to pre-action steps by reference to the Previous Rules rather than these Rules.

Notes—

Rule 33 of the *Supreme Court Civil Rules 2006* and of the *District Court Civil Rules 2006* addressed the requirement to serve a notice before action making an offer to settle and providing details of the claim in all cases in the Supreme and District Courts except those governed by the *Supreme Court Civil Supplementary Rules 2014* and the *District Court Civil Supplementary Rules 2014* respectively.

Rules 8 to 34 of the *Supreme Court Civil Supplementary Rules 2014* and of the *District Court Civil Supplementary Rules 2014* addressed the requirement to serve a notice before action making an offer to settle and providing details of the claim in all construction disputes and medical negligence disputes (as defined therein) in the Supreme and District Courts.

Rule 21A of the *Magistrates Court Civil Rules 2013* addressed the requirement to serve a notice before action providing details of the claim in all cases in the Magistrates Court.

1.5—Object

The object of these Rules is to facilitate the just, efficient, timely, cost-effective and proportionate resolution or determination of the issues in proceedings governed by these Rules.

Notes—

Section 14A of the *Acts Interpretation Act 1915* generally applies the provisions of the Act to "statutory instruments" such that a reference to an "Act" extends to a "statutory instrument".

These Rules are a "statutory instrument" within the meaning of the *Acts Interpretation Act 1915*.

Section 22 of the *Acts Interpretation Act 1915* provides that, where a provision of a statute is reasonably open to more than one construction, a construction that would promote the purpose or object of the statute must be preferred to a construction that would not promote that purpose or object.

1.6—Application of Rules

(1) Subject to the following subrules, these Rules apply to all proceedings in the Supreme Court, District Court and Magistrates Court of South Australia other than an excluded proceeding.

(2) A provision of these Rules appearing under a heading referring to a specified Court or Courts only applies as a rule of the specified Court or Courts and does not apply to proceedings in another Court.

(3) When a specific set of Rules applies to a proceeding and there is a conflict between a provision of the specific set of Rules and a provision of these Rules, the provision of the specific set of Rules applies to the exclusion of the provision of these Rules.

Note—

Examples of specific sets of Rules are the *Corporations Rules 2003* and the *Probate Rules 2015*.

(4) These Rules do not apply to a minor civil action in the Magistrates Court unless Chapter 24 otherwise provides.

Part 2—Interpretation

2.1—Definitions

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

the ***Act*** means—

(a) in the context of or in respect of the Supreme Court—the *Supreme Court Act 1935*;

(b) in the context of or in respect of the District Court—the *District Court Act 1991*;

(c) in the context of or in respect of the Magistrates Court—the *Magistrates Court Act 1991*;

action means any one of a claim, cross claim or originating application;

address for service—see rule 44.1;

alternative dispute resolution process means a process in which parties attempt to resolve, narrow or make a more efficient determination of disputes the subject of a proceeding or potential proceeding, with or without the involvement of a neutral party, including (without limitation) a pre-action meeting, settlement conference, mediation, conciliation or judicial intimation;

appeal—see rule 211.1;

appellant—see rule 211.1;

appellate proceeding—see rule 211.1;

applicant—see rule 21.1;

authorised witness—see rule 31.9;

business day means a day other than a Saturday, Sunday or public holiday;

by consent means with the written consent or consent given orally in court of all other affected parties;

CAA website means the website operated by the Courts Administration Authority to which the public has access;

cause of action means a set of facts by reason of which (subject to any defence or the exercise of discretion by a court) a person is entitled to relief in a claim;

Chief Judge means the Chief Judge of the District Court;

Chief Judicial Officer means—

(a) in respect of the Supreme Court—the Chief Justice;

(b) in respect of the District Court—the Chief Judge;

(c) in respect of the Magistrates Court—the Chief Magistrate;

Chief Justice means the Chief Justice of the Supreme Court;

Chief Magistrate means the Chief Magistrate of the Magistrates Court;

claim means a claim as described in rule 51.2 and, unless the context otherwise indicates, includes a cross claim;

Claim means a Claim as described in rule 63.1 and, unless the context otherwise indicates, includes a Cross Claim;

Claim documents—see rule 63.3;

close of pleadings means, unless the Court otherwise orders, the earlier of the date on which a reply to a defence is due or is filed when there is no other extant claim or cross claim in respect of which a reply to a defence is not yet due and has not yet been filed;

commencement date means the date on which these Rules come into effect under rule 1.2;

company means a company as defined by section 9 of the *Corporations Act 2001* (Cth);

construction claim means a claim relating to building, construction or engineering (whether seeking monetary relief or otherwise) and includes a professional negligence claim against a building, construction or engineering expert or certifying authority;

corporations cross-vesting provisions means Part 9.6A Division 1 Subdivision C of the *Corporations Act 2001* (Cth);

the ***Court*** means the Supreme Court, District Court or Magistrates Court as applicable and, when the context indicates, means a judicial officer having power to act in the manner the subject of the relevant provision of these Rules;

cross appeal—see rule 211.1;

cross claim means a claim in which an existing party seeks final relief from the Court against another existing party or a person who is not an existing party and encompasses a counter claim, third party claim and contribution claim;

Cross Claim means a Cross Claim as described in rule 65.3;

Cross claim documents—see rule 65.5;

cross-vesting legislation means the *Jurisdiction of Courts (Cross-Vesting) Act 1987* and counterpart legislation of the other States and the Commonwealth;

directions hearing means any hearing in a proceeding other than a trial or hearing at which the proceeding is or may be finally determined;

document—see definition in section 4 of the *Acts Interpretation Act 1915*;

Electronic System—see rule 13.5;

email service—see rule 42.2;

enforcement process means—

(a) an application for a summons, warrant or order, or

(b) a summons, warrant or order,

made under or governed by Chapter 17 of these Rules;

evidentiary material means a document or thing of evidentiary value and includes a document or thing that the Court determines should be produced to determine whether it has evidentiary value;

excluded proceeding means—

(a) a criminal proceeding being a proceeding against a person for an offence including (without limitation) a committal proceeding, a proceeding in relation to bail and a proceeding in relation to sentence;

(b) a proceeding under the *Intervention Orders (Prevention of Abuse) Act 2009*; or

(c) a proceeding governed by the criminal rules of the Supreme Court, District Court or Magistrates Court;

expert—see rule 74.1;

expert report—see rule 74.1;

freezing order—see rule 112.14;

the ***Full Court*** means the Full Court as defined in section 5(1) of the *Supreme Court Act 1935*;

in chambers means a hearing, determination or the making of an order or judgment by a judicial officer in the judicial officer's chambers or in a courtroom as if in the judicial officer's chambers whether in the presence or absence of the parties;

in court means a hearing, determination or the making of an order or judgment by a judicial officer in a courtroom or via audio visual or telephone link, except one in a courtroom as if in the judicial officer's chambers;

interested party—see rule 21.1 and rule 21.5;

joint interest means a joint as opposed to a several interest (regardless of whether there is a concurrent several interest);

judgment debtor—see rule 201.1;

judicial officer means—

(a) in respect of the Supreme Court—a Justice, Auxiliary Justice, Master, Auxiliary Master or Judicial Registrar of the Court or a Registrar exercising power of the Court conferred by rule 11.1;

(b) in respect of the District Court—a Judge, Auxiliary Judge, Master, Auxiliary Master or Judicial Registrar of the Court or a Registrar exercising power of the Court conferred by rule 11.2;

(c) in respect of the Magistrates Court—a Magistrate, Auxiliary Magistrate or Judicial Registrar of the Court or a Registrar exercising power of the Court conferred by rule 11.3;

law firm means a law practice within the meaning of the *Legal Practitioners Act 1981* and includes—

(a) the Crown Solicitor, Australian Government Solicitor, Office of the Director of Public Prosecutions or any other government body practicing as solicitors;

(b) the Legal Services Commission, Aboriginal Legal Rights Movement, a community legal centre or any other body providing legal aid services practising as solicitors; and

(c) an in-house government, corporate or other solicitor;

Note—

It is the responsibility of a solicitor practising as a law firm to ensure that the solicitor is lawfully entitled to so practice under the *Legal Practitioners Act 1981*. For example, section 51 of that Act identifies which legal practitioners are entitled to practise before a State court or tribunal on behalf, amongst others, of the State Government, State Government bodies, the Legal Services Commission, community legal centres or the Law Society.

lawyer means a law firm, solicitor working in a law firm or barrister;

Law Society means the Law Society of South Australia;

Legal Practitioners Act means the *Legal Practitioners Act 1981*;

liquidated claim—see rule 142.1;

list of documents—see rule 73.1;

litigation guardian—see rule 23.6;

LPEAC means the Legal Practitioners Education and Admission Council;

minor civil action means a minor civil action in the Magistrates Court within the meaning of section 3 of the *Magistrates Court Act 1991*;

minor civil review means a review in the District Court of a minor civil action governed by section 38(6) to (9) of the *Magistrates Court Act 1991*;

monetary claim—see rule 142.1;

monetary judgment—see rule 201.1;

non-monetary judgment—see rule 201.1;

original service—see rule 42.9;

originating application—see rule 51.3;

Originating Application—see rule 82.1;

Originating Application documents—see rule 82.3;

originating process means a Claim, Cross Claim or Originating Application and includes a document required to be filed or served at the same time (including a statement of claim, statement of facts issues and contentions, supporting affidavit or notice);

overarching obligations—see rule 3.1 and rule 3.2;

party means an applicant, appellant, respondent (including a third or subsequent party) or interested party in a proceeding or appellate proceeding;

party title—see rule 21.1;

personal injury claim means a claim for damages for physical or mental injury (including contraction of a disease) sustained by a person or arising out of the death of a person;

personal service—see rule 42.1;

pleading means a statement of claim, statement of cross claim, defence, reply, statement of facts issues and contentions, response to statement of facts issues and contentions or a pleading subsequent to another pleading;

post service—see rule 42.3;

prescribed forms—see rule 31.3(1) and (4);

Previous Rules means—

(a) in the context of the Supreme Court—the *Supreme Court Civil Rules 2006* and the *Supreme Court Civil Supplementary Rules 2014* and the *Supreme Court Fast Track Rules Adoption Rules 2014* and the *Supreme Court Fast Track Supplementary Rules Adoption Rules 2014*;

(b) in the context of the District Court—the *District Court Civil Rules 2006* and the *District Court Civil Supplementary Rules 2014* and the *District Court Fast Track Rules Adoption Rules 2014* and the *District Court Fast Track Supplementary Rules Adoption Rules 2014*;

(c) in the context of the Magistrates Court—the *Magistrates Court (Civil) Rules 2013*;

proceeding means a proceeding other than an excluded proceeding, and includes—

(a) a cross claim as well as a claim;

(b) an originating application;

(c) a proceeding seeking review of an administrative decision notwithstanding that it may be called an "appeal" by a statute; and

(d) where the context requires—an appellate proceeding;

registered body means a registered body as defined by section 9 of the *Corporations Act 2001* (Cth);

a Registrar means—

(a) in respect of the Supreme Court—the Registrar, a Deputy Registrar or a person acting as the Registrar or a Deputy Registrar of the Court;

(b) in respect of the District Court—the Registrar, a Deputy Registrar, or a person acting as the Registrar or a Deputy Registrar of the Court;

(c) in respect of the Magistrates Court—the Principal Registrar, a Registrar, a Deputy Registrar or a person acting as the Principal Registrar, a Registrar or a Deputy Registrar of the Court;

the Registrar means—

(a) in respect of the Supreme Court—the Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(b) in respect of the District Court—the Registrar of the Court and includes a person to whom a function of the Registrar has been delegated;

(c) in respect of the Magistrates Court—the Principal Registrar of the Court and includes a person to whom a function of the Principal Registrar has been delegated;

respondent—see rule 21.1;

responsible solicitor in a proceeding—see rule 25.3;

return date means the hearing date for an originating application as shown on the Originating Application or, if no such date is shown, as provided in the notice of hearing issued by the Registrar;

the Rules or ***these Rules*** means the *Uniform Civil Court Rules 2020* (including the Schedules);

search order—see rule 112.2;

settlement conference—see rule 131.2;

sheriff—see rule 201.1;

short form statement of claim—see rule 63.1;

standard costs basis—see rule 191.1;

a ***State*** means a State of Australia, the Northern Territory or the Australian Capital Territory;

the State means the State of South Australia;

statement of claim means a statement of claim as described in rule 63.1 or rule 63.2 and, unless the context otherwise indicates, includes a short form statement of claim and a statement of cross claim;

statement of cross claim means a statement of cross claim as described in rule 65.3;

statute includes—

(a) an Act within the meaning of the *Acts Interpretation Act 1915* and, where applicable, legislation of another polity that would be an Act if made in or under the laws of South Australia;

(b) a statutory instrument within the meaning of the *Acts Interpretation Act 1915* and, where applicable, an instrument of another polity that would be a statutory instrument if made in or under the laws of South Australia;

(c) these Rules and any other applicable rules of court; and

(d) a provision of such an Act, statutory instrument or rules of court;

step in a proceeding or appellate proceeding includes a document filed, process issued, action taken or order made in the proceeding;

subpoena—see rule 156.1;

taxation—see rule 191.1;

taxation process means the process of taxing costs in a proceeding under Chapter 16 Part 5;

third party—see rule 21.1;

third party claim means a claim in which an existing party seeks final relief from the Court against a person other than an existing party;

trial means a hearing of an action or of a separate issue in an action;

tribunal means the South Australian Employment Tribunal, the South Australian Civil and Administrative Tribunal, the Legal Practitioners Disciplinary Tribunal or the Police Disciplinary Tribunal;

without notice means without serving or informing another party or other person of an application to be made to the Court;

written evidence—see rule 154.9.

(2) In these Rules, unless the contrary intention appears, a term defined in the Act that is not defined in these Rules has the same meaning when used in these Rules in respect of the Court governed by the Act.

Notes—

Section 4AA of the *Acts Interpretation Act 1915* provides that, if a word or phrase has a defined meaning, other parts of speech and grammatical forms of the word or phrase have, unless the contrary intention appears, corresponding meanings.

A term that is defined in this rule or at the beginning of a Chapter, Part or Division is underlined to indicate that it is a defined term, unless it is a commonly used term. However, an underlined term may bear a different meaning to the defined meaning where the context so indicates.

Commonly used terms are:

action

appeal

appellant

appellate proceeding

applicant

claim

the ***Court***

cross appeal

cross claim

document

Electronic System

expert

interested party

judicial officer

law firm

lawyer

Legal Practitioners Act

list of documents

originating application

party

prescribed form

proceeding

respondent

the Rules or ***these Rules***

sheriff

State

the State

statement of claim

statement of cross claim

statute

step

subpoena

taxation

2.2—Calculation of time

(1) This rule applies to the calculation of time fixed by or under these Rules or an order of the Court and is subject to manifestation of a contrary intention.

(2) A reference to a ***day*** is a reference to a calendar day.

(3) If time is fixed by reference to a date or event, the day of the date or on which the event occurs is not to be counted.

Examples—

On 1 March, the Court orders a party to file a document within 14 days. The party must file the document by no later than 15 March.

The Court orders a party to file a document at least 14 days before a hearing scheduled on 31 March. The party must file the document by no later than 16 March.

(4) When the time for a document to be filed is fixed prospectively, if that period would otherwise end on a day when the Registry is closed, that period is extended to end on the next day on which the Registry is open.

Supreme Court and District Court

(5) Time does not run between 25 December and 1 January for the purpose of the period fixed by these Rules for filing a defence to a claim or a response or responding affidavit to an originating application or for filing a notice of appeal or review governed by Chapter 18.

2.3—Interpretation

(1) In these Rules—

(a) all headings are part of these Rules; and

(b) notes, examples and references to prescribed forms are part of these Rules.

Note—

Sections 19 and 19A of the *Acts Interpretation Act 1915* identify material that, subject to any express provision to the contrary, does and does not form part of an Act.

(2) In these Rules, unless the contrary intention appears—

(a) if the word "or" appears at the end of the penultimate item in a list, all of the preceding items in the list are to be read as if the word "or" appeared at the end of each; and

(b) if the word "and" appears at the end of the penultimate item in a list, all of the preceding items in the list are to be read as if the word "and" appeared at the end of each.

Note—

Sections 14B, 14BA, 26, 34, 35, 36 and 37 of the *Acts Interpretation Act 1915* contain rules of construction. Those rules of construction apply to these Rules subject to manifestation of a contrary intention.

2.4—Statutory equivalent language

In these Rules, unless the contrary intention appears—

(a) if an applicable statute refers to a plaintiff in a proceeding, a reference in these Rules to an applicant in a proceeding is to be understood as a reference to a plaintiff;

(b) if an applicable statute refers to a defendant in a proceeding, a reference in these Rules to a respondent in a proceeding is to be understood as a reference to a defendant;

(c) if an applicable statute refers to adjudication of costs, a reference in these Rules to taxation of costs is to be understood as a reference to adjudication of costs;

(d) if an applicable statute refers to permission to appeal or to take a step in a proceeding, a reference in these Rules to leave to appeal or leave to take a step in a proceeding is to be understood as a reference to permission to appeal or to take a step in a proceeding; and

(e) if an applicable statute refers to a summons as originating process for the institution of an action, a reference in these Rules to a claim or originating application as originating process for the institution of an action is to be understood as a reference to a summons as originating process for the institution of an action.

Part 3—Overarching obligations of parties and lawyers

3.1—Overarching obligations

(1) A party must in relation to a proceeding or an appellate proceeding—

(a) act honestly;

(b) not engage in misleading conduct;

(c) not take a step that is frivolous, vexatious or an abuse of process;

(d) not make an assertion or response to an assertion for which they do not, on the material available at the time, have a proper basis;

(e) not take a step unless they reasonably believe that it is necessary to facilitate the resolution or determination of the proceeding;

(f) cooperate with the other parties and with the Court in relation to the conduct of the proceeding;

(g) use reasonable endeavours to resolve, or alternatively narrow the scope of, a dispute in or the subject of the proceeding by agreement;

(h) use reasonable endeavours to ensure that the time and costs incurred are reasonable and proportionate to—

(i) the importance and value of the subject matter of the proceeding or step in the proceeding; and

(ii) the complexity of the issues in the proceeding or step in the proceeding;

(i) comply with these Rules and orders made by the Court;

(j) be prepared for and ready to proceed with a hearing, directions hearing or trial at the appointed time; and

(k) use reasonable endeavours to act promptly and minimise delay.

(2) A lawyer acting or appearing for a party, or a person exercising subrogated rights (including an insurer or indemnifier) in respect of, or who is otherwise entitled to exercise control or influence over, a party (by reason of providing litigation funding or otherwise), must, in relation to a proceeding or an appellate proceeding—

(a) act in accordance with subrule (1); and

(b) not engage in conduct that causes or permits that party to act contrary to subrule (1).

3.2—Breach of obligations

(1) In exercising any power in relation to a proceeding or appellate proceeding, the Court may take into account a failure by a person to comply with the obligations imposed by rule 3.1 (***overarching obligations***).

(2) The Court may make such order as it thinks fit in the interests of justice by reason of a failure by a person to comply with overarching obligations.

(3) For example, the Court may—

(a) order that a person who has failed to comply with overarching obligations take or not take specified steps to remedy or mitigate the failure;

(b) order that a person who has failed to comply with overarching obligations pay costs of any person arising from the failure; or

(c) make any other or further order to avoid or mitigate the prejudice suffered by a person arising from the failure.

Part 4—Power of Chief Judicial Officer to vary rules

4.1—Emergency power

(1) This rule applies if—

(a) the State or Federal Government declares, or exercises powers based on there being, the existence of emergency conditions; or

(b) the Chief Judicial Officer determines that emergency conditions affecting the Court or the community justify exercise of the power conferred by this rule.

(2) When this rule applies, the Chief Judicial Officer may vary any provision of these Rules in a manner and for a time that is necessary or desirable to deal with the emergency conditions giving rise to the existence of the power conferred by this rule.

(3) A variation under subrule (2) may apply to—

(a) a particular proceeding or class of proceedings;

(b) a particular party or class of parties;

(c) a particular lawyer or class of lawyers; or

(d) a particular step or class of steps.

(4) The Registrar must publish any variation made under this rule on the CAA website.

Chapter 2—The Court

Part 1—Jurisdiction

Note—

This Part addresses original jurisdiction. Appellate jurisdiction is addressed in Chapter 18.

11.1—Original jurisdiction—Supreme Court

(1) Subject to section 48(2)(a) of the *Supreme Court Act 1935* and these Rules, the jurisdiction of the Supreme Court may be exercised by a Judge in all proceedings.

(2) The jurisdiction of the Supreme Court exercisable by a Judge, except the jurisdiction to hear a contempt charge or when a statute otherwise provides, may be exercised by a Master or Judicial Registrar in all proceedings, except that a trial of a claim can only be heard and determined by a Master if—

(a) the Chief Justice so directs; or

(b) all parties consent.

Note—

Section 7(2) of the *Supreme Court Act 1935* provides that, subject to any statute, the masters and judicial registrars have the power, authority and jurisdiction conferred on them under any statute and under the rules of court. Section 48(2)(c) provides that the jurisdiction vested in the court may be exercised by a master or judicial registrar to the extent authorised by any statute or by the rules of court.

(3) The jurisdiction of the Supreme Court—

(a) to tax costs under Chapter 16 Part 5 may be exercised by a Registrar in a proceeding or class of proceedings if the Chief Justice so directs;

(b) to tax costs under Chapter 20 Part 12 Division 2 may be exercised by a Registrar in a proceeding or class of proceedings if the Chief Justice so directs;

(c) to make orders under the *Enforcement of Judgments Act 1991* may be exercised by a Registrar; or

(d) to make orders or judgments by consent may be exercised by a Registrar.

Notes—

Section 72(1)(i) of the *Supreme Court Act 1935* provides that rules of court may be made for conferring on the registrar or other member of the non-judicial staff of the court the power to adjudicate costs.

Clause 41(1) of Schedule 3 to the *Legal Practitioners Act 1981* provides that the power of the Court to adjudicate and settle a bill for costs may be exercised by the Registrar.

Section 18(1) of the *Enforcement of Judgments Act 1991* provides that a court may, by its rules, delegate any of its powers under that Act to officers of a class designated in the delegation.

(4) A Registrar may refer a matter in respect of which they have jurisdiction to a Master.

(5) A Master may refer a matter in respect of which the Master has jurisdiction to a Judge.

(6) The jurisdiction of the Supreme Court to hear and determine—

(a) an application to admit a person as a solicitor and barrister of the Court under section 15 of the Legal Practitioners Act; or

(b) a disciplinary proceeding under section 89 of the Legal Practitioners Act or in the inherent jurisdiction of the Court,

is to be exercised by 3 Judges of the Court sitting en banco.

11.2—Original jurisdiction—District Court

(1) The jurisdiction of the District Court, except the jurisdiction to hear a contempt charge or when a statute otherwise provides, may be exercised by a Master or Judicial Registrar in all proceedings, except that a trial of a claim can only be heard and determined by a Master or Judicial Registrar if—

(a) the Chief Judge so directs; or

(b) all parties consent.

Note—

Section 20(1)(b) of the *District Court Act 1991* provides that, subject to that section, if a matter lies within a jurisdiction of the Court conferred by any statute or the rules on Masters, the Court may be constituted of a Master. Section 51(1)(b) empowers the Court to make rules authorising the Masters or Judicial Registrars to exercise any part of the jurisdiction of the Court. Section 16C(1) provides that Judicial Registrars may exercise such jurisdiction of the Court as assigned by the Chief Judge or the rules.

(2) The jurisdiction of the District Court—

(a) to tax costs under Chapter 16 Part 5 may be exercised by a Registrar in a proceeding or class of proceedings if the Chief Judge so directs;

(b) to make orders under the *Enforcement of Judgments Act 1991* may be exercised by a Registrar; or

(c) to make orders or judgments by consent may be exercised by a Registrar.

Notes—

Section 51 of the *District Court Act 1991* authorises the making of rules regulating the business of the Court and the duties of the various officers of the Court and regulating costs.

Section 18(1) of the *Enforcement of Judgments Act 1991* provides that a court may, by its rules, delegate any of its powers under that Act to officers of a class designated in the delegation.

(3) A Registrar may refer a matter in respect of which they have jurisdiction to a Master.

(4) A Master may refer a matter in respect of which the Master has jurisdiction to a Judge.

11.3—Original jurisdiction—Magistrates Court

(1) The jurisdiction of the Magistrates Court, except the jurisdiction to hear a contempt charge or when a statute otherwise provides, may be exercised by a Judicial Registrar in all proceedings.

Note—

Section 7A(2) of the *Magistrates Court Act 1991* provides that the Court may be constituted of a special justice in defined cases, including if there is no Magistrate or Judicial Registrar available.

(2) The jurisdiction of the Magistrates Court—

(a) to tax costs under Chapter 16 Part 5 may be exercised by a Registrar in a proceeding or class of proceedings if the Chief Magistrate so directs;

(b) to make orders under the *Enforcement of Judgments Act 1991* may be exercised by a Registrar; or

(c) to make orders or judgments by consent may be exercised by a Registrar.

Notes—

Section 49 of the *Magistrates Court Act 1991* authorises the making of rules regulating the business of the Court and the duties of the various officers of the Court and regulating costs.

Section 18(1) of the *Enforcement of Judgments Act 1991* provides that a court may, by its rules, delegate any of its powers under that Act to officers of a class designated in the delegation.

(3) A Registrar may refer a matter in respect of which they have jurisdiction to a Judicial Registrar or Magistrate.

(4) A Judicial Registrar may refer a matter in respect of which the Judicial Registrar has jurisdiction to a Magistrate.

(5) A waiver by the parties of the monetary limit on the jurisdiction of the Magistrates Court may be effected by—

(a) a notice in writing signed by a party and filed at Court; or

(b) oral consent expressed by a party at a hearing,

provided that every party expresses consent to the waiver.

Note—

Section 8(2) of the *Magistrates Court Act 1991* provides that the parties to an action may waive any monetary limit on the civil jurisdiction of the Court.

11.4—Exercise of jurisdiction

(1) The jurisdiction of the Court may be exercised in chambers in all proceedings.

Note—

Rule 15.3 addresses the exercise of the discretion to hear a matter in court or in chambers.

(2) The Court may make orders in a proceeding for the appointment of—

(a) an assessor when a statute authorises or requires the appointment of an assessor, including the manner in which the assessor is to assist in the decision-making function of the Court;

(b) an arbitrator, including the scope of the matter referred to the arbitrator for trial and the powers of the Court that may be exercised by the arbitrator;

(c) an expert, including the scope of the matter referred to the expert for investigation and report and the powers of the Court that may be exercised by the expert.

Notes—

Section 71 of the *Supreme Court Act 1935* provides that the Court may in any matter call in the aid of one or more assessors and try and hear such matter wholly or partially with the assistance of such assessors. Section 20(4) of the *District Court Act 1991* and section 7B of the *Magistrates Court Act 1991* address the appointment of assessors when an Act conferring jurisdiction provides that the Court is to sit with assessors in exercising that jurisdiction.

Section 66 of the *Supreme Court Act 1935*, section 33 of the *District Court Act 1991* and section 28 of the *Magistrates Court Act 1991* provide that the Court may refer a civil proceeding or any issues arising in a civil proceeding for trial by an arbitrator.

Section 67 of the *Supreme Court Act 1935*, section 34 of the *District Court Act 1991* and section 29 of the *Magistrates Court Act 1991* provide that the Court may refer any question arising in a civil proceeding for investigation and report by a referee who is an expert in the relevant field.

11.5—Allocation of jurisdiction

The Chief Judicial Officer may determine that certain types of proceedings or hearings will ordinarily be heard by certain types of judicial officers.

Note—

Appellate jurisdiction is addressed in Chapter 18 Part 2.

Part 2—Judicial powers

12.1—General powers

(1) The Court may on its own initiative, or on application by any person, make any order that it considers appropriate in the interests of justice.

(2) For example, the Court may—

(a) order that a provision of these Rules not apply or apply in a modified way or dispense with compliance (whether before or after compliance is or was required);

(b) make an order that is inconsistent with or in lieu of a provision of these Rules;

(c) fix or vary the time fixed by or under a provision of these Rules or a court order;

(d) make an order subject to conditions;

(e) specify consequences of an event referred to in, or of non-compliance with, an order;

(f) make or refuse any order sought by a person or make a different order;

(g) make an order on its own initiative;

(h) set aside a step taken in a proceeding in breach of these Rules or an order, or for other cause;

(i) direct the Registrar to do or not to do a thing;

(j) make an order about a proceeding not yet instituted;

(k) make an order about the form of a document to be filed, including imposing additional requirements about the filing or form of documents;

(l) order the amendment of, or itself amend, a document;

(m) order that a document be uplifted and removed from the file;

(n) order production of a document notwithstanding that a lawyer or other person claims a lien over it;

(o) order the stay of a proceeding, of a step in or order made in a proceeding, or of enforcement of a judgment or order; or

(p) make any order as to costs.

(3) Without affecting the generality of subrule (1), the Court may give directions about the procedure to be followed in a proceeding—

(a) when these Rules do not address or address fully a procedural matter that arises in a proceeding;

(b) to resolve uncertainty about the correct procedure to be adopted, including commencing a proceeding or appellate proceeding; or

(c) in any other case, when the Court thinks fit.

(4) The conferral by these Rules of specific powers on the Court does not affect the generality of the power conferred by this rule.

12.2—Regard to object of Rules

(1) The Court may, in making orders, have regard to the object of these Rules.

(2) For example, the Court may have regard to—

(a) the nature and complexity of the issues in the proceeding or appellate proceeding or step;

(b) the importance and value (monetary or non-monetary) of the subject matter of the proceeding or appellate proceeding or step;

(c) the time and cost incurred in the proceeding or appellate proceeding or step;

(d) the proportionality between the time and cost incurred in and the importance and value of the subject matter of the proceeding or appellate proceeding or step;

(e) the proportionality between the time and cost incurred in and the complexity of the issues in the proceeding or appellate proceeding or step;

(f) the desirability of early resolution by agreement of disputes the subject of or in proceedings;

(g) the efficient conduct of the business of the Court;

(h) the efficient use of judicial and administrative resources;

(i) the extent to which the parties have undertaken pre-action steps;

(j) the extent to which a person has complied with overarching obligations; or

(k) any prejudice that may be caused to a person as a consequence of making or not making, or the terms of, an order.

Part 3—Administration

Division 1—General

13.1—Chief Judicial Officer

(1) The Chief Judicial Officer may delegate any administrative function conferred on the Chief Judicial Officer to another judicial officer.

(2) A delegation under subrule (1)—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) does not derogate from the power of the delegate to act in any matter; and

(d) is revocable at will.

(3) A function delegated under subrule (1) may, if the instrument of delegation so provides, be further delegated.

Notes—

Section 9A(2) of the *Supreme Court Act 1935* provides that the Chief Justice is responsible for the administration of the Court. Section 10(1) provides for the Governor to appoint an Acting Chief Justice. Section 10(2)(b) provides that any power or duty attached to the office of the Chief Justice by or under an Act devolves during the absence or inability of the Chief Justice on the most senior puisne judge available if there is no Acting Chief Justice.

Section 11(2) of the *District Court Act 1991* provides that the Chief Judge is responsible for the administration of the Court. Section 11AA(1) provides for the Governor to appoint an Acting

Chief Judge. Section 11AA(2)(b) provides that any power or duty attached to the office of the Chief Judge by or under an Act devolves during the absence or inability of the Chief Judge on the most senior puisne judge available if there is no Acting Chief Judge.

Section 11(2) of the *Magistrates Court Act 1991* provides that the Chief Magistrate is responsible for the administration of the Court. Section 11(3) of the *Magistrates Court Act 1991* and section 6B of the *Magistrates Act 1983* provide for the Chief Magistrate or the Governor to appoint an Acting Chief Magistrate and provide that responsibility for administration of the Court devolves on the Acting Chief Magistrate during the absence or inability of the Chief Magistrate.

13.2—Registrar

(1) The Registrar must establish systems—

(a) for filing documents in the Court and serving documents;

(b) for issuing the Court's process;

(c) for communication within the Court and between the Court and other persons;

(d) for listing hearings and trials;

(e) for creation, retention and destruction of official records of the Court;

(f) for receipt, retention and return or destruction of documents and things—

(i) tendered in proceedings;

(ii) produced in response to a subpoena; or

(iii) otherwise delivered into the custody of the Court; and

(g) for controlled access by judicial and non-judicial officers and other persons to court records.

Notes—

Section 82(3) of the *Supreme Court Act 1935* provides that the Registrar is the Court's principal administrative officer. Section 82(4) provides that the Registrar is subject to the control and direction of the Chief Justice.

Section 18(1) of the *District Court Act 1991* provides that the Registrar is the Court's principal administrative officer. Section 19 provides that the Registrar is responsible to the Chief Judge for the proper and efficient discharge of his or her duties.

Section 13(1) of the *Magistrates Court Act 1991* provides that the Principal Registrar is the Court's chief administrative officer. Section 14 provides that the Principal Registrar is responsible to the Chief Magistrate for the proper and efficient discharge of his or her duties.

(2) If a statute assigns an administrative function to the Court, the function is to be carried out by the Registrar.

(3) The Registrar may delegate any specific administrative function conferred on the Registrar by these Rules to another officer of the Court indefinitely or for such period and subject to such conditions as the Registrar thinks fit.

(4) A delegation under subrule (3)—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) does not derogate from the power of the delegate to act in any matter; and

(d) is revocable at will.

(5) A person who wishes to ask the Court to carry out an administrative function must file an application to the Registrar in the prescribed form.

Prescribed form—

Form 76 Application to Registrar

Notes—

See also the specific forms prescribed for specific proceedings by rule 13.11, rule 142.2 and rule 156.17.

If these Rules require a proceeding to be instituted by filing an application to the Registrar in the prescribed form without identifying a specific form, the prescribed form is Form 76 Application to Registrar.

13.3—Registrar may seek directions

(1) The Registrar may refer to the Court any question arising in the course of the performance of an administrative function.

(2) The Court may on such referral—

(a) give such directions as it thinks fit; or

(b) assume control of the matter.

13.4—Review of exercise of function by Registrar

(1) The Court may, on application by a person having an interest in the exercise or on its own motion, review an exercise of administrative power by the Registrar and may make such orders as it thinks fit with respect to the matter in relation to which the power was exercised.

(2) An application for review must be made as soon as practicable, and in any event within 7 days, after the exercise of power the subject of the application by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

Notes—

An exercise, either at first instance by the Registrar or by a Magistrate or Master on review under this rule, of administrative power (as opposed to judicial power) is not subject to appeal.

An appeal against an exercise by a Registrar of the Court's jurisdiction under Chapter 2 Part 1 (relating to the taxation of costs or enforcement of judgments) is governed by Chapter 18 Part 6 and not by this rule.

(3) An application for review under subrule (2) may not be made if the exercise of administrative power by the Registrar was pursuant to a direction by the Court under rule 13.3.

(4) Unless the Court otherwise orders and subject to subrule (5), an application for review under subrule (2) will be listed for hearing before—

(a) a Magistrate in the Magistrates Court;

(b) a Master in the District Court;

(c) a Master in the Supreme Court.

(5) A review may be determined without a hearing if the judicial officer conducting the review thinks fit.

Division 2—Electronic court management system

13.5—Establishment and operation

(1) The Registrar must establish an electronic court management system (***Electronic System***) to perform such of the Registrar's general functions (including those referred to in rule 13.2) and for use by judicial and non-judicial officers of the Court and external users as the Registrar determines.

(2) For example, the Electronic System may enable—

(a) the creation, filing or service of documents in electronic form;

(b) the use of electronic signatures by parties, lawyers or other persons;

(c) the electronic issue of the Court's process;

(d) the use of electronic signatures by judicial or non-judicial officers, sheriff's officers or other persons performing functions on behalf of the Court;

(e) communications between users and the Court in electronic form;

(f) the electronic listing of hearings, directions hearings and trials;

(g) the creation, retention or deletion of electronic records of proceedings in the Court;

(h) the receipt, retention or deletion of electronic documents tendered in proceedings, produced in response to a subpoena or otherwise produced to the Court; or

(i) controlled access by internal or external users to court records.

(3) The Registrar may determine that it is mandatory that all or specified classes of documents lodged for filing by all or specified classes of persons be filed electronically via the Electronic System and to that extent the Registry will not accept physical documents for filing.

(4) The Electronic System may be established by the Registrar in conjunction with other courts.

(5) If it is mandatory for a person to file a document electronically via the Electronic System, the Registrar or the Court may waive that requirement if and to such extent and on such conditions as the Registrar or the Court thinks fit.

13.6—Registered users

(1) The Registrar may only permit a person other than a judicial or non-judicial officer of a court participating in the Electronic System to have access to the Electronic System if the person is a registered user.

(2) The Registrar may establish a system for a person to become a registered user and may exercise a general discretion whether to admit a person as a registered user.

(3) The Registrar may impose conditions on the use of the Electronic System by registered users, a class of registered users or individual registered users.

(4) The Registrar may cancel the registration of a person if, in the opinion of the Registrar, the person—

(a) is not a fit and proper person to be a registered user;

(b) should not have been admitted as a registered user; or

(c) has breached a condition of the terms of use of the Electronic System published by the Registrar on the Electronic System's portal.

13.7—Originals of documents uploaded into Electronic System

(1) A party who uploads a document electronically to the Electronic System (whether self-represented or represented by a law firm) undertakes to the Court that the document uploaded is identical to the original document.

(2) A law firm who uploads a document electronically to the Electronic System undertakes to the Court that the document uploaded is identical to the original document.

(3) A document comprising or including an affidavit or statutory declaration uploaded electronically to the Electronic System must be uploaded by scanning the original bearing the original signature of the deponent and attesting witness and not by scanning a copy.

(4) A registered user who uploads a document comprising or including an affidavit or statutory declaration electronically to the Electronic System undertakes to the Court—

(a) that the document uploaded is the original document bearing the original signature of the deponent and attesting witness and not a copy;

(b) to retain possession of the original document until finalisation of the proceeding and any appeal and expiration of any appeal period; and

(c) to produce the original document upon request by the Court.

13.8—Official record of the Court

(1) If a document is filed with, or issued by, the Court in electronic form or converted by the Court by scanning or otherwise into electronic form, the document in electronic form represents the official record.

(2) If no electronic version of a document is created by the Court, the physical document is the official record.

Division 3—Registry

13.9—Registry hours

(1) The Registrar must determine when the Registry is to be open for business.

(2) The Registrar must establish procedures for a party or lawyer to request the performance of a function by the Registry (relating to the filing of an urgent document or listing of an urgent hearing or otherwise), upon payment of the prescribed fee, when the Registry is not open for business.

(3) The Registrar must publish the opening hours and procedures referred to in this rule on the CAA website.

Division 4—Access to court documents

13.10—Document access

The Registrar must establish practices and procedures—

(a) determining what information or documents in respect of a proceeding are accessible to parties, lawyers, members of the public or any other class of persons; and

(b) for a person to request access to information or documents or copies of documents in respect of a proceeding (when applicable on payment of a fee).

Division 5—Court fees

13.11—Remission or reduction

(1) An application for remission or reduction of the fee to institute a proceeding must be made by an application to the Registrar for remission or reduction of fees in the prescribed form lodged at the Registry.

(2) An application for remission or reduction of a fee otherwise payable in an existing proceeding must be made by filing in that proceeding an application to the Registrar for remission or reduction of fees in the prescribed form.

Prescribed form—

Form 76A Application to Registrar – Remission or Reduction of Court Fees

Part 4—Divisions

14.1—Supreme Court

These Rules govern proceedings in the original and appellate jurisdictions.

14.2—District Court

(1) These Rules govern proceedings in the Civil, Criminal Injuries and Administrative and Disciplinary Divisions of the Court.

(2) The Chief Judge may give directions relating to the assignment of proceedings to a division of the Court, the assignment of judicial officers to manage and hear proceedings in a division of the Court, or the administration of a division of the Court.

Note—

Section 7 of the *District Court Act 1991* divides the Court into 4 divisions being the Civil, Criminal Injuries and Administrative and Disciplinary Divisions as well as the Criminal Division. These Rules do not govern proceedings in the Criminal Division.

14.3—Magistrates Court

(1) These Rules govern proceedings in the Civil (General Claims), Civil (Consumer and Business) and Civil (Minor Claims) Divisions of the Court.

(2) The Chief Magistrate may give directions relating to the assignment of proceedings to a division of the Court, the assignment of judicial officers to manage and hear proceedings in a division of the Court, or the administration of a division of the Court.

Note—

Section 7 of the *Magistrates Court Act 1991* divides the Court into 5 divisions being the Civil (General Claims), Civil (Consumer and Business) and Civil (Minor Claims) Divisions as well as the Criminal and Petty Sessions Divisions. These Rules do not govern proceedings in the Criminal Division or, other than reviews of decisions of the Chief Recovery Officer under the *Fines Enforcement and Debt Recovery Act 2017*, the Petty Sessions Division.

Part 5—Hearings

Division 1—Hearings

15.1—Determination without hearing

The Court may make orders or grant judgment in a proceeding without conducting a hearing if—

(a) it is by consent;

(b) a determination is to be made on written submissions;

(c) judgment has been reserved after hearing submissions; or

(d) the Court determines that to do so would not prejudice any party.

15.2—Hearings ordinarily in presence of parties

(1) Hearings are ordinarily held in the presence of the parties or their lawyers, whether physically, by audio visual link or by telephone conference.

(2) The Court may conduct a hearing or direct that a hearing be conducted without notice to or in the absence of a party (including a party's lawyer) if—

(a) the party does not yet have an address for service;

(b) the Court determines that the hearing does not affect the party;

(c) the party has been excused from attending the hearing or, having been given notice of it, does not attend the hearing;

(d) the hearing is to determine whether to make an interim order having effect pending a subsequent hearing at which the party may attend;

(e) the Court determines that the risk that another party will otherwise suffer prejudice justifies that course;

(f) the Court determines that the risk that the party (or party's lawyer) will disrupt the hearing justifies that course; or

(g) the Court determines that it is in the interests of justice to do so.

15.3—Hearings ordinarily in court in public

(1) Hearings are ordinarily held in a place open to the public.

(2) The Court may conduct a hearing in chambers if it considers it necessary or desirable to preserve the health of the participants or that it is otherwise in the interests of justice to do so.

(3) The Court may, on its own motion or on application by any person, order that specified persons, or all persons except those specified, absent themselves from a hearing under section 69 of the *Evidence Act 1929*.

15.4—Appearance by audio visual link or telephone

(1) The Court may direct or permit the participants (parties, lawyers and witnesses) or a specific participant to appear at a hearing remotely by audio visual link or by telephone.

(2) A request to appear by audio visual link or by telephone must be made to the Court in sufficient time before the hearing to allow the Court to decide whether to allow the request and, if so, make appropriate arrangements.

(3) If the Court is unable to contact the party or lawyer at any time within 15 minutes after the time appointed for the hearing at the nominated facility, or by the nominated telephone number, the party or lawyer will be regarded as having failed to appear at the hearing for the purposes of these Rules.

(4) Unless the Court otherwise orders, the costs incurred by the Court in conducting an audio visual hearing at the request of a party must be paid by the requesting party.

15.5—Recording events in court

(1) Unless the Court otherwise orders and subject to the following subrules, the making in a court of a record of persons, things or events is not permitted.

(2) This rule does not apply to court staff acting in the course of their office or employment.

(3) Subject to subrules (4) and (5)—

(a) a party to a proceeding being heard by the Court, a lawyer, law clerk, student or bona fide member of the media may make a handwritten or electronic note of persons, things or events in a court; and

(b) a bona fide member of the media may make an audio recording of proceedings for the sole purpose of verifying notes and for no other purpose.

(4) Any record made in a court permitted by subrule (3) must—

(a) be made in a manner that does not interfere with the proceedings, court decorum or the Court's sound system or other technology; and

(b) not involve speech or otherwise generate sound.

(5) Any audio recording made by a bona fide member of the media under subrule (3)(b) must—

(a) not record any private conversation in a court;

(b) not be made available to any other person or used for any other purpose; and

(c) be erased within 48 hours of the recording.

(6) In this rule, ***record*** means a record by any means whatsoever, including without limitation handwriting, other physical means, audio or visual recording or an electronic record.

15.6—Electronic communications in court

(1) Unless the Court otherwise orders and subject to the following subrules, communication using an electronic device to and from a court during proceedings is not permitted.

(2) This rule does not apply to court staff acting in the course of their office or employment.

(3) Subject to subrules (4) and (5)—

(a) a party to a proceeding being heard by the Court or a lawyer may communicate using an electronic device to and from a court during proceedings; and

(b) a bona fide member of the media may communicate using an electronic device to and from a court during proceedings for the sole purpose of reporting on proceedings.

(4) Any electronic communication permitted by subrule (3) must—

(a) be made in a manner that does not interfere with the proceedings, court decorum or the Court's sound system or other technology; and

(b) not involve speech or otherwise generate sound.

(5) Any electronic communication of evidence adduced or a submission made in a proceeding by a bona fide member of the media permitted by subrule (3)(b) must not be made until at least 15 minutes have elapsed since the later of—

(a) the evidence or submission being given or made; and

(b) the Court ruling on any application for suppression or objection made in relation to the evidence or submission within that period of 15 minutes.

(6) In this rule, ***electronic device*** means any device capable of transmitting or receiving information, audio, video or other matter (including without limitation a cellular phone, computer, personal digital assistant or audio or visual camera).

15.7—Attire

(1) The Chief Judicial Officer may determine what comprises appropriate attire for lawyers or other persons appearing or attending in a court.

(2) The Registrar must publish any such determinations on the CAA website.

15.8—Facilities in court

If a party or lawyer will require any special facilities for an appearance or attendance at a directions hearing, hearing or trial, they must notify the Registry in sufficient time for the facilities (if available) to be arranged.

Examples—

Examples of special facilities are the need for an interpreter, an audio visual link, equipment to play an audio visual recording, hearing enhancement facilities or wheelchair access.

Division 2—Listing of hearings

15.9—Listing practices

The Registrar must establish practices and procedures determining—

(a) when different types of hearings in different types of proceedings will be listed in the ordinary course (in the absence of a special request, special circumstances or an order of the Court); and

(b) how hearings are to be listed when they are to be listed in consultation with the parties.

Part 6—Communication with Court

16.1—Email and telephone communications

(1) The Registrar must establish protocols relating to communications by email or telephone between parties or their lawyers and the Court.

(2) The Registrar must publish the protocols referred to in this rule on the CAA website.

Chapter 3—Parties and representation

Part 1—Parties

Division 1—Type

21.1—Party types

(1) Parties to an action are either applicants, respondents or interested parties.

(2) An ***applicant*** is a party (whenever joined) seeking final relief from the Court in the action.

(3) A ***respondent*** is a party (whenever joined)—

(a) against whom final relief is sought from the Court in the action; or

(b) whose interests may be directly and adversely affected by the orders sought in the action.

(4) An ***interested party*** is a party (whenever joined) against whom no relief is sought and whose interests are not directly and adversely affected by the action but who should be given the opportunity to be heard in relation to the proceeding or who must be joined to be bound by the result.

Examples—

In a dispute between landlord and tenant under section 35(3) of the *Housing Improvement Act 2016*, the Minister is entitled to be heard and must be joined as an interested party under rule 239.1 even though no relief is sought against the Minister and the Minister is not directly or adversely affected.

In a proceeding seeking rectification of the real property Register Book, the Registrar-General may need to be bound by the result even though the Registrar is not directly or adversely affected and no relief is sought against the Registrar. The Registrar would be joined as an interested party.

Notes—

An interested party may choose not to participate in the proceeding, or to participate only to a limited extent, but this will not affect the proceeding as between applicant and respondent.

The costs rules that apply as between applicant and respondent do not apply as between applicant and interested party. If the interested party does not participate in the proceeding, no costs order will ordinarily be made as between applicant and interested party. Even if the interested party does participate, costs will not necessarily follow the event due to the limited role of an interested party in contrast to the role of a respondent.

These Rules do not provide for an intervenor. A person who would have been an intervenor under the Previous Rules will be an interested party under these Rules.

(5) A ***third party*** is a respondent to a cross claim who is a new party to the proceeding; a ***fourth party*** is a respondent to a cross claim by a third party who is a new party to the proceeding; and so on.

(6) Each party to a proceeding in the nature of a claim is designated as Applicant, Respondent, Third Party, Fourth Party etc in the proceeding according to the party's role in or in respect of the action in which the party is originally joined and notwithstanding that the party may have a different role in a cross claim in the proceeding.

Examples—

An applicant in a claim who is a respondent to a cross claim retains the title of "Applicant" for the purpose of the proceeding as a whole including the cross claim.

A respondent to a cross claim who is not a party to the claim but brings a cross claim against a fourth party retains the title of "Third Party" for the purpose of the proceeding as a whole including the cross claim.

(7) When there are multiple parties of the same party type (for example, 2 applicants), the first named party of that type is designated as the First [Party Type] and so on.

(8) The ***party title*** for a particular party is the number (when applicable) and type of that party.

Example—

A claim is brought by 3 applicants John Doe, Jane Doe and Doe Pty Ltd against 2 respondents Ann Jones and Fred Smith. Ann Jones joins ABC Pty Ltd as a third party. ABC Pty Ltd joins XYZ Pty Ltd as a fourth party

The party titles are—

John Doe	First Applicant
Jane Doe	Second Applicant
Doe Pty Ltd	Third Applicant
Ann Jones	First Respondent
Fred Smith	Second Respondent
ABC Pty Ltd	Third Party
XYZ Pty Ltd	Fourth Party

(9) The Court may at any stage order that the party title of a party be changed.

Division 2—Capacity

21.2—Party in particular capacity

(1) This rule applies to—

(a) a personal representative of a deceased estate (executor or administrator);

(b) a trustee of a trust;

(c) a bankruptcy trustee of a bankrupt estate, administrator in respect of a debt agreement and controlling trustee in respect of a personal insolvency agreement under or governed by the *Bankruptcy Act 1966* (Cth) or similar legislation of any jurisdiction; and

(d) a liquidator, administrator, receiver and receiver and manager of an incorporated body under or governed by the *Corporations Act 2001* (Cth) or *Associations Incorporation Act 1985* or similar legislation of any jurisdiction.

(2) If a person to whom this rule applies is a party to a proceeding or appellate proceeding in a particular capacity, the person and the person's capacity form part of the party name.

(3) The beneficiaries or other persons interested in an estate or subject matter of a proceeding or appellate proceeding brought by a party to which this rule applies need not be joined as parties to the proceeding (but the Court may make an order joining any such person as a party on such conditions as it thinks fit).

(4) A person may be a party to a proceeding or appellate proceeding in more than one capacity.

Example—

A person may be an applicant in one capacity and a respondent or interested party in another capacity in a claim.

(5) The Court may at any stage order a change in the capacity of a party to a proceeding on such conditions as it thinks fit.

Division 3—Multiple parties

21.3—Multiple applicants

(1) An action may be brought by 2 or more applicants if—

(a) they rely on a joint or several cause of action or jointly or severally seek the same orders against the same respondent;

(b) they each rely on a cause of action or seek orders against the same respondent arising out of the same transaction or event or series of transactions or events; or

(c) the Court gives leave or so orders.

(2) Any person who has a joint interest with an applicant in—

(a) a cause of action in an action;

(b) orders sought in an action; or

(c) the subject matter of an action,

must be joined as an applicant in the action unless—

(d) that person does not consent to being joined as an applicant in the action, and is joined by the applicant as an interested party; or

(e) the Court otherwise orders.

Note—

If multiple applicants are not represented by a law firm and wish to authorise one applicant to file documents on their behalf, they will need to file an authorisation notice: see rule 25.7.

21.4—Multiple respondents

(1) An action may be brought against 2 or more respondents (including a third or subsequent party) if—

(a) an applicant relies on a cause of action or seeks the same orders against them jointly or severally;

(b) the cause of action or orders sought against them arise out of the same transaction or event or series of transactions or events;

(c) the same question of law or fact will arise in determining the action; or

(d) the Court gives leave or so orders.

(2) Any person who has a joint interest with a respondent in respect of—

(a) a cause of action in an action;

(b) orders sought in an action; or

(c) the subject matter of an action,

must be joined as a respondent unless the Court otherwise orders.

Note—

If multiple respondents are not represented by a law firm and wish to authorise one respondent to file documents on their behalf, they will need to file an authorisation notice: see rule 25.7.

21.5—Multiple interested parties

(1) An action may be brought naming 2 or more interested parties.

(2) Any person who has a joint interest with an interested party in respect of—

(a) a cause of action in an action;

(b) orders sought in an action; or

(c) the subject matter of an action,

must be joined as an interested party unless the Court otherwise orders.

Part 2—Change of parties

Division 1—Joinder and disjoinder

22.1—Joinder of parties

(1) The Court may at any stage order the joinder of a party to a proceeding or appellate proceeding on such conditions as it thinks fit.

(2) Unless the Court otherwise orders, a person may only be joined as an applicant or appellant if the person consents to being so joined.

(3) An application by a person to be joined as a party must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(4) The Court may order that a proceeding or appellate proceeding be treated as having been commenced by or against or in respect of the joined party on a date specified by the order.

Note—

If a cause of action by or against the newly joined party would be statute barred, see rule 69.2 or rule 84.1.

22.2—Substitution or addition of parties

(1) If the interest or liability of a party the subject of a proceeding or appellate proceeding (the ***old party***) passes to another person (the ***new party***) during the proceeding, whether by assignment, transmission, devolution or otherwise, the Court may at any stage either—

(a) order the substitution of the new party for the old party on such conditions as the Court thinks fit; or

(b) order the addition of the new party (in addition to the old party) on such conditions as the Court thinks fit.

(2) Unless the Court otherwise orders, a person may only be substituted or added as an applicant or appellant if the person consents to being so substituted or added.

(3) Unless the Court otherwise orders, the proceeding or appellate proceeding will be treated as having been commenced by or against or in respect of the new party when the old party became a party.

(4) Unless the Court otherwise orders, any step taken or thing done in the proceeding before the substitution or addition has the same effect in relation to the new party as it had in relation to the old party.

22.3—Removal of parties

The Court may at any stage, on such conditions as it thinks fit, order the removal of a party in a proceeding or appellate proceeding if the party—

(a) was never a necessary or proper party to the proceeding; or

(b) is no longer a necessary or proper party to the proceeding.

22.4—Errors

(1) A proceeding or appellate proceeding is not invalid merely due to an error in the joinder or name of a party, including (without limitation)—

(a) an error in the name, description or capacity of a party;

(b) the non-joinder of a necessary or proper party; or

(c) the joinder of a party who should not have been joined.

(2) The Court may make such orders on such conditions as it thinks fit in respect of an error of joinder or name of a party.

Division 2—Death of party

22.5—Death of party

(1) If a person is dead when an action or appellate proceeding is instituted naming the person as a party, the proceeding is irregular but is not invalid if a cause of action or right to seek relief or appeal survives under the general law.

(2) If a party dies after an action or appellate proceeding is instituted but before it is finally determined, the proceeding becomes irregular but is not invalid if a cause of action or right to seek relief or appeal survives under the general law.

(3) If subrule (1) or (2) applies, the Court may—

(a) if provision is made by a statute for the proceeding to be brought or continued by or against an insurer in the event of the party's death—make an order substituting the insurer for the party;

(b) make an order substituting the personal representative of the estate for the party;

(c) make an order appointing a representative of the estate for the purpose of the proceeding;

(d) dismiss the action or appellate proceeding; or

(e) make any other or further order as it thinks fit.

Part 3—Particular parties

Division 1—Partnerships and unincorporated associations

23.1—Introduction

(1) In this Division, unless the contrary intention appears—

relevant time means—

(a) in the case of a claim—when the cause of action arose;

(b) in the case of an originating application—when the partnership or unincorporated association is joined as a party to the proceeding; or

(c) in any case—such other time as the Court may order.

(2) To avoid doubt, this Division does not prevent partners or members of an unincorporated association being named in a proceeding in their individual names.

(3) To avoid doubt, this Division applies to proceedings—

(a) between a partnership or unincorporated association and a past or present partner or member;

(b) between a partnership or unincorporated association and a non-member; or

(c) between different partnerships or between different unincorporated associations.

(4) To avoid doubt, when a partnership or unincorporated association is a party to a proceeding pursuant to this Division, any order or judgment will be made in the name of the partnership or unincorporated association.

Note—

For the enforcement of judgments and orders against a party in the name of a partnership or unincorporated association, see Chapter 17 Part 2.

23.2—Partnership name

(1) This rule applies to a partnership comprising 3 or more partners at the relevant time that has not been dissolved when the action is instituted.

Note—

If a partnership comprises 2 partners, they must sue or be sued in their own names and not the partnership name.

(2) An action may be brought by persons making a claim or originating application, and an appellate proceeding may be brought by persons, as partners in the name of the partnership as at the relevant time.

(3) An action may be brought against respondents or name interested parties who are alleged to be liable or interested, and an appellate proceeding may be brought against persons, as partners in the name of the partnership as at the relevant time.

(4) An action or appellate proceeding by or against a partnership in the partnership name under this rule must show the party name as "[partnership name] (a partnership)".

23.3—Unincorporated association name

(1) An action may be brought by persons making a claim or originating application, and an appellate proceeding may be brought by persons, as members of an unincorporated association in the name of the association as at the relevant time.

(2) An action may be brought against respondents or naming interested parties who are alleged to be liable or interested, and an appellate proceeding may be brought against persons, as members of an unincorporated association in the name of the association as at the relevant time.

(3) An action or appellate proceeding by or against an unincorporated association in the unincorporated association name under this rule must show the party name as "[association name] (an unincorporated association)".

23.4—Disclosure of members

(1) A party may by written notice require a party to a proceeding or appellate proceeding joined in the name of a partnership or unincorporated association to disclose the name and address of each person who was a partner or member at the relevant time.

(2) A party who receives such a notice must within 14 days file and serve on each other party to the proceeding a notice disclosing the name and address of each person who was a partner or member at the relevant time.

(3) The Court may at any stage order that a party to a proceeding or appellate proceeding joined in the name of a partnership or unincorporated association file and serve a notice disclosing the name and address of each person who was a partner or member at a specified time and, if it thinks fit, that the notice be verified on oath.

(4) If a party fails to comply fully with an obligation imposed by subrule (1) or (2) or an order made under subrule (3), the Court may make such orders as it thinks fit.

23.5—Dispute about identity of members

(1) A person alleged to be a partner or member of a partnership or unincorporated association that is a party to a proceeding or appellate proceeding pursuant to this Division may apply to be joined as an additional party if the person disputes that the person was a partner or member at the relevant time.

(2) For the purpose of a proceeding, the Court may, if it thinks fit, determine at a separate trial or hearing or by way of summary judgment whether a person was—

(a) a partner;

(b) a member of a partnership; or

(c) an unincorporated association.

Division 2—Persons under legal incapacity

23.6—Definitions

In this Division, unless the contrary intention appears—

eligible persons—see rule 23.7;

guardian certificate means a certificate signed by a proposed litigation guardian certifying that—

(a) the person for whom the proposed litigation guardian consents to act is a person under a legal incapacity, identifying that person's date of birth and, when applicable, details of their mental disability or illness rendering them incapable of managing their participation in a proceeding;

(b) the proposed litigation guardian is eligible to be a litigation guardian for the person under a legal incapacity in the proceeding;

(c) the proposed litigation guardian does not and would not have an interest in the proceeding adverse to the person under a legal incapacity;

(d) the proposed litigation guardian understands the rights and obligations of a litigation guardian; and

(e) the proposed litigation guardian consents to acting as litigation guardian for the person under a legal incapacity in the proceeding;

litigation guardian means a person acting as a litigation guardian under rule 23.8 or 23.9;

person under a legal incapacity means a person—

(a) under the age of 18 years; or

(b) who, because of a mental disability or illness, is not capable of managing their participation in a proceeding.

23.7—Eligibility to be litigation guardian

(1) Subject to subrule (2), the following persons are eligible to be a litigation guardian (***eligible persons***) for a person under a legal incapacity:

(a) a parent or guardian of the person under a legal incapacity;

(b) a holder of an enduring power of attorney authorising the person to act on behalf of the person under a legal incapacity;

(c) the Public Trustee of South Australia or an equivalent Public or State Trustee of another State or a licensed trustee company within the meaning of Part 5D of the *Corporations Act 2001* (Cth) having authority to manage the affairs of the person under a legal incapacity that extends to acting as litigation guardian in the proceeding; or

(d) a person approved by the Court.

(2) A person is not an eligible person if—

(a) the person is a person under a legal incapacity;

(b) unless the Court otherwise orders, the person has or would have an interest in the proceeding adverse to that of the person under a legal incapacity; or

(c) the Court so orders.

23.8—Proceeding by person under legal incapacity

(1) Subject to subrules (5) and (6), unless the Court otherwise orders, an action or appellate proceeding by a person under a legal incapacity must be brought by an eligible person as litigation guardian for the person under a legal incapacity.

(2) An eligible person may bring an action or appellate proceeding as litigation guardian for a person under a legal incapacity if a guardian certificate is filed by the person immediately after filing of the originating process.

(3) The statement of claim in a claim or supporting affidavit in an originating application brought by a litigation guardian must disclose the nature of the incapacity and, when a child, the date of birth of the person under a legal incapacity.

(4) The Court may at any stage appoint a person who signs a guardian certificate as a litigation guardian for an applicant in a claim or originating application or appellant in an appellate proceeding (including in addition to or instead of any existing litigation guardian) or remove any litigation guardian on such conditions and make such consequential or transitional orders as the Court thinks fit.

(5) A person who is 16 or 17 years old may bring an originating application for authorisation of or consent to marriage under section 12 or 16 of the *Marriage Act 1961* (Cth).

Note—

See rule 295.1.

(6) A person who is 17 years old may bring an originating application to appeal against a provisional licence disqualification under section 81BB of the *Motor Vehicles Act 1959*.

Note—

See rule 244.9.

23.9—Proceeding against or naming person under legal incapacity

(1) Subject to subrule (2), an action or appellate proceeding may only be instituted against a person under a legal incapacity by naming both the person and a litigation guardian for the person as a respondent or interested party and filing a guardian certificate at the same time.

Note—

An applicant who seeks to institute a proceeding against a person under a legal incapacity will be required to obtain a guardian certificate from an eligible person as litigation guardian for the person under a legal incapacity prior to instituting the proceeding.

(2) A proceeding may be instituted against a person under a legal incapacity without naming a litigation guardian, but no further steps may be taken against or in respect of the person unless and until a litigation guardian is appointed.

(3) The Court may at any stage appoint a person who signs a guardian certificate as litigation guardian for a respondent or interested party in a proceeding (including in addition to or instead of any existing litigation guardian) or remove any litigation guardian on such conditions and make such consequential or transitional orders as the Court thinks fit.

23.10—Constitution and conduct of proceeding

(1) A proceeding by or against a person under a legal incapacity for whom there is a litigation guardian is to show the name of the party as "[name of person under a legal incapacity] by litigation guardian [name of litigation guardian]".

(2) The person under a legal incapacity is treated as the substantive party to the proceeding and the litigation guardian is treated as a quasi-attorney for the person under a legal incapacity.

Note—

The role and responsibilities of litigation guardians are governed by general law principles.

(3) Unless the Court otherwise orders, a litigation guardian may take any step in a proceeding that could be taken by the person under a legal incapacity if the person had capacity to act in their own right.

(4) Unless the Court otherwise orders, any right or liability to receive or pay costs in a proceeding vests in the person under a legal incapacity and not in the litigation guardian.

(5) This rule does not affect the question whether a litigation guardian is entitled to be indemnified out of the assets of a person under a legal incapacity.

Note—

For compromises of proceedings to which a person under a legal incapacity is a party, see rule 134.2.

23.11—Failure to appoint litigation guardian

(1) A failure to appoint a litigation guardian does not invalidate a proceeding by or against a person under a legal incapacity.

(2) On becoming aware that a party is a person under a legal incapacity, the Court may make such orders concerning steps taken to date in the proceeding as it thinks fit on such conditions as it thinks fit, including (without limitation) orders to—

(a) set aside or vary any step taken in the proceeding; or

(b) set aside or vary any order made or judgment granted in the proceeding.

Part 4—Representative parties

Division 1—Introduction

24.1—Definitions

In this Part, unless the contrary intention appears—

representative party means a person named as a party to a proceeding under this Part on behalf of a group of 2 or more persons;

representative proceeding means a proceeding under this Part in which the applicant, respondent, appellant or other party is a representative party; and

represented party means a person who is a member of a group represented in a proceeding under this Part by a representative party.

Division 2—Parties with common interest

24.2—Bringing proceeding

(1) If a group of 2 or more persons has a common interest in the subject matter of a proceeding or appellate proceeding, the proceeding may be brought by a member of the group as a representative party representing some or all members of the group (including the representative).

(2) If a proceeding is instituted under this rule, the statement of claim in a claim or supporting affidavit in an originating application or notice of appeal in an appellate proceeding must specify—

(a) the name and address of each represented party; and

(b) the common interest that the represented parties have in the subject matter of the proceeding.

24.3—Defending or participating in proceeding

(1) If a group of 2 or more persons has a common interest in the subject matter of a proceeding or appellate proceeding, the Court may order that the proceeding be brought against a person as a respondent or naming a person as an interested party who is a member of the group as a representative party representing some or all members of the group (including the representative).

(2) If an order is made under this rule, a defence or response filed by the representative party must identify the name and address of each represented party.

Division 3—Parties with common question

24.4—Bringing action

(1) If—

(a) a group of 2 or more persons each have a cause of action or right to seek relief against the same person;

(b) the causes of action or rights to seek relief of all members of the group arise out of or are in respect of the same, similar or related circumstances; and

(c) the causes of action or rights to seek relief of all members of the group give rise to a substantial common question of law or fact,

an action may be brought by a person who is a member of the group as a representative party representing some or all members of the group (including the representative).

(2) An action may be brought under this rule notwithstanding that—

(a) the subject matter of the action may be separate contracts or transactions between the respondent and individual represented parties;

(b) the subject matter of the action may involve separate acts or omissions of the respondent in relation to individual represented parties; or

(c) the nature or detail of the relief sought differs between individual represented parties or requires individual assessment.

(3) If an action is instituted under this rule, the statement of claim or supporting affidavit must—

(a) identify the represented parties, whether identified individually or by reference to membership of a class or otherwise (to avoid doubt, it is not necessary to specify the number of represented parties);

(b) specify the causes of action or rights to seek relief that are common to all represented parties;

(c) specify any causes of action or rights to seek relief that are specific to individual represented parties;

(d) specify the circumstances out of which or in respect of which the causes of action or rights to seek relief of all members of the group arise and how they are the same, similar or related; and

(e) specify the question of law or fact that is common to the causes of action or rights to seek relief of all represented parties.

24.5—Process to opt out or opt in

(1) An applicant who institutes an action under this Division must at least 7 days before the first directions hearing or hearing apply for an order setting out a process for persons to opt out or opt in as represented parties.

(2) At the first hearing or, if it thinks fit, any subsequent hearing, the Court will determine whether a process should be adopted for persons to opt out or opt in as represented parties.

(3) If the Court determines that a process should be adopted for persons to opt out or opt in as represented parties, the Court will make an order as to—

(a) the terms of, timing of and manner in which the representative party is to give notice (an ***information notice***) to group members of—

(i) the proceeding;

(ii) the Court's order;

(iii) the right to opt out or opt in (as the case may be); and

(iv) the rights and liabilities of group members who opt out or do not opt out or opt in or do not opt in (as the case may be);

(b) the terms of, timing of and manner in which a group member may give to the representative party an opt out notice or opt in notice (as the case may be) and the effect of so doing or not so doing; and

(c) such other or further matters as the Court thinks fit.

(4) The Court may at any stage vary an opt out or opt in order made under subrule (3) and may extend or abridge the time for giving an information notice or an opt out or opt in notice (as the case may be) and may make a further order under subrule (3).

Division 4—Beneficiaries etc

24.6—Appointment of representative

(1) This rule applies to a proceeding concerning—

(a) administration of an estate of a deceased person;

(b) administration of a trust; or

(c) construction of a written instrument.

(2) The Court may appoint a person as a representative party to represent the interests of a class of persons in a proceeding if—

(a) the class cannot be readily ascertained;

(b) the class can be ascertained but its members, or some of its members, cannot be found; or

(c) the appointment should be made to minimise costs.

(3) A person appointed under subrule (2) becomes a party to the proceeding.

Division 5—General

24.7—Constitution of proceeding

(1) The Court may make orders in relation to the constitution of a proceeding instituted under this Part on such conditions and with such consequential orders as it thinks fit.

(2) For example, the Court may order—

(a) that a proceeding cease to be a representative proceeding under this Part and make consequential orders to reconstitute it as an ordinary proceeding (including joining some or all represented parties as ordinary parties);

(b) that a representative party cease to represent some or all of the other represented parties;

(c) that a representative party represent an additional represented party, including a party whose cause of action or right to seek relief or appeal accrued after institution of the proceeding;

(d) that some or all of the other represented parties be joined as applicants, respondents, interested parties or appellants instead of represented parties;

(e) the appointment of a person as a representative party in addition to or instead of the existing representative party;

(f) the joinder of a person as an additional applicant, respondent, interested party or appellant; or

(g) that a process be adopted for persons to opt in or opt out as represented parties.

24.8—Conduct of proceeding

The Court may make such orders as it thinks fit in relation to the conduct of a representative proceeding instituted under this Part.

24.9—Effect of orders and judgments on represented parties

(1) Unless the Court otherwise orders, an order or judgment made in a proceeding or appellate proceeding for or against or affecting a representative party is binding on each represented party.

(2) The Court may order, on application by a person purportedly represented in a representative proceeding that the person is not bound by the order or judgment if the person was not in fact represented by the representative party.

Note—

Rule 202.2 provides that, unless the Court otherwise orders, an order or judgment cannot be enforced against a represented party who is not a representative party.

24.10—Costs

Unless the Court otherwise orders, any right or liability to receive or pay costs in a representative proceeding under this Part vests in the representative party and not in the represented parties.

24.11—Costs of representative party

(1) The Court may order that the costs of a representative party be paid out of a fund or by persons nominated by the Court.

(2) Without limiting the effect of subrule (1), if judgment is granted in favour of a representative party or a proceeding or appellate proceeding has been or is to be resolved with the approval of the Court for the benefit of a representative party under this Part, the representative party may apply for an order for costs under subrule (3).

(3) If the costs reasonably incurred by a representative party are likely to exceed any costs recoverable from another party to the proceeding, the Court may order that some or all of the excess be paid to the representative party out of the moneys to be paid under the judgment or resolution.

Part 5—Representation

Division 1—Lawyers

25.1—Right of representation of parties

General right

(1) Subject to the following subrules, a party may be represented in a proceeding or appellate proceeding by a law firm legally entitled to practise in South Australia.

Representation by multiple law firms

(2) Unless the Court otherwise orders, a party may only be represented in a proceeding or appellate proceeding by a single law firm.

(3) If a party is permitted by the Court to be represented by 2 or more law firms, unless the Court otherwise orders—

(a) a document may be served on the party by serving it on any one of the law firms;

(b) the law firms may act jointly or individually on behalf of the party; and

(c) there is to be no increase in the liability to costs of other parties.

Magistrates Court

(4) A party may only be represented in a minor civil action by a law firm if and to the extent permitted under section 38(4) of the *Magistrates Court Act 1991*.

Note—

Section 38(5) of the *Magistrates Court Act 1991* limits the award of costs in a minor civil action if a party is represented by a lawyer.

District Court

(5) A party may only be represented in a minor civil review by a law firm if and to the extent permitted under section 38(4), (7)(a) and (7)(ab) of the *Magistrates Court Act 1991*.

25.2—Law firm acting for party

(1) A law firm retained to act for a party in a proceeding or appellate proceeding must file a notice of acting for the party in the proceeding in the prescribed form as soon as practicable after acceptance of the retainer.

Prescribed form—

Form 23 Notice of Acting

(2) A party who is no longer represented by a law firm in a proceeding or appellate proceeding must file a notice of acting in the prescribed form as soon as practicable after termination of the law firm's retainer unless a different law firm has been retained to represent the party in the proceeding.

Prescribed form—

Form 23 Notice of Acting

(3) A law firm whose retainer to act for a party in a proceeding or appellate proceeding has been terminated may file a notice of cessation of acting if a different law firm has not been retained and the party fails to file a notice of acting within 7 days after termination of the retainer—

(a) if filed before the proceeding is either entered or listed for trial or hearing—without leave of the Court; or

(b) in any other case—with leave of the Court.

Prescribed form—

Form 24 Notice of Cessation of Acting

(4) A law firm is to be regarded as representing a party in a proceeding or appellate proceeding if and from the time when—

(a) the law firm files a notice of acting for the party in the proceeding; or

(b) the law firm's name appears as the party's law firm on the first document filed on behalf of the party in the proceeding.

(5) A law firm is to be regarded as ceasing to represent a party in a proceeding or appellate proceeding if and from the time when—

(a) a different law firm files a notice of acting for the party in the proceeding under subrule (1);

(b) the party files a notice of acting in the proceeding under subrule (2);

(c) the law firm files a notice of cessation of acting under subrule (3); or

(d) the Court so orders.

25.3—Responsible solicitor acting for party

(1) When a law firm commences to represent a party in a proceeding or appellate proceeding, it must nominate an individual solicitor who is responsible for representation of the party in the proceeding (the ***responsible solicitor***).

(2) A law firm may file a notice of acting nominating a different individual as the responsible solicitor.

(3) An individual nominated as the responsible solicitor continues to be responsible for representation of the party in the proceeding or appellate proceeding unless and until the law firm files a notice of acting nominating a different individual as the responsible solicitor.

25.4—Counsel for party

General right

(1) Subject to the following subrules, a party may appear or be represented in a proceeding or appellate proceeding by one or more counsel who is a solicitor or barrister legally entitled to practise in South Australia.

Magistrates Court

(2) A party may only appear or be represented by counsel in a minor civil action if and to the extent permitted under section 38(4) of the *Magistrates Court Act 1991*.

Note—

Section 38(5) of the *Magistrates Court Act 1991* limits the award of costs in a minor civil action if a party is represented by a lawyer.

District Court

(3) A party may only appear or be represented by counsel in a minor civil review if and to the extent permitted under section 38(4), (7)(a) and (7)(ab) of the *Magistrates Court Act 1991*.

25.5—Party bound by conduct of lawyer

(1) Subject to subrule (2), a party in a proceeding or appellate proceeding is bound by the conduct of the law firm who is recorded as representing the party and by counsel who appears for the party in the proceeding.

(2) The Court may order that a party is not bound by the conduct of a law firm or counsel in a proceeding if—

(a) the law firm or counsel acted outside their scope of authority; and

(b) the Court considers that it is reasonable in all the circumstances that the party not be so bound.

Division 2—Non-lawyers

25.6—No right of representation by non-lawyer

General position

(1) Subject to the following subrules and any applicable statute, a person may not appear or be represented in a proceeding or appellate proceeding by a person other than a lawyer legally entitled to practice in South Australia.

(2) To avoid doubt, this rule does not prevent an individual from acting or appearing as a self-represented litigant without any representation.

Exception—company director

(3) The Court may give leave for a person other than a law firm to represent or appear for a party in a proceeding or appellate proceeding on such terms as the Court thinks fit if—

(a) the party is a company;

(b) the representative is a director of the company;

(c) the director has power to bind the party in the proceeding; and

(d) the Court considers that it is in the interests of justice to give such leave.

(4) The Court may if it thinks fit give leave to a self-represented litigant to be assisted in the presentation of their case at a hearing by a person approved by the Court. Unless the Court otherwise orders, such leave does not permit the person assisting to address the Court.

(5) The Crown may be represented by a person nominated by the Attorney-General in certain stages of criminal injuries compensation proceedings under section 10A of the (repealed) *Criminal Injuries Compensation Act 1978* and section 26 of the *Victims of Crime Act 2001*.

Magistrates Court

(6) A party may be represented or assisted in a minor civil action by a person other than a lawyer if and to the extent permitted under section 38(4) of the *Magistrates Court Act 1991*.

Division 3—Co-parties

25.7—Authority

(1) This rule applies to a co-applicant, co-respondent, co-third party, co-interested party or co-appellant (***co-party***) who is self-represented in a proceeding or appellate proceeding.

(2) Subject to the following subrules, co-parties who are self-represented in a proceeding must each file separate documents in the proceeding.

(3) A co-party may sign and cause to be filed an authorisation, in the prescribed form, allowing the authorised co-party to file and serve documents on their behalf.

Prescribed form—

Form 21 Authorisation

(4) An authorisation filed under subrule (3) remains in force unless and until the party who provided the authorisation files a deauthorisation in the prescribed form.

Prescribed form—

Form 22 Deauthorisation

(5) An authorisation or deauthorisation must be served on each other party to the proceeding as soon as practicable.

(6) A party who has provided an authorisation under this rule is bound by the conduct of the authorised co-party in filing and serving documents while the authorisation remains in force.

(7) In this rule, an ***authorised co-party*** means the co-party who is authorised under this rule to file and serve documents on another co-party's behalf.

Chapter 4—Documents

Part 1—Document form and content

Division 1—General

31.1—Definitions

In this Part, unless the contrary intention appears—

prescribed content—see rule 31.2;

prescribed formats—see rule 31.2.

31.2—Prescribed formats and layout of filed documents

(1) The Registrar must prescribe—

(a) the physical format of documents in physical or electronic form; and

(b) the electronic file format of documents in electronic form;

required in respect of documents to be filed at court (***prescribed formats***).

(2) The Registrar must prescribe the layout of—

(a) application books under rule 213.4;

(b) appeal books under rule 217.5; and

(c) appeal books under rule 218.4 and rule 218.9;

required in respect of documents to be filed at court (***prescribed content***).

31.3—Prescribed forms

(1) The forms contained in Schedule 7 prescribe the form and content of defined types of documents to be filed at court (***prescribed forms***).

(2) If a proceeding is—

(a) a minor civil action in the Magistrates Court, a document filed in the proceeding must show "Minor Civil"; or

(b) in the Full Court of the Supreme Court, a document filed in the proceeding must show "Full Court",

in the court heading immediately below the name of the court and reference to the civil jurisdiction.

(3) If a proceeding is allocated to a list under Chapter 23, a document filed in the proceeding (other than the initial originating process) must show the name of that list in the court heading immediately below the name of the court and reference to the civil jurisdiction and, if applicable, the name inserted in accordance with subrule (2).

(4) The Chief Judicial Officer may—

(a) modify or delete a prescribed form contained in Schedule 7; or

(b) prescribe the form and content of additional defined types of documents to be filed at court (***prescribed forms***).

(5) When these Rules refer to a prescribed form, that form (as modified under subrule (4) when applicable) must, subject to rule 31.5, be used for that purpose or in those circumstances.

31.4—Publication of prescribed requirements

The Registrar must cause the prescribed formats, prescribed content and prescribed forms in force from time to time to be published on the CAA website.

31.5—Compliance with prescribed requirements

(1) A document to be filed in a proceeding must be in accordance with the requirements contained under rule 31.2 and in rule 31.3.

(2) A document that does not substantially comply with subrule (1) may be rejected for filing by the Registrar or by the Electronic System.

(3) The Court may give directions about the format or form of documents to be filed at court in a proceeding, including varying the requirements contained under rule 31.2 and in rule 31.3.

31.6—Document settled by counsel

There is no need for the name or signature of counsel who drafts or settles a document to be filed in a proceeding to appear on the document other than a summary of argument or written submissions.

Division 2—Affidavits and statutory declarations

31.7—Form and content

(1) An affidavit or, when permitted by these Rules, a statutory declaration must be in the prescribed form.

Prescribed forms—

Form 12 Affidavit

Form 13 Statutory Declaration

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

(2) An affidavit or statutory declaration must contain the address and occupation of the deponent but the address—

(a) may be a business address at which the deponent is regularly in attendance; or

(b) if the deponent reasonably fears that disclosure of their address will endanger the deponent or another person or if the Court so orders—

(i) if a law firm acts for the deponent—may be care of that law firm;

(ii) if a law firm acts for the party filing the affidavit—may be care of that law firm; or

(iii) in any other case—may be shown instead on a separate document filed on a court access basis as defined in rule 32.2.

(3) An affidavit or statutory declaration must be witnessed and attested by a person authorised under rule 31.9 to take it.

(4) Each page of an affidavit or statutory declaration must be dated and signed at the foot by the deponent and attesting witness.

(5) The signing clause of an affidavit or statutory declaration must—

(a) subject to subrules (6) and (7), be signed by the deponent or, if there are multiple deponents, each deponent;

(b) show the name, qualification and address of and be signed by the attesting witness; and

(c) follow immediately on from the text of the affidavit (not on a separate page).

(6) If the deponent is illiterate or blind—

(a) the affidavit or statutory declaration must be read to the deponent in the presence of the attesting witness;

(b) the deponent must indicate that the deponent approves the content of the affidavit or statutory declaration; and

(c) the attesting witness must state the above matters in the attestation clause.

(7) If the affidavit or statutory declaration is in English and the deponent does not sufficiently understand English—

(a) an accredited interpreter must interpret its content to the deponent in the presence of the attesting witness;

(b) the deponent must indicate that the deponent approves its content in the presence of the attesting witness (via the interpreter if necessary);

(c) the interpreter must interpret the oath or affirmation to the deponent;

(d) the deponent must swear or affirm that the content of the affidavit or statutory declaration is true (via the interpreter if necessary); and

(e) the attesting witness must state the above matters in the attestation clause.

Note—

Section 14(2) of the *Evidence Act 1929* provides for the making of an affidavit or other written deposition in a language other than English.

(8) Unless there is a specific reason to do so, an affidavit or statutory declaration is not to exhibit a copy of a document already on the court file but only to describe it (by reference to its name, date and filed document number) so that it can be identified.

(9) If an affidavit or statutory declaration refers to an exhibit or exhibits—

(a) each exhibit must be identified by a combination of the deponent's initials and a number;

(b) subject to paragraph (c), the number component must start at 1 for the first exhibit and continue consecutively for subsequent exhibits;

(c) the numbering of exhibits to a further affidavit by the same deponent filed in the proceeding must be consecutive to the numbering of the previous affidavit's exhibits;

(d) if there are 5 or more exhibits, the affidavit must include an index to the exhibits (showing number, short description and page number) immediately after the body of the affidavit and before the exhibit front sheet to the exhibits referred to in paragraph (e); and

(e) the exhibit or exhibits must have a single exhibit front sheet in the prescribed form signed and dated by the attesting witness.

Prescribed form—

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

(10) If an affidavit or statutory declaration refers to a sequence of documents (such as a sequence of correspondence), the sequence should be made a single exhibit.

(11) An affidavit or statutory declaration must contain a single pagination sequence commencing with the first page of the affidavit or statutory declaration and ending with the last page of the last exhibit.

(12) If an affidavit or statutory declaration is permitted to contain hearsay, it must in respect of each statement based on hearsay—

(a) state that the deponent believes the statement;

(b) identify the source of the statement (for example, the person who made the statement to the deponent or the document from which the deponent obtained the statement); and

(c) make it clear that the hearsay is first hand hearsay.

(13) The attesting witness must make a single certification in respect of all exhibits produced by the deponent rather than individual certifications.

31.8—Composition

(1) This rule applies in respect of an affidavit or statutory declaration filed by a party if—

(a) unless the Court otherwise orders, it contains 5 or more exhibits or the exhibits comprise 50 or more pages;

(b) the filing party so elects; or

(c) the Court so orders.

(2) An affidavit or statutory declaration to which this rule applies and any exhibits—

(a) if filed as a physical version—must be filed without the pages being stapled, bound or otherwise physically joined;

(b) if filed as a physical version—must have each exhibit clearly marked with its exhibit designation and tagged so that its commencement can be seen without opening the bundle; and

(c) if filed as an electronic scanned version—must be uploaded as separate files such that each file—

(i) is less than 20 megabytes; and

(ii) if printed out on double sided paper, would be no more than 3 centimetres thick,

whichever is less.

31.9—Attesting witness

(1) The following persons are authorised to take an affidavit or statutory declaration (***authorised witnesses***):

(a) the Registrar of the Court;

(b) a justice of the peace;

(c) a notary public;

(d) a Commissioner for taking affidavits; and

(e) any other person authorised by law to take affidavits or statutory declarations respectively.

(2) An affidavit or statutory declaration may not be made before the party or an employee or agent of the party filing it unless—

(a) the attesting witness is a lawyer acting for the party; or

(b) the party is the Crown.

Part 2—Filing of documents

32.1—Filing of documents

(1) Subject to subrule (3) and rule 32.3, a document lodged for filing in electronic form—

(a) if it is the first document to be filed for a proceeding—is conditionally accepted for filing if a case number is allocated to the proceeding, a filed document number is allocated to the document and the Court's seal is applied to the document by the Electronic System;

(b) in any other case—is conditionally accepted for filing if a filed document number is allocated, or the Court's seal is applied, to the document (as applicable) by the Electronic System;

(c) if accepted for filing when the registry is open—is conditionally treated as filed on the day and at the time at which it is accepted for filing; or

(d) if accepted for filing when the registry is not open—is conditionally treated as filed on the next day at the next time at which the registry is open.

(2) Subject to subrule (3), a document lodged for filing in physical form—

(a) if it is the first document to be filed for a proceeding—is filed if and when a case number is allocated to the proceeding, a filed document number is allocated to the document and the Court's seal is applied to the document by the Registry; or

(b) in any other case—is filed if and when a filed document number is allocated, or the Court's seal is applied, to the document (as applicable) by the Registry.

(3) The Court may order that a document be treated as having been filed on an earlier date or at an earlier time if the document ought to have been accepted for filing by the Court earlier.

(4) If a document the original of which is in electronic form resident on the Electronic System is required to be served, it is sufficient that the version of the document downloaded from the Electronic System is served.

(5) If a document the original of which is filed in physical form in the Registry is required to be served, the person lodging the document for filing—

(a) may serve a downloaded version of the document after it has been uploaded to the Electronic System by the Registry as if subrule (4) applied; and

(b) in any other case—must produce to the Registry additional copies to be sealed for the purpose of service.

(6) A party, upon payment of the prescribed fee, may request the Registrar to provide a certified copy of a filed document.

32.2—Filing of documents on restricted access basis

(1) In this rule—

court access basis means that, unless the Court otherwise orders, access to view, download or copy a document is limited to judicial and non-judicial officers;

excluded access basis means that, unless the Court otherwise orders, access to view, download or copy a document is excluded for the judicial officer assigned or expected to hear and determine the proceeding;

judiciary access basis means that, unless the Court otherwise orders, access to view, download or copy a document is limited to judicial officers;

lawyer access basis means that, unless the Court otherwise orders, access to view, download or copy a document is limited to court officers together with counsel or solicitors for the parties who have undertaken not, without leave of the Court, to disclose the content of the document to any person other than one entitled to access;

party access basis means that, unless the Court otherwise orders, access to view, download or copy a document is limited to court officers together with the parties, counsel or solicitors for the parties who have undertaken not, without leave of the Court, to disclose the content of the document to any person other than one entitled to access.

(2) The Court may order that a document to be filed be filed, or if already filed be treated as filed, on a court access basis, an excluded access basis, a judiciary access basis, a lawyer access basis, or a party access basis.

(3) A formal offer (other than one expressed to be open) filed under rule 132.4 or a pre-action document filed under rule 61.7, 61.9 or 61.10 is to be treated as filed on an excluded access basis.

(4) A party may, at the same time as filing a document, apply by interlocutory application for an order that the document be treated as filed on a restricted access basis, specifying the access basis sought.

(5) If a party files a document under subrule (4) and makes an oral request to the Registrar for interim treatment under this subrule at the same time, it will be treated on an interim basis as filed on the specified restricted access basis until the Court hears and determines the application under subrule (4).

32.3—Rejection of document for filing

(1) The Registrar may reject a document lodged for filing if—

(a) it does not substantially comply with the requirements contained under rule 31.2 or in rule 31.3;

(b) it otherwise does not substantially comply with these Rules;

(c) it is frivolous, vexatious, scandalous or an abuse of the process of the Court;

(d) the person lodging it has been declared a vexatious litigant under section 39 of the *Supreme Court Act 1935*, if filed it would institute a proceeding within the meaning of that section and leave has not been obtained to do so;

(e) the Court directs the Registrar not to accept it; or

(f) the Court directed the Registrar not to accept any document from the person lodging it without the prior leave of the Court and such leave has not been obtained.

(2) The Registrar may reject a document under subrule (1) that was lodged for filing via the Electronic System and conditionally accepted for filing under rule 32.1 if—

(a) the Registrar does so within 7 days of the conditional acceptance;

(b) the Registrar informs the person of the ground for rejection; and

(c) if the rejection is made under paragraph (a) or (b) of subrule (1)—the Registrar gives to the person who lodged the document an opportunity to lodge a substituted document within 7 days rectifying the matter that caused the original document to be rejected.

(3) If the Registrar accepts a substituted document under paragraph (3)(c), unless the Court otherwise orders, it will be treated as having been filed on the date on which the rejected document was conditionally accepted for filing.

Notes—

The Court might otherwise order, for example, if an applicant adds to a substituted statement of claim a cause of action not pleaded in the rejected statement of claim and, since the rejected document was conditionally accepted has become statute barred.

The Court might otherwise order, for example, if the lodging party did not attempt in good faith to comply with the relevant rule.

A document which is not rejected for filing but which falls within a paragraph of subrule (1) will be amenable to an application to strike it out under rule 34.1, rule 70.3 or rule 85.1.

(4) If the Registrar rejects a document under subrule (2) and does not accept a substituted document under subrule (3), it will be treated as not having been filed and will be deleted from the records of the Court.

32.4—Directions by Court

The Court may, of its own motion, on referral by the Registrar or on application by a person—

(a) direct the Registrar not to accept a document; or

(b) direct the Registrar not to accept any document from the person lodging it without the prior leave of the Court.

Part 3—Amendment of filed documents

33.1—Entitlement to amend filed documents

(1) The defined types of filed documents in column 2 of the following table may be amended by the filing party in accordance with rule 33.2 in the corresponding defined respects in column 3 of the table and on the corresponding defined conditions in column 4 of the table—

Entitlement to amend filed documents			
Item	**Type of filed document**	**Respects**	**Conditions**
1	Originating process or pleadings	Any	In accordance with rule 69.1 or 69.2 (by consent, as of right within time limit or by leave) or rule 84.1 (by consent or by leave)
2	List of documents	Add additional documents	None
3	List of documents	Otherwise	By consent or by leave

4	Notice to admit	Within 7 days of service	None
5	Notice to admit	Otherwise	By consent or by leave
6	Response to notice to admit	Any	By consent or by leave
7	Interrogatories	Within 14 days of service	None
8	Interrogatories	Otherwise	By consent or by leave
9	Appellate document	Any	In accordance with rule 215.2 (by consent, as of right within time limit or by leave)
10	Any other document	Any	By leave

(2) Subject to subrule (3), an affidavit or statutory declaration may not be amended but, if found to be erroneous, may be the subject of a further affidavit or statutory declaration by the deponent correcting the error.

(3) The Court may permit a deponent under oath or affirmation to amend a document referred to in subrule (2) by deleting, adding or altering, and initialling, a word or words to correct an unintended statement contained in it.

(4) The Court may grant leave to amend any document on such conditions as it thinks fit.

(5) In the table in subrule (1)—

by consent has the same meaning as given in rule 2.1;

by leave means with the prior leave of the Court which may be granted subject to conditions and which, unless expressed otherwise, expires 14 days after the grant of leave.

33.2—Manner of amendment

(1) Unless the Court otherwise orders, if a filed document may be amended in accordance with rule 33.1, it must be amended by filing a revised version of the filed document in the relevant prescribed form—

(a) showing a revision number in accordance with the relevant prescribed form such that the first time the document is amended the amended document is shown as "Revision 1", the second time it is amended the amended document is shown as "Revision 2" and so on;

(b) showing the omission of existing text from the previous version in a manner (such as striking through) that does not affect the legibility of the text omitted;

(c) showing the addition of text to the previous version in a manner (such as by underlining) that shows what has been added; and

(d) preserving the existing numbering (such as numbering an additional paragraph inserted between existing paragraphs 10 and 11 as paragraph 10A).

(2) The Court may give directions about the mode of amendment of a filed document.

(3) Unless the Court otherwise orders, a party who files an amended document must serve it on each other party as soon as practicable.

33.3—Costs of amendment

Unless the Court otherwise orders, a party who amends a document under rule 33.1 (including under rule 69.1, 69.2, 84.1 or 215.2) must pay the costs thrown away by another party as a result of the amendment on the standard costs basis fixed and payable after the proceeding or appellate proceeding is determined by judgment.

Part 4—Strike out of filed documents

34.1—Strike out of filed documents

(1) The Court may order that a filed document or part of a filed document be struck out if—

(a) it does not comply with these Rules; or

(b) it is frivolous, vexatious or an abuse of the process of the Court.

(2) If the Court strikes out all or part of a document under subrule (1), it may if it thinks fit grant leave to file within a specified time an amended or substituted document rectifying the matter that caused the original document to be struck out.

Part 5—Issue of court documents

35.1—Issue of court documents

(1) A document is issued by the Court when—

(a) a filed document number is allocated to the document;

(b) the Court's seal is applied to the document; or

(c) the signature of a court officer is applied to the document,

by the Electronic System or the Registry.

(2) If an issued document the original of which is in electronic form on the Electronic System is required to be served, it is sufficient that a version of the document downloaded from the Electronic System is served.

(3) If an issued document the original of which is filed in physical form at the Registry is required to be served, the person lodging the document for filing—

(a) may serve a downloaded version of the document after it has been uploaded to the Electronic System by the Registry as if subrule (2) applied; or

(b) in any other case—must produce to the Registry additional copies to be sealed for the purpose of service.

(4) A party, upon payment of the prescribed fee, may request the Registrar to provide a certified copy of a document issued by the Court.

Chapter 5—Service

Part 1—Service obligations

41.1—Service of filed documents on other parties

A party or other person who files a document must as soon as practicable serve it on all other parties to the proceeding or appellate proceeding unless—

(a) the document is an application to amend a Claim, Originating Application, Notice of Appeal, Notice of Review or Notice of Case Stated that has not yet been served;

(b) the document is an application to extend the time limit for service of the Claim documents;

(c) the document is an application under Chapter 17 Part 3 Division 2, 3, 4 or 8 or Part 4 Division 1 or 2 (except rule 204.3) or Part 5 Division 3;

(d) the document is a subpoena, or request for a subpoena, in which case the party must comply instead with rule 156.6 when applicable;

(e) these Rules provide that the document need not be served on any party or the party in question; or

(f) the Court otherwise orders.

41.2—Provision of document referred to in filed document

A party who files a document in a proceeding that refers to another document that is in the party's possession, custody or power must, on the request of another party, provide to the requesting party a copy of the referenced document.

41.3—Ineffective service

If a party becomes aware that service of a document on a person at an address or in a particular manner will or may not be effective, the party—

(a) must inform the Court as soon as practicable of that fact;

(b) must inform the Court as soon as practicable of any step taken in the proceeding reliant on service at that address or in that manner having been effective; and

(c) must not, without leave of the Court, attempt to effect service of any document at that address or in that manner.

41.4—Service by sheriff

(1) The sheriff must, if requested to do so by a party to a proceeding or the party's lawyer, serve in the State any document in the proceeding in respect of which personal service is required on an individual.

(2) A request for service by the sheriff must be in writing and must, when necessary, contain instructions for service.

Note—

Selecting "sheriff service required" on an originating process comprises a request in writing for the purpose of this rule and will be regarded as requesting personal service.

Part 2—Types of service

42.1—Personal service

(1) A document is served by ***personal service*** on a person if it is served in accordance with the following table—

Types of service		
Item	**Type of person**	**Method of service**
1	Individual	Either: (a) the document is given to and accepted by the person; or (b) each of the following apply: (i) the document is offered to the person; (ii) the person is unwilling to accept the document; (iii) the person is informed of the nature of the document; and (iv) the document is put down in the presence of the person.
2	Person under a legal incapacity	Either: (a) the document is served personally on the person's litigation guardian in the proceeding; or (b) the document is served personally on the person and on their parent or guardian.
3	Company served in South Australia or New Zealand	Document is served in accordance with section 109X of the *Corporations Act 2001* (Cth).
4	Company served elsewhere in Australia	Document is served in accordance with section 9 of the *Service and Execution of Process Act 1992* (Cth).
5	Registered body served in South Australia or New Zealand	Document is served in accordance with section 601CX of the *Corporations Act 2001* (Cth).
6	Registered body served elsewhere in Australia	Document is served in accordance with section 9 of the *Service and Execution of Process Act 1992* (Cth).

Types of service (cont.)		
Item	**Type of person**	**Method of service**
7	Other body corporate served in South Australia or New Zealand	Document is left at or sent by prepaid post to: (a) the head office; (b) a registered office; or (c) the principal place of business, of the body corporate.
8	Other body corporate served elsewhere in Australia	Document is served in accordance with section 10(2) or (3) of the *Service and Execution of Process Act 1992* (Cth).
9	The State of South Australia	Document is served in accordance with section 13(3) of the *Crown Proceedings Act 1992*.
10	The Commonwealth of Australia or a State	Document is served in accordance with section 63 of the *Judiciary Act 1901*.
11	Council	Document is served in accordance with section 280 of the *Local Government Act 1999*.
12	Partnership	Document is: (a) served personally on an individual or corporation who is, at the time of service, a partner in the partnership; (b) left at the principal place of business of the partnership with an individual who is apparently an adult and engaged in service of the partnership; or (c) served personally on every person who was a partner in the partnership at the relevant time as defined in rule 23.1.

(2) If a document is served by pre-paid post under subrule (1), there is a rebuttable presumption that it was received at the address to which it was posted when it would have arrived in the ordinary course of post.

42.2—Email service

(1) A document is served by ***email service*** on a person (***the recipient***) if—

(a) it is sent as an attachment in a PDF or Word format to an email address;

(b) either—

(i) the recipient has consented to the document or a class of documents encompassing the document being served on the recipient by email sent to that email address;

(ii) the recipient communicated using that email address with the party on whose behalf the document is to be served in relation to the subject matter of the proceeding or the dispute the subject of the proceeding;

(iii) the recipient publishes on its website or otherwise gives notice that any documents or a specified class of documents in any proceedings or a specified class of proceedings can be served at a specified email address, the documents or proceedings fall within the specified class if applicable and the notice is extant at the time of service; or

(iv) the email address is part of the recipient's address for service in the proceeding or appellate proceeding under rule 44.1;

(c) the party on whose behalf the document is to be served has not received and does not receive information suggesting that the email address is not being used by the recipient; and

(d) the sender's or recipient's email service does not notify the sender that the email was not delivered or the recipient may not be responding to emails.

(2) A document is served by ***email service*** on a person (***the recipient***) if it is sent as an attachment in a PDF or Word format to the person at an email address and the person replies to or acknowledges receipt of the email.

(3) To avoid doubt, a response generated automatically by the recipient's email service is not a reply or acknowledgement for the purposes of subrule (2).

(4) Unless the Court otherwise orders, a document served by email service under this rule is to be regarded as having been served—

(a) under subrule (1)—when the sender's email service records the email as having been sent; or

(b) under subrule (2)—when the recipient replies to or acknowledges receipt of the document.

42.3—Post service

(1) A document is served by ***post service*** on a person (***the recipient***) if—

(a) it is sent by express post via Australia Post in an envelope to a physical address;

(b) one of the following applies—

(i) the recipient has consented to the document or a class of documents encompassing the document being served on the recipient by post sent to that address;

(ii) the recipient communicated by post, using that address, with the party on whose behalf the document is to be served in relation to the subject matter of the proceeding or the dispute the subject of the proceeding;

(iii) the recipient is an individual and resides at that address;

(iv) the recipient is not an individual and has an office at that address usually attended on weekdays; or

(v) the address is part of the recipient's address for service in the proceeding or appellate proceeding under rule 44.1;

(c) the party on whose behalf the document is to be served has not received and does not receive information suggesting that the address is not being used by the recipient; and

(d) the sender obtains from Australia Post—

(i) proof of posting by way of an Article Lodgement Receipt showing when the envelope was received over the counter at a post office; and

(ii) proof of delivery via Australia Post's online tracking facility showing when the envelope was delivered to that address.

(2) A document is served by ***post service*** on a person (***the recipient***) if it is sent by express post via Australia Post to the person and the person replies to a covering letter attaching the document or acknowledges receipt of the document.

(3) Unless the Court otherwise orders, a document served by post service is to be regarded as having been served—

(a) under subrule (1)—when Australia Post's online tracking facility records the envelope containing the document as having been delivered to the address; or

(b) under subrule (2)—when the recipient replies to or acknowledges receipt of the document.

42.4—Solicitor service

A document is served by ***solicitor service*** on a person if—

(a) it is served on a solicitor having instructions to accept service of the document, or a class of documents that includes the document, on behalf of that person by personal service on the solicitor in accordance with rule 42.1 or in accordance with a method of service agreed by the solicitor, or

(b) a solicitor issues a written acknowledgement that the solicitor has accepted service of the document on behalf of that person.

42.5—Agent service

A document is served by ***agent service*** on a person if it is served on an agent having authority to receive service of the document, or a class of documents that includes the document, on behalf of that person by personal service on the agent in accordance with rule 42.1 or in accordance with a method of service agreed by the agent.

42.6—Agreed service

A document is served by ***agreed service*** on a person if it is served in accordance with an agreement by that person to receive service of the document, or a class of documents that includes the document, in a specified manner.

42.7—Substituted service

(1) If it is not practicable to serve a document in accordance with an applicable rule, the Court may, on application without notice, make an order substituting another method of service (***substituted service***).

(2) It is not necessary for the applicant to establish that the proposed method of service will bring the document to the notice of the person to be served.

(3) A document served in accordance with a method of service authorised by the Court under subrule (1) is to be regarded as having been served by original service.

(4) If the Court orders service on a party's insurer under this rule, the order may be set aside on the application of the insurer if the insurer establishes that—

(a) it is not liable to indemnify the party against the subject matter of the proceeding; or

(b) it has no right to conduct the defence of the proceeding on behalf of the party.

42.8—Deemed service

(1) A document is to be regarded as having been served (***deemed service***) on a person if—

(a) the person acquires actual knowledge of the document and its contents; or

(b) the person files a document in the proceeding responding to the document.

(2) A document regarded as having been served on a person under subrule (1) is to be regarded as having been served when the event referred to in subrule (1) occurs or such earlier time as is determined by the Court.

42.9—Original service

(1) A document is served by ***original service*** if it is served—

(a) on a company or registered body to be served interstate—in accordance with rule 42.1; or

(b) in any other case—if it is served in accordance with rule 42.1, rule 42.2, rule 42.3 or, if applicable, rule 42.4, rule 42.5, rule 42.6 or rule 42.7.

(2) A document regarded as having been served on a person under rule 42.8 is to be regarded as having been served by original service.

42.10—Time of service

Unless the Court otherwise orders, a document that is served after 5.00 pm on a particular day is not to be treated as served, for the purpose of time running against the person served, until the next business day.

Part 3—Service requirements

43.1—Originating process

Service of an originating process must be effected in accordance with rule 63.4, rule 65.6 or rule 82.4 as applicable.

43.2—Subpoenas

Service of a subpoena must be effected in accordance with rule 156.6.

43.3—Enforcement process

Service of an enforcement process must be effected in accordance with Chapter 17.

43.4—Other documents

Unless the Court otherwise orders, a document that is to be served on a person in a proceeding must be served—

(a) if the person has an address for service in the proceeding—by service at that address; or

(b) in any other case—by original service.

Part 4—Address for service

Division 1—Obligation to provide address for service

44.1—Address for service

(1) A party who—

(a) has not provided an address for service; and

(b) wishes to file a document in a proceeding or appellate proceeding,

must provide to the Court an address for service in accordance with subrule (2) in the manner specified in subrule (3) or (4).

(2) An ***address for service*** must include—

(a) the party title and full name of the party;

(b) whether the party is represented by a law firm and, if so, the name of the law firm and of the individual responsible solicitor;

(c) a physical address at which documents in or in relation to the proceeding can be served which must—

(i) if the party does not provide an email address—be in South Australia; or

(ii) if the party provides an email address—be in Australia;

(d) an email address at which documents in or in relation to the proceeding can be served, unless the party does not have available and cannot reasonably obtain an email address; and

(e) a telephone number at which the party or, if represented, the party's law firm can be contacted.

Note—

If a document is filed by a law firm, the law firm will need to be identified by an L code and the responsible solicitor will need to be identified by a P code. A law firm or individual solicitor who does not have an L code or P code can obtain one on request to the Law Society.

(3) If the party is initiating a proceeding or appellate proceeding, the party must provide an address for service—

(a) if the initiating document is lodged using the Electronic System—by entering the address for service details in the course of initiating the proceeding or appellate proceeding and causing the address for service to be displayed on the initiating document;

(b) if the initiating document is lodged without using the Electronic System—by causing the address for service details to be displayed on the initiating document.

Note—

The initiating document is ordinarily a Claim or Originating Application for a proceeding and a Notice of Appeal, Notice of Review or Notice of Case Stated for an appellate proceeding.

(4) If the party wishes to file a document in an existing proceeding or appellate proceeding, the party must provide an address for service—

(a) if the document is lodged using the Electronic System—by entering the address for service details, obtaining approved access to the case and causing a notice of acting in the prescribed form to be generated; or

(b) if the document is lodged without using the Electronic System—by providing on the first document filed the address for service details or by filing a notice of acting in the prescribed form.

Prescribed form—

Form 23 Notice of Acting

(5) A party's address for service remains the last address for service provided to the Court unless and until a notice of acting or notice of cessation of acting is filed in accordance with rule 25.2 or a notice of change of address for service is filed in accordance with rule 44.2 showing a different address for service.

(6) If it comes to the attention of a party that a document sent to another party's address for service was not received by the recipient party, the sending party must bring that fact to the attention of the recipient party and, if unable to do so, must inform the Court.

(7) The Court may strike out all or part of a party's address for service if it appears that documents sent to that address are not being received by that party.

44.2—Change of address for service

(1) If there is a change in the address, email address (if applicable) or telephone number shown in a party's address for service, a notice of change of address for service must be filed and served on all parties within 7 days.

Prescribed form—

Form 25 Notice of Change of Address for Service

(2) If there is a change of the individual responsible solicitor within a law firm acting for a party, a notice of acting showing the new responsible solicitor must be filed and served on all parties within 7 days.

Prescribed form—

Form 23 Notice of Acting

Note—

See also rule 25.2 in relation to a change in the representation status of a party or change of law firm acting for a party.

Division 2—Service at address for service

44.3—Service at address for service

Unless the document is enforcement process in respect of which personal service is required or a subpoena, a document is served on a party with an address for service in a proceeding if it is—

(a) served at the party's physical address for service by personal service in accordance with rule 42.1;

(b) delivered to the party's physical address for service and left with a person who is apparently an adult and who apparently resides or works or is present at that address;

(c) sent as an attachment in a PDF or Word format to the party's email address for service in accordance with rule 42.2;

(d) sent by express post in an envelope addressed to that party at the party's physical address for service in accordance with rule 42.3; or

(e) delivered in any other way that the Court orders.

Note—

Service of a subpoena is addressed by rule 156.6 and service of enforcement process is addressed in Chapter 17.

44.4—Issue by Court of documents to address for service

(1) The Court may give notice to a party with an address for service in a proceeding by sending a notice in any manner referred to in rule 44.3.

(2) Rule 42.2 and rule 42.3 as to when a document served by email or post is to be regarded as having been served apply, with any necessary changes, to a notice from the Court sent by email or post.

Part 5—Proof of service

45.1—Method of proof of service

(1) Subject to the following subrules, when it is sought to prove service of a document, service must be proved by an affidavit in compliance with rule 45.2 and rule 45.3, rule 45.4, rule 45.5, rule 45.6 or rule 45.7, as applicable.

(2) Service may also be proved by oral evidence and must be so proved if the Court so orders.

(3) Service of a document outside Australia may also be proved—

(a) if the Hague Convention applies— by a certificate of service under rules 21 and 23 of Schedule 1; or

(b) in any other case— by an official certificate stating how and when service was effected given by—

(i) a foreign court; or

(ii) an embassy, high commission, consular or government authority of the country in which service was effected.

(4) Subrule (1) does not apply to service governed by rule 31 of Schedule 1.

(5) The Court may dispense with compliance with this rule if satisfied that the requisite service was effected.

45.2—Requirements for affidavit of proof of service

An affidavit of proof of service must—

(a) be in the prescribed form;

Prescribed form—

Form 42 Affidavit of Proof of Service

Form 43 Affidavit of Proof of Personal Service on an Individual by Sheriff's Officer

(b) unless the Court otherwise orders or these Rules otherwise provide, be made by a person of their own knowledge;

(c) either exhibit a copy of the document served (including any notice required to be served for service out of the State) or, if it has been filed at court, refer to the document by its name, date and filed document number; and

(d) depose to sufficient facts to prove service in accordance with the relevant part of Part 2 or rule 44.3.

45.3—Personal service

(1) If service is effected by personal service, an affidavit of proof of service must be by the person who delivered the document to the person, office or place of business in question and, if applicable, be supplemented by an affidavit by the person who instructed the delivery of the document.

(2) If the document is served on an individual, the affidavit of proof of service must—

(a) be by the person who served the document;

(b) state how the person on whom the document was served was identified; and

(c) set out the conversation with the person on whom the document was served about the document and the identity of that person.

(3) If the document is served on an individual as guardian, director, liquidator, administrator, member or partner of the person to be served or on the Attorney-General or an individual appointed by the Attorney-General to receive service on behalf of the person to be served, the affidavit of proof of service must—

(a) comply with subrule (2); and

(b) be supplemented by an affidavit by the person who instructed service of the document—

(i) exhibiting documentary evidence proving the requisite relationship between the individual and the person to be served; or

(ii) if this cannot practicably be obtained, stating, if necessary on information and belief, how it is known that the individual bears the requisite relationship to the person to be served.

(4) If service is effected at an office or place of business of the entity to be served, the affidavit of proof of service must—

(a) be by the person who served the document and if the document was left with an individual—

(i) state how that individual was identified; and

(ii) set out the conversation with that individual about the document, the person to be served, the identity of the office or place of business and the identity of the individual; and

(b) be supplemented by an affidavit by the person who instructed service of the document—

(i) exhibiting documentary evidence proving that the address at which the document was served is the requisite office or place of business of the entity to be served; or

(ii) if this cannot practicably be obtained, stating, if necessary on information and belief, how it is known that the address at which the document was served is the requisite office or place of business of the entity to be served.

(5) If service is effected on a solicitor acting for the State of South Australia pursuant to section 13(3) of the *Crown Proceedings Act 1992*, the affidavit of proof of service must—

(a) be by the person who served the document on the solicitor—

(i) state how the solicitor was identified; and

(ii) set out the conversation with the solicitor about the document, the person to be served and the identity of the solicitor; and

(b) be supplemented by an affidavit by the person who instructed service of the document—

(i) exhibiting documentary evidence proving that the solicitor is relevantly acting for the State of South Australia; or

(ii) if this cannot practicably be obtained, stating, if necessary on information and belief, how it is known that the solicitor is relevantly acting for the State of South Australia.

(6) If service is effected by prepaid post on a company, registered body or other body corporate pursuant to the *Corporations Act 2001* (Cth), *Service and Execution of Process Act 1992* (Cth), *Local Government Act 1999* or rule 42.1, the affidavit of proof of service must—

(a) be by the person who posted the document;

(b) exhibit documentary evidence proving the identity of the office, registered office, principal office or principal place of business or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the address to which the document was posted is the requisite office or place of business of the entity to be served; and

(c) exhibit a copy of the envelope.

45.4—Email service

If service is effected by email service, an affidavit of proof of service must—

(a) be by the person who sent the document to the person in question;

(b) exhibit documentary evidence proving that the email address to which the document being served was sent is the requisite email address pursuant to rule 42.2(1) or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the email address is the requisite email address; and

(c) exhibit a copy of the email including the date and time of sending.

45.5—Post service

If service is effected by post service, an affidavit of proof of service must—

(a) be by the person who posted the document to the person in question;

(b) exhibit documentary evidence proving that the address shown on the envelope containing the document being served is the requisite address pursuant to rule 42.3(1) or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the address is the requisite address;

(c) exhibit a copy of the envelope;

(d) exhibit a copy of the Article Lodgement Receipt issued by Australia Post as proof of posting; and

(e) exhibit a printout from Australia Post's online tracking facility as proof of delivery to the address shown on the envelope.

45.6—Solicitor and agent service

If service is effected by solicitor or agent service as defined in rules 42.4 and 42.5, an affidavit of proof of service must—

(a) be by the person who delivered or sent the document to the solicitor or agent;

(b) if reliance is placed on rule 42.4(a), exhibit documentary evidence proving that the solicitor had instructions to accept service of the document, or a class of documents that includes the document, on behalf of the person being served within the meaning of rule 42.4(a) or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the solicitor had those instructions;

(c) if reliance is placed on rule 42.4(b), exhibit a copy of the acknowledgement issued by the solicitor that the solicitor accepted service of the document on behalf of the person being served within the meaning of rule 42.4(b);

(d) if reliance is placed on rule 42.5, exhibit documentary evidence proving that the agent had authority to accept service of the document, or a class of documents that includes the document, on behalf of the person being served within the meaning of rule 42.5 or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the agent had that authority;

(e) if served personally on the solicitor, comply with rule 45.3;

(f) if served in a manner agreed by the solicitor or agent, exhibit documentary evidence of that agreement or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the solicitor or agent agreed to that manner of service; and

(g) if served by email service or post service on the solicitor or agent in accordance with a manner agreed by the solicitor or agent, comply with rule 45.4 or rule 45.5.

45.7—Agreed Service

If service is effected by agreed service as defined in rule 42.6, an affidavit of proof of service must—

(a) be by the person who delivered or sent the document;

(b) exhibit documentary evidence proving that the person agreed to service of the document or a class of documents that includes the document, in the manner in question within the meaning of rule 42.6 or, if this cannot practicably be obtained, state, if necessary on information and belief, how it is known that the person so agreed; and

(c) depose to such facts as are necessary to prove service in accordance with the agreement.

45.8—Substituted service

If service is effected by substituted service as defined in rule 42.7, an affidavit of proof of service must—

(a) be by the person who delivered or sent the document; and

(b) depose to such facts as are necessary to prove service in accordance with the order.

45.9—Service at address for service

If service is effected by service at an address for service, an affidavit of proof of service must—

(a) be by the person who delivered or sent the document; and

(b) depose to such facts as are necessary to prove service in accordance with rule 44.3.

Chapter 6—Constitution of proceedings

Part 1—Types of proceedings

51.1—Types

All actions and proceedings are either claims or originating applications.

Note—

Proceedings by way of claim are managed differently to those by way of originating application. Proceedings by way of claim require pleadings, discovery and service of expert reports and involve several interlocutory steps before proceeding to trial. Proceedings by way of originating application do not usually involve these steps, usually proceed on affidavits when evidence is required and may be finally determined on the return date.

51.2—Claims

(1) Subject to subrules (3) to (5), a ***claim*** is a proceeding in which the applicant claims—

(a) a remedy for a common law or equitable cause of action; or

(b) a statutory remedy of a type available for a common law or equitable cause of action (such as damages, compensation, injunction, restitution, specific performance, rescission, rectification or declaration) for a statutory cause of action analogous to a common law or equitable cause of action.

Examples—

A claim for damages under section 236 or compensation under section 237 or an injunction under section 232 as a result of misleading conduct in breach of section 18 of the Australian Consumer Law is a statutory cause of action.

A claim for recovery of monies under section 588FF on avoidance of an unfair preference under section 588FA of the *Corporations Act 2001* (Cth) is a statutory cause of action.

(2) A claim may comprise more than one cause of action (whether common law, equitable or statutory).

(3) Chapters 19 to 22 require certain types of proceedings to be instituted as claims.

(4) If a proceeding includes both a claim and what would in any other case be an originating application if it stood alone—

(a) the proceeding is to be by way of claim; and

(b) the applicant is otherwise required to comply as far as possible with any applicable provisions in Chapter 19, 20, 21 or 22.

(5) If there is a prescribed form to initiate a particular type of action as a claim, that type of action is a claim.

Example—

For example, Form 1A is the prescribed form for an action to determine a dispute arising out of the performance of building work to which a statutory warranty relates under section 37 of the *Building Work Contractors Act 1995*. Even if hypothetically the action would not be a claim under subrule (1), it is a claim by reason of subrule (5). See also Forms 1B, 1C and 1D.

51.3—Originating applications

(1) Subject to subrules (2) and (3), an ***originating application*** is a proceeding that does not include a claim under rule 51.2.

(2) Chapters 19 to 22 require certain types of actions to be instituted as originating applications.

(3) If there is a prescribed form to initiate a particular type of action as an originating application, that type of action is an originating application.

Example—

For example, Form 2B is the prescribed form for an action for authorisation of a proposed marriage by a minor under section 12 of the *Marriage Act 1961* (Cth). Even if hypothetically the action would not be an originating application under subrule (1), it is an originating application by reason of subrule (3). See also Forms 2A to 2U.

51.4—Proceeding instituted in incorrect form

If a proceeding is incorrectly instituted as a claim or an originating application, the Court may—

(a) order that the proceeding remain as constituted and make any further or consequential orders (relating to the filing of pleadings, affidavits or otherwise) as it thinks fit;

(b) order that the proceeding be terminated as constituted and replaced by a proceeding correctly constituted and make any further or consequential orders as it thinks fit; or

(c) make any other or further order as it thinks fit.

Part 2—Types of claims

52.1—Types of claims

(1) A claim in a proceeding by way of claim may be a claim (without more) or a cross claim.

(2) A claim (without more) is the claim (whether or not amended) that instituted the proceeding.

(3) A ***cross claim*** is a claim in which a respondent to a claim or an earlier cross claim seeks final relief from the Court against another existing party or a new party.

Note—

Unlike a respondent to a claim, a respondent to an originating application cannot bring a cross originating application. A respondent to an originating application who wishes to seek final relief from the Court against another existing party or a new party must bring a separate proceeding. Such a respondent may apply to the Court to hear and determine the 2 proceedings together.

Part 3—Consolidation and division of proceedings

53.1—Consolidation

(1) The Court may order the consolidation of separate proceedings into a single proceeding on such conditions as it thinks fit, including designating party roles and determining which party is to have the carriage of the consolidated proceeding.

(2) The Court may make consequential orders for the transition of separate proceedings into a single proceeding.

53.2—Division

(1) The Court may order the division of a proceeding into separate proceedings on such conditions as it thinks fit, including designating party roles and determining which party is to have the carriage of each separate proceeding.

(2) The Court may make consequential orders for the transition of a proceeding into separate proceedings.

Note—

If dividing a proceeding into 2 separate proceedings, the Court will either order that 2 new proceedings be created in place of the original proceeding or that one new proceeding be created and the balance remain in the original proceeding.

Chapter 7—Claims

Part 1—Pre-action steps

Division 1—Preliminary

61.1—Objects

The objects of this Part are to—

(a) encourage parties to resolve a dispute before commencing litigation;

(b) facilitate litigation, if unavoidable, proceeding expeditiously, efficiently, at a proportionate cost and on narrowed issues;

(c) involve insurers at an early stage;

(d) require parties to take steps before instituting proceedings in accordance with the principle that the time and costs incurred should be proportionate to the amount or value in dispute; and

(e) require substantial compliance without emphasis on technical matters or minor departures from the requirements.

61.2—Definitions

In this Part, unless the contrary intention appears—

address for pre-action service means a physical, email or postal address at which documents relating to a potential proceeding may be served on a party;

medical negligence claim means a personal injury claim against a health practitioner (whether or not qualified) or hospital;

pre-action claim—see rule 61.7;

pre-action document means a pre-action claim, pre-action response, pre-action third party notice or pre-action third party response;

pre-action meeting—see rule 61.12;

pre-action meeting report—see rule 61.12;

pre-action response—see rule 61.9;

pre-action steps means steps taken under this Part before the commencement of a proceeding, including service of pre-action documents, negotiation of arrangements for a pre-action meeting and attendance at a pre-action meeting;

pre-action third party notice—see rule 61.10;

required response time in respect of a pre-action document means either—

(a) if the pre-action document involves a personal injury claim—within 30 days; or

(b) in any other case—within 21 days,

of receipt by the party required to respond or such later time as the relevant parties may agree.

61.3—Service of documents under this Part

(1) A document to be served under this Part may be served by—

(a) personal service in accordance with rule 42.1;

(b) being sent as an attachment in PDF or Word format to an email address reasonably believed by the sender to be actively used by the person to be served; or

(c) being sent by express post via Australia Post to an address reasonably believed by the sender to be an address at which the person to be served regularly lives, works, carries on business or is present.

(2) A document to be served under this Part may be served on a party who has provided an address for pre-action service by—

(a) being delivered to a physical address for pre-action service and left with a person who is apparently an adult;

(b) being sent as an attachment in PDF or Word format to an email address for pre-action service; or

(c) being sent by express post via Australia Post to a postal address for pre-action service.

(3) A document to be served under this Part may be served—

(a) on an insurer reasonably believed by the party sending the document to be exercising subrogated rights for, or indemnifying the party to be served in relation to, the matter; or

(b) on a law firm reasonably believed by the party sending the document to be acting for the party to be served in relation to the matter.

61.4—Confidentiality

(1) Unless the relevant parties otherwise agree, subject to subrule (2) the content of any communications between the parties in or for the purpose of pre-action steps must be kept confidential and are the subject of settlement privilege.

(2) The Court may direct that a protected communication be disclosed to the Court for the limited purpose of making procedural or costs orders but not so as to disclose it to the judicial officer who is to hear or determine the proceeding before all questions, except costs, have been determined.

Note—

A person may disclose or use a protected communication in circumstances in which a communication the subject of settlement privilege may be disclosed or used under the general law or section 67C of the *Evidence Act 1929* or otherwise under statute.

61.5—Costs of compliance

Unless the Court otherwise orders and subject to costs orders made under rule 61.15 or 61.16, the costs of compliance with this Part are to be treated as costs in the cause except to the extent that such costs relate to issues not subsequently litigated.

Division 2—Early notice of personal injury

61.6—Notice of personal injury

(1) This rule applies in respect of a person who commences a personal injury claim in the Court, except a person who has, before the expiration of the period referred to in subrule (2)—

(a) given notice under section 126A of the *Motor Vehicles Act 1959*; or

(b) made a claim under section 30 of the *Return to Work Act 2014*.

Notes—

A person for whom insurance is provided under Part 4 of the *Motor Vehicles Act 1959* is required by section 126A of that Act to provide notice of the injury in the circumstances and manner specified by that section.

A person who makes a claim under section 30 of the *Return to Work Act 2014* is required to provide notice of the injury in the circumstances and manner specified by section 16 of that Act.

(2) A person to whom this rule applies must, within 6 months after the day on which the incident giving rise to the personal injury occurred, serve on the person potentially liable a written notice of injury—

(a) setting out the full name and address for pre-action service of the person giving the notice;

(b) setting out the full name and address of each person potentially liable;

(c) identifying when, where and how the injury was sustained;

(d) identifying why the recipient is potentially liable; and

(e) identifying any medical records relating to the applicant required from the recipient.

(3) If a person to whom this rule applies is not aware that they have suffered personal injury or that the injury has caused material loss or damage or was arguably caused by the negligence of the person potentially liable, the time in subrule (2) is extended until one month after the person becomes so aware.

(4) A recipient of a notice of injury must, within 6 weeks, serve on the sender at their address for pre-action service a written response—

(a) setting out the recipient's address for pre-action service;

(b) providing a copy of any requested medical records in the possession, custody or power of the recipient (with an invoice for copying);

(c) if the claim is a medical negligence claim and liability is denied, explaining why it is denied including any alternative explanation for what happened or caused any adverse effects; and

(d) making suggestions for next steps (for example, further investigation, obtaining expert evidence, negotiation, alternative dispute resolution or an invitation to institute a proceeding).

Division 3—Pre-action exchanges and offers

61.7—Pre-action claim

(1) In this Part, a ***pre-action claim*** is a written notice—

(a) setting out the full name and address for pre-action service of each proposed applicant;

(b) setting out the full name and address of each proposed respondent;

(c) as far as reasonably practicable identifying each proposed cause of action in sufficient detail to enable the proposed respondent to decide whether and to what extent to admit the claim, to respond to the claim and to respond to the proposed applicant's offer;

(d) as far as reasonably practicable, to the extent that the relief sought comprises a liquidated sum, identifying how it is calculated and, to the extent that it

comprises damages, giving a breakdown showing how the damages are quantified;

(e) if an extension of time is to be sought, identifying the basis for the extension;

(f) attaching a copy of any expert report relevant to the claim in the possession, custody or power of the proposed applicant;

(g) attaching sufficient material as is necessary for the proposed respondent to respond as required by rule 61.9;

(h) unless the claim is a personal injury claim, attaching an estimate in the prescribed form of the total costs likely to be incurred by the proposed applicant if the matter proceeds to trial;

Prescribed form—

Form P3 Cost Estimate

(i) identifying the court in which the action is intended to be brought;

(j) making an offer to settle the claim in terms capable of giving rise to a legally binding agreement if accepted;

(k) proposing a date and time for a pre-action meeting to be convened under rule 61.12, either at a physical location or by audio visual link or telephone conference call, if the claim is not first resolved; and

(l) to the extent that a proposed claim is a personal injury claim, addressing the matters set out in subrule (2).

(2) To the extent that a proposed claim is a personal injury claim, a ***pre-action claim*** is a written notice which also—

(a) sets out the date of birth and occupation of the proposed applicant;

(b) identifies the conduct by the proposed respondent alleged to be negligent (including the date and occasion) and the essence of why it was negligent;

(c) if the proposed claim is a medical negligence claim—

(i) identifies the adverse effects allegedly caused by the negligent conduct and the proposed applicant's current condition; and

(ii) briefly outlines the causal link between the negligent conduct and the adverse effects including what the outcome would have been had there been no negligence;

(d) identifies whether the proposed applicant has returned to work and, if not, whether they will be able to return to work and, if so, when that is likely;

(e) identifies whether the proposed applicant is continuing to receive treatment and, if so, its nature;

(f) identifies any medical records required or sought from the proposed respondent; and

(g) identifies any other records held by other providers that are relevant,

to the extent that information that is still current has not already been provided to the proposed respondent in a notice of personal injury under rule 61.6.

(3) Subject to rule 61.8, before commencing a claim in the Court, the applicant must have served on the respondent a pre-action claim.

61.8—Exemption and dispensation from obligation

(1) A proposed applicant may (but is not required to) serve a pre-action claim if—

(a) on commencement of the action, the applicant applies for a search order under rule 112.2 or freezing order under rule 112.14;

(b) on commencement of the action, the applicant applies for an interlocutory injunction and reasonably fears that, if given a pre-action claim, the respondent will act in a manner that would frustrate the grant of the injunction;

(c) the dispute has been, or will be, the subject of an alternative dispute resolution process similar to that prescribed by this Part;

(d) the action is to enforce a binding order or determination enforceable between the parties, including (without limitation) a monetary order by the South Australian Civil and Administrative Tribunal enforceable under section 89 of the *South Australian Civil and Administrative Tribunal Act 2013*;

(e) the action is for payment of a claimed amount under section 15 or 16 of the *Building and Construction Industry Security of Payment Act 2009*;

(f) there is a statutory time limit for instituting the action of not more than 3 months;

(g) the applicant reasonably believes that the action will be uncontested or is not genuinely contestable and serves on the respondent a Final Notice under Part 2 of this Chapter;

(h) the action is a dust disease action and meets the criteria for an urgent case under rule 315.2;

(i) the action is a criminal injuries compensation proceeding under Chapter 21 Part 3; or

(j) the action is an originating application.

(2) An applicant may apply to the Court at the commencement of a proceeding for dispensation from compliance with rule 61.7 on justifying grounds but, if the Court does not grant dispensation, the Court may make orders as if no application for dispensation were made.

61.9—Pre-action response

(1) A proposed respondent who receives a pre-action claim must within the required response time, serve on the proposed applicant and any other party to the pre-action steps, a response (***pre-action response***)—

(a) setting out the full name and address for pre-action service of the proposed respondent;

(b) either accepting the proposed applicant's offer or complying with paragraphs (c) to (i);

(c) as far as reasonably practicable, responding to each of the proposed applicant's identified causes of action (including to avoid doubt any additional ground of defence) in sufficient detail to enable the proposed applicant to decide whether, and to what extent, to pursue the claim and to respond to the proposed respondent's offer;

(d) if the proposed respondent intends to bring a counter claim, providing the information required by rule 61.7 to be given in a pre-action claim;

(e) attaching a copy of any expert report relevant to the claim in the possession, custody or power of the proposed respondent;

(f) attaching sufficient material as is necessary for the proposed applicant to respond to the proposed respondent's offer;

(g) unless the claim is a personal injury claim, attaching an estimate in the prescribed form of the total costs likely to be incurred by the proposed respondent in the proceeding if it proceeds to trial;

Prescribed form—

Form P3 Cost Estimate

(h) making an offer to settle the claim and any counter claim in terms capable of giving rise to a legally binding agreement if accepted; and

(i) either agreeing to the proposed details or proposing different details for the pre-action meeting such that any alternative date is—

(i) no later than 7 days after the date suggested by the proposed applicant; or

(ii) if the proposed respondent issues a pre-action third party notice under rule 61.10—no later than 7 days after a response is due from the third party.

(2) To the extent that a proposed claim is a personal injury claim and contains a request for medical records, the pre-action response must also—

(a) provide a copy of any requested medical records in the possession, custody or power of the proposed respondent (with an invoice for copying); and

(b) if the records are incomplete, explain why, and if the records are extensive and further information is required to identify the relevant records, identify what further information is required.

(3) To the extent that a proposed claim is a construction claim, the pre-action response must also identify any dispute about the principal contractual terms or statutory provisions relied on in respect of the claim.

(4) A proposed respondent is not excused from serving a pre-action response by reason of a defect or omission in the pre-action claim in complying with a paragraph of subrule (1) or (2) of rule 61.7.

61.10—Further pre-action steps

(1) A proposed applicant who receives a pre-action response stating that a proposed respondent intends to bring a counter claim must, within the required response time, serve on the proposed respondent and any other party to the pre-action steps a pre-action response in compliance with rule 61.9.

(2) If a party who receives a pre-action document intends to bring a third party claim, that party must within the required response time serve on the intended third party and each other party to the pre-action steps a notice (***pre-action third party notice***) in compliance with rule 61.7.

(3) A third party who receives a pre-action third party notice must, within the required response time, serve on each other party to the pre-action steps a pre-action response in compliance with rule 61.9.

61.11—Pre-action offers when multiple parties

To avoid doubt, any offer made during pre-action steps may be made jointly by 2 or more parties.

Division 4—Pre-action meeting

61.12—Pre-action meeting

(1) If—

(a) the dispute is not resolved within 7 days after the time for service of the last pre-action document under Division 3; and

(b) arrangements for a pre-action meeting have not already been agreed,

the parties must negotiate in good faith to agree on arrangement for a meeting, either in person or by audio visual link or telephone conference call (which may be a mediation or other alternative dispute resolution process) to attempt to resolve the dispute (***pre-action meeting***).

(2) If there is disagreement about the mode of the meeting, the meeting must be in person, unless a party reasonably fears for their health if the meeting is in person, in which event it must be by audio visual link or telephone conference call.

(3) A pre-action meeting must be held within 21 days after the time for service of the last pre-action document under Division 3 or such later time as the parties may unanimously agree.

(4) The meeting—

(a) must be attended by each party or a person with authority to enter into an agreement settling the dispute involving that party;

(b) should also be attended by—

(i) a lawyer for each party (if a lawyer has been instructed); and

(ii) if a claim is made or defended on behalf of another party (for example, a claim made by a main contractor under a contractual obligation to pass on subcontractor claims), the party on whose behalf the claim is made or defended or that party's lawyer; and

(c) may be adjourned with the unanimous agreement of the parties.

(5) At the meeting—

(a) each party must negotiate in good faith with a view to resolving the dispute involving that party;

(b) the parties should—

(i) identify the main issues in dispute and the primary cause of disagreement in respect of each issue;

(ii) consider how the issues might be resolved without recourse to litigation; and

(iii) consider whether any third party (other than a participant at the meeting) should be joined if a proceeding is instituted and the consequences for the meeting;

(c) the lawyers for the parties should endeavour to reach a consensus in the presence of the parties as to the likely cost and time scale of litigation;

(d) if the parties or their lawyers anticipate difficulty in achieving the aims of the meeting, the parties should consider appointing at their joint cost an independent person to chair the meeting;

(e) in respect of each issue in dispute, or the dispute as a whole, the parties should consider whether some form of alternative dispute resolution would be more suitable than litigation and, if so, endeavour to agree which form to adopt; and

(f) if the parties are unable to agree on a means of resolving the dispute other than by litigation, they should use their best endeavours to agree—

(i) if expert evidence is likely to be required—how the relevant issues are to be defined and how expert evidence is to be dealt with including whether a joint expert might be appointed and, if so, who that should be;

(ii) the extent of discovery of documents with a view to saving costs; and

(iii) the conduct of the litigation with the aim of minimising cost and delay.

(6) If the matter is not resolved at the meeting, the parties must draw up and sign a report (***pre-action meeting report***) in the prescribed form setting out—

(a) the date and mode of the meeting;

(b) the name and role of each person participating in the meeting;

(c) compliance by the parties with this Part; and

(d) any agreement reached about future conduct of an alternative dispute resolution process or litigation.

Prescribed form—

Form P4 Pre-action Meeting Report

Division 5—Initiation of action

61.13—Initiation of action

(1) An applicant breaches this rule if the applicant—

(a) is required to but does not serve a pre-action claim before instituting a claim; or

(b) serves a pre-action claim and institutes a claim before the time provided by this Part for pre-action responses and a pre-action meeting.

(2) In addition to the consequences of non-compliance under Division 6, unless the Court otherwise orders, an applicant who breaches this rule is not entitled to recover the costs of preparing, filing or serving the Claim.

(3) An applicant who initiates an action by way of claim must—

(a) certify on the Claim—

(i) whether the applicant served a pre-action claim on the respondent;

(ii) whether the respondent served a pre-action response; and

(iii) whether the parties attended a pre-action meeting; and

(b) if a pre-action claim was not served—state in the statement of claim whether the applicant was or was not required to serve a pre-action claim and if not plead the relevant facts under rule 61.8(1).

(4) An applicant must, within 7 days after the filing of a defence in the action, file on an excluded access basis copies of any pre-action documents served together with the pre-action meeting report.

Division 6—Pre-action steps not taken

61.14—Special directions hearing

(1) This rule applies if the applicant certifies on the Claim that a pre-action claim or pre-action response was not served or there was no pre-action meeting.

(2) The Court will list the proceeding for a special directions hearing to determine whether orders should be made for any pre-action steps or steps in lieu to be taken.

(3) At the directions hearing, the Court may make such orders as it thinks fit including (without limitation)—

(a) for a pre-action step or step in lieu to be taken;

(b) for a stay of other steps in the proceeding until such steps have been taken;

(c) for ordinary steps in the proceeding to be taken; or

(d) for costs.

(4) Unless there is good reason to order otherwise, if the applicant failed to serve a pre-action claim in breach of rule 61.7 or instituted the proceeding in breach of rule 61.13(1)—

(a) the applicant must pay the non-defaulting parties' costs of the directions hearing and costs thrown away by reason of the breach on an indemnity basis (within the meaning of rule 191.1), such costs being payable forthwith; and

(b) the Court will fix the costs ordered in a lump sum at the directions hearing.

(5) Unless there is good reason to order otherwise, if a party failed to serve a pre-action response in breach of rule 61.9 or 61.10—

(a) the defaulting party must pay the non-defaulting parties' costs of the directions hearing and costs thrown away by reason of the breach on an indemnity basis (within the meaning of rule 191.1), such costs being payable forthwith; and

(b) the Court will fix the costs ordered in a lump sum at the directions hearing.

(6) Unless there is good reason to otherwise order, if a party failed or refused to propose, or respond to a proposal for, a pre-action meeting in breach of rule 61.7, 61.9 or 61.10 or failed to attend a pre-action meeting in breach of rule 61.12—

(a) the defaulting party must pay the non-defaulting parties' costs of the directions hearing and costs thrown away by reason of the breach on an indemnity basis (within the meaning of rule 191.1), such costs being payable forthwith; and

(b) the Court will fix the costs ordered in a lump sum at the directions hearing.

61.15—Applications and orders

(1) If a party considers that another party failed to comply with Division 3, 4 or 5, that party—

(a) if the party seeks directions displacing the usual steps to be taken before the first directions hearing—may lodge an application to the Registrar in accordance with rule 13.2(5) for listing of an early directions hearing; or

(b) at the first directions hearing, may seek any directions that can be given at a special directions hearing.

(2) The Court may at a directions hearing (including a special directions hearing), if it finds that a party failed to comply with Division 3, 4 or 5, make such orders (including as to costs) as it thinks fit.

Note—

A party who fails to comply with Division 3, 4 or 5 may expect to be ordered to pay the costs of the hearing and costs thrown away due to the breach on an indemnity basis as defined in rule 191.1, payable forthwith.

61.16—Costs of proceeding

When the Court considers orders relating to costs of a proceeding, the Court may take into account—

(a) any failure by a party to comply with Division 3, 4 or 5;

(b) a comparison between the terms of any non-accepted pre-action offer and the result of the proceeding;

(c) whether a party unreasonably failed to accept a pre-action offer or a better pre-action offer; or

(d) the conduct of a party otherwise in respect of pre-action steps.

Part 2—Alternative pre-action steps

62.1—Final notice

(1) A person intending to bring a claim in the Court who reasonably believes that the claim will be uncontested or is not genuinely contestable may, instead of serving a pre-action claim under rule 61.7—

(a) on payment of the prescribed fee—file in the Court; and

(b) serve on the intended respondent by original service,

a notice of intention to bring the claim in the prescribed form (***a Final Notice***) at least 21 days before instituting the proceeding.

Prescribed form—

Form P1 Final Notice

(2) An applicant who serves a Final Notice under this rule is entitled to recover as part of the costs of the proceeding the filing fee for the notice.

62.2—Enforceable payment agreement

(1) After service of a Final Notice under rule 62.1, or in any other case when a monetary claim is made by one person against another, the parties may enter into an enforceable payment agreement in the prescribed form (***Enforceable Payment Agreement***).

Prescribed form—

Form P2 Enforceable Payment Agreement

(2) If a Final Notice has been filed or an action issued in the Court, either party may (but is not required to) file the Enforceable Payment Agreement.

(3) When the parties have entered into an Enforceable Payment Agreement and the debtor is not in default, the creditor must not make any adverse report about non-payment of the monetary obligation to a credit reference agency.

(4) If a debtor does not comply with an Enforceable Payment Agreement and, if it provides for payment by instalments, the debtor is in arrears in respect of at least 2 instalments, the creditor may—

(a) if an action has not already been instituted, file and serve a Claim in the Court in reliance on the Enforceable Payment Agreement; or

(b) seek summary judgment in an action instituted under paragraph (a) or in an existing action for the debt the subject of the Enforceable Payment Agreement in accordance with the Enforceable Payment Agreement by filing an interlocutory application in accordance with rule 102.1(1) and supporting affidavit in accordance with rule 102.1(2) deposing to—

(i) execution of, and exhibiting, the Enforceable Payment Agreement;

(ii) non-compliance with the Agreement; and

(iii) any payments made by the debtor under the Agreement and the amount outstanding.

Part 3—Institution and service of claim

63.1—Claim and statement of claim

(1) An action by way of claim must be instituted by filing a Claim in the prescribed form.

Prescribed form—

Form 1 Claim

Note—

See also the specific forms prescribed for specific proceedings by rule 266.4, rule 292.1, 297.1 and rule 298.1.

(2) If an extension of time is sought to commence the action, the Claim must include a statement to that effect and identify the statutory basis for the extension sought.

(3) If the applicant seeks to invoke the jurisdiction of the Court conferred by the cross-vesting legislation or the corporations cross-vesting provisions, the statement of claim must include a statement that the claim is made under the relevant provision of that legislation (even if the applicant also relies on another statutory provision for the substantive claim).

(4) An applicant must certify on the Claim—

(a) whether the applicant served a pre-action claim on the respondent;

(b) whether the respondent served a pre-action response; and

(c) whether the parties attended a pre-action meeting.

(5) A Claim must contain or be accompanied by a statement of claim unless—

(a) the person filing the Claim certifies that, in their reasonable opinion, the claim will be uncontested or is not genuinely contestable; and

(b) the applicant elects to rely on, and completes, a short form statement of claim (***short form statement of claim***) contained within the Claim briefly summarising the claim.

(6) The statement of claim must—

(a) be in the prescribed form;

(b) comply with the pleading rules in Part 7;

(c) if a pre-action claim was not served, state whether the applicant was required to serve one; and

(d) if the applicant states that they were not required to serve a pre-action claim, plead the relevant facts under rule 61.8(1).

Prescribed forms—

Form 1 Claim

Form 1S Statement of Claim uploaded with Claim

Filing instructions—

If a Claim is filed physically at Registry, a Form 1 is to be used.

If a Claim is filed using the Electronic System, a Form 1S is to be uploaded (not required if electing to rely on a short form statement of claim in accordance with rule 63.1(5)).

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(7) The Claim must identify the total claim value as defined in rule 67.5(4).

(8) The applicant must, when filing a Claim, identify the location at which the applicant requests that the proceeding be heard, being a location at which the Court sits and either close to where the claim arose or where the respondent lives.

Note—

The Court will take into account the request in listing the first directions hearing but it is in the discretion of the Court as to the location of the first directions hearing. It is in the discretion of the Court as to the location of any subsequent directions hearings or of any trial.

63.2—Subsequent statement of claim

An amended statement of claim filed under rule 69.3 or statement of claim filed in substitution for a short form statement of claim under rule 68.1 or otherwise filed after the institution of the proceeding must be in the prescribed form and comply with the pleading rules in Part 7.

Prescribed form—

Form 8 Statement of Claim Standalone

Filing instructions—

If a Statement of Claim is filed after the commencement of an action (due to amendment, order of the Court or otherwise), a Form 8 is to be used.

63.3—Claim documents to be served

(1) The documents required to be served on a respondent or interested party (***Claim documents***) comprise—

(a) the Claim incorporating or accompanied by the statement of claim;

(b) a multilingual notice in the prescribed form; and

(c) if the party is served—

(i) in another State—a notice to party served interstate in the prescribed form;

(ii) in New Zealand—a notice to party served in New Zealand in the prescribed form;

(iii) out of Australia—a notice to party served outside Australia in the prescribed form; or

(iv) out of Australia under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters—a summary of the document to be served outside Australia in the prescribed form.

Prescribed forms—

Form 31 Multilingual Notice – Claim

Form 34 Notice to Party Served – Interstate

Form 35 Notice to Party Served – New Zealand

Form 36 Notice to Party Served – Outside Australia

Form 37 Summary of the Document to be Served

(2) Unless the Court otherwise orders or the parties otherwise agree, an applicant must as soon as practicable serve a copy of the relevant Claim documents on each respondent and each interested party (if any).

63.4—Manner of service

(1) Unless the Court otherwise orders, service of Claim documents on a company or registered body interstate must be effected by personal service in accordance with rule 42.1.

(2) Unless the Court otherwise orders, service of Claim documents out of Australia must be effected in accordance with Schedule 1 Part 1.

(3) Unless the Court otherwise orders, service of Claim documents in any other case must be effected by original service in accordance with rule 42.1, rule 42.2, 42.3 or, if applicable, rule 42.4, rule 42.5, rule 42.6 or rule 42.7.

(4) Claim documents will be regarded as having been served on a party in accordance with this rule if rule 42.8 applies.

Notes—

Service of Claim documents in another State is effective only if there is compliance with section 16 of the *Service and Execution of Process Act 1992* (Cth).

Claim documents served in New Zealand must contain or be accompanied by the information contained in section 11 of the *Trans-Tasman Proceedings Act 2010* (Cth).

63.5—First directions hearing

(1) In the normal course, the Court will list the first directions hearing in a proceeding several weeks after a defence is filed to allow time for pleadings and discovery to be completed.

(2) If a party seeks an urgent interlocutory order or listing of an urgent trial before the first directions hearing would otherwise be listed, that party must file an interlocutory application and supporting affidavit deposing to the circumstances of urgency, in accordance with rule 102.1.

Note—

Interlocutory applications, hearings and orders are governed by Chapter 9.

Part 4—Limitation of time for service

64.1—Limitation of time for service

(1) Subject to subrule (2), the Claim documents must be served on each respondent and each interested party (if any) within 6 months after being filed.

(2) The Court may from time to time extend the period referred to in subrule (1) for a specified period—

(a) before or after the time limit for service under this rule has expired; and

(b) even though the time for commencing the claim has expired.

(3) An application for an extension of time to serve must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1—

(a) identifying the ground on which the extension is sought and deposing to the facts relied on for an extension of time; and

(b) if the ground is other than that the party has not been able to serve the Claim documents, identifying whether each other party has been informed of the institution of the claim and provided with a copy of the Claim documents and, if not, why not.

Note—

The Court expects a party to serve a respondent if possible. If the claim is for damages for personal injuries and the applicant's condition is not yet stable or there is other good reason for no further steps to be taken in the proceeding for the time being, the Court expects the applicant to elect for a moratorium on steps under rule 64.5 rather than seek an extension of time for service.

64.2—List of inactive cases

(1) The Registrar must maintain a list of inactive cases in accordance with this rule.

(2) A claim is liable to be in the list of inactive cases if at the end of the time limit for serving the Claim documents (including any extension of time) under rule 64.1—

(a) no application for extending the time for service has been made or such an application has been made and refused;

(b) no respondent or interested party has filed a notice of acting or defence; and

(c) the applicant has not applied for default judgment.

(3) Before entering a claim in the list of inactive cases, the Registrar must send notice to the applicant's address for service giving notice of intention to enter it in the list after the expiration of one month from the date of the notice.

(4) If, on the expiry of a notice of intention under subrule (3), the claim remains liable to be in the list of inactive cases, the Registrar must so enter it.

(5) A claim ceases to be liable to be in the list of inactive cases (and if already entered is to be removed from the list) if—

(a) a defence is filed;

(b) the applicant obtains default judgment; or

(c) the Court orders that it is not to be entered or remain in the list.

64.3—Dismissal of action in list of inactive cases

If a claim remains in the list of inactive cases for not less than 2 months, the Registrar may dismiss it as if an order had been made for dismissal for want of prosecution.

Note—

The Registrar may give notice of intention to dismiss a claim under this rule but if the Registrar does not do so it does not affect the dismissal.

64.4—Reinstatement of dismissed action

(1) The applicant may apply to reinstate a claim that has been dismissed under rule 64.3 by filing an interlocutory application and supporting affidavit in accordance with rule 102.1—

(a) identifying the ground on which the application is made;

(b) explaining why the applicant allowed the claim to be dismissed;

(c) deposing to the facts relied on for reinstatement; and

(d) establishing that there is an arguable basis for the claim.

(2) The Court may order that the interlocutory application and supporting affidavit be served on each other party to the proceeding.

(3) The Court may, if it considers that it is in the interests of justice, reinstate a claim that has been dismissed under rule 64.3 even though the time for commencing a claim has expired.

Note—

In general, the Court would need to be satisfied that the applicant has a reasonable explanation for having allowed the claim to be dismissed, that there is an arguable basis for the claim and that reinstatement will not cause undue prejudice to the respondent against whom the claim was dismissed.

64.5—Moratorium on steps

(1) An applicant may elect, on or after filing a claim, to place the claim under a moratorium by filing and serving an election in the prescribed form and filing an affidavit of proof of service deposing to service of the Claim documents and the election document.

Prescribed forms—

Form 15B Election – Moratorium on Steps

Form 42 Affidavit of Proof of Service

Form 43 Affidavit of Proof of Personal Service on an Individual by Sheriff's Officer

Note—

If no affidavit of proof of service of the Form 15B is filed, the proceeding will remain liable to be placed in the list of inactive cases even though the Form 15B has been filed.

(2) While a claim remains under a moratorium—

(a) it is not liable to be placed in the list of inactive cases under rule 64.2 or dismissed under rule 64.3 (but this does not affect the power of the Court to dismiss it on a different basis);

(b) the other parties are not required to file a defence and the time for them to take any step in the proceeding against the applicant does not begin to run;

(c) the applicant is not entitled to seek default judgment; and

(d) no party is entitled to take any step in the proceeding (except applying to remove it from the moratorium).

Note—

Although the time for filing a cross claim under rule 65.2 will not run, the fact that the claim has been placed under a moratorium will not stop time running for the purpose of any applicable statutory time limit.

(3) The Court may order that a claim be removed from the moratorium.

(4) Unless the Court otherwise orders, an application for an order under subrule (3) must be made on at least 14 days' notice to each other party.

Part 5—Defence and cross claim

65.1—Defence

(1) Unless the Court otherwise orders, a defence to a statement of claim must be filed within 28 days after service of the Claim documents.

(2) A defence or amended defence must be in the prescribed form and comply with the pleading rules in Part 7.

Prescribed forms—

Form 51 Defence Shell

Form 51S Defence Details lodged or uploaded with Defence Shell

Form 52 Defence Standalone

Filing instructions—

If a Defence is filed physically at Registry, a Form 51 with a Form 51S is to be used.

If a Defence is filed using the Electronic System, a Form 51 is to be used with a Form 51S uploaded.

If a revised (amended) Defence is filed, a Form 52 is to be used.

(3) Unless the Court otherwise orders, a copy of the defence must be served on each other party to the proceeding.

65.2—Entitlement to bring cross claim

(1) A respondent may bring a cross claim by counter claim for a claim that might have been brought in a separate proceeding—

(a) against an applicant bringing a claim against the respondent without leave of the Court; or

(b) against another existing party to the proceeding—

(i) for a claim that is related to the subject matter of the proceeding without leave of the Court; or

(ii) in any other case—with leave of the Court.

(2) A respondent may bring a cross claim by contribution claim against an existing party to the proceeding for indemnity or contribution in respect of a claim against the respondent.

(3) A respondent may bring a cross claim by third party claim against a new party to the proceeding for a claim that might have been brought in a separate proceeding—

(a) that is related to the subject matter of the proceeding without leave of the Court; or

(b) in any other case—with leave of the Court.

(4) A respondent may bring a cross claim by combined counter claim and third party claim if the respondent is entitled to bring a counter claim against an existing party and a third party claim against a new party.

(5) Unless the Court otherwise orders, a cross claim must be filed within the time fixed for filing a defence by the party in question.

Note—

An interested party cannot bring a cross claim. Such a party would need to apply successfully to become a respondent before being entitled to bring a cross claim.

65.3—Form and content of cross claim

(1) A cross claim must be instituted by filing a Cross Claim in the prescribed form and must contain or be accompanied by a statement of cross claim in the prescribed form which complies with the pleading rules in Part 7.

Prescribed forms—

Form 61 Cross Claim

Form 61S Statement of Cross Claim uploaded with Cross Claim

Filing instructions—

If a Cross Claim is filed physically at Registry, a Form 61 is to be used.

If a Cross Claim is filed using the Electronic System, a Form 61 is to be used with a Form 61S uploaded.

(2) If an extension of time is sought to commence the cross claim, the statement of cross claim must include a statement to that effect and identify the statutory basis for the extension sought.

(3) If it is sought to invoke the jurisdiction of the Court conferred by the cross-vesting legislation or the corporations cross-vesting provisions, the statement of cross claim must include a statement that the cross claim is made under the relevant provision of that legislation (even if the applicant also relies on another statutory provision for the substantive claim).

(4) A statement of cross claim may refer to, and repeat or adopt, a passage from a pleading by that party or another party already filed or filed at the same time.

Examples—

A statement of cross claim may refer to and adopt a passage from the statement of claim.

A statement of cross claim may refer to and repeat a passage from the party's defence to the statement of claim.

65.4—Subsequent statement of cross claim

An amended statement of cross claim filed under rule 69.3 must be in the prescribed form and comply with the pleading rules in Part 7.

Prescribed form—

Form 62 Statement of Cross Claim Standalone

Filing instructions—

If a revised (amended) Statement of Cross Claim is filed, a Form 62 is to be used.

65.5—Cross Claim documents to be served

(1) The documents required to be served on a respondent or interested party (***Cross Claim documents***) comprise a copy of the Cross Claim and statement of cross claim and, to the extent that the cross claim is a third party claim—

(a) a multilingual notice in the prescribed form;

(b) the Claim and statement of claim;

(c) if the party is served—

(i) in another State—a notice in the prescribed form; or

(ii) in New Zealand—a notice to party served in New Zealand in the prescribed form; or

(iii) out of Australia—a notice to party served outside Australia in the prescribed form; or

(iv) out of Australia under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters—a summary of the document to be served in the prescribed form.

Prescribed forms—

Form 31 Multilingual Notice – Claim

Form 34 Notice to Party Served – Interstate

Form 35 Notice to Party Served – New Zealand

Form 36 Notice to Party Served – Outside Australia

Form 37 Summary of the Document to be Served

(2) Unless the Court otherwise orders, an applicant on a cross claim must, as soon as practicable, serve the Cross Claim documents on each respondent and each interested party (if any) to the cross claim.

(3) A party who brings a cross claim joining a new party to the proceeding must, on request, provide to the new party copies of all documents filed in the proceeding before the new party was joined.

65.6—Manner of service

(1) Service of Cross Claim documents on a party with an address for service must be effected in accordance with rule 44.3.

(2) Service of Cross Claim documents on a party without an address for service must be effected in accordance with rule 63.4.

65.7—Defence to cross claim

(1) Unless the Court otherwise orders, a defence to a statement of cross claim must be filed within 28 days after service of the Cross Claim documents.

(2) A defence or amended defence to a statement of cross claim must be in the prescribed form and comply with the pleading rules in Part 7.

Prescribed forms—

Form 51 Defence Shell

Form 51S Defence Details lodged or uploaded with Defence Shell

Form 52 Defence Standalone

Filing instructions—

If a Defence is filed physically at Registry, a Form 51 with a Form 51S is to be used.

If a Defence is filed using the Electronic System, a Form 51 is to be used with a Form 51S uploaded.

If a revised (amended) Defence is filed, a Form 52 is to be used.

65.8—Defence to earlier claim

(1) A respondent or interested party to a cross claim may elect to file a defence to the statement of claim in the claim or the statement of cross claim in a cross claim filed by an earlier party in the proceeding.

(2) A respondent or interested party to a cross claim who wishes to contest the claim, or a cross claim filed by an earlier party in the proceeding, on a ground—

(a) not already pleaded by a party to the claim or earlier cross claim; and

(b) that would be required, by the pleading rules in Part 7, to be pleaded if pleaded by the respondent or interested party,

must file a defence to the statement of claim, or statement of cross claim in the earlier cross claim, pleading that ground of defence.

(3) Unless the Court otherwise orders, a defence filed under this rule must be filed within 28 days after service of the Cross Claim documents.

(4) A defence or amended defence must be in the prescribed form and comply with the pleading rules in Part 7.

Prescribed forms—

Form 51 Defence Shell

Form 51S Defence Details lodged or uploaded with Defence Shell

Form 52 Defence Standalone

Filing instructions—

If a Defence is filed physically at Registry, a Form 51 with a Form 51S is to be used.

If a Defence is filed using the Electronic System, a Form 51 is to be used with a Form 51S uploaded.

If a revised (amended) Defence is filed, a Form 52 is to be used.

65.9—Conduct of cross claim

(1) Unless the Court otherwise orders or the context otherwise indicates, the rules that apply to claims apply, with any necessary changes, to cross claims and the parties are to conduct a cross claim in the same manner as a claim.

(2) Unless the Court otherwise orders, a claim and cross claim are to be the subject of common hearings and a common trial.

(3) Unless the Court otherwise orders, a cross claim may proceed notwithstanding that the claim has been the subject of judgment, resolution, early finalisation or a stay of proceedings.

Part 6—Pleadings subsequent to defence

66.1—Affidavit of personal injury particulars

(1) Subject to subrule (2), if a claim comprises or includes a personal injury claim, the applicant on the claim must file and serve an affidavit of personal injury particulars.

(2) This rule does not apply to a criminal injuries compensation proceeding under Chapter 21 Part 3.

(3) Unless the Court otherwise orders, an affidavit of personal injury particulars must be filed within 28 days after service of the first defence to the statement of claim in which the personal injury claim is made.

(4) Unless the Court otherwise orders, an updated affidavit of personal injury particulars must be filed—

(a) within 28 days after receipt of a request by a respondent, provided that at least 6 months have elapsed since the most recent statement;

(b) within 28 days after the applicant becomes aware that a previous statement was, or has become, inaccurate in a material respect; or

(c) when the Court orders.

(5) An affidavit or updated affidavit of personal injury particulars must be in the prescribed form and contain, to the best of the applicant's knowledge, information and belief, each item of information required by the prescribed form except any information that all other parties have agreed need not be included.

Prescribed form—

Form 10 Affidavit of Personal Injury Particulars

(6) An updated affidavit of personal injury particulars need only contain information that needs to be amended or updated since the previous statement.

66.2—Reply

(1) An applicant on a claim may file a reply to a defence to that claim.

(2) Unless the Court otherwise orders, any reply to a defence must be filed within 14 days after service of the defence.

(3) A reply or amended reply must be in the prescribed form and comply with the pleading rules in Part 7.

Prescribed form—

Form 53 Reply

Part 7—Pleading rules

Division 1—Universal pleading rules

67.1—Definitions

In this Part, unless the contrary intention appears—

fact means a proposition of fact or law.

67.2—Pleading rules

(1) A pleading must—

(a) comply with the relevant prescribed form;

(b) be divided into consecutively numbered paragraphs, each paragraph dealing with a separate matter; and

(c) be as concise and precise as practicable.

(2) A pleading must—

(a) set out the affirmative facts relied on by the party to establish the party's claim or defence to a claim;

(b) identify any statutory provision relied on by the party to establish the party's claim or defence to a claim or in answer to an allegation of fact by the opposing party; and

(c) give fair notice of the party's case to the opposing party so as to avoid the opposing party being taken by surprise at or in preparation for trial.

(3) A pleading must not—

(a) make inconsistent allegations of fact unless one is expressed to be in the alternative to the other;

(b) contain material that is irrelevant or unnecessary to perform the functions of the pleading identified in subrule (2);

(c) contain material that is evasive or ambiguous;

(d) contain material that is scandalous, frivolous or vexatious; or

(e) be an abuse of the process of the Court.

(4) A pleading may refer to events occurring after institution of the proceeding.

67.3—Certification

(1) A pleading must, if filed by a law firm, include a certificate by the responsible solicitor in the relevant prescribed form that it is filed in accordance with the instructions of the client, there is a proper basis for each allegation of fact in it and it complies with these Rules.

(2) A pleading must, if filed by a party, include a certificate by the party in the relevant prescribed form that the party is responsible for the pleading and each allegation of fact in it is true to the best of the party's knowledge, information and belief.

67.4—Provision of document referred to in pleading

A party who files a pleading that refers to a document that is in the party's possession, custody or power must, on request and payment of a reasonable copying fee, provide to another party a copy of the document.

Division 2—Specific pleading rules

67.5—Statement of claim pleading rules

(1) A statement of claim must comply with the relevant prescribed form.

Prescribed forms—

Form 1 Claim and Form 1S Statement of Claim uploaded with Claim

Form 1A Claim – Building Work Contractors Act and Form 1AS Statement of Claim uploaded with Claim – Building Work Contractors Act

Form 1B Claim – Retail and Commercial Leases Act and Form 1BS Statement of Claim uploaded with Claim – Retail and Commercial Leases Act

Form 1C Claim – Second Hand Vehicle Dealers Act and Form 1CS Statement of Claim uploaded with Claim – Second Hand Vehicle Dealers Act

Form 1D Claim – Native Title Compensation

Form 8 Statement of Claim Standalone

Form 8A Statement of Claim– Building Work Contractors Act – Standalone

Form 8B Statement of Claim– Retail and Commercial Leases Act – Standalone

Form 8C Statement of Claim– Second Hand Vehicle Dealers Act – Standalone

Form 61 Cross Claim and Form 61S Statement of Cross Claim uploaded with Claim

Form 62 Statement of Cross Claim Standalone

(2) If a claim comprises or includes a personal injury claim, the statement of claim must state in general terms (without containing the detail required for the affidavit of personal injury particulars under rule 66.1)—

(a) the nature of the injury and any resulting disability;

(b) the nature of treatment received and expected to be required;

(c) the resultant effect on the applicant's past and present capacity to earn income;

(d) the resultant effect on the applicant's past and present enjoyment of life; and

(e) the kinds of economic and non-economic loss suffered by the applicant.

(3) Subject to rule 69.1 and rule 69.2, a statement of claim may raise a new cause of action based on events occurring after the commencement of the claim or cross claim to which it relates.

Note—

Rule 69.1 and rule 69.2 preclude amendments if the amendment would add a cause of action that is statute barred. Rule 69.1(3) entitles a party to apply for an order disallowing an amendment made without leave or consent.

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(4) The Claim or statement of claim must state—

(a) to the extent that a monetary claim is made, the total amount of the monetary claim;

(b) to the extent that a claim is made for the return or delivery of property, the total value of the property;

(c) to the extent that the claim is for damages or compensation, the amount sought;

(d) to the extent that the claim is for other relief, the total value of that relief; and

(e) the total of each of the above items, being the ***total claim value***.

67.6—Defence pleading rules

(1) A defence must specifically admit, not admit or deny (in each case with or without qualification or elaboration) each allegation of fact in the statement of claim.

(2) This rule does not derogate from the obligation to comply with rule 67.2(2).

(3) If a defence admits an allegation, unless the Court otherwise orders, to the extent that the allegation is admitted—

(a) the opposing party is entitled to rely on that admission and is not required to prove that allegation at trial; and

(b) the party making the admission must not adduce evidence to disprove the allegation.

(4) If a defence does not admit an allegation, the party is entitled to put the opposing party to proof on that allegation but, unless the Court otherwise orders, not to adduce evidence to disprove the allegation.

(5) If a defence denies an allegation, the party is entitled to put the opposing party to proof on that allegation or adduce evidence to negate the allegation but, unless the Court otherwise orders, not to rely on any other answer to the allegation required to be pleaded by rule 67.2(2) unless and to the extent that the party has complied with rule 67.2(2).

(6) If a defence does not address an allegation of fact in the statement of claim, it is taken to be denied.

(7) If a respondent contends that the Court does not have jurisdiction to hear and determine the action or otherwise objects to the Court's jurisdiction, the respondent must plead the objection in the defence and file at the same time as the defence an interlocutory application seeking hearing and determination of the objection.

(8) To avoid doubt, this rule applies, to the extent applicable, to a defence to a short form statement of claim as well as to a defence to a statement of claim.

67.7—Reply pleading rules

(1) A reply may specifically admit, not admit or deny (in each case with or without qualification or elaboration) an allegation of fact in the defence.

(2) This rule does not derogate from the obligation to comply with rule 67.2(2).

(3) Subrules (3) to (5) of rule 67.6 apply to a reply in the same manner, with any necessary changes, as they apply to a defence.

(4) If a reply does not address an allegation of fact in the defence, it is taken to be denied.

Part 8—Substitution of statement of claim for short form statement of claim

68.1—Filing of full pleadings

(1) Subject to subrule (2), if an applicant files a Claim containing a short form statement of claim and a respondent files a defence, the applicant must file a statement of claim in accordance with rule 63.1 within 21 days after service of the defence.

(2) If the applicant files an application for summary judgment under rule 144.2 within 21 days after service of a defence, the obligation to file a statement of claim is suspended unless and until the application for summary judgment is dismissed.

(3) If the application for summary judgment is dismissed, the applicant must file a statement of claim within 21 days after the date of dismissal.

(4) If the applicant files a statement of claim under this rule, a respondent may file an amended defence responding to the statement of claim within 14 days after service of the statement of claim.

(5) The applicant may file a reply to a defence or amended defence within 14 days after service of an amended defence or after the time for filing an amended defence expires.

Part 9—Amendment of originating process or pleadings

69.1—Amendment without consent or leave

(1) Subject to subrule (2), a party may amend a Claim or pleading (but not to introduce an additional party) at any time up to 14 days after the last date on which lists of documents are due to be filed by operation of these Rules or order of the Court.

(2) A party may not amend under this rule if the amendment would add a cause of action that is statute barred.

(3) If a party makes an amendment under this rule, another party may apply for an order disallowing the amendment in whole or in part on the ground that, if leave had been sought to make the amendment, it would have been refused.

(4) On an application under subrule (3), the onus will be on the party seeking disallowance of the amendment to persuade the Court that it should be disallowed.

Notes—

Ordinarily a party amending a document under this rule (or rule 69.2) must pay the costs of each other party of the amendment: see rule 194.4(2).

There is no limit on the number of times a document may be amended under this rule.

69.2—Amendment by consent or with leave

(1) A party may amend a Claim or pleading (including to introduce an additional party)—

(a) by consent; or

(b) with the leave of the Court.

(2) If leave is granted to amend a Claim or pleading—

(a) to add a cause of action that is statute barred;

(b) to add an applicant in respect of a cause of action that is statute barred; or

(c) to add a respondent in respect of a cause of action that is statute barred,

the amendment takes effect on a date fixed by the Court not earlier than the date on which the application for leave to amend was made or foreshadowed unless the Court makes an order under subrule (3).

(3) The Court may order that the amendment relate back to the date on which the claim the subject of the amendment was instituted—

(a) if subrule (2)(a) applies—if the new cause of action arises out of substantially the same facts as the original cause of action; or

(b) if subrule (2)(b) or (c) applies—if the failure to join the additional party arose from a genuine mistake.

69.3—Manner of amendment

(1) If a party is entitled to amend a Claim or pleading under rule 69.1 or 69.2, the amendment must be made by filing a revised version of the Claim or pleading in accordance with rule 33.2.

(2) A party who files an amended Claim or pleading must serve it on each other party as soon as practicable.

69.4—Consequential amendment

(1) If a party amends a Claim or pleading, a responding party may amend its pleading in response to the Claim or pleading consequentially on the amendment.

(2) Unless the Court otherwise orders, an amended defence to an amended Claim or amended statement of claim must be filed within 14 days after service of the amended document.

(3) Unless the Court otherwise orders, an amended reply or reply to an amended defence must be filed within 7 days after service of the amended document.

69.5—Costs of amendment

Unless the Court otherwise orders, a party who amends a Claim or pleading under rule 69.1 or rule 69.2 must pay the costs thrown away by another party as a result of the amendment on the standard costs basis payable when the claim is determined by judgment.

Part 10—Particulars and strike out

70.1—Request for particulars

(1) A party may by written notice request better particulars of an opposing party's pleading.

(2) A request for better particulars must be served within 28 days, or such other period as may be ordered by the Court, of receipt by the requesting party of the pleading in question.

(3) A party who receives a notice under subrule (1) within the time specified under subrule (2) must, within 14 days or such other period as may be ordered by the Court, provide a written response responding in respect of each request by either—

(a) providing better particulars;

(b) offering to provide better particulars and indicating when they will be provided; or

(c) declining to provide better particulars.

70.2—Order for better particulars

(1) The Court may order a party to provide better particulars of its case by—

(a) filing and serving an amended pleading containing such particulars; or

(b) filing and serving a separate document containing such particulars.

Notes—

Ordinarily, if particulars are ordered, the order will be for an amended pleading.

However, the Court may order that particulars be provided in the form of a Scott Schedule or another document separate from the pleading, in which case the Court may also order a response to the better particulars.

(2) Ordinarily the Court will only order better particulars in respect of a pleading if—

(a) a want of particularity results in the pleading not complying with the pleading rules in Part 7; and

(b) the party seeking the particulars will otherwise suffer substantial prejudice.

70.3—Strike out

(1) The Court may strike out all or part of a Claim or pleading if—

(a) it does not comply with these Rules;

(b) it is frivolous, vexatious or an abuse of the process of the Court; or

(c) it does not disclose a reasonable cause of action or defence (as applicable).

(2) If the Court strikes out all or part of a document under subrule (1), it may if it thinks fit grant leave to file within a specified time an amended or substituted document rectifying the matter that caused the original document to be struck out.

Part 11—Effect of pleadings

71.1—Party bound by pleading at trial

At the trial of a claim, a party is bound by an assertion or admission made in a pleading filed by the party unless the Court gives leave to amend the pleading to withdraw or amend the assertion or admission.

71.2—Party cannot go beyond pleading at trial

(1) At the trial of a claim, a party is not entitled, without leave of the Court—

(a) to adduce evidence of a matter that should have been, but is not, pleaded in the party's pleading; or

(b) to raise an issue that should have been, but is not, raised in the party's pleading.

Note—

Subrule (1) does not apply to evidence or issues relevant only to credit.

(2) The Court may decline to entertain an application for leave under subrule (1) unless the party seeking leave applies for leave to amend the party's pleading to plead what should have been pleaded.

(3) In deciding whether and how to exercise its discretion to grant or refuse leave under subrule (1), the Court will have regard amongst other things to—

(a) material that was available to the parties apart from the pleadings; and

(b) matters that would be relevant to an application for leave to amend the party's pleading to plead what should have been pleaded.

Part 12—Consolidated pleading

72.1—Order for progressive consolidated pleading

(1) The Court may order that, instead of the parties filing pleadings contained in separate documents, the parties file progressively their pleadings as part of a consolidated pleading in the prescribed form in accordance with subrule (2).

Prescribed form—

Form 9 Consolidated Pleading

(2) If the Court makes an order under subrule (1)—

(a) the applicant must file an initial version of the consolidated pleading in the prescribed form containing the matters that would in any other case be pleaded in the statement of claim;

(b) each respondent or interested party to the action must file a revised version of the consolidated pleading in the prescribed form containing the matters that would in any other case be pleaded in the defence;

Example—

If there are 2 respondents to the action, each must file a separate consolidated pleading containing that party's defence to the statement of claim against that party.

(c) if the applicant wishes to file a reply to another party's defence, the applicant must file a revised version of the consolidated pleading in the prescribed form containing the matters that would in any other case be pleaded in the reply to that party's defence;

(d) paragraphs (a) to (c) apply separately to pleading in a cross claim in the same manner, with any necessary changes, as they apply to pleading in a claim.

Example—

If the first respondent to the action brings a counter claim against the applicant, there is to be a separate consolidated pleading to represent the pleadings in the counter claim. If the second respondent to the action brings a third party claim, there is to be a separate consolidated pleading to represent the pleadings in the third party claim.

(3) If the Court makes an order under subrule (1), Parts 3 to 11 apply to the consolidated pleading or the relevant part of the consolidated pleading in the same manner, with any necessary changes, as they apply to separate pleadings.

72.2—Order for consolidated pleading

(1) The Court may order that, in addition to the parties filing pleadings contained in separate documents, the applicant on the claim or cross claim or another party file a consolidated pleading in accordance with subrule (2).

(2) If the Court makes an order under subrule (1), the party the subject of the order must file and serve a consolidated pleading on the same basis as if a progressive consolidated pleading had been prepared under rule 72.1.

Part 13—Discovery

Division 1—Introduction

73.1—Definitions

In this Part, unless the contrary intention appears—

complex electronic protocol—see rule 73.6;

discoverable document—see rule 73.7(4), rule 73.8(2) or rule 73.9(2) as applicable;

discovery by category means discovery of directly relevant documents falling within specified categories in a person's possession, custody or power;

general discovery means discovery of directly relevant documents in a person's possession, custody or power;

list of documents means a list of discovered documents filed or to be filed under this Part;

physical protocol—see rule 73.4;

privileged document means a document that is privileged from production on the ground of legal professional privilege, public interest immunity or another recognised ground;

simple electronic protocol—see rule 73.5;

specific discovery means discovery of specified documents or categories of documents in a person's possession, custody or power.

73.2—Making discovery

A person makes discovery of documents in accordance with this Part—

(a) by filing and serving a list of discoverable documents that are or were in the person's possession, custody or power in accordance with this Part; and

(b) in respect of documents that are discovered and in the person's possession, custody or power—by numbering them, arranging them in numbered order, making them available for inspection and providing copies of or making them available for copying in accordance with this Part.

73.3—Form and content of list of documents

(1) This rule applies unless the Court otherwise orders or the parties unanimously otherwise agree.

(2) A list of documents must, subject to subrules (3), (4) and (5)—

(a) list each discoverable document in the person's possession, custody or power in respect of which no claim of privilege is made;

(b) list each discoverable document in the person's possession, custody or power in respect of which a claim of privilege is made, identifying the nature of the privilege and ground on which it is claimed and describing the document in sufficient detail that it can be identified and the fact that it is privileged is apparent from its description; and

(c) list each discoverable document that was in the person's possession, custody or power, describing it in sufficient detail that it can be identified and identifying when it left the person's possession custody or power, where it went and where it is now believed to be.

(3) A document need not be disclosed in a list of documents if—

(a) it is a copy of a document that has been disclosed and there is no evidentiary significance in the fact or content of the copy;

(b) it is a communication or record of a communication between parties (personally or by their lawyers) after institution of the proceeding; or

(c) it has been filed in the proceeding.

(4) A list of documents may list a bundle of documents as a single item if—

(a) it comprises a physical or electronic file of documents that was kept as a file before, or other than for the purpose of, the proceeding; or

(b) the documents are of a homogenous character.

(5) A privileged document need not be disclosed separately if it is encompassed by a generic description of—

(a) communications and records of communications between a person and the person's lawyer for the dominant purpose of legal advice or representation in the proceeding;

(b) drafts of documents prepared for the dominant purpose of legal advice or representation in the proceeding; or

(c) opinions or advices of counsel.

(6) Unless the Court otherwise orders or the parties unanimously otherwise agree, a list of documents must be in the appropriate prescribed form for a separate list of documents.

Prescribed forms—

Form 73A List of Documents – Physical Protocol

Form 73B List of Documents – Simple Electronic Protocol

Form 73C List of Documents – Complex Electronic Protocol

(7) A list of documents must number sequentially each document in the list.

(8) Each discovered document in the person's possession, custody or power must be marked with the corresponding number.

(9) Subject to subrules (4) and (5), a list of documents must list documents in chronological order and undated documents must be placed in the best approximation of their chronological order.

(10) A person filing a list of documents must, by the person's solicitor if represented or by the person if not represented, certify the list of documents in accordance with the prescribed form.

(11) Unless the Court otherwise orders or the parties unanimously otherwise agree, a list of documents must be prepared in accordance with the physical protocol.

Division 2—Protocols

73.4—Physical protocol

(1) This rule governs physical discovery (the ***physical protocol***) when use of an electronic protocol is not needed or justified.

(2) Physical documents must be discovered in their native physical form.

(3) Electronic documents may be discovered in their native electronic form.

(4) The list of documents must be in the prescribed form for a separate or consolidated list of documents.

Prescribed forms—

Form 73A List of Documents – Physical Protocol (under rule 73.3(6))

Form 74A List of Documents Consolidated – Physical Protocol (under rule 73.11(2))

73.5—Simple electronic protocol

(1) Schedule 4 Part 2 provides for a simple form of electronic discovery (the ***simple electronic protocol***) when—

(a) it is desirable for each party to have an electronic database identifying each disclosed document; and

(b) use of the complex electronic protocol is not needed or justified.

(2) The list of documents must be in the prescribed form for a separate or consolidated list of documents.

Prescribed forms—

Form 73B List of Documents – Simple Electronic Protocol (under rule 73.3(6))

Form 74B List of Documents Consolidated – Simple Electronic Protocol (under rule 73.11(2))

73.6—Complex electronic protocol

(1) Schedule 4 Part 3 provides for an advanced form of electronic discovery (the ***complex electronic protocol***) when—

(a) it is desirable for each party to have an electronic database identifying each disclosed document; and

(b) there will be a relatively large number of disclosed documents or it is anticipated that there will be an electronic trial.

(2) The list of documents must be in the prescribed form for a separate or consolidated list of documents.

Prescribed forms—

Form 73C List of Documents – Complex Electronic Protocol (under rule 73.3(6))

Form 74C List of Documents Consolidated – Complex Electronic Protocol (under rule 73.11(2))

Division 3—Lists of documents

73.7—General discovery

(1) This rule applies to require general discovery unless the Court otherwise orders or the parties unanimously otherwise agree.

(2) Each applicant and respondent in a proceeding must make discovery of discoverable documents that are or were in their possession, custody or power in accordance with this Division.

(3) An interested party must make discovery of discoverable documents that are or were in their possession, custody or power if—

(a) the party receives by the close of pleadings written notice from an applicant or respondent in the proceeding requiring the party to make general discovery; or

(b) the Court so orders.

(4) A party who is required to make discovery under this rule must, within 28 days after the close of pleadings, file and serve a list of documents.

(5) A document is a ***discoverable document*** for the purposes of this rule if it is directly relevant to an issue raised in the proceeding and, if pleadings have been filed, the issues for this purpose are defined by the pleadings.

(6) Without limiting the generality of the definition of discoverable document in subrule (5), a document is directly relevant in the context of discovery made by a party to the proceeding if it is intended to be relied on at trial by that party or it supports or adversely affects a party's case.

73.8—Discovery by category

(1) The Court may order or the parties may unanimously agree that discovery by category be made instead of general discovery.

(2) A document is a ***discoverable document*** for the purposes of this rule if—

(a) it would be a discoverable document for the purpose of rule 73.7; and

(b) it falls into a category specified by the order or agreement.

(3) Unless the Court otherwise orders or the parties unanimously otherwise agree, subrules (2), (3) and (4) of rule 73.7 apply when discovery by category is ordered or agreed.

73.9—Specific discovery

(1) The Court may order or the parties may unanimously agree that specific discovery be made instead of general discovery.

(2) A document is a ***discoverable document*** for the purposes of this rule if it falls into a category specified by the order or agreement.

(3) Unless the Court otherwise orders or the parties unanimously otherwise agree, subrules (2), (3) and (4) of rule 73.7 apply when specific discovery is ordered or agreed.

73.10—Continuing discovery obligation

If a person who has filed a list of documents pursuant to this Division or an order of the Court—

(a) comes into possession, custody or power of a discoverable document not included in the list of documents (including a document that came into existence after such filing); or

(b) becomes aware that there is in their possession, custody or power a discoverable document not included in a list of documents filed under this rule,

the person must, as soon as practicable, file and serve a revised list of documents that includes that document.

Division 4—Consolidated list of documents

73.11—Consolidated list of documents

(1) The Court may order or the parties may unanimously agree that, instead of each party filing a separate list of documents, the parties are collectively to file a single consolidated list of documents in accordance with this rule and in accordance with the physical, simple electronic or complex electronic protocol.

(2) A consolidated list of documents must be in the appropriate prescribed form for a consolidated list of documents.

Prescribed forms—

Form 74A List of Documents Consolidated – Physical Protocol

Form 74B List of Documents Consolidated – Simple Electronic Protocol

Form 74C List of Documents Consolidated – Complex Electronic Protocol

(3) If a consolidated list of documents is to be filed—

(a) the applicant in the proceeding must within the time fixed by the order or agreement file and serve the initial version of the consolidated list of documents, identifying the applicant as the party disclosing and the date the document is added in the appropriate columns;

(b) each other party must in turn, within the time fixed by the order or agreement, file and serve an updated version of the consolidated list of documents, identifying the party as the party disclosing and the date on which the document is added in the appropriate columns; and

(c) if a party would be required under rule 73.10 to update that party's list of documents, the party must update the consolidated list of documents, identifying the party as the party disclosing and the date on which the document is added in the appropriate columns.

Division 5—Inspection and copying

73.12—Inspection

(1) A person who files a list of documents must make available for inspection by a party to the proceeding the discovered documents, other than privileged documents, in their possession, custody or power.

(2) The person must make the documents available for inspection—

(a) within 10 kilometers of the general post office at Adelaide;

(b) if the hearing location of the proceeding is a place other than Adelaide, within 10 kilometers of the hearing location; or

(c) at such other place as may be agreed.

(3) The person must make the documents available for inspection on a working day at a time between 9.00 am and 5.00 pm nominated by the inspecting party on not less than 48 hours' notice.

(4) The person must make available reasonable facilities for inspection including—

(a) when not self-evident—a person able to explain the arrangement of the documents and, if necessary, locate documents by reference to the list;

(b) when necessary—equipment needed to view a document (for example, for an electronic or microfiche document); or

(c) when reasonably requested—production for inspection of documents in stages.

(5) If a document is not in the person's physical possession but is obtainable by the person, the person must take all reasonable steps to obtain the document.

73.13—Copying

(1) A person who files a list of documents must, on not less than 48 hours' notice and on reasonable terms as to payment, make available to an inspecting party facilities for copying discovered documents, other than privileged documents, in the possession, custody or power of the person nominated by the inspecting party during an inspection under rule 73.12, including, if requested, a person to undertake the copying.

(2) A person who files a list of documents must, on reasonable terms as to payment, provide to an inspecting party copies of requested discovered documents, other than privileged documents, in their possession, custody or power as soon as practicable after the request.

(3) To avoid doubt, a party may inspect or request copies of discovered documents from time to time.

Division 6—Court orders

73.14—Modification of rules for discovery

(1) The Court may order that the operation of the rules in this Part be modified in a manner specified in the order.

(2) For example, the Court may order that—

(a) the parties, or a party, need not make discovery or the parties', or a party's, obligations to make discovery be limited;

(b) the criteria for a discoverable document be modified (including broadening or narrowing the criteria);

(c) the time for filing a list of documents be modified;

(d) discovery be made in stages;

(e) a document, or class of documents, need not be disclosed, or be disclosed separately;

(f) a party describe documents with greater precision;

(g) a bundle of documents be listed as a single item;

(h) the simple electronic protocol or complex electronic protocol apply instead of the physical protocol;

(i) the form of a list of documents otherwise be modified;

(j) documents be produced for inspection in a specified manner or copies be provided on specified terms;

(k) a person's list of documents be verified on oath; or

(l) an agreement made under rule 73.18 be cancelled and the parties make discovery under the rules in, or an order under, this Part.

73.15—Enforcement and other orders

(1) If there is reason to doubt whether a person has fully complied with an obligation to disclose, produce for inspection or copy a document under this Part (whether under the rules in or an order or agreement under this Part), the Court may make such orders as it thinks fit to determine whether there has been full compliance or to ensure or enforce full compliance.

(2) For example, the Court may order that—

(a) a person's list of documents be verified on oath;

(b) a person make specific discovery of specified documents, or categories of documents, in their possession, custody or power;

(c) a person file an affidavit, or give oral evidence, deposing to whether a person has specified documents or categories of documents in their possession, custody or power;

(d) a person answer written questions; or

(e) a person appear before the Court for examination.

73.16—Order for production or non-production

(1) The Court may order that a person produce a document, whether or not it has been discovered or is required to be discovered, for inspection by the Court or inspection or copying by a party.

(2) If a person objects to producing a particular document to a party, the Court may order its production to the Court so that the Court can determine the objection.

(3) The Court has a discretion, on objection to the production of a document, to relieve the objector from the obligation to produce the document if satisfied that the document neither supports nor adversely affects the case of any party to the proceeding.

73.17—Confidential documents

The Court may make such order as it thinks fit to protect the confidentiality of a document discovered or produced under this Part.

Division 7—Agreement of parties

73.18—Modification of rules for discovery

The parties may agree in writing that the operation of rules in this Part be modified in a manner specified in the agreement provided that—

(a) each party to the proceeding at the close of pleadings is a party to the agreement; and

(b) the agreement is signed by each party by the close of pleadings.

Example—

For example, the parties may agree on any of the matters set out in rule 73.14(2).

Part 14—Expert reports

Division 1—Introduction

74.1—Definitions

In this Part, unless the contrary intention appears—

due date means 6 weeks after the close of pleadings or such other date as may be ordered by the Court;

expert means a person having, or purporting to have, expertise or experience in a field qualifying the person to give expert evidence within the field (and, to avoid doubt, includes a party, partner or associate of a party or person employed by a party);

expert report means a written report by an expert relevant to issues in the proceeding in question including a summary expert report but excluding a report by a shadow expert;

shadow expert—see rule 74.13;

summary expert report—see rule 74.12.

Division 2—Obligations of parties

74.2—Letter requesting expert report

(1) A party who requests an expert to provide an expert report must, within 7 days of arranging for the expert to provide an expert report, send a letter to the expert—

(a) setting out the assumptions the expert is requested to make for the purpose of expressing an opinion;

(b) setting out any investigations the expert is requested to make for the purpose of expressing an opinion;

(c) setting out the materials provided to the expert for the purpose of expressing an opinion;

(d) setting out the questions on which the expert is asked to express an opinion; and

(e) attaching a copy of this Part.

(2) A party who requests an expert to provide an expert report must, within 7 days of sending a letter to the expert under subrule (1), serve on each party to the proceeding a copy of the letter.

Note—

Merely retaining an expert for a proceeding without providing any substantive instructions to the expert does not constitute arranging for the expert to provide an expert report for the purposes of subrule (1).

74.3—Obtain and serve expert reports

(1) Subject to rule 74.13, a party must, within 7 days of the close of pleadings, serve on each other party to the proceeding a copy of each expert report in the party's possession, custody or power relevant to the subject matter of the proceeding not previously served on that party (whether or not the party intends to rely on the report at the trial).

(2) If a party intends to adduce expert evidence at trial, the party must, by the due date, obtain an expert report complying with rule 74.10 from each intended expert.

(3) Subject to rule 74.13, a party must, by the due date, serve on each other party to the proceeding a copy of each expert report in the party's possession, custody or power relevant to the subject matter of the proceeding not previously served on that party (whether or not the party intends to rely on it at the trial).

(4) If a party wishes to adduce at trial expert evidence of which notice should have been, but was not, given by an expert report from the witness (including evidence outside the scope of an expert report served under this rule)—

(a) the party must first obtain leave of the Court; and

(b) unless the Court otherwise orders, if leave is given, the party must pay the incremental costs of each other party caused by the failure to comply with this rule.

74.4—Provision of information and documents

(1) A party may request another party who has disclosed an expert report to provide—

(a) a copy of written communications and records of communications between the party or a representative of the party and the expert or between the expert and another expert relevant to the content of the report (***relevant communications***);

(b) details (date, parties and substantive content) of relevant communications if they were oral and not recorded;

(c) a copy of documentary material on which the expert relied in making the report; or

(d) details of any fee or benefit that the expert has received, or is or will become entitled to receive, for preparation of the report or giving evidence.

(2) A party who receives a request under subrule (1) must comply with it as soon as practicable.

Division 3—Expert code of conduct

Note—

This Division contains harmonised rules.

74.5—General duties to Court

An expert, other than a shadow expert, is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceeding or other person retaining the expert, to assist the Court impartially on matters relevant to the area of expertise of the witness.

74.6—Content of report

(1) Subject to rule 74.12, an expert report (including a supplementary report) must comply with the requirements set out in Division 4.

(2) An expert must prepare a supplementary report if required to do so under rule 74.11.

74.7—Change of opinion

When an expert has provided to a party an expert report, and the expert subsequently changes their opinion on a material matter, the expert must as soon as practicable provide to the party a supplementary report in accordance with rule 74.11(1).

74.8—Conferral with prior expert

(1) An expert preparing a report in response to, or in the same field of expertise or dealing with the same subject matter as, an expert report by another expert (a ***prior expert***) should, to the extent practicable, confer with the prior expert about their respective assumptions and opinions.

(2) A prior expert asked to confer should, to the extent practicable, confer with the subsequent expert about their respective assumptions and opinions.

74.9—Conference of experts

(1) If directed to do so by the Court, an expert must—

(a) confer with any other expert;

(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 order of the Court.

(2) Each expert must—

(a) exercise their independent judgment in relation to every conference in which the expert participates pursuant to an order of the Court and in relation to each report subsequently provided, and will not act on any instruction or request to withhold or avoid agreement; and

(b) endeavour to reach agreement with the other expert (or experts) 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.

Division 4—Content of expert report

Note—

This Division contains harmonised rules.

74.10—Content of report

An expert report prepared by an expert must—

(a) state clearly the opinion, or opinions, of the expert;

(b) state the name and address of the expert;

(c) include an acknowledgment that the expert has read this Part and agrees to be bound by its provisions;

(d) state the qualifications of the expert to prepare the report;

(e) state the assumptions and material facts on which each opinion expressed in the report is based (whether by annexing a letter of instructions or otherwise);

(f) identify the reasons for, and any literature or other materials utilised in support of, such opinion;

(g) state (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

(h) identify any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

(i) to the extent to which any opinion that the expert has expressed involves the acceptance of another person's opinion, identify that other person and the opinion expressed by that other person;

(j) include 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;

(k) state any qualifications on an opinion expressed in the report without which the report is, or may be, incomplete or inaccurate;

(l) state whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;

(m) where the report is lengthy or complex, include a brief summary of the report at the beginning of the report;

(n) identify documents and other materials that the expert has been asked to consider (whether by annexing a letter of instructions or otherwise);

(o) attach copies of documents that record instructions given to the expert; and

(p) be signed by the expert.

74.11—Supplementary report

(1) When an expert has provided to a party an expert report, and the expert subsequently changes their opinion on a material matter, the expert must as soon as practicable provide to the party a supplementary report which shall state or provide the information referred to in paragraphs (a), (d), (e), (f), (h), (i), (j), (k) and (l) of rule 74.10 and, if applicable, paragraph (g) of that rule.

(2) In any subsequent report (whether prepared in accordance with subrule (1) or not), the expert may refer to material contained in the earlier report without repeating it.

Division 5—Summary report and shadow experts

74.12—Summary report

(1) A party may seek and an expert may provide a written report that sets out in summary form assumptions made and opinions held by an expert without the expert complying with the requirements set out in rule 74.10 other than paragraphs (a), (b), (o) and (p) of that rule (a ***summary expert report***).

(2) To avoid doubt, subrule (1) does not affect the obligation of a party to comply with rule 74.3(1) and rule 74.3(3).

74.13—Shadow expert

(1) A ***shadow expert*** is an expert who—

(a) is engaged to give advice or an opinion on or assist with the preparation or presentation of a party's case on the basis that the expert will not give evidence at trial;

(b) has not previously provided a report on the subject of the case other than as a shadow expert; and

(c) as part of the engagement gives a certificate in the prescribed form certifying that the expert—

(i) understands that it is not the expert's role to give evidence at trial; and

(ii) has not previously provided a report on the subject of the case other than as a shadow expert.

Prescribed form—

Form 75 Certificate by Shadow Expert

(2) A party who engages a shadow expert in relation to a proceeding must, as soon as practicable after the engagement takes effect, serve on each other party to the proceeding—

(a) written notice of the engagement, date of the engagement and qualifications of the shadow expert; and

(b) a copy of the shadow expert's certificate under subrule (1)(c).

(3) Unless the Court otherwise orders for special reasons or all parties consent, evidence of a shadow expert is not admissible at trial.

Chapter 8—Originating applications

Part 1—Pre-action steps

81.1—Pre-action steps

(1) An applicant is not required to serve a pre-action claim as defined in rule 61.7 before instituting a proceeding by way of originating application.

(2) However, if an applicant elects to serve a pre-action claim, the parties are required to comply with Chapter 7 Part 1 Divisions 3, 4 and 5.

Note—

This rule and this Chapter do not apply to minor civil actions. Rule 332.2 requires an applicant in a minor civil action instituted by claim or originating application to serve before action a written notice of intention to commence the action and rule 332.3 requires a response to be served.

Part 2—Institution and service of originating application

82.1—Originating Application

(1) A proceeding by way of originating application must be instituted by filing an Originating Application in accordance with the prescribed form.

Prescribed forms—

Form 2 Originating Application

Form 3 Originating Application – Notice of Objection

Form 4 Originating Application for Review

Form 5 Originating Application – Appeal Against Administrative Decision

Form 6 Originating Application – Interpleader

Form 7 Originating Application Ex Parte

Notes—

See also the specific forms prescribed for specific proceedings by rule 203.8, rule 203.16, rule 240.1, rule 244.8, rule 244.9, rule 245.1, rule 245.2, rule 245.3, rule 245.6, rule 256.4, rule 257.2, rule 257.3, rule 258.3, rule 262.2, rule 266.2, rule 293.1, rule 295.1 and rule 296.1 and by Schedule 5.

If these Rules require a proceeding to be instituted by filing an Originating Application in the prescribed form without identifying a specific form, the prescribed form is Form 2 Originating Application.

(2) Unless these Rules otherwise provide, an Originating Application must be accompanied by a supporting affidavit in the prescribed form.

Prescribed form—

Form 12 Affidavit

Form 14 Exhibit front sheet to Affidavit or Statutory Declaration

(3) If an extension of time is sought to commence a proceeding, the Originating Application must include a statement to that effect and identify the statutory basis for the extension sought.

(4) If the applicant seeks to invoke the jurisdiction of the Court conferred by the cross-vesting legislation or the corporations cross-vesting provisions, the Originating

Application or supporting affidavit must include a statement that the application is made under the relevant provision of that legislation (even if the applicant also relies on another statutory provision for the substantive application).

(5) Subject to rule 84.1, an Originating Application may seek relief based on events occurring after the commencement of the originating application.

Note—

Rule 84.1 requires leave or consent to amend an Originating Application and governs amendments that would add an application for relief that is statute barred.

(6) If an originating application may be made without notice, the Court may in urgent special circumstances permit the application to be made orally by the applicant in person, by audio visual link or by telephone conference, subject to such conditions as the Court thinks fit (which without limitation may include the applicant undertaking to file specified documents within a specified time).

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(7) The Originating Application or supporting affidavit must state—

(a) to the extent that a monetary claim is made, the total amount of the monetary claim;

(b) to the extent that the application is for other relief the value of which can be measured, estimated or approximated in monetary terms, the total value of that relief; and

(c) the total of each of the above items, being the ***total application value***.

(8) The applicant must, when filing an Originating Application, identify the location at which the applicant requests that the proceeding be heard, being a location at which the Court sits and either close to where the action arose or where the respondent lives.

Note—

The Court will take into account the request in listing the first hearing but it is in the discretion of the Court as to the location of the first hearing. It is in the discretion of the Court as to the location of any subsequent hearings or of any trial.

82.2—Accompanying documents

(1) When a supporting affidavit or statutory declaration is required, the affidavit must—

(a) comprise evidence admissible at trial;

(b) set out the facts on which the applicant relies to seek the orders sought; and

(c) if the applicant seeks an extension of time in which to institute the proceeding—set out the facts on which the applicant relies to seek an extension of time.

(2) An applicant must file, at the same time as the Originating Application, copies of any pre-action documents served under rule 61.7 or 61.9 or 61.10 together with any pre-action meeting report as required by rule 61.12.

82.3—Originating Application documents to be served

(1) The documents required to be served on a respondent or interested party (***Originating Application documents***) comprise—

(a) the Originating Application and, when applicable, the supporting affidavit;

(b) a multilingual notice in the prescribed form; and

(c) if the party is served—

(i) in another State—a notice to the party served interstate in the prescribed form; or

(ii) in New Zealand—a notice to the party served in New Zealand in the prescribed form; or

(iii) out of Australia—a notice to the party served outside Australia in the prescribed form; or

(iv) out of Australia under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters—a summary of the document to be served in the prescribed form.

Prescribed forms—

Form 32 Multilingual Notice – Originating Application

Form 34 Notice to Party Served – Interstate

Form 35 Notice to Party Served – New Zealand

Form 36 Notice to Party Served – Outside Australia

Form 37 Summary of the Document to be Served

(2) An applicant must, as soon as practicable, serve a copy of the relevant Originating Application documents on each respondent and each interested party (if any).

82.4—Manner of service

(1) Unless the Court otherwise orders, service of Originating Application documents on a company or registered body interstate must be effected by personal service in accordance with rule 42.1.

(2) Unless the Court otherwise orders, service of Originating Application documents out of Australia must be effected in accordance with Schedule 1 Part 1.

(3) Unless the Court otherwise orders, service of Originating Application documents in any other case must be effected by original service in accordance with rule 42.1, rule 42.2, rule 42.3 or, if applicable, rule 42.4, rule 42.5, rule 42.6 or rule 42.7.

(4) Originating Application documents will be regarded as having been served on a party in accordance with this rule if rule 42.8 applies.

Notes—

Service of Originating Application documents in another State is effective only if there is compliance with section 16 of the *Service and Execution of Process Act 1992* (Cth).

Originating Application documents served in New Zealand must contain or be accompanied by the information contained in section 11 of the *Trans-Tasman Proceedings Act 2010* (Cth).

Part 3—Response

83.1—Response

(1) If a respondent or interested party wishes to oppose or make submissions about an originating application, they must, within 14 days after service of the Originating Application documents, file a Response in the prescribed form setting out—

(a) the party's response to facts alleged in support of the application;

(b) other facts the party contends are relevant to the application;

(c) the party's attitude to any application for an extension of time; and

(d) the party's response to the orders sought in the application.

Prescribed form—

Form 56 Response

(2) If a respondent contends that the Court does not have jurisdiction to hear and determine the action or otherwise objects to the Court's jurisdiction, the respondent must advance the objection in the response and file at the same time as the response an interlocutory application in accordance with rule 102.1 seeking hearing and determination of the objection.

(3) A respondent or interested party who files a Response must serve it as soon as practicable on each other party to the action.

Note—

A respondent (or interested party) in an originating application cannot bring a cross application in that proceeding (in contrast to a respondent (or interested party) in a claim who can bring a cross claim in that proceeding). Instead, a party other than the applicant in an originating application who wishes to seek relief against another party must bring a separate proceeding seeking that relief.

83.2—Affidavit

(1) If a respondent or interested party wishes to rely on any facts in addition to or contrary to those relied on by the applicant (whether in the Originating Application or any supporting affidavit), they must within 14 days after service of the Originating Application documents file a responding affidavit in the prescribed form.

Prescribed form—

Form 12 Affidavit

(2) A responding affidavit must—

(a) comprise evidence admissible at the final hearing of the originating application; and

(b) set out the facts on which the respondent or interested party relies in relation to the orders sought.

(3) A respondent or interested party who files a responding affidavit must serve it as soon as practicable on each other party to the action.

Part 4—Amendment of originating application or response

84.1—Amendment by consent or with leave

(1) A party may amend an Originating Application (including to introduce an additional party) or response—

(a) by consent; or

(b) with leave of the Court.

(2) If leave is granted to amend an Originating Application—

(a) to add an application for relief that is statute barred;

(b) to add an applicant in respect of an application for relief that is statute barred; or

(c) to add a respondent in respect of an application for relief that is statute barred,

the amendment takes effect on a date fixed by the Court not earlier than the date on which the application for leave to amend was made or foreshadowed unless the Court makes an order under subrule (3).

(3) The Court may order that the amendment relate back to the date on which the Originating Application was instituted—

(a) if subrule (2)(a) applies—if the new application for relief arises out of substantially the same facts as the original application for relief; or

(b) if subrule (2)(b) or (c) applies—if the failure to join the additional party arose from a genuine mistake.

84.2—Manner of amendment

(1) If a party is entitled to amend an Originating Application or response under rule 84.1, the amendment must be made by filing a revised version of the document in accordance with rule 33.2.

(2) A party who files an amended Originating Application or response must serve it on each other party as soon as practicable.

84.3—Consequential amendment

(1) If a party amends an Originating Application, a responding party may amend its response consequentially on the amendment.

(2) Unless the Court otherwise orders, an amended response to an amended Originating Application must be filed within 14 days after service of the amended document.

84.4—Costs of amendment

Unless the Court otherwise orders, a party who amends an Originating Application or response under rule 84.1 must pay the costs thrown away by another party as a result of the amendment on the standard costs basis fixed and payable after the proceeding is determined by judgment.

Part 5—Strike out

85.1—Strike out

(1) The Court may strike out all or part of an Originating Application, supporting affidavit, response or responding affidavit if—

(a) it does not comply with these Rules;

(b) it is frivolous, vexatious or an abuse of the process of the Court; or

(c) it does not disclose a reasonable basis for the application or basis to contest the application (as applicable).

(2) If the Court strikes out all or part of a document under subrule (1), it may if it thinks fit grant leave to file within a specified time an amended or substituted document rectifying the matter that caused the original document to be struck out.

Part 6—Hearings

86.1—Convening hearing

(1) If a return date is to be shown on the Originating Application when it is accepted for filing, the Court will list the hearing several weeks after the Originating Application is

instituted to allow time for service of the Originating Application documents and the filing, service and consideration of any responses and responding affidavits.

(2) If a return date is not shown on the Originating Application, the Registrar will give notice to all participating parties of the listing of the hearing.

(3) If a party seeks an early or later listing of the return date, the party must file an application to the Registrar in accordance with rule 13.2(5).

86.2—Nature of hearing

(1) On the return date, the Court may exercise its discretion—

(a) to hear and determine the Originating Application if the applicant appears and no other party appears or opposes the application; or

(b) to hear the Originating Application if all parties who appear are ready to proceed with the hearing.

(2) If the Court determines that the action is not to be heard on the return date, the Court will determine whether—

(a) it should be heard on an adjourned return date;

(b) it should be listed for trial; or

(c) listing for hearing or trial should be deferred.

(3) If the Court determines that the action should be heard on an adjourned hearing date, the Court—

(a) will adjourn the hearing to a subsequent date;

(b) may make orders for the taking of any interlocutory step that may be ordered at a directions hearing under Chapter 9; and

(c) will proceed to hear the application on the adjourned date.

(4) If the Court determines that action should be listed for trial, the Court—

(a) will list the application for trial;

(b) may give directions for the taking of interlocutory steps; or

(c) may adjourn the matter to a subsequent date for a directions hearing.

(5) If the Court determines that listing for hearing or trial should be deferred, the Court—

(a) may make orders for the taking of any interlocutory step that may be ordered at a directions hearing under Chapter 9; and

(b) will adjourn the hearing to a subsequent date for a directions hearing.

(6) The Court may at or in respect of a hearing make any order that may be made at or in respect of a trial under rule 172.1 or at or in respect of a directions hearing under rule 101.5.

86.3—Attendance of parties

(1) Unless the Court otherwise orders, the applicant must attend (in person or by a lawyer) at a hearing, directions hearing or trial.

(2) If the applicant does not attend, the Court may dismiss the application, otherwise determine the application, make an order as to costs or make any other or further order as it thinks fit.

(3) Unless the Court otherwise orders, a respondent or interested party must attend at a hearing, directions hearing or trial if they oppose the application or wish to be heard in relation to it.

(4) If a respondent or interested party does not attend, the Court may determine the application, make an order as to costs or make any other or further order as it thinks fit.

86.4—Directions

(1) The Court may, in court or in chambers, on its own initiative or on the application of any person, make orders for the taking of any interlocutory step that may be ordered at a directions hearing under Chapter 9.

(2) For example, the Court may make orders—

(a) for the filing and service of pleadings;

(b) for the filing and service of lists of documents or expert reports;

(c) for the taking of any other interlocutory step that is or may be taken in respect of a claim under Chapter 7;

(d) that the parties participate in an alternative dispute resolution process under Chapter 11;

(e) that the deponent of an affidavit to be tendered at a hearing attend for examination and, if the deponent fails to attend, excluding the affidavit from evidence; or

(f) if the Court lists the proceeding for trial, for the taking of any step under Chapter 13.

(3) The Court may make orders for the filing of interlocutory applications or affidavits in relation to interlocutory matters.

Part 7—Pleadings

87.1—Application of pleading and other rules

(1) This rule applies when pleadings are required by these Rules or by an order of the Court to be filed in an originating application.

Notes—

Rule 244.7 requires pleadings to be filed in taxation appeal proceedings and rule 256.4 and rule 256.6 require pleadings to be filed in judicial review proceedings in the Supreme Court.

Rule 86.4(2)(a) empowers the Court to order pleadings to be filed in any originating application.

(2) Chapter 7 Parts 7, 9, 10 and 11 apply in respect of pleadings in an originating application.

(3) Chapter 12 Part 3 applies in respect of pleadings in an originating application in the same manner, with any necessary changes, as they apply in respect of pleadings in a claim.

Part 8—Trial

88.1—Trial

If the Court orders that the action be listed for trial, Chapter 14 applies to the extent applicable.

Chapter 9—Interlocutory applications, hearings and orders

Part 1—Directions hearings

101.1—Nature and purpose

(1) A directions hearing may be adjourned from time to time.

(2) A directions hearing may be adjourned to or convened—

(a) before trial, during trial, after trial; or

(b) after judgment.

(3) The purposes of a directions hearing include—

(a) identifying the issues in dispute;

(b) monitoring and enforcing compliance with these Rules;

(c) monitoring the progress of the parties and making orders to progress the matter to resolution or trial or hearing as expeditiously and efficiently as practicable;

(d) listing the matter for an alternative dispute resolution process, or trial or hearing;

(e) making orders concerning preparation for and conduct of the trial or hearing;

(f) making orders for an urgent trial or hearing in urgent cases;

(g) making orders concerning post-judgment steps; and

(h) hearing and determining interlocutory applications.

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(4) At the first directions hearing, the Court will consider any application to change or determine the location for future directions hearings or the trial.

(5) At any directions hearing, the Court may order that future directions hearings or the trial be at a specified location.

101.2—Convening directions hearings

(1) A directions hearing in a claim will be listed as a result of the filing of the first defence in the proceeding.

(2) The Registrar may, and if directed by the Court must, convene a settlement conference instead of a directions hearing after the filing of the first defence in the proceeding.

(3) If a party seeks an earlier or later listing of a directions hearing, the party must file an application to the Registrar in accordance with rule 13.2(5).

(4) A directions hearing in a claim or originating application may be convened by the Court on its own initiative or on the application of any person.

(5) The Registrar will give notice to all parties who have an address for service of the listing of a directions hearing or settlement conference (other than a hearing adjourned from a previous hearing).

101.3—Attendance at directions hearings

(1) Unless the Court otherwise orders, each party with an address for service must attend (either in person or by a lawyer) at a directions hearing, unless—

(a) in the case of a claim—the party has informed the Court that the party will abide by the result of the proceeding; or

(b) in the case of an originating application—the party does not oppose the application or wish to be heard in relation to it.

(2) The Court may order that a party, or in the case of a body corporate an officer of the body corporate, attend at a directions hearing (whether or not the party or body corporate is represented by a lawyer at the hearing).

101.4—Affidavits and evidence for use at directions hearings

(1) Unless the Court otherwise orders or these Rules otherwise provide, an affidavit to be tendered at a directions hearing may contain first hand hearsay if it will save time or expense and it complies with rule 31.7(12).

(2) Unless the Court otherwise orders, an affidavit to be tendered at a directions hearing must be served at least 2 business days before the listed hearing date.

(3) The Court may order that the deponent of an affidavit to be tendered at a directions hearing attend for examination before the Court and, if the deponent fails to attend, the Court may exclude the affidavit from evidence.

(4) If a party reasonably requires an affidavit from a person for the purpose of a proceeding and the person has failed to comply with a reasonable request to make the affidavit, the Court may order that the person attend for examination before the Court.

(5) The Court may inform itself on any matter without requiring formal proof on the basis of information the Court considers reasonably reliable.

101.5—Conduct of directions hearings

(1) The Court may, at a directions hearing or in the absence of the parties, make orders in relation to a proceeding either on its own initiative or on the application of any person.

(2) The Court may at or in respect of a directions hearing make any order that may be made at or in respect of a trial under rule 172.1.

(3) Unless the Court otherwise orders, if the parties consent to an order to be made at a directions hearing (including, without limitation, an order adjourning the hearing or extending time to take a step in the proceeding), the terms of the consent order and fact of the consent to the order must be communicated to the Court at least 2 business days before the hearing date.

(4) The Court may order that the parties prepare an agenda of items to be considered or draft orders to be sought at a directions hearing.

(5) If a party seeks lengthy or detailed orders, the party must provide a draft order to the Court and each other party.

(6) The Court may make orders for the filing of interlocutory applications or affidavits in relation to interlocutory matters.

(7) The Court may list an interlocutory application or disputed interlocutory issue for argument at a subsequent directions hearing.

101.6—Compliance with orders made at directions hearings

(1) The parties and their lawyers have a duty to the Court to comply with orders made at a directions hearing and any applicable litigation plan, including a timetable for the taking of interlocutory or pre-trial steps.

(2) If a party does not intend to take a particular step in accordance with a timetable fixed at a directions hearing, the party must by email inform each other party and the Court of that fact and apply for an extension of time to enable the party to take the step.

(3) If all parties consent to an extension of time, the Court may, if it thinks fit, deal with the application in chambers.

101.7—Litigation plan

(1) The Court may order, or the parties may agree, that the parties prepare a litigation plan.

(2) The purpose of a litigation plan is to—

(a) identify the issues in a proceeding and the steps necessary to prepare for trial;

(b) enable the Court to make orders that address in an integrated way all the necessary steps in preparation for trial;

(c) facilitate interlocutory steps being taken in parallel whenever practicable rather than in a mechanical or sequential way;

(d) avoid or reduce the need for repetition of procedural steps and multiple directions hearings and adjournments;

(e) narrow the issues in dispute at an early stage; and

(f) facilitate an early listing for trial.

(3) A litigation plan must be in the prescribed form.

Prescribed Form—

Form 71 Litigation Plan

(4) The length and detail of a litigation plan should be proportionate to the nature, extent and complexity of the issues and not disproportionate to the monetary amount in dispute.

(5) Unless the Court otherwise orders—

(a) a single litigation plan must be prepared cooperatively by all parties to a proceeding (with the applicant preparing the first draft);

(b) the last party to make a contribution to the plan must file the plan and serve it on each other party; and

(c) a litigation plan may accommodate competing positions of the parties (for example, when the parties disagree about the time needed to make discovery).

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(6) If a proceeding is assigned to the special classification list when the first defence is filed, the parties must prepare, file and serve a litigation plan before the first directions hearing.

101.8—Summaries of argument

(1) The Court may order that a party file written submissions or a summary of argument for the purposes of a hearing.

(2) Written submissions or a summary of argument must be in the prescribed form and must show the anticipated hearing date and name of the judicial officer listed to hear the matter (if known).

Prescribed forms—

Form 89 Summary of Argument

Form 90 Written Submissions

(3) Written submissions or a summary of argument must set out succinctly each proposition advanced by the party together with supporting references to the reasons for judgment, evidence, legislation or authorities.

(4) A citation to a case in written submissions or a summary of argument must—

(a) if the case is reported in a published series of reports—include a citation to the highest ranking available series of reports in which the case is published;

(b) if the case is reported in a published (but not authorised) series of reports—include a citation to an available series of reports in which the case is published; and

(c) if the case postdates 1997 and is published online on Austlii or its equivalent elsewhere—include a medium neutral citation to the case.

(5) Unless the Court otherwise orders, written submissions must not exceed 10 pages and must comply with the Registrar's format requirements.

(6) Unless the Court otherwise orders, a summary of argument must not exceed 5 pages and must comply with the Registrar's format requirements.

(7) The Registrar may, on application filed by a party in accordance with rule 13.2(5), vary the page limit for written submissions or summaries of argument.

Part 2—Interlocutory applications

102.1—Making interlocutory applications

(1) Subject to subrule (2), a person who seeks an order, other than an order that may only be made at or following a trial of a claim or the final hearing of an originating application, must file a written interlocutory application in the prescribed form.

Prescribed form—

Form 77 Interlocutory Application

(2) The Court may permit a party to make an oral application for an interlocutory order at a hearing or directions hearing.

(3) Unless the Court otherwise orders or these Rules otherwise provide, a written interlocutory application must be accompanied by a supporting affidavit in the prescribed form deposing to the facts on the basis of which the order is sought.

Prescribed form—

Form 12 Affidavit

(4) If a party seeks lengthy or detailed orders, the party must file with the application a draft order in the prescribed form.

Prescribed form—

Form 79 Draft Order

(5) If a party seeks (whether by written or oral interlocutory application) the same or substantially the same orders as were sought in a previous interlocutory application (whether written or oral), the party must seek leave to bring the application and the question of leave will be considered first when the application is to be heard or listed for hearing.

(6) Unless the Court otherwise orders, an interlocutory application together with any supporting affidavit must be filed and served at least 7 days before the listed hearing date.

(7) Unless the Court otherwise orders, an affidavit to be tendered at the hearing of an interlocutory application must be served at least 2 business days before the listed hearing date.

Note—

The Court will exercise a discretion when to permit an oral application. Relevant factors include whether the application is contested and the nature and importance of the application. In general terms—

(a) if the application is not opposed, an oral application will usually be permitted;

(b) if the application seeks an extension of time fixed by a statute, these Rules or an order of the Court and the application is opposed, filing of an interlocutory application and supporting affidavit will usually be required;

(c) in any other case—if the application relates to the time for taking a step in the proceeding, an oral application will usually be permitted;

(d) if the application seeks leave to amend the originating process or a pleading and the application is opposed, filing of an interlocutory application and supporting affidavit will usually be required;

(e) if the application seeks better particulars of a pleading or striking out of all or part of a pleading and the application is opposed, filing of an interlocutory application and supporting affidavit will usually be required;

(f) if the application seeks a variation to the default discovery rules or an order based on an alleged breach of discovery obligations and the application is opposed, filing of an interlocutory application and supporting affidavit will usually be required;

(g) if the application seeks leave to take a step in the proceeding and the application is opposed, filing of an interlocutory application and supporting affidavit will usually be required;

(h) if the application seeks an injunction, filing of an interlocutory application and supporting affidavit will usually be required;

(i) if the application seeks summary judgment or other early finalisation of the proceeding or the setting aside of a judgment, filing of an interlocutory application and supporting affidavit will usually be required.

102.2—Listing interlocutory applications

(1) The Registrar is responsible for listing written interlocutory applications for hearing, but if the proceeding is being case managed by a judicial officer, usually the judicial officer will list interlocutory applications for hearing.

(2) If, when an interlocutory application is filed, a directions hearing or in the case of an originating application a hearing has been listed, usually the interlocutory application will be listed for that hearing.

(3) If, when an interlocutory application is filed, a hearing has not been listed, the Registrar will list a directions hearing or in the case of an originating application a hearing at which the application may be heard or a date for hearing of the application may be fixed.

(4) If the person filing the interlocutory application seeks an early listing of the application, a request with reasons must be included in the supporting affidavit.

(5) The Court may determine an interlocutory application without a hearing on the basis of the application, any affidavits filed and, if ordered, written submissions.

(6) The Court may make orders relating to the subject matter of the application irrespective of whether the person making the application has asked for such orders in the application.

102.3—Notice of interlocutory applications

(1) Unless the Court otherwise orders or these Rules otherwise provide, a person filing an interlocutory application must, as soon as practicable, serve the application and supporting affidavit on each other party to the proceeding.

(2) Unless the Court otherwise orders or these Rules otherwise provide, a person who intends to make an oral application under rule 102.1(2) must, at least 7 days before the hearing date, give notice of the application to each other party to the proceeding.

102.4—Default of appearance at hearing

(1) If a party making an interlocutory application fails to appear at a hearing of the application, the Court may dismiss the application or make such other or further order as it thinks fit.

(2) If a party against whom an interlocutory application is made fails to appear at a hearing of the application, the Court may make the order sought on the application or make such or further order as it thinks fit.

Part 3—Interlocutory orders

103.1—Interlocutory orders

(1) The Court may make interlocutory orders—

(a) on its own initiative or on the application of any person in relation to a proceeding;

(b) in court or in chambers.

(2) If a party seeks the making of a consent order containing lengthy or detailed orders, the party must file a draft order in the prescribed form.

Prescribed form—

Form 79 Draft Order

(3) A party may consent to an order by filing and serving a consent to order in the prescribed form.

Prescribed form—

Form 80 Consent to Order

103.2—Pronouncement and record of order by Court

(1) Unless the Court otherwise orders, an order of the Court takes effect—

(a) if the Court pronounces the order orally in court—at the end of the hearing at which the pronouncement is made; or

(b) in any other case—when the Court notifies the terms of the order to the parties.

(2) The Court may order that an order take effect at an earlier or later time than under subrule (1).

Notes—

The time to appeal runs from the date when an order takes effect.

A person who fails to do an act required or does an act prohibited by an order will be in contempt of court if the person breaches the terms of the order once it has taken effect provided that the person had notice of the order.

(3) An order of the Court is perfected by being entered in the records of the Court—

(a) when a record of outcome in the prescribed form is signed (physically or electronically) by the presiding judicial officer, or

(b) a formal order is entered in the records of the Court under rule 103.4,

(whichever occurs first).

Prescribed forms—

Form 81 Record of Outcome - Order

Form 82 Order

(4) The Court may before the order is entered into the records of the Court under subrule (3), vary (without limitation) the terms of the order pronounced under subrule (1).

103.3—Subsequent variation of order

The Court may make a later order varying or setting aside an earlier interlocutory order.

103.4—Entry of formal order

(1) A party to an order may file an application to the Registrar in accordance with rule 13.2(5) to enter a formal order.

(2) Unless the Registrar otherwise directs, a request for a formal order under subrule (1) must be accompanied by a draft order in the prescribed form as an editable Word document.

Prescribed form—

Form 79 Draft Order

(3) The Registrar may direct the parties to attend before the Registrar for settling of the formal order and if a party so directed fails to attend the Registrar may proceed in that party's absence.

(4) A formal order under this rule is entered in the records of the Court when it is signed by or on behalf of the Registrar and the Court's seal is applied to it.

103.5—Order requiring compliance with positive or negative requirements

A formal order requiring a person to do, or refrain from doing, an act must be endorsed with a warning, in the prescribed form, of the consequences of failing to comply with the order.

Prescribed form—

Form 82 Order

Chapter 10—Discretionary interlocutory steps

Part 1—Injunctions

111.1—Interim and interlocutory injunctions

(1) The Court may grant an injunction before, at or after the hearing and determination of a proceeding.

(2) An application may in a case of urgency or risk be made without notice but in such a case the Court may, if it thinks fit, require the party applying for the injunction to give notice of the application to other parties.

(3) If an injunction is granted on an application made without notice, the Court will ordinarily only grant an interim injunction until notice is given and the Court subsequently hears and determines whether the interim injunction should be discharged or an interlocutory injunction should be granted.

(4) If 'the usual undertaking as to damages' is given to the Court in connection with an interlocutory order or undertaking by another person, it means an undertaking to the Court to—

(a) submit to such order (if any) as the Court considers 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 interlocutory order or undertaking by the other person or any continuation of it (with or without variation); and

(b) pay the compensation referred to in (a) to the person or persons referred to in the order.

Part 2—Evidence and property subject of proceedings

Division 1—Search orders

Note—

This Division contains harmonised rules.

112.1—Definitions

In this Division—

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; and

search order has the meaning given by rule 112.2.

112.2—Search order

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 that is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

Note—

For an application in respect of an anticipated proceeding, see Chapter 19 Part 13.

112.3—Requirements for grant of search order

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 a 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 anticipated proceeding before the Court.

112.4—Jurisdiction

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

112.5—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, other persons 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, other persons named or described in the order with any information, thing or service described in the order;

(c) to allow 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 up to 3 days after the date the order was served, except for the purposes of obtaining legal advice or legal representation; or

(e) to do or refrain from doing any act as the Court considers appropriate.

(2) Without limiting the generality of subrule (1)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include—

(a) searching for, inspecting or removing the thing; and

(b) making or obtaining a record of the thing or any information it may contain.

(3) A search order may contain other provisions that the Court considers appropriate.

(4) In subrule (2)—

record includes a copy, photograph, film or sample.

Prescribed form—

Form 82A Search Order

112.6—Independent lawyers

(1) If the Court makes a search order, the Court will appoint one or more lawyers, each of whom is independent of the applicant's lawyer, (the ***independent lawyers***) to supervise the execution of the order, and to do any other acts or things in relation to the order that the Court considers appropriate.

(2) The Court may appoint an independent lawyer to supervise execution of the order at any one or more premises, and a different independent lawyer or lawyers to supervise execution of the order at other premises, with each independent lawyer having power to do any other acts or things in relation to the order that the Court considers appropriate.

112.7—Costs

(1) The Court may make any order for costs that it considers appropriate in relation to an order made under this Division.

(2) Without limiting the generality of subrule (1), an order for costs includes an order for the costs of any person affected by a search order.

112.8—Protocol

Schedule 2 applies to applications for search orders made under this Division or Chapter 19 Part 13.

Division 2—Medical and biological evidentiary material

112.9—Medical examination

(1) This rule applies when the medical condition of a party (the ***subject party***) is in issue in a proceeding.

(2) Another party to the proceeding (the ***requesting party***) may request the subject party to attend a medical examination relevant to the medical issue by a medical practitioner at the cost of the requesting party provided that the request is made before the proceeding is either entered or listed for trial.

(3) The Court may at any time, on application by another party to the proceeding, order that the subject party attend a medical examination relevant to the medical issue by a medical practitioner at the cost of the requesting party.

(4) The subject party must attend a medical examination requested or ordered under subrule (2) or (3) unless, a reasonable time before the examination, the subject party requests payment of a sum to cover the reasonable cost of travelling expenses and loss of earnings by reason of the attendance and the requesting party fails to pay that sum before the examination.

(5) A medical practitioner who carries out a medical examination under this rule must prepare a written report setting out the results of the examination and, upon request, provide a copy to the subject party.

(6) The requesting party must give to each other party to the proceeding a copy of the medical report prepared in accordance with subrule (5) as soon as practicable after receipt.

(7) If the subject party fails to comply with an obligation to attend a medical examination under this rule, the Court may make such orders as it thinks fit, including staying the action or ordering that the subject party not be entitled to damages or interest while in default.

112.10—Biological test

(1) This rule applies when a biological test is capable of determining or providing highly probative evidence of an issue of identity, paternity or another issue in a proceeding.

(2) The Court may order that—

(a) a party to a proceeding submit to a biological test; or

(b) a parent or guardian of a child have the child submit to a biological test.

(3) A person cannot be compelled to submit to, or to have a child submit to, a biological test under this rule but, if the order is not complied with, the Court may draw an inference from the non-compliance.

Division 3—Other evidentiary material orders

112.11—Custody or control of evidentiary material

(1) The Court may make an order—

(a) for the custody and control of evidentiary material;

(b) for the preservation of evidentiary material;

(c) for the inspection of evidentiary material;

(d) for taking a sample, making observations or making an audio or visual record of evidentiary material;

(e) for conducting an analysis, test or experiment (including destructive testing) in relation to evidentiary material; or

(f) otherwise relating to evidentiary material.

(2) The Court may authorise a person to enter land or do any other thing to gain access to evidentiary material for the purpose of an order under subrule (1).

(3) The Court may authorise a person to have access to evidentiary material the subject of an order under subrule (1).

Division 4—Property

112.12—Property subject of a proceeding

(1) The Court may make an order for the preservation of property the subject of or connected with a proceeding.

Example—

The Court may order the payment of a fund into court or make other provision for the security of a fund.

(2) If the property is perishable, or it is desirable for another reason to sell the property, the Court may order the sale of the property.

(3) If—

(a) an applicant brings a claim for the recovery of specific property; and

(b) the respondent does not dispute the applicant's title but claims to be entitled to retain the property under a lien or other security for the payment of money,

the Court may order the respondent to give up possession of the property to the applicant upon the applicant paying into Court an amount fixed by the Court to cover

the amount secured by the lien or other security and, if the Court thinks fit, interest and costs.

(4) The Court may make orders about—

(a) management of real or personal property the subject of a proceeding;

(b) how real or personal property the subject of a proceeding is to be dealt with; or

(c) payment of income derived from real or personal property the subject of a proceeding.

Example—

The Court might order the sale, exchange or partition of land.

Division 5—Freezing orders

Note—

This Division contains harmonised rules.

112.13—Definitions

In this Division—

ancillary order has the meaning given by rule 112.15;

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 112.14;

judgment includes an order;

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

112.14—Freezing order

(1) The Court may make an order (a ***freezing order***), with or without notice to a 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.

Prescribed form—

Form 82B Freezing Order

Note—

For an application in respect of an anticipated proceeding, see Chapter 19 Part 13.

112.15—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 subrule (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.

112.16—Respondent need not be party to proceeding

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

112.17—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) for a judgment to which subrule (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) for a cause of action to which subrule (3) applies—another court.

(2) This subrule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(3) This subrule 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 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 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, 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 ancillary order if the Court considers it is in the interests of justice to do so.

112.18—Jurisdiction

Nothing in this Division diminishes the inherent, implied or statutory jurisdiction of the Court to make a freezing order or ancillary order.

112.19—Service outside Australia of application for freezing order or ancillary order

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

112.20—Costs

(1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Division.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

112.21—Protocol

Schedule 3 applies to applications for freezing orders made under this Division or Chapter 19 Part 13.

Part 3—Transfer of proceeding

Division 1—Transfer to external court

113.1—Application for transfer or removal for potential transfer

Supreme Court

(1) An application for an order for transfer of a proceeding under section 5 of the cross-vesting legislation or section 1337H or 1337H(5) of the corporations cross-vesting provisions must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) An application for an order for transfer of a proceeding under section 8 of the cross-vesting legislation must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

District Court and Magistrates Court

(3) An application for an order for transfer of a proceeding under section 1337K(2) of the corporations cross-vesting provisions must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

Division 2—Transfer between local courts

113.2—Application for transfer out of a court

An application for transfer of a proceeding—

(a) from the Supreme Court—

(i) to the District Court under section 24(1)(b) of the *District Court Act 1991*; or

(ii) to the Magistrates Court under section 19(2a) of the *Magistrates Court Act 1991*;

(b) from the District Court—

(i) to the Supreme Court under section 24(2) of the *District Court Act 1991*; or

(ii) to the Magistrates Court under section 19(1)(b) of the *Magistrates Court Act 1991*; or

(c) from the Magistrates Court to the District Court under section 19(2) of the *Magistrates Court Act 1991*,

must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

113.3—Application for transfer into a court

An application for transfer of a proceeding—

(a) into the Supreme Court—

(i) from the District Court under section 24(1)(a) of the *District Court Act 1991*; or

(ii) from the Environment Resources and Development Court of South Australia under section 20A(2) of the *Environment, Resources and Development Court Act 1993*;

(b) into the District Court from the Magistrates Court under section 19(1)(a) of the *Magistrates Court Act 1991*,

must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

Division 3—Transfer to minor civil division—Magistrates Court

113.4—Order that proceeding be heard as minor civil action

(1) The Court may on its own initiative or on application by any party make an order under section 10AB of the *Magistrates Court Act 1991* that a proceeding in the general jurisdiction of the Court be heard and determined as a minor civil action.

(2) Unless the Court otherwise orders, an application by a party for an order under subrule (1) may be made by oral application.

Part 4—Payment of monies into court

114.1—Payment into court

(1) Any money paid into court must be paid into a Suitors Fund maintained by the Registrar for that purpose.

(2) A person paying monies into court must file a notice of payment into court in the prescribed form containing—

(a) the full name of the party lodging the funds;

(b) the type and amount of the payment;

(c) the reason for the payment and what the payment is in respect of; and

(d) particulars of the order or other authority under which the payment is made.

Prescribed form—

Form 85 Notice of Payment into Court

114.2—Investment of monies in Suitors Fund

(1) The Suitors Fund (and any income of the Fund) must be invested by the Registrar as a common fund pursuant to section 21 of the *Public Finance and Audit Act 1987*.

(2) However, the Court may order that any part of the Suitors Fund be separately invested.

(3) As soon as practicable after the last day of each month, the Registrar must fix the rate of interest payable in respect of funds in court for the preceding month and credit interest to the common fund or any special fund.

(4) When money is paid out during any month, the rate of interest applicable to the previous month is to apply in respect of the current month unless the Registrar otherwise directs.

(5) Interest accrues from day to day up to the date when the amount to be paid out is calculated.

114.3—Certificate or transcript of monies in court

(1) On written request by a person claiming an interest in funds in an account in the books of the Court, the Registrar may exercise a discretion to issue—

(a) a certificate of the amount and description of the funds (the certificate, if silent, will be taken to refer to the position at the beginning of the day and not include transactions on the day on which it is issued);

(b) another certificate with respect to transactions or dealings with funds in court;

(c) a transcript of the account; or

(d) a transcript of the account authenticated by the Auditor-General.

(2) A certificate or transcript may show details of—

(a) any order restraining the transfer, payment out or other dealing with the funds in court, and whether it affects capital or interest; and

(b) any restraining or charging order affecting the funds of which the Registrar has received notice and the name of the person in whose favour the order was made.

114.4—Payment out of court

(1) Money must be paid out of the Suitors Fund only—

(a) by order of the Court; or

(b) by direction of the Registrar.

(2) Money that a person is entitled to have paid out may be paid out—

(a) to the person;

(b) on the written request of the person or attorney—to the person's attorney appointed under a power that the Registrar considers sufficient; or

(c) on the written authority of the person or the attorney—to the lawyer of the person or attorney.

(3) A person requesting payment out of monies in court must file a request for payment out in the prescribed form.

Prescribed form—

Form 86 Request for Payment out of Court

(4) If the person entitled to payment out of funds in court or the person's attorney gives to the Registrar instructions in writing to remit the money to the person or attorney by cheque sent by post, the Registrar may exercise a discretion to remit the money in accordance with those instructions.

(5) When money is, by an order, to be paid to a person who is deceased, it may be paid to the personal representative of the deceased person, unless the order otherwise provides.

(6) When money is, by an order, to be paid to persons described in the order as partners, it may be paid to any one or more of such persons, unless the order otherwise provides.

(7) The Registrar need only pay out funds in court on being satisfied of the identity of the person entitled to receive them.

Part 5—Security for costs

115.1—Security for costs

(1) The Court may order that an applicant in an action provide security for costs if—

(a) the applicant is bringing the claim or application for someone else's benefit;

(b) the applicant is ordinarily resident outside Australia;

(c) there are reasonable grounds to suspect that the action has been brought for an ulterior purpose;

(d) the order is authorised by statute; or

(e) the order is necessary in the interests of justice.

Note—

Section 1335 of the *Corporations Act 2001* (Cth), section 19 of the *Service and Execution of Process Act 1992* (Cth) and section 15 of the *Trans-Tasman Proceedings Act 2010* (Cth) empower the Court to order security for costs in defined circumstances.

(2) The Court may order a stay of the action until security is given.

(3) The Court may vary or revoke an order for security for costs and may order further security.

(4) If security is not given, the Court may dismiss the action.

(5) If the action has been stayed under subrule (2) for 6 months without security having been given, the action is automatically dismissed for want of prosecution.

(6) If the action is dismissed under subrule (4) or (5), the Court may, for special reasons, reinstate the action.

Part 6—Non-party discovery

116.1—Application and order

(1) The Court may make an order under subrule (2) if satisfied, on application by a party to a proceeding, that a non-party against whom the order is sought may be in possession of evidentiary material relevant to a cause of action the subject of the proceeding.

(2) If the Court is satisfied under subrule (1), the Court may order that the non-party—

(a) disclose whether the non-party has or has had possession, custody or power of evidentiary material relevant to the cause of action and if so provide full particulars of the material;

(b) produce any evidentiary material relevant to the cause of action to the Court or for inspection or copying by the parties;

(c) make discovery as if the non-party were a party, in which case Chapter 7 Part 13 applies, with any necessary changes; or

(d) verify the non-party's disclosure, production or list of documents by affidavit.

116.2—Compensation

(1) Unless the Court otherwise orders, the non-party is entitled to payment of reasonable compensation by the person who sought the order for the time and expense involved in complying with an order made under rule 116.1.

(2) The compensation is to be fixed by agreement or, in default of agreement, by the Court.

Part 7—Notices to admit and interrogatories

Division 1—Notice to admit

117.1—Notice

(1) A party may file and serve on another party to a proceeding a notice to admit—

(a) the truth of a specified fact; or

(b) the authenticity, relevance or admissibility of a specified document.

(2) Unless the Court otherwise orders, a party cannot give more than 2 notices to admit or give a notice to admit after the earlier of—

(a) 28 days after the last date on which lists of documents are due to be filed by operation of these Rules or an order of the Court; or

(b) the date on which the proceeding is either entered or listed for trial.

(3) A notice to admit must be in the prescribed form and, unless the Court otherwise orders, must identify any specified documents by discovery number or by attaching a copy of the document to the notice.

Prescribed form—

Form 101 Notice to Admit

117.2—Response

(1) A party to whom a notice to admit is addressed must, within 14 days after receipt of the notice to admit or such other time as may be fixed by the Court, file and serve a response responding to each assertion by either—

(a) admitting the assertion;

(b) denying the assertion and explaining why;

(c) stating that the party is not in a position to admit or deny the assertion and explaining why; or

(d) claiming privilege or some other proper ground for refusing to respond.

(2) A response to a notice to admit must be in the prescribed form.

Prescribed form—

Form 102 Response to Notice to Admit

(3) If the party to whom a notice to admit is addressed—

(a) does not respond to a particular assertion, the party is taken to have admitted that assertion; or

(b) does not file a response within the time referred to in subrule (1), the party is taken to have admitted each assertion in the notice to admit.

(4) The Court may, on application made within 14 days after a response is served, order the giving of a better response.

(5) A party may not withdraw an admission having effect under this rule without leave of the Court.

117.3—Evidence

(1) A response to a notice to admit may be tendered at trial against the responding party.

(2) An admission having effect under this Division is effective only for the purpose of the proceeding in which the notice to admit was given.

117.4—Costs

(1) Unless the Court otherwise orders, the costs of proving an assertion that was not admitted in a response to a notice to admit must be paid by the responding party.

(2) The Court may order that a party pay the other party's costs thrown away by reason of an unreasonable request, or an unreasonable failure to admit an assertion, in a notice to admit.

Division 2—Interrogatories

117.5—Interrogatories

(1) A party may, with prior leave of the Court, administer interrogatories to another party.

(2) An application for leave under this rule must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 exhibiting the proposed interrogatories and identifying the ground on which the application is made.

(3) Unless the Court otherwise orders, a party cannot administer more than one set of interrogatories or seek to administer interrogatories after the earlier of—

(a) 28 days after the last date on which lists of documents are due to be filed by operation of these Rules or an order of the Court; or

(b) the date on which the proceeding is either entered or listed for trial.

(4) The Court may order that the affidavit verifying answers to interrogatories be made by a specified person or a person holding a specified position on behalf of the answering party.

(5) Interrogatories must be in the prescribed form and must be filed and served on each other party to the proceeding.

Prescribed form—

Form 103 Interrogatories

117.6—Answers

(1) A party to whom interrogatories are administered must file and serve answers to the interrogatories verified by affidavit within 28 days of service or such other time as may be fixed by the Court.

(2) Answers to interrogatories must be in the prescribed form.

Prescribed form—

Form 104 Answers to Interrogatories

(3) An answering party may object to answering a question on one of the following grounds—

(a) the question does not relate to an issue in the proceeding;

(b) the question is vexatious or oppressive; or

(c) privilege.

(4) Unless the Court otherwise orders, the affidavit verifying answers to interrogatories must be made by—

(a) the party or the party's litigation guardian;

(b) if the party is a body corporate—an officer of the body corporate;

(c) if the party is named as a partnership or unincorporated association—a partner or member; or

(d) if the party is the Crown—an officer of the Crown.

(5) The Court may, on application made within 14 days after answers to interrogatories are served—

(a) disallow an objection;

(b) order the giving of an answer, or better answer, to an interrogatory; or

(c) order that the deponent to the affidavit, or another person, attend before the Court for examination.

117.7—Evidence

(1) Subject to relevance, answers to interrogatories may be tendered at trial against the answering party.

(2) Answers to interrogatories are admissible only for the purpose of the proceeding in which they were administered.

Part 8—Subpoenas

118.1—Subpoenas

(1) A subpoena for the purpose of an interlocutory hearing may only be issued with leave of the Court.

(2) The issue of subpoenas is governed by Chapter 13 Part 6.

Chapter 11—Resolution

Part 1—Alternative dispute resolution

131.1—General

(1) Subject to the following subrules, communications between the parties or between a party and a facilitator that are part of an alternative dispute resolution process must be treated as confidential and not disclosed to the Court.

(2) Subrule (1) does not prevent a facilitator providing a report to the Court on the outcome of an alternative dispute resolution process.

(3) Subrule (1) does not prevent a party tendering evidence of an offer made during an alternative dispute resolution process on an issue of costs after determination by the Court of the substantive issues in the proceeding other than costs.

(4) If the Court orders that the parties attend an alternative dispute resolution conference, unless notice is given to the parties in another manner, the Registrar will give notice of the conference details in the prescribed form.

Prescribed form—

Form 78C Notice of ADR Conference

(5) If the Court orders that the parties attend an alternative dispute resolution conference, unless the Court otherwise orders, it must be attended by each party or a representative of a party with authority to resolve the dispute (including an insurer conducting the litigation exercising subrogated or indemnification rights) and their lawyers.

(6) A judicial or non-judicial court officer presiding over an alternative dispute resolution process may make orders and give directions for the purpose of the process.

(7) A judicial officer presiding over an alternative dispute resolution process may make any order in the proceeding that could be made at a directions hearing.

(8) In general, it is expected that the parties bear their own costs of an alternative dispute resolution process ordered by the Court; however the Court retains its general discretion to make an order relating to the costs of an alternative dispute resolution process ordered by the Court.

131.2—Settlement conference

(1) In this Part—

settlement conference means a conference between the parties to attempt to—

(a) resolve the proceeding;

(b) reach agreement on an alternative dispute resolution process; or

(c) narrow the issues in the proceeding.

(2) The Court may, at any stage, order the parties to a proceeding to attend a settlement conference and make orders for that purpose.

(3) For example, the Court may make an order—

(a) that the settlement conference be presided over by a judicial or non-judicial officer of the Court;

(b) of the type that may be made in relation to a mediation referred to in rule 131.3(2)(b) to 131.3(2)(h).

131.3—Mediation

(1) The Court may at any stage order the parties to a proceeding to attend a mediation and make orders for that purpose.

(2) For example, the Court may make orders—

(a) appointing a mediator, who may be a judicial or non-judicial officer or an external mediator;

(b) that the parties attend a mediation on a date and time and at a place fixed by the Court;

(c) as to who is to attend at the mediation;

(d) that the parties prepare and exchange position papers;

(e) that a party provide limited particulars of the party's case for the purpose of the mediation;

(f) that a party provide limited discovery of documents for the purpose of the mediation;

(g) that the parties exchange expert reports; or

(h) as to the contributions to be made by the parties to any mediation fee payable to the Court for a court mediator or charged by an external mediator.

(3) The parties are expected to participate appropriately in the mediation and negotiate in good faith with a view to resolving the dispute.

(4) Where a claim or any aspect of it is resolved at a mediation, the mediator is expected to assist the parties to record the agreement.

(5) If the mediation is adjourned by the mediator, the mediator is expected to report that fact to the Court.

(6) The mediator is expected to provide a report to the Court at the conclusion of the mediation whether the dispute was resolved or narrowed and, if the mediator considers that a party did not participate appropriately in or make genuine attempts to resolve the matters in issue at the mediation, report that fact.

Supreme Court and District Court

(7) When the mediator is an external mediator—

(a) if the parties and the mediator do not reach agreement as to the mediator's fees—the mediator may only charge fees for the work in relation to the mediation that do not exceed the fees in the Counsel Fee Indicator as defined in rule 195.7;

(b) the parties to the proceeding are jointly and severally liable for payment of the mediator's fees; and

(c) the responsible solicitor for each party who is represented must use their best endeavours to ensure prompt payment of the mediator's fees.

Magistrates Court

(8) When a mediation takes place, the mediator must certify whether the parties to the mediation made an attempt to settle.

131.4—Other alternative dispute resolution processes

The Court may, at any stage, order the parties to a proceeding to participate in another form of alternative dispute resolution process and make orders for that purpose.

Example—

The Court may order that the parties attend before a judicial officer for the purpose of the judicial officer giving an intimation about the likely outcome of the proceeding based on material provided and submissions made by the parties to that judicial officer.

Part 2—Settlement offers

Division 1—Introduction

132.1—Definitions

In this Part, unless the contrary intention appears—

formal offer—see rule 132.4;

formal offer document means a formal offer, formal acceptance, formal withdrawal or formal response.

132.2—Persons under legal incapacity

A litigation guardian may file a formal offer document on behalf of a person under a legal incapacity but no acceptance of an offer made or accepted by a litigation guardian is binding unless and until the Court approves the resolution.

Note—

See rule 134.2.

132.3—Confidentiality

(1) Subject to the following subrules, unless the Court otherwise orders, a formal offer document filed under this Part must be treated as confidential and not disclosed to the Court.

(2) Subrule (1) does not apply to a formal offer expressed to be an open offer or formal offer document relating to that formal offer.

(3) Subrule (1) does not prevent production to the Court or the tender in evidence of a formal offer document—

(a) when a formal offer has been accepted under this Part;

(b) for the purpose of determining a dispute whether a formal offer has been accepted under this Part;

(c) for the purpose of case management by a judicial officer who will not be the judicial officer hearing and determining the proceeding; or

(d) on an issue of costs after final determination by the Court of the substantive issues in the proceeding other than costs.

Division 2—Offers and responses

132.4—Formal offer

(1) A party (the ***offeror***) may file a document making a formal offer to another party (the ***offeree***) in the prescribed form to resolve a proceeding or any part of a proceeding (***formal offer***)—

(a) in terms of a judgment to be entered upon acceptance (a ***judgment offer***); or

(b) in terms of a contract to come into existence upon acceptance including terms for the disposition of the proceeding (a ***contract offer***).

Prescribed form—

Form 121 Formal Offer

(2) A formal offer must be served on each other party to the proceeding as soon as practicable after being filed.

(3) A formal offer may be expressed to be an open offer but, if silent, is made without prejudice save as to costs.

(4) A formal offer may include any term capable of being incorporated—

(a) in the case of a judgment offer—in a judgment; or

(b) in the case of a contract offer—in a contract.

(5) A formal offer—

(a) may include any term as to principal relief whether or not sought or obtainable in the proceeding;

(b) must include a term as to costs of the proceeding;

Examples—

That one party pay the costs of the proceeding of another party which may be on a specified basis or up to a specified date.

That one party pay the disbursements of another party which may be on a specified basis or up to a specified date.

That each party bear its own costs.

That the parties will submit to any costs order the Court may make.

(c) may include any term as to the offer lapsing if not accepted but if silent includes an imputed term that the offer remains open until withdrawn in accordance with rule 132.5; and

(d) if a contract offer involving payment of money—may include any term as to time for payment but if silent includes an imputed term that payment must be made within 28 days of acceptance.

(6) A formal offer may include or annex reasons why it would be unreasonable for the offer not to be accepted.

(7) A party may make multiple formal offers at the same time or over time.

132.5—Withdrawal of offer

(1) Provided that it has not been accepted, a party may withdraw a formal offer at any time by filing a withdrawal of formal offer (a ***formal withdrawal***) in the prescribed form.

Prescribed form—

Form 122 Withdrawal of Formal Offer

(2) A formal withdrawal must be served on each other party to the proceeding as soon as practicable after being filed.

132.6—Response to offer

(1) Unless an offeree accepts an offer under rule 132.7, an offeree must file a response to formal offer (a ***formal response***) in the prescribed form within 14 days after service of a formal offer—

(a) not accepting the offer;

(b) contending that the offer does not comply with rule 132.4 and identifying why; or

(c) contending that the offeree requires a specified number of additional days to decide whether to accept the offer and identifying why.

Prescribed form—

Form 124 Response to Formal Offer

(2) A formal response must be served on each other party to the proceeding as soon as practicable after being filed.

(3) The making of a formal response that does not accept a formal offer does not prevent later acceptance of the offer by the offeree provided that the offer is still open for acceptance.

(4) Unless the Court otherwise orders, an offeree is not entitled on an application for costs under Division 4 to contend that an offer does not comply with rule 132.4 or did not give the offeree a reasonable time to decide whether to accept the offer other than on a ground identified in a formal response filed in compliance with this rule.

Division 3—Acceptance

132.7—Acceptance of formal offer

(1) Provided that it remains open for acceptance, the offeree may accept a formal offer or, if the offer contains alternatives, an alternative contained within a formal offer by filing and serving on each other party to the proceeding an acceptance of formal offer (a ***formal acceptance***) in the prescribed form.

Prescribed form—

Form 123 Acceptance of Formal Offer

(2) A party may accept a formal offer notwithstanding the existence of a concurrent offer by the offeror or offeree in different terms.

(3) A party cannot accept only some of the terms of an offer (or of an alternative offer contained in a formal offer).

Note—

A party wishing to accept only some of the terms of an offer must make a counter-offer.

132.8—Implementation of resolution

(1) When a judgment offer is accepted, the Registrar may—

(a) enter judgment in terms reflecting the accepted judgment offer; or

(b) require the offeror to file a draft judgment in the prescribed form reflecting the terms of the accepted offer, and may enter judgment on the parties communicating their consent to the terms of the draft judgment under rule 133.1.

Prescribed form—

Form 127 Draft Judgment

(2) When a contract offer is accepted, the parties must apply to the Court for appropriate orders within 14 days of acceptance.

132.9—Failure to comply with resolution terms

If a party fails to comply with the terms of an accepted offer, the Court may—

(a) enter judgment or make orders to give effect to the terms of the resolution;

(b) if an applicant is in default—stay or dismiss the proceeding or the part the subject of the resolution;

(c) if a respondent is in default—strike out the respondent's defence to the proceeding or the part the subject of the resolution;

(d) set aside the resolution and make directions for the proceeding, or the part the subject of the resolution, to proceed to trial; or

(e) make such other or further order as it thinks fit.

Division 4—Costs

132.10—Relevant offer not accepted

(1) In this rule—

relevant offer means a formal offer in compliance with rule 132.4 that—

(a) was filed and served on the offeree at least 21 days before the commencement of the trial or final hearing of the proceeding or such later date as the Court orders on an application made before the expiration of that period;

(b) was and remained open for acceptance at least 14 days after service;

(c) relates to an entire action and not merely to part of it;

(d) involves genuine compromise;

(e) contains a term that the respondent to the action is to pay the costs of the applicant on the standard costs basis up to acceptance of the offer or 14 days after service of the offer (whichever is earlier) or that the parties will submit to any order that the Court may make in the exercise of its discretion; and

(f) if it is a contract offer—

(i) provides that the consideration payable by one party to the other (disregarding costs) is the payment of money; and

(ii) if made by the party who is to pay the money—provides that the money is payable under the terms of the offer within 28 days after acceptance and the party is ready, willing and able to pay the money in accordance with the terms of the offer.

Note—

If the trial or final hearing is vacated or adjourned without being part heard, the original trial date is to be ignored for the purpose of subrule (1)(a).

(2) When—

(a) a relevant offer is made by an applicant in an action;

(b) the offer is not accepted by a respondent; and

(c) the applicant obtains judgment that is no less favourable to the applicant than the terms of the offer,

then—

(d) the costs incurred in respect of the action up to 14 days after service of the formal offer are unaffected by the making of the formal offer; and

(e) subject to the overriding discretion of the Court, the applicant is entitled to an order against the respondent for the applicant's costs of the action to which the relevant offer relates thereafter on an indemnity basis.

(3) When—

(a) a relevant offer is made by a respondent in an action;

(b) the offer is not accepted by an applicant; and

(c) either—

(i) the respondent obtains judgment dismissing the action; or

(ii) the applicant obtains judgment that is less favourable to the applicant than the terms of the offer,

then—

(d) the costs incurred in respect of the action up to 14 days after service of the formal offer are unaffected by the making of the formal offer; and

(e) subject to the overriding discretion of the Court, the respondent is entitled to an order against the applicant for the respondent's costs of the action to which the relevant offer relates thereafter on an indemnity basis.

(4) When a party makes a relevant offer for damages to be assessed or a proportion of damages to be assessed, this rule does not apply to costs incurred in relation to the assessment of the damages.

132.11—Costs in other cases

(1) This rule applies in cases when rule 132.10 does not apply.

(2) When—

(a) a party has made a formal offer;

(b) the offer was not accepted; and

(c) judgment is granted in respect of the action or part of an action the subject of the offer on terms no less favourable to the offeror than the terms of the offer,

the Court is to take these matters into account on the question of costs.

(3) Without affecting the generality of the discretion of the Court, in exercising its discretion as to costs under subrule (2), the Court may—

(a) order that the offeree pay the costs of the offeror in respect of the action or the part the subject of the offer from 14 days after service of the formal offer on a specified basis;

(b) order that the offeree bear its own costs in respect of the action or the part the subject of the offer from 14 days after service of the formal offer; or

(c) make such other or further order as to costs as it thinks fit.

(4) Without affecting the generality of the discretion of the Court, in exercising its discretion as to costs, if the Court considers that a party unreasonably rejected a formal offer or failed to make a formal offer, the Court may—

(a) order that that party pay the costs of the opposing party after the rejection or date when an offer should have been made on a specified basis;

(b) order that that party bear its own costs after the rejection or date when an offer should have been made; or

(c) make such other or further order as to costs as it thinks fit.

Division 5—Appellate proceedings and taxations

132.12—Appellate proceedings and taxation process

(1) Divisions 1, 2 and 3 of this Part apply, with any necessary changes, to an appellate proceeding or taxation process in the same way as they apply to a proceeding.

(2) When—

(a) a party has made a formal offer in respect of an appellate proceeding or taxation process;

(b) the offer was not accepted; and

(c) judgment is granted in the appellate proceeding or the taxation is determined on terms no less favourable to the offeror than the terms of the offer,

the Court is to take these matters into account on the question of costs.

(3) Without affecting the generality of the discretion of the Court, in exercising its discretion as to costs under subrule (2), the Court may—

(a) order that the offeree pay the costs of the offeror in respect of the appellate proceeding or taxation process after 14 days after service of the formal offer on a specified basis;

(b) order that the offeree bear its own costs in respect of the appellate proceeding or taxation process after 14 days after service of the formal offer on a specified basis; or

(c) make such other or further order as to costs as it thinks fit.

Part 3—Consent judgment

133.1—Consent judgment

(1) Judgment may be given by the Court by consent on—

(a) the parties expressing consent in court or in chambers to the terms of the judgment;

(b) a party filing both a draft judgment in the prescribed form as an editable Word document and a draft judgment in the prescribed form on which the parties have endorsed their consent; or

Prescribed form—

Form 127 Draft Judgment

(c) the parties giving their consent to the terms of the judgment by email or other correspondence.

(2) Judgment may be given by the Registrar by consent on—

(a) a party filing a draft judgment in the prescribed form as an editable Word document and a draft judgment in the prescribed form on which the parties have endorsed their consent; or

Prescribed form—

Form 127 Draft Judgment

(b) the parties giving their consent to the terms of the judgment by email or other correspondence.

(3) Unless the Court orders, a monetary judgment given by consent is taken to be in addition to any sum already recovered since the institution of the proceeding.

Part 4—Court approval

134.1—Representative action

(1) A resolution of a representative action by a representative party under Chapter 3 Part 4 is not binding unless the Court approves the terms of the resolution.

(2) A resolution is binding on a represented party, as defined in rule 24.1, if approved by the Court.

(3) The Court may, on application by a represented party, as defined in rule 24.1, set aside in whole or part a resolution previously approved by the Court and make consequential orders if the interests of justice so require.

134.2—Proceeding involving person under legal incapacity

(1) A resolution of a proceeding to which a litigation guardian or person under a legal incapacity is a party is not binding unless the Court approves the terms of the resolution.

(2) Any money to which a person under a legal incapacity is entitled under an agreement for the resolution of a proceeding approved by the Court must be dealt with in accordance with orders by the Court from time to time.

134.3—Proceeding involving deceased estate

A resolution of a proceeding involving a deceased estate is not binding unless the Court approves the terms of the resolution.

Chapter 12—Early finalisation

Part 1—Discontinuance

141.1—Introduction

(1) An applicant cannot discontinue an action without leave of the Court if—

(a) the applicant has a joint interest with a co-applicant in a cause of action in, orders sought in or the subject matter of the action and the co-applicant does not join in the discontinuance;

(b) the applicant is a litigation guardian for a person under a legal incapacity under rule 23.7;

(c) the action is brought in the name of a partnership or unincorporated association under Chapter 3 Part 3 Division 1; or

(d) the action is brought by a representative party under Chapter 3 Part 4 Division 1 or 2.

(2) An applicant who files a notice of discontinuance must serve a copy on each other party to the proceeding with an address for service as soon as practicable after filing the notice.

141.2—Discontinuance before service or by consent

(1) Subject to rule 141.1(1), an applicant may discontinue an action against a respondent or interested party at any time without leave of the Court by filing a notice of discontinuance in the prescribed form if—

(a) the originating process has not been served on any other party and no other party to the action has an address for service; or

(b) each other party to the action has signed a consent to discontinuance in the prescribed form.

Prescribed forms—

Form 125 Notice of Discontinuance

Form 126 Consent to Discontinuance

(2) If an applicant discontinues an action under this rule, unless the relevant parties otherwise agree, each party must bear their own costs of the action.

141.3—Discontinuance without consent or leave

(1) Subject to rule 141.1(1), an applicant may discontinue a claim at any time before it is either entered or listed for trial by filing a notice of discontinuance in the prescribed form.

Prescribed form—

Form 125 Notice of Discontinuance

(2) If an applicant discontinues a claim under this rule, the applicant is liable to pay the costs of a respondent against whom the claim is discontinued up to the date of service of the notice of discontinuance on the standard costs basis and any interested party named in the claim must bear their own costs.

(3) A respondent or interested party to a claim that is discontinued may, within 21 days after service of a notice of discontinuance under subrule (1), apply for orders under

subrule (4) by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(4) The Court may, on an application under subrule (3), for special reasons—

(a) set aside the discontinuance; and

(b) unless the applicant undertakes to prosecute the claim diligently:

(i) substitute an order dismissing the claim; or

(ii) substitute an order granting leave to discontinue on terms as to costs different to those under subrule (2).

141.4—Discontinuance with leave

(1) An applicant may seek leave to discontinue an action on terms as to costs or otherwise by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) The Court may, on application under subrule (1)—

(a) refuse leave if it considers that the prejudice that will be caused by discontinuance to an objecting party justifies the refusal of leave and, unless the applicant undertakes to prosecute the action diligently, dismiss the action;

(b) grant leave on terms including as to costs; or

(c) make such other or further order as it thinks fit.

(3) If a Court grants leave to discontinue, any notice of discontinuance must be filed within 14 days after the grant of leave.

Prescribed form—

Form 125 Notice of Discontinuance

Part 2—Judgment in default of defence

Division 1—Introduction

142.1—Introduction

(1) Unless the Court otherwise orders, this Part applies only to proceedings by way of claim (including a cross claim) and has no application to proceedings by way of originating application.

(2) In these Rules, unless the contrary intention appears—

liquidated claim means a claim for a specific sum or for an amount calculated in accordance with a formula agreed between the parties or prescribed by statute or contract (and, to avoid doubt, a formula may include a scale, reference to external data, provision for interest or provision for costs);

monetary claim means a claim for which the only remedies sought (apart from costs) involve the payment of money, whether by way of damages, compensation or otherwise;

non-monetary claim means a claim that is not solely a monetary claim and includes a claim for a declaration, injunction, specific performance or the delivery up of property;

property loss claim means a claim for damages for loss of or damage to tangible property other than land.

Division 2—Request for default judgment

142.2—Universal requirements

(1) An applicant is entitled to request judgment in default of defence against a respondent to the applicant's claim or cross claim under this Part if—

(a) the respondent was served with the Claim documents or Cross Claim documents and any other requisite document in compliance with these Rules;

(b) the respondent failed to file a defence within the time fixed; and

(c) the applicant files an affidavit of proof of service in compliance with Chapter 5 Part 5.

Notes—

Rule 334.2(7) provides that a respondent to a cross claim in a minor civil action will be taken to have filed a defence denying the allegations in the cross claim unless the Court orders a party to file such a defence.

See Chapter 5 Part 5.

(2) An applicant who seeks default judgment must file an application to the Registrar for judgment in the prescribed form.

Prescribed form—

Form 76B Application to Registrar – Request Default Judgment

(3) Rules 142.3 to 142.9 do not apply to a request for conditional judgment governed by rule 142.10.

142.3—Liquidated claim

(1) If the applicant's claim is solely a liquidated claim, the applicant may request judgment for the amount of the claim shown in, or calculated in accordance with, the applicant's short form statement of claim, statement of claim or statement of cross claim.

(2) If the amount for which judgment is requested requires calculation, the applicant must show the calculation in detail in a document filed at the same time as the request for judgment.

Example—

Calculation of contractual interest.

(3) An applicant who seeks default judgment may request that the default judgment include a fixed amount for costs of the claim if the applicant shows the calculation of costs in the request for judgment or a document filed at the same time.

142.4—Property loss claim—Magistrates Court

(1) If the applicant's claim is solely a property loss claim and the applicant has complied with subrule (2), the applicant may request judgment for the amount of the claim shown in the applicant's short form statement of claim, statement of claim or statement of cross claim less any payments received shown in the request for judgment or a document filed at the same time.

(2) An applicant can only request judgment under this rule if—

(a) the applicant proves by an affidavit of proof of service that the applicant served on the respondent along with the Claim documents or Cross Claim documents—

(i) if the claim is for the loss of property—evidence of the value of the property at the relevant time, being at least an expert report by a valuer or loss adjuster showing an assessment of the value of the property or the internet publication called RedBook (redbook.com.au) showing the value of property of that description and condition;

(ii) if the claim is for the cost of repair undertaken to the property—evidence of the cost of repairing the damage to the property, being at least a copy of the invoice from the repairer for the repair of the property showing a detailed breakdown of the cost of repair;

(iii) if the claim is for the value of repair that has not been undertaken—evidence of the cost of repairing the damage to the property, being at least—

(A) a copy of a quotation from a repairer to undertake the repair of the property showing a detailed breakdown of the quoted cost of repair; or

(B) an expert report by a loss adjuster showing a detailed breakdown of the reasonable cost of repair of the property;

(iv) if the claim is for or includes the cost of hiring alternative property while the property is being repaired or until it is replaced—evidence of the cost of hiring, being at least a copy of the invoice from the owner of the alternative property showing a detailed breakdown of the cost of hire;

(v) if the claim includes other costs incurred in consequence of the loss or damage (including towing, storage or accommodation costs)—evidence of the costs incurred, being at least a copy of the invoice showing a detailed breakdown of the costs incurred; and

(b) no claim is made in the action other than one or more of the matters identified in subrule (2)(a).

(3) An applicant who seeks default judgment may request that the default judgment include a fixed amount for costs of the claim if the applicant shows the calculation of costs in the request for judgment or a document filed at the same time.

142.5—Other monetary claims

If the applicant's claim is solely a monetary claim (but not solely a liquidated claim) or if the applicant so elects, the applicant may request judgment for an amount to be assessed.

142.6—Non-monetary claims

If the applicant's claim is, or includes, a non-monetary claim (whether or not it also includes a monetary claim) or if the applicant so elects, the applicant may request judgment for relief to be assessed.

Division 3—Entry of default judgment

142.7—Liquidated claim

If an applicant requesting judgment under rule 142.3 is entitled to default judgment, the Registrar may enter default judgment for the amount of the claim shown in, or calculated in accordance with, the applicant's short form statement of claim, statement of claim or statement of cross claim, together with—

(a) if the applicant seeks a fixed amount of costs under rule 142.3(3)—an amount fixed by the Registrar for costs in accordance with the relevant costs scale; or

(b) in any other case—costs of the claim to be taxed.

142.8—Property loss claim

If an applicant requesting judgment under rule 142.4 is entitled to default judgment, the Registrar may enter default judgment for the amount of the claim shown in, or calculated in accordance with, the applicant's short form statement of claim, statement of claim or statement of cross claim together with—

(a) if the applicant seeks a fixed amount of costs under rule 142.4(3)—an amount fixed by the Registrar for costs in accordance with the relevant costs scale; or

(b) in any other case—costs of the claim to be taxed.

142.9—Other claims

(1) If an applicant requesting judgment under rule 142.5 or 142.6 is entitled to default judgment, the Registrar may enter default judgment for an amount or relief to be assessed.

(2) If the Registrar enters judgment under subrule (1), the Registrar will list the matter for a directions hearing in relation to the assessment and will give notice to the parties in the prescribed form.

Prescribed form—

Form 78B Notice of Directions Hearing – Assessment of Damages or Other Relief

(3) The trial of the assessment is to be conducted on the basis that the respondent is not entitled to contest liability, but the relief to which the applicant is entitled (if any), including any issue as to causation or remoteness of loss and the exercise of any discretion, is to be the subject of the assessment.

(4) On the determination of the assessment, the Court will grant judgment for the relief to which the applicant is found to be entitled and make an order with respect to the costs of the claim.

Division 4—Conditional judgment

142.10—Cross claim conditional on liability under antecedent claim

(1) If the applicant's cross claim is conditional on the applicant being found liable on a claim or earlier cross claim, the applicant may request conditional judgment for relief to be assessed.

(2) If the applicant requests judgment under subrule (1), the Registrar may, if the applicant is entitled to default judgment, enter conditional judgment for relief to be assessed in the prescribed form.

Prescribed form—

Form 132 Record of Conditional Non-Monetary Judgment

(3) A default judgment will be conditional on the applicant being found liable on the antecedent claim.

(4) The trial of the proceeding will be conducted on the basis that the respondent is not entitled to contest liability to the applicant on the cross claim but may contest any other issue on the cross claim or any issue in the antecedent claim.

Division 5—Application to set aside default judgment

142.11—Application to set aside for irregularity

(1) A party may apply under this rule to set aside or vary a judgment in default of defence on the ground that—

(a) the Claim documents or Cross Claim documents were not served on that party in accordance with the requirements imposed by these Rules and their existence and content did not come to that party's attention at least 28 days before the date on which the default judgment was entered;

(b) the Claim documents or Cross Claim documents were served by email service or post service, the party was no longer using the address to which they were sent or they were not received at that address and their existence and content did not come to that party's attention at least 28 days before the date on which the default judgment was entered;

(c) the party obtaining judgment was not entitled to default judgment;

(d) the judgment was obtained as a result of misrepresentation or misconduct by the party obtaining it; or

(e) the judgment was otherwise obtained or granted as a result of an irregularity.

(2) If the Court is satisfied that the default judgment was obtained as a result of an irregularity under one or more paragraphs of subrule (1)—

(a) the Court may set aside the default judgment on such conditions as it thinks fit;

(b) if the only irregularity was that judgment was entered for a sum in excess of that to which the party obtaining judgment was entitled—the Court may instead, in the exercise of its discretion, amend the judgment to the correct amount;

(c) if the only irregularity was that judgment was entered for a fixed amount when it should have been entered for an amount or relief to be assessed—the Court may instead, in the exercise of its discretion, amend the judgment to a judgment for an amount or relief to be assessed.

142.12—Application to set aside on other grounds

(1) A party may apply under this rule to set aside or vary a judgment in default of defence on the ground that—

(a) the Claim documents or Cross Claim documents did not come to the attention of that party or the party has another reasonable excuse for not having filed a defence; and

(b) the party has a reasonable basis for defending the claim.

(2) If the Court is satisfied that both grounds in subrule (1) are established, the Court may set aside the default judgment on such conditions as it thinks fit.

Part 3—Failure to disclose basis for action or defence or abuse

143.1—Judgment for failure to disclose basis

(1) The Court may grant judgment dismissing an action on the ground that no reasonable cause of action in the case of a claim, or basis for the application in the case of an originating application, is capable of being disclosed.

(2) The Court may grant judgment in favour of an applicant in an action on the ground that no reasonable defence in the case of a claim, or basis to contest the application in the case of an originating application, is capable of being disclosed.

143.2—Judgment for abuse of process

(1) The Court may grant judgment dismissing an action on the ground that it is frivolous, vexatious or an abuse of the process of the Court.

(2) The Court may grant judgment in favour of an applicant in an action on the ground that a defence of or contest to it is frivolous, vexatious or an abuse of the process of the Court.

Part 4—Summary judgment

144.1—Introduction

Unless the Court otherwise orders, this Part applies only to proceedings by way of claim (including a cross claim).

144.2—Summary judgment

(1) The Court may, on application by a party, give summary judgment in favour of an applicant—

(a) on a claim if there is no reasonable basis for defending the claim;

(b) on a cause of action in a claim if there is no reasonable basis for defending the cause of action; or

(c) on a separate issue that arises in a claim if there is no reasonable basis for contesting that issue.

(2) The Court may, on application by a party, give summary judgment against an applicant—

(a) on a claim if there is no reasonable basis for prosecuting the claim;

(b) on a cause of action in a claim if there is no reasonable basis for prosecuting the cause of action; or

(c) on a separate issue that arises in a claim if there is no reasonable basis for contesting that issue.

(3) An application for summary judgment must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

144.3—Judgment on admissions

(1) The Court may, on application by a party, give judgment in favour of an applicant based on admissions on a claim, cause of action or separate issue that arises in the same manner as it may grant summary judgment under rule 144.2(1).

(2) The Court may, on application by a party, give judgment against an applicant based on admissions on a claim, cause of action or separate issue that arises in the same manner as it may grant summary judgment under rule 144.2(2).

(3) An application for judgment under subrule (1) or (2) must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

144.4—Balance of proceeding

If the Court grants judgment under rule 144.2 or 144.3 which does not finally determine the whole proceeding—

(a) the Court may make orders about how the balance of the proceeding is to proceed; and

(b) in any other case—the balance of the proceeding is to proceed in the usual way.

Part 5—Default of appearance

145.1—Default of appearance at trial of claim

(1) This rule applies only to proceedings by way of claim (including a cross claim).

(2) If at the trial of a claim, a respondent fails to appear within 15 minutes of the scheduled commencement of the trial, the Court may—

(a) enter default judgment against the respondent in the same manner as if the Court granted judgment for failure to file a defence under Part 2;

(b) hear the trial of and determine the claim (or an issue listed for trial) notwithstanding the absence of the respondent; or

(c) make such other or further order as it thinks fit.

(3) If at the trial of a claim, the applicant fails to appear within 15 minutes of the scheduled commencement of the trial, the Court may—

(a) enter default judgment dismissing the claim in the same manner as if the Court granted judgment for failure to disclose a cause of action under Part 3; or

(b) make such other or further order as it thinks fit.

(4) If at the trial of a claim, neither the applicant nor the respondent appears within 15 minutes of the scheduled commencement of the trial, the Court may make such order as it thinks fit (including that the claim be treated as discontinued under Part 1 with no order as to costs or any order that could be made under subrule (2) or (3)).

(5) If at the trial of a claim, an interested party fails to appear within 15 minutes of the scheduled commencement of the trial, the Court may hear the trial of and determine the claim (or an issue listed for trial) notwithstanding the absence of the interested party.

Magistrates Court

(6) Instead of making an order under subrule (2)(a), the Court may, if it thinks fit, enter default judgment against the respondent for the relief sought in the claim without undertaking an assessment of amount or relief.

145.2—Default of appearance at hearing of originating application

(1) This rule applies only to proceedings by way of originating application.

(2) If at a hearing the respondent fails to appear within 15 minutes of the scheduled commencement of the hearing, the Court may—

(a) if it thinks fit, grant the relief sought against the respondent without hearing evidence or assessing the merits of the application;

(b) hear and determine the application notwithstanding the absence of the respondent; or

(c) make such other or further order as it thinks fit.

(3) If at a hearing the applicant fails to appear within 15 minutes of the scheduled commencement of the hearing, the Court may—

(a) if it thinks fit, dismiss the application without hearing evidence or assessing the merits of the application;

(b) hear and determine the application notwithstanding the absence of the applicant; or

(c) make such other or further order as it thinks fit.

(4) If at a hearing neither the applicant nor the respondent appear within 15 minutes of the scheduled commencement of the hearing, the Court may make such order as it thinks fit (including that the application be treated as discontinued with no order as to costs under Part 1 or any order that could be made under subrule (2) or (3)).

(5) If at any hearing an interested party fails to appear within 15 minutes of the scheduled commencement of the hearing, the Court may proceed to hear and determine the matter notwithstanding the absence of the interested party.

145.3—Default of appearance at any other hearing—Magistrates Court

(1) If, at a directions hearing or a settlement conference, mediation or other alternative dispute resolution process in a claim, a party fails to appear within 15 minutes of the scheduled commencement of the hearing, the Court may make any order that it could make under rule 145.1 if the hearing were a trial governed by that rule.

(2) If, at a directions hearing or a settlement conference, mediation or other alternative dispute resolution process in an originating application, a party fails to appear within 15 minutes of the scheduled commencement of the hearing, the Court may make any order that it could make under rule 145.2 if the hearing were a hearing of the originating application governed by that rule.

145.4—Application to set aside default judgment

(1) An applicant may apply under this rule to set aside a judgment in default of appearance on the ground that the applicant—

(a) has a reasonable excuse for not having appeared; and

(b) has a reasonable basis for prosecuting the action.

(2) A respondent may apply under this rule to set aside a judgment in default of appearance on the ground that the respondent—

(a) has a reasonable excuse for not having appeared; and

(b) has a reasonable basis for defending the claim or contesting the originating application.

(3) If the Court is satisfied that it is in the interests of justice that a default judgment be set aside or varied, the Court may—

(a) set aside the default judgment on such conditions as it thinks fit;

(b) vary the terms of the default judgment; or

(c) make such other or further order as it thinks fit.

Part 6—Default of compliance

146.1—Judgment in default of compliance

(1) If a party—

(a) commits serious or persistent breaches of these Rules or an order of the Court which seriously prejudice the proper and expeditious conduct of an action;

(b) fails to file a substitute originating process, pleading or affidavit within the time specified by the terms of leave granted under rule 70.3, 85.1 or 87.1; or

(c) manifests an inability or unwillingness to prosecute or defend an action with due diligence,

another party may apply for default judgment against that party.

(2) An application for default judgment must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(3) If the party in default is an applicant in an action, the Court may—

(a) stay the action until the non-compliance is rectified;

(b) grant judgment dismissing the action;

(c) list the matter for an early trial or hearing; or

(d) make any other or further order as it thinks fit.

(4) If the party in default is a respondent or an interested party in an action, the Court may—

(a) grant judgment in favour of the applicant for some or all of the relief sought;

(b) grant judgment in favour of the applicant for damages or relief to be assessed;

(c) order that an interested party be removed as a party to the action;

(d) list the matter for an early trial or hearing; or

(e) make any other or further order as it thinks fit.

146.2—Application to set aside default judgment

(1) A party may apply under this rule to set aside a default judgment granted under rule 146.1 by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) If the Court is satisfied that it is in the interests of justice that a default judgment be set aside or varied, the Court may—

(a) set aside the default judgment on such conditions as it thinks fit;

(b) vary the terms of the default judgment; or

(c) make such other or further order as it thinks fit.

Chapter 13—Preparation for trial

Part 1—Listing and entry for trial

Division 1—General

151.1—Subject matter for trial

(1) Unless the Court otherwise orders, when it is ordered that a matter proceed to trial, there is to be a single trial of all issues (other than costs) in the proceeding.

(2) The Court may order that there be separate trials of separate issues in a proceeding and may determine the order in which such trials are to be heard or determined.

Examples—

In a proceeding in which there is a claim and 3 cross claims, the Court might order that the trial of the claim proceed first, to be followed by the trial of the first cross claim, to be followed by the trial of the second and third cross claims.

In a proceeding in which the applicant seeks damages for personal injuries, the Court might order that there be a trial on issues of duty of care and negligence, to be followed by a trial on issues of causation and quantum of loss.

In an originating application in which there is an issue whether the applicant has standing to bring the proceeding, the Court might order that the trial of that issue proceed first, to be followed by a trial of all other issues.

151.2—Constitution of Court for trial

Supreme Court

(1) Subject to rule 11.1, the Court constituted of a Judge or Master may order that a trial proceed before—

(a) a Judge, Master or Judicial Registrar;

(b) a Judge, Master or Judicial Registrar assisted by 1 or more assessors; or

(c) an arbitrator.

District Court

(2) Subject to rule 11.2, the Court constituted of a Judge or Master may order that a trial proceed before—

(a) a Judge, Master or Judicial Registrar;

(b) if so provided by statute—a Judge, Master or Judicial Registrar assisted by 1 or more assessors; or

(c) an arbitrator.

Magistrates Court

(3) Subject to rule 11.3, the Court constituted of a Magistrate or Judicial Registrar may order that a trial proceed before—

(a) a Magistrate or Judicial Registrar;

(b) if so provided by statute—a Magistrate or Judicial Registrar assisted by 1 or more assessors; or

(c) an arbitrator.

151.3—Location of trial

Supreme Court and District Court

(1) Unless the Court otherwise orders, the place of trial will be Adelaide.

Magistrates Court

(2) Unless the Court otherwise orders, the place of trial will be—

(a) if the proceeding is being managed in a location within the Mount Gambier region—Mount Gambier;

(b) if the proceeding is being managed in a location within the Berri region—Berri;

(c) if the proceeding is being managed in a location within the Port Augusta region—Port Augusta;

(d) in any other case—Adelaide.

Supreme Court, District Court and Magistrates Court

(3) The Court may order that the place of trial be any appropriate place within or outside the State.

151.4—Referral to expert

The Court may refer an issue in a proceeding for investigation and report by an expert referee.

Division 2—Entry and listing for trial—Supreme Court and District Court

151.5—Application of Division

This Division applies to all proceedings in the Supreme Court and District Court unless—

(a) Division 3 applies to the proceedings (see rule 151.8); or

(b) the Court otherwise orders.

151.6—Entry for trial

(1) Unless the Court otherwise orders or these Rules otherwise provide, a proceeding will only be listed for trial after it has been entered for trial by order of the Court.

(2) Unless the Court otherwise orders, a proceeding will not be entered for trial unless each party (by a party's lawyer when represented) has signed a certificate of readiness for trial in the prescribed form certifying that the proceeding is ready to proceed to trial.

Prescribed form—

Form 88 Certificate of Readiness for Trial

(3) If a party in a proceeding is represented by a law firm, either the responsible solicitor or counsel must attend a directions hearing at which a proceeding is expected to be entered for trial.

(4) Each party in a proceeding must inform the Court at or before the directions hearing at which a proceeding is entered for trial of any special facilities required at trial.

Examples—

Examples of special facilities are the need for an interpreter, an audio visual link, equipment to play an audio visual recording, hearing enhancement facilities or wheelchair access.

(5) If a party fails to inform the Court under subrule (4) of any special facilities required at trial, the judicial officer may determine that—

(a) the trial is to proceed without the party having the benefit of any such facilities; or

(b) the party must pay the costs of any adjournment due to the unavailability of any such facilities.

(6) The Court may order that a proceeding be dealt with under Division 3 rather than this Division.

151.7—Listing for trial

(1) After a proceeding has been entered for trial, the Court or the Registrar will list the proceeding for trial by fixing a date or dates for the trial.

(2) Before the proceeding is due to be listed for trial, the parties must confirm the estimated length of trial and ascertain the availability of witnesses and counsel.

(3) The Registrar will send a notice of trial in the prescribed form to each party not present when the proceeding was listed for trial.

Prescribed forms—

Form 78D Notice of Trial

Form 78F Notice of Hearing of Assessment of Damages or Other Relief

Division 3—Listing for trial

151.8—Application of Division

(1) Unless the Court otherwise orders, this Division applies to—

(a) all proceedings in the Magistrates Court;

(b) proceedings by way of originating application when the Court orders that there be a trial;

(c) proceedings in the Dust Diseases, Fast Track or Special Classification List under Chapter 23;

(d) proceedings when a litigation plan has been made under rule 101.7; and

(e) other proceedings when the Court so orders.

151.9—Listing for trial

(1) When the Court considers that it is appropriate to do so, the Court will either list a proceeding for trial by fixing a date or dates for the trial or refer a proceeding to the Registrar to fix a date or dates for the trial.

(2) For the purpose of a hearing at which a proceeding is expected to be listed for trial, the parties must estimate the length of trial and ascertain the availability of witnesses and counsel.

(3) If a party in a proceeding is represented by a law firm, either the responsible solicitor or counsel must attend a hearing at which the proceeding is expected to be listed for trial.

(4) Each party in a proceeding must inform the Court at or before the hearing at which the proceeding is listed for trial of any special facilities required at trial.

(5) If a party fails to inform the Court under subrule (4) of any special facilities required at trial, the judicial officer at trial may determine that—

(a) the trial is to proceed without the party having the benefit of any such facilities; or

(b) the party must pay the costs of any adjournment due to the unavailability of any such facilities.

(6) The Registrar will send a notice of trial in the prescribed form to each party not present when the proceeding was listed for trial.

Prescribed forms—

Form 78D Notice of Trial

Form 78F Notice of Hearing of Assessment of Damages or Other Relief

Division 4—Trial plan

151.10—Trial plan

The Court may order the parties in a proceeding to prepare a trial plan in the prescribed form.

Prescribed form—

Form 72 Trial Plan

Division 5—Responsibility of parties and lawyers

151.11—Responsibility

(1) When a proceeding is listed for trial under rule 151.7 or 151.9, it is the responsibility of each party and each lawyer acting for a party to ensure that it is ready for trial on the trial date.

(2) If a proceeding is resolved in principle or other circumstances affect the need for a trial date or the length of trial, the applicant must immediately file and serve on each other party an interlocutory application and supporting affidavit in accordance with rule 102.1 applying to vacate or vary the trial date.

(3) If the applicant fails to act as required by subrule (2), another party to the proceeding must so act.

151.12—Prima facie preclusion of further steps

If the Court makes an order that a proceeding be entered for trial under rule 151.6 or listed for trial under rule 151.9, a party may not—

(a) amend a pleading;

(b) seek particulars of, or strike out of, a pleading;

(c) seek further discovery;

(d) rely on a new expert report; or

(e) seek an interlocutory order that should already have been sought,

without leave of the Court.

Part 2—Electronic trials

152.1—Application and order

(1) The Court may order that the trial of a proceeding be conducted by way of electronic trial.

(2) Unless the Court otherwise orders, an application for an electronic trial must be made within 14 days after the close of pleadings.

(3) An application for an electronic trial must, unless it is by the consent of all parties, be supported by an affidavit setting out—

(a) the key issues in dispute;

(b) the anticipated volume of documents to be tendered;

(c) the proposed manner in which discovery of documents is to be made;

(d) the proposed platform or document database proposed to be utilised during the trial;

(e) the proposed protocol to be used for the electronic provision of documents; and

(f) the identity of the proposed electronic courtroom provider.

(4) The remaining provisions of this Part apply only if an order is made for an electronic trial.

(5) Unless the Court otherwise orders, all other rules continue to apply to a proceeding when there is to be an electronic trial.

(6) In this Part—

electronic courtroom provider, in respect of an electronic trial, means the person with responsibility to prepare, install and maintain the electronic courtroom facilities for the purposes of the conduct of the electronic trial;

Electronic Trial Book—see rule 152.4.

152.2—Post-order steps

(1) If an order is made for an electronic trial, unless the Court otherwise orders—

(a) all documents filed with the Court must be served between the parties in electronic form as multi-page text searchable PDF documents;

(b) a reference in a filed document to a disclosed document must be made using its allocated Document ID, which must, wherever possible, be hyperlinked to the disclosed document; and

(c) the naming convention of each file must reflect the filed document number, pleading, witness name or nature of the document and the date filed.

Examples—

FDN# affidavit of Joseph James Blogs filed [day] [month] [year]; or

FDN# statement of claim filed [day] [month] [year]; or

FDN# applicant's closing submissions filed [day] [month] [year].

(2) If an error is found in a served document, the producing party must provide a corrected version of the document to the receiving party.

152.3—Post-discovery steps

(1) After completion of discovery, the parties must as soon as practicable request to meet with the Registrar to arrange for the conduct of the electronic trial.

(2) The parties must make all reasonable efforts to reach agreement about the following matters in respect of the conduct of the electronic trial—

(a) sharing of the costs of the electronic trial;

(b) preparation of an Electronic Trial Book in accordance with rule 152.4;

(c) instructions to the electronic courtroom provider;

(d) payment of third party costs;

(e) real time transcript;

(f) training of and access by Court staff on and to the Electronic Trial Book; and

(g) access by the presiding judicial officer and judicial staff to the Electronic Trial Book from the conclusion of the trial to the delivery of judgment.

(3) Unless the Court otherwise orders or the parties otherwise agree, the parties must comply with Part 4 Division 2 for preparation of a joint tender book.

152.4—Electronic trial book

(1) The parties must prepare an electronic database for the electronic trial (the ***Electronic Trial Book***).

(2) All documents intended to be used at trial must be included in the Electronic Trial Book and, where referred to in any document, linked by hyperlink to the document in the Electronic Trial Book.

(3) Unless the Court otherwise directs or the parties otherwise agree, the Electronic Trial Book must include—

(a) all originating process;

(b) all pleadings;

(c) all written lay and expert evidence;

(d) the joint tender book documents;

(e) subpoenas issued in the proceeding;

(f) authorities relied upon; and

(g) any other documents that the parties agree or the Court orders be included.

152.5—Providing additional documents during electronic trial

(1) A party to a proceeding must obtain consent from each other party to the proceeding before providing additional documents to the Court in electronic form.

(2) If an additional document, not included in the Electronic Trial Book, is required for examination of a witness, tender or submission, the party requiring the document must ensure that it is provided to the electronic courtroom provider on the evening or morning before the hearing commences to ensure that it is readily accessible during the trial and access to it does not delay the orderly conduct of the trial.

Part 3—Pre-trial directions hearing

153.1—Convening and preparation

(1) The presiding judicial officer allocated to hear a trial may convene a pre-trial directions hearing before the trial is to commence.

(2) The parties in a proceeding must, before a pre-trial directions hearing, proactively review whether they have complied with these Rules and any orders of the Court and are ready for trial.

153.2—Pre-trial directions hearing

(1) Unless excused by the Court, a pre-trial directions hearing must be attended by the counsel or one of the counsel retained for the trial for each party to the proceeding.

(2) The matters to be considered by the Court at a pre-trial directions hearing may include (without limitation)—

(a) confirmation that counsel have been briefed for trial;

(b) identification, or preparation of a statement, of issues to be determined at trial;

(c) narrowing issues (including agreement on facts, the use of section 59J of the *Evidence Act 1929*, other evidentiary aids to proof and agreement on the law);

(d) the form and timing of openings (including written openings or mini-openings);

(e) whether there is to be a view, inspection or demonstration;

(f) subpoenas;

(g) documentary evidence (including nature, form and objections);

(h) lay evidence (including the nature and identity of lay witnesses and whether the evidence of particular witnesses can be agreed, dispensed with or shortened);

(i) expert evidence (including conferral of experts, identification of differences in assumptions or opinions, manner and timing of taking expert evidence, whether evidence should be taken concurrently);

(j) the order in which witnesses are to be called (including any witnesses able to attend only at particular times and interposition);

(k) whether all lay evidence should be called before any expert is called by any party;

(l) any special facilities required (including the need for an interpreter, an audio visual link, equipment to play an audio visual recording, hearing enhancement facilities or wheelchair access);

(m) limiting the number of witnesses or time for evidence of witnesses or time for addresses;

(n) conferral by counsel in relation to objections to witness statements, expert reports or documentary evidence;

(o) other orders to ensure that the trial proceeds in the most efficient, expeditious and cost-effective manner;

(p) lists of authorities;

(q) when applicable, arrangements for an electronic trial;

(r) whether all attempts at settlement, including mediation, have been exhausted; and

(s) confirmation of estimated trial length.

Part 4—Preparation of evidence to be adduced at trial

Division 1—Introduction

154.1—Application of Divisions 2, 3 and 4

Supreme Court and District Court

(1) Unless the Court otherwise orders, Divisions 2, 3 and 4 apply in a proceeding by way of claim.

(2) The Court may order that Divisions 2, 3 or 4 apply in a proceeding by way of originating application.

Magistrates Court

(3) The Court may order that Divisions 2, 3 or 4 apply in a proceeding.

154.2—Codes

In a list of objections under this Part, the codes in column 2 of the following table have the corresponding meanings set out in column 3 of the table—

Codes for Lists of Objections under Part 4		
Item	**Code**	**Meaning**
1	A	authenticity/provenance not established
2	ARG	argumentative
3	BR	not a business record
4	C	inadmissible conclusion or opinion (without primary facts)
5	D	reasoning (by expert) not disclosed
6	F	no foundation established for statement or opinion
7	H	inadmissible hearsay
8	I	assumptions not identified
9	L	admissible only for stated limited purpose
10	O	inadmissible opinion
11	P	privileged
12	R	not relevant
13	REC	reconstruction or speculation
14	S	inadmissible secondary evidence when primary evidence available
15	V	impermissibly vague or ambiguous

Division 2—Tender book

154.3—Content

(1) This rule applies subject to any order of the Court.

(2) A document must be included in a joint tender book if a party nominates its inclusion (regardless of whether there is opposition to its inclusion or foreshadowed opposition to its tender at trial).

(3) Documents in a joint tender book must be arranged in a single chronological order unless, as agreed by all parties—

(a) a group of documents will be considered at trial separately from other documents, in which case they may be arranged separately from other documents in their own chronological order, or

(b) a group of documents does not lend itself to chronological order, in which case they may be arranged in a different logical order.

Examples—

Documents relating to quantum might be arranged in a separate sequence to documents relating to liability.

A bundle of company searches which have no chronological relevance might be arranged at the beginning or end of the chronological documents.

(4) Documents in a joint tender book must be—

(a) contained in lever arch folders unless the parties agree on an alternative method of binding (such as spiral-binding);

(b) paginated in a single numbering sequence regardless of the volume in which they are contained; and

(c) separated by dividers.

(5) A joint tender book must include an index showing for each document a sequential number, date, description, discovery number, page number and when applicable the party that nominated its inclusion.

(6) If the parties cannot agree on any aspect of production of the joint tender book, they must apply for directions by filing an application to the Registrar in accordance with rule 13.2(5).

154.4—Process

(1) The applicant in a proceeding or other party having carriage of the proceeding must, not less than 35 days, or such other time as may be fixed by the Court or agreed by the parties, before the scheduled commencement of trial, serve on each other party a draft index to the joint tender book in editable Word document form listing all documents, other than any expert reports or written evidence, that the party intends to tender at trial.

(2) Each other party must, not less than 21 days, or such other time as may be fixed by the Court or agreed by the parties, before the scheduled commencement of trial, serve on each other party an amended draft index, adding to the index reference to any additional documents that the party intends to tender at trial.

(3) A party who adds to the draft joint tender book index reference to a document (including the party who prepares the first draft) must, on request by another party—

(a) make the document available for inspection by the other party; or

(b) on payment of a reasonable copying fee, provide a copy of the document to the other party.

(4) The applicant or other party having carriage of the proceeding must, not less than 14 days before the scheduled commencement of trial, or such other time as may be fixed by the Court or agreed by the parties, file 2 copies and serve on each other party one copy of the joint tender book.

(5) The Court may make orders varying this process, including orders for the production, lodgement and service of an electronic tender book instead of a physical tender book.

154.5—Objections

When this Division applies—

(a) each party must, not less than 7 days before the scheduled commencement of trial, file and serve on each other party a schedule identifying any document or passage in a document in the tender book in respect of which the party intends to object to the tender, together with a code identifying the ground of objection (using the codes at rule 154.2 and creating any further code necessary to denote another ground of objection);

(b) if a party objects to the tender of a document in the tender book, or a passage of a document in the tender book, without having complied with paragraph (a)—

(i) the party must first obtain leave of the Court; and

(ii) unless the Court otherwise orders, if leave is granted—the objecting party must pay the incremental costs of the other parties occasioned by the failure to include the document or passage in a schedule of objections.

Division 3—Expert reports

154.6—Objections

When this Division applies—

(a) each party must, not less than 7 days before the scheduled commencement of trial, file and serve on each other party a schedule identifying any passages in an expert report in respect of which the party intends to object to the tender, together with a code identifying the ground of objection (using the codes at rule 154.2 and creating any further code necessary to denote another ground of objection);

(b) if a party objects to the tender of any passages in an expert report without having complied with paragraph (a)—

(i) the party must first obtain leave of the Court; and

(ii) unless the Court otherwise orders, if leave is granted—the objecting party must pay the incremental costs of each other party occasioned by the failure to include the passage in a schedule of objections.

Division 4—Written lay evidence

154.7—When permitted

(1) A party (the ***proponent***) may, not less than 35 days before the scheduled commencement of trial, serve a notice on each other party that the party intends to adduce evidence from a witness in the form of an affidavit that has been filed in the proceeding.

(2) Any other party to the proceeding may, not less than 21 days before the scheduled commencement of trial, serve on the proponent and each other party to the proceeding a notice in response—

(a) objecting to any evidence being adduced from the witness in the form of an affidavit; or

(b) requiring that the witness attend at trial for examination.

(3) Unless the Court otherwise orders, if no party serves a notice in response under subrule (2), the proponent may (subject to any objections to passages on admissibility grounds) tender the affidavit at trial and the witness need not attend to give oral evidence.

(4) Unless the Court otherwise orders, if a party serves a notice in response under subrule (2)(a) and the proponent wishes to adduce evidence from the witness, the witness must attend to give evidence at trial and the judicial officer presiding over the trial will rule on any application to tender the affidavit.

(5) Unless the Court otherwise orders, if a party serves a notice in response under subrule (2)(b) and the proponent wishes to adduce evidence from the witness, the witness must attend to give evidence at trial.

154.8—When required

(1) The Court may order, or the parties may agree, that some or all of the evidence in chief of some or all witnesses at trial be adduced in the form of affidavits or signed written witness statements.

(2) If evidence in that form is to be adduced, rules 154.10, 154.11 and 154.12 apply except to the extent modified by the order of the Court or agreement of the parties.

(3) The Court may order that the deponent of an affidavit or author of a written witness statement to be tendered at trial need not attend at trial to give the evidence adduced in the affidavit or written witness statement.

(4) Unless the Court makes an order under subrule (3), the deponent of an affidavit or author of a written witness statement to be tendered at trial must attend at the trial to give evidence.

154.9—Content

(1) An affidavit or written witness statement comprising evidence in chief of a witness (***written evidence***) must be in numbered paragraphs, each paragraph addressing a single topic and not be of excessive length.

(2) Unless the Court otherwise orders, written evidence—

(a) must not exhibit a document to which the witness refers;

(b) if no joint tender book has been prepared when the written evidence is served—must refer to a document by its discovery number;

(c) if a joint tender book has been prepared when the written evidence is served—must refer to a document by its joint tender book number, and

(d) if a joint tender book is prepared after the written evidence is served—must be amended to refer to a document by its joint tender book number.

154.10—Process

(1) This rule applies when written evidence is to be adduced by a party under rule 154.8.

(2) The applicant or other party having carriage of the proceeding must, not less than 35 days, or such other time as may be fixed by the Court or agreed by the parties, before the scheduled commencement of trial, serve on each other party the written evidence to be adduced by the party.

(3) Each other party must, not less than 21 days, or such other time as may be fixed by the Court or agreed by the parties, before the scheduled commencement of trial, serve on each other party the written evidence to be adduced by the party.

(4) The applicant or other party having carriage of the proceeding must, not less than 14 days, or such other time as may be fixed by the Court or agreed by the parties, before the scheduled commencement of trial, serve on each other party any written evidence to be adduced by the party in response.

(5) Each party must, not less than 7 days before the scheduled commencement of trial, file 2 copies of any written evidence served by that party.

154.11—Objections

When this Division applies—

(a) each party must, not less than 7 days before the scheduled commencement of trial, file and serve on each other party a schedule identifying any passages in written evidence in respect of which the party intends to object to the tender, together with a code identifying the ground of objection (using the codes at rule 154.2 and creating any further code necessary to denote another ground of objection);

(b) if a party objects to the tender of any passages in written evidence without having complied with paragraph (a)—

(i) the party must first obtain leave of the Court; and

(ii) unless the Court otherwise orders, if leave is granted—the objecting party must pay the incremental costs of each other party occasioned by the failure to include the passage in a schedule of objections.

154.12—Evidence at trial

(1) When an order or agreement is made pursuant to rule 154.8, it may specify the extent to which a party serving written evidence is entitled to adduce oral evidence from the witness in question.

Examples—

The order or agreement may provide that the witness may give oral evidence concerning oral communications between the parties.

The order or agreement may provide that the witness may give oral evidence confined to elaborating upon matters, or certain matters, addressed in the written evidence.

The order or agreement may provide that the witness may give oral evidence limited to a certain time.

(2) When an order or agreement is made pursuant to rule 154.8, if a party wishes to adduce evidence at trial from a witness in respect of whom written evidence should have been but was not served or evidence outside the scope of the written evidence that should have been included in it—

(i) the party must first obtain leave of the Court; and

(ii) unless the Court otherwise orders, if leave is granted—the party must pay the incremental costs of each other party caused by the failure to include the evidence in written evidence.

(3) If a deponent of an affidavit or author of a written witness statement who is required under these Rules or an order of the Court to attend to give evidence at trial fails to attend, the Court may exclude the affidavit or written witness statement from evidence.

Division 5—Other notice of evidence

154.13—Order for notice

(1) The Court may order that a party give notice in writing identifying—

(a) the witnesses proposed to be called to give evidence at trial;

(b) the nature or detail of the evidence to be given by a witness proposed to be called to give evidence at trial;

(c) the nature or detail of documents proposed to be tendered at trial; or

(d) any other evidence proposed to be adduced at trial.

(2) When an order is made under subrule (1), if a party wishes to adduce evidence at trial of which notice should have been but was not given or evidence outside the scope of notice given—

(a) the party must first obtain leave of the Court; and

(b) unless the Court otherwise orders, if leave is granted—the party must pay the incremental costs of each other party caused by the failure to give notice.

Division 6—Notice to admit substance of evidence

154.14—Notice to admit substance of evidence of witness

(1) If a party believes that the attendance of a witness at trial will not be necessary because the witness's evidence or documents proved by the witness will be of a formal nature or uncontroversial, the party may serve a notice in writing on each other party at least 14 days before the scheduled commencement of trial—

(a) conveying the belief;

(b) identifying the witness; and

(c) specifying the facts that the evidence or documents would tend to prove or establish.

(2) If, 7 days after service of the notice referred to in subrule (1), no other party has served a notice of objection incorporating detailed reasons for the objection—

(a) the witness need not attend at trial; and

(b) the content of the notice is taken to be admitted.

Part 5—Evidence adduced before examiner

155.1—Appointment of examiner

(1) The Court may appoint an examiner to take the evidence of a witness before or during the trial or hearing of a proceeding.

(2) An officer of the Court or a lawyer is eligible to be appointed as an examiner.

(3) The Court may make any orders necessary or expedient for the conduct of the examination.

155.2—Procedure before examiner

(1) Unless the Court otherwise orders, a witness in a hearing before an examiner may be examined, cross-examined and re-examined in the same way as a witness at the trial of a proceeding.

(2) An examiner is an officer of the Court and has such of the Court's powers as the Court may assign (but not, unless the examiner is a Judge or Magistrate, the power to punish for contempt).

(3) The Court may, on application by an examiner or an interested person, make an order for punishment of—

(a) a contempt committed in the face of the examiner; or

(b) a contempt of an order of the examiner.

155.3—Record of examination

(1) The Court may order that an audio or audio visual record of an examination be made.

(2) Unless the Court otherwise orders, a transcript of an examination must be prepared and—

(a) signed by the witness (who may note any objection to the accuracy of the transcript); and

(b) certified by the examiner.

(3) The examiner must certify any document produced to the examiner by the witness.

(4) At the conclusion of the examination, the examiner—

(a) must forward the certified transcript of the examination to the Registrar;

(b) if an audio or audio visual record of the examination was ordered to be made—must forward the record to the Registrar; and

(c) must report to the Court any failure by a witness to answer lawful questions or to produce evidentiary material to the examiner when lawfully required to do so.

Part 6—Subpoenas

Note—

This Part contains harmonised rules.

Division 1—Introduction

156.1—Interpretation

(1) In this Part, unless the contrary intention appears—

addressee means a person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as prepaid 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; or

(b) to produce the subpoena or a copy of it and a document or thing; or

(c) to do both those things.

(2) To the extent that a subpoena requires an addressee to attend to give evidence, it is called a ***subpoena to attend to give evidence***.

(3) To the extent that a subpoena requires an addressee to produce the subpoena or a copy of it and a document or thing, it is called a ***subpoena to produce***.

Division 2—Issue and service

156.2—Issuing 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 those things.

(2) An issuing officer must 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 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 issuing officer must 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 when it is sealed or otherwise authenticated in accordance with subrule (3).

156.3—Form of subpoena

(1) A subpoena must be in accordance with the prescribed form—

Prescribed forms—

Supreme Court and District Court

Form 105A Subpoena to Attend to Give Evidence (Sup and Dist Courts)

Form 106A Subpoena to Produce Documents (Sup and Dist Courts)

Form 107A Subpoena to Attend and Produce (Sup and Dist Courts)

Magistrates Court

Form 105B Subpoena to Attend to Give Evidence (Mag Court)

Form 106B Subpoena to Produce Documents (Mag Court)

Form 107B Subpoena to Attend and Produce (Mag Court)

(2) A subpoena to attend to give evidence must not be addressed to more than one person.

(3) A subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to produce must—

(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 must specify the date, time and place for attendance.

(6) The date specified in a subpoena must be the date of trial or hearing or any other date as permitted 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 permitted by the Court.

(8) The last date for service of a subpoena—

(a) is—

(i) the date 5 business days before the earliest date the addressee is required to comply with the subpoena; or

(ii) an earlier or later date fixed by the Court; and

(b) must be specified in the subpoena.

Notes—

Section 30(1) of the *Service and Execution of Process Act 1992* (Cth) provides that service of a subpoena in another State is effective only if the period between service and the day on which the addressee is required to comply with the subpoena is not less than 14 days or such shorter period as the court, on application, allows.

Section 30(2) provides that the court may allow a shorter period only if it is satisfied that the giving of the evidence likely to be given by the addressee, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and there will be enough time for the addressee to comply with the subpoena without hardship or serious inconvenience and to make an application under section 33.

(9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

156.4—Change 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 specified in a subpoena as the date or time for attendance or for production or for both.

(2) When notice is given under subrule (1), the subpoena has effect as if the date or time notified appeared in the subpoena instead of the date or time which appeared in the subpoena.

156.5—Setting aside or other relief

(1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or part, or grant other relief in relation to it.

(2) An application under subrule (1) must be made on notice to the issuing party.

(3) The Court may order that the applicant give notice of the application to each other party or to any other person having a sufficient interest.

Note—

Sections 33, 43 and 44 of the *Service and Execution of Process Act 1992* (Cth) contain provisions governing applications to set aside subpoenas served interstate.

156.6—Service

(1) A subpoena must be served personally on the addressee.

(2) The issuing party must 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.

Note—

This rule does not require service of a subpoena on each other party if the subpoena is only to give evidence and does not require production of any documents.

Division 3—Compliance

156.7—Compliance with subpoena

Supreme Court and District Court

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence if conduct money has not been handed or tendered to the addressee a reasonable time before the date on which attendance is required.

Magistrates Court

(2) An addressee need not comply with the requirements of a subpoena to attend to give evidence—

(a) if served out of the State—if conduct money has not been handed or tendered to the addressee a reasonable time before the date on which attendance is required; or

(b) if served in the State—if the addressee—

(i) has, a reasonable time before the date for attendance, requested payment in advance of conduct money from the issuing party nominating a reasonable amount required or provision of tickets or vouchers or both for travel and any accommodation; and

(ii) has not received such payment or provision in sufficient time to enable compliance.

(3) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

Notes—

Section 30 of the *Service and Execution of Process Act 1992* (Cth) addresses this in the case of service in another State: see the notes to rule 156.3(8).

Section 31 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served in another State, service is only effective if prescribed notices and a copy of any order under section 30 are attached to the subpoena served.

Section 32 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served in another State, service is only effective if, a reasonable time before compliance is required, sufficient allowances and travelling expenses are paid or tendered to the person.

(4) Despite rule 156.6(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(5) The addressee must comply with a subpoena to produce by—

(a) attending at the date, time and place specified for production 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) delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for that purpose in the subpoena, or, if more than one address is specified, at any one of those addresses, so that they are received not less than 2 business days before the date specified in the subpoena for attendance and production.

Note—

Section 34 of the *Service and Execution of Process Act 1992* (Cth) provides that, when a subpoena is served in another State, a document or thing may be delivered to the Registrar not less than 24 hours before the date for compliance.

(6) For 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 subrule (5) does not discharge the addressee from the obligation to attend to give evidence.

(7) Unless a subpoena specifically requires the production of the original document, the addressee may produce a copy of any document required to be produced by the subpoena.

(8) 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.

156.8—Production otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 156.7(5)(b).

(2) The Registrar must, 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 must, if requested by the Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production tell the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

Division 4—Dealing with documents

156.9—Removal, return, inspection, copying and disposal of documents and things

The Court may give directions about 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.

156.10—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 156.7(5)(b).

(2) On request in writing of a party, the Registrar must tell the party whether production in response to a subpoena has occurred and, if so, include a description, in general terms, of the documents and things produced.

(3) Subject to this rule, a person may inspect a document or thing produced only if the Court has granted leave and the inspection is in accordance with that leave.

(4) The Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having a 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 must, at the time of production, notify the Registrar 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 Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, the Registrar—

(a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and

(b) must refer the objection to the Court for hearing and determination.

(8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard.

(9) After being notified by the Registrar under subrule (8), the issuing party must notify the addressee, the objector and each other party of the date, time and place at which the objection will be heard.

(10) The Registrar may permit any document or thing produced to be removed from the Registry only on application in writing signed by a lawyer for a party.

(11) A lawyer who signs an application under subrule (10), and removes a document or thing from the Registry is taken to undertake to the Court that—

(a) the document or thing will be kept in the personal custody of the lawyer or a barrister briefed by the lawyer in the proceeding; and

(b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.

(12) The Registrar may grant an application under subrule (10) subject to conditions or refuse to grant the application.

156.11—Return of documents and things produced

(1) The Registrar may return to the addressee any document or thing produced in response to the subpoena.

(2) The Registrar may return any document or thing under subrule (1) only if the Registrar 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 to produce or to give evidence and to produce must complete the declaration by the addressee contained at the end of 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 subrule (6), the Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena which were declared by the addressee to be copies.

(6) The Registrar 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.

Division 5—Costs of compliance

156.12—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 subrule (1), the Court will 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; and

(b) any witness expenses payable to the addressee.

Note—

Sections 35 and 45 of the *Service and Execution of Process Act 1992* (Cth) provide that, when a subpoena is served in another State, the person served is entitled to reasonable expenses incurred in compliance and empowers the Court to make orders for this purpose.

Division 6—Failure to comply

156.13—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 subrule (1), if a subpoena has not been served personally on an 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 date for service of the subpoena, actual knowledge of the subpoena and its requirements.

(3) Subrules (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.

Note—

Rule 156.18 addresses the issue of a warrant to an addressee who fails to comply with a subpoena.

Division 7—Documents in court custody

156.14—Documents and things in custody of 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 Registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the Court, the Registrar must 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 Registrar must, unless the Court has otherwise ordered—

(a) ask the other court to send the document or thing to the Registrar; 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.

Division 8—Service interstate

156.15—Service of subpoena interstate

(1) A subpoena served in another State under sections 29 and 31 of the *Service and Execution of Process Act 1992* (Cth) must be accompanied by a notice in the prescribed form.

Prescribed form—

Form 108 Notice to Accompany Subpoena Served – Interstate

(2) A subpoena served in another State under sections 39 to 41 of the *Service and Execution of Process Act 1992* (Cth) must be accompanied by a notice in the prescribed form.

Prescribed form—

Form 109 Notice to Accompany Subpoena Served – Interstate Prisoner

Division 9—Service in New Zealand

156.16—Service of subpoena in New Zealand

(1) An application under section 31 of the *Trans-Tasman Proceedings Act 2010* (Cth) for leave to serve a subpoena in New Zealand under that Act—

(a) in relation to a current proceeding in the Court—must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1; or

(b) in any other case—must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) The supporting affidavit must—

(a) exhibit a copy of the subpoena in respect of which leave to serve is sought;

(b) identify the name, occupation and address of the proposed addressee;

(c) identify whether the addressee is over 18 years old;

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

(e) identify the steps taken (if any) 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;

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

(g) identify the amounts to be tendered to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;

(h) identify, if the subpoena requires the addressee to attend to give evidence, an estimate of the time during which the addressee will be required to attend; and

(i) identify any facts or matters known to the applicant that may constitute 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 2010* (Cth).

(3) A subpoena served in New Zealand under sections 30 and 32 of the *Trans-Tasman Proceedings Act 2010* (Cth) must be accompanied by a notice in the prescribed form.

Prescribed form—

Form 110 Notice to Accompany Subpoena Served – New Zealand

156.17—Application to set aside service

(1) An application under section 35 of the *Trans-Tasman Proceedings Act 2010* (Cth) to set aside a subpoena served in New Zealand must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) A request under section 36(5) of the *Trans-Tasman Proceedings Act 2010* (Cth) for a hearing of an application to set aside a subpoena served in New Zealand must be made by filing an application to the Registrar in the prescribed form.

Prescribed form—

Form 76C Application to Registrar – Request Hearing

(3) A request under section 36(6) of the *Trans-Tasman Proceedings Act 2010* (Cth) to appear remotely on the hearing of an application to set aside a subpoena served in New Zealand must be made by filing an application to the Registrar in the prescribed form.

Prescribed form—

Form 76D Application to Registrar – Request Remote Appearance

Division 10—Non-compliance with subpoena

156.18—Issue of warrant of apprehension to addressee

(1) The Court may order the issue of a warrant of apprehension to—

(a) an addressee who fails to comply with a subpoena or summons requiring the addressee to attend to give evidence or produce documents;

(b) a person in respect of whom there are grounds for belief that, if such a subpoena were issued, the person would not comply with it.

Note—

Section 35(3) the *Supreme Court Act 1935*, section 25(3) of the *District Court Act 1991* and section 20(3) of the *Magistrates Court Act 1991* empower the Court to issue a warrant to have the person arrested and brought before the Court.

(2) If the court makes an order under subrule (1), the Registrar must issue a warrant in the prescribed form.

Prescribed form—

Form 114 Warrant of Apprehension of Witness

Part 7—Production of prisoner before Court

157.1—Warrant or summons to produce prisoner

(1) A warrant to produce a person held in custody in the State to give evidence or attend at a hearing of a proceeding must be in the prescribed form.

Prescribed form—

Form 115 Warrant to Produce Person in Custody

(2) A summons to produce a person held in custody in the State to give evidence or attend at a hearing of a proceeding must be in the prescribed form.

Prescribed form—

Form 113 Summons to Produce Person in Custody

Note—

Section 117(1) of the *Supreme Court Act 1935* empowers the Court to order that a prisoner whose evidence is required in a proceeding be brought before the Court for examination. Section 28 of the *District Court Act 1991* empowers the issue of a warrant or summons to produce a person held in custody in the State. Section 23 of the *Magistrates Court Act 1991* empowers the issue of a warrant or summons to produce a person held in custody in the State. Section 28(2) of the *Correctional Services Act 1982* empowers a court to direct the Chief Executive to cause a prisoner to be brought before the court as a party or a witness.

Part 8—Production of documents at trial

158.1—Notice to produce

(1) A party must produce to the Court at trial a document in the party's possession, custody or power if—

(a) another party served on the party a notice to produce in the prescribed form not less than 7 days before the scheduled commencement of trial; or

(b) the Court so orders.

Prescribed form—

Form 111 Notice to Produce

(2) A document must be produced to the Court—

(a) by attending at the commencement of trial and producing the document 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 document to the Registrar so that it is received not less than 2 business days before the scheduled commencement of trial.

Part 9—Pleadings book

159.1—Pleadings book

(1) This Part applies—

(a) to a proceeding by way of claim in the Supreme Court or District Court; and

(b) in any other case—only if the Court orders.

(2) When this Part applies, the applicant or other party having carriage of the proceeding must, not less than 7 days before the scheduled commencement of trial, file and serve on each other party a pleadings book.

(3) A pleadings book must contain—

(a) the current version of the originating process and pleadings (including any particulars of loss) for each action in the proceeding the subject of the trial;

(b) any judgment or order relevant to the conduct of the trial; and

(c) any certificate of readiness for trial.

(4) A pleadings book must be paginated, indexed and bound.

Chapter 14—Trial

Part 1—Trial of claim and cross claim

171.1—Scope of evidence and determination

(1) This rule applies when a claim and a cross claim in a proceeding are to be tried together.

Note—

Rule 151.1(2) provides for the Court to order a trial of separate claims or issues. Rule 151.1(1) provides that, unless the Court otherwise orders, there is to be a single trial of all issues (other than costs) in the proceeding.

(2) Unless the Court otherwise orders, a party to a cross claim is entitled to adduce (including by cross-examination) admissible evidence relevant to the claim or an earlier cross claim if its determination is capable of affecting the position of the party in the cross claim.

(3) Each party is bound by the Court's judgment insofar as it determines issues affecting the interests of the party even though the issues were not raised in the claim or cross claim to which the person was a party.

Part 2—Conduct of trial

172.1—Control of trial

(1) The Court may make orders at any time and from time to time about the conduct of the trial.

(2) For example, the Court may make orders—

(a) determining the issues on which evidence is to be adduced;

(b) determining the nature of the evidence to be adduced to decide the issues;

(c) determining the way in which the evidence is to be adduced;

(d) limiting the time to be taken by the trial or any aspect of it;

(e) limiting the number of witnesses that a party may call;

(f) limiting the amount of evidence that a party may adduce;

(g) excluding what would otherwise be admissible evidence;

(h) determining the order in which evidence is to be adduced;

(i) determining the order in which witnesses are to give evidence; or

(j) determining that any evidence be given earlier or later than during the case of the party adducing that evidence.

Notes—

Rule 74.3(4) addresses the consequences of a failure to serve an expert report in respect of expert evidence sought to be adduced at trial.

Rule 154.5 addresses the consequences of failure, when required, to give advance notice of an objection to a document in a joint tender book.

Rule 154.6 addresses the consequences of a failure, when required, to give advance notice of an objection to an expert report.

Rule 154.11 addresses the consequences of a failure, when required, to give advance notice of an objection to a passage in written evidence.

Rule 154.12 addresses the consequences of a failure, when required, to serve written evidence sought to be adduced at trial.

Rule 154.13(2) addresses the consequences of a failure, when required, to give notice required under rule 154.13(1).

172.2—Evidence at trial

(1) Unless the Court otherwise orders or these Rules otherwise provide, evidence of a witness at the trial of a claim will be taken orally.

(2) If rule 74.3, rule 154.12 or rule 154.13 applies to a proceeding, subject to any prior order, the extent to which a party may adduce oral evidence from a witness a is in the discretion of the Court.

172.3—Expert evidence at trial

(1) The Court may order that 2 or more experts confer before or during the giving of evidence to identify and report on matters of agreement, matters of difference and the reasons for matters of difference.

(2) The Court may order that the evidence of an expert be deferred until all factual evidence has been taken.

(3) The Court may ask an expert—

(a) to review the factual evidence; or

(b) to review the opinion of another expert,

and state whether the witness wishes to modify an opinion earlier expressed in light of that evidence.

(4) The Court may order that an expert address questions posed by the Court.

(5) The Court may order that the evidence of 2 or more experts be taken in a particular sequence or concurrently.

172.4—Cross-examination on pleadings

(1) If a party gives evidence at trial, the party may be cross-examined about the party's knowledge of or belief in the truth of the facts alleged in the party's pleading.

(2) The Court may draw an inference adverse to a party's credit from a discrepancy between what it finds proved and an allegation of fact in the party's pleading.

Part 3—Limitations due to failure to give notice

173.1—Failure to give notice of evidence or objection

(1) The Court may exclude evidence at trial if a party failed to comply with a requirement to give notice of the evidence imposed by, or an order made under, rule 74.3, rule 154.12 or rule 154.13.

(2) The Court may exclude an objection to evidence at trial if a party failed to comply with a requirement to give notice of the objection imposed by, or an order made under, rule 154.5, rule 154.6 or rule 154.11.

Part 4—Trial by arbitrator

174.1—Referral to arbitrator

(1) The Court may refer a proceeding or an issue arising in a proceeding for trial by an arbitrator and appoint an arbitrator or permit the parties to appoint an arbitrator for this purpose.

(2) A judicial officer is eligible to be appointed as an arbitrator.

Note—

Section 66 of the *Supreme Court Act 1935*, section 33 of the *District Court Act 1991* and section 28 of the *Magistrates Court Act 1991* provide for referral to arbitration and appointment of an arbitrator.

174.2—Conduct of arbitration

(1) An arbitration must be conducted as ordered by the Court.

Example—

The Court might direct that an arbitration be conducted in the same way as an arbitration under the *Commercial Arbitration Act 2011*.

(2) An arbitrator is an officer of the Court and has such of the Court's powers as the Court may assign (but not the power to punish for contempt).

(3) The Court may, on application by an arbitrator or an interested person, make an order for punishment of—

(a) a contempt committed in the face of an arbitrator; or

(b) a contempt of an order of an arbitrator.

Part 5—Death or incapacity of presiding judicial officer

175.1—Effect of death or incapacity

(1) This rule applies if a presiding judicial officer dies or becomes incapacitated before final determination of proceedings.

(2) If reasons for judgment in final form were prepared by the presiding judicial officer, another judicial officer may publish the reasons and grant judgment in accordance with them.

(3) In any other case—another judicial officer may complete the hearing and determination of the proceeding and—

(a) rehear evidence and submissions to the extent that the judicial officer thinks fit; and

(b) make orders as appropriate.

Chapter 15—Judgment

Part 1—Reasons for judgment

181.1—Inquiry to Chief Judicial Officer

(1) A party may, by letter addressed to the Chief Judicial Officer (or the most senior puisne judicial officer who does not comprise and is not part of the Coram if the Chief Judicial Officer comprises or is part of the Coram), inquire about progress of delivery of reasons for judgment.

(2) The party making the inquiry must at the same time send a copy of the letter to each other party to the proceeding.

(3) The identity of a party making such an inquiry will not be disclosed to—

(a) any other judicial officer; or

(b) any other person except each other party to, or a person having an interest in, the outcome of the proceeding.

Part 2—Judgment by Court

Division 1—General

182.1—Nature of relief

(1) The Court may give judgment for relief that differs from the relief sought by the applicant.

(2) The Court may make any order necessary or desirable to give effect to the principal terms of a judgment.

(3) If a party is entitled to judgment for a monetary amount against another party on a claim in a proceeding and the second party is entitled to judgment for a monetary amount against the first party on a different claim in the proceeding, the Court may give a single judgment for the balance.

Example—

A is entitled to judgment against B on a claim for $90,000. B is entitled to judgment on a cross claim against A for $40,000. The Court may give a single judgment in favour of A against B for $50,000.

182.2—Pronouncement and record of judgment by Court

(1) Unless the Court otherwise orders, a judgment by the Court takes effect—

(a) if the Court pronounces judgment orally in court—at the end of the hearing when the pronouncement is made; or

(b) if the Court pronounces judgment other than at a hearing—when the Court communicates the terms of the judgment to the parties.

(2) The Court may order that a judgment take effect earlier or later than under subrule (1).

Notes—

The time to appeal runs from the date when a judgment takes effect.

A person who fails to do an act required or does an act prohibited by a judgment will be in contempt of court if the person breaches the terms of the judgment once it has taken effect provided that the person has notice of the judgment.

(3) A judgment by the Court is perfected by being entered in the records of the Court—

(a) when a record of outcome in the prescribed form is signed (physically or electronically) by the presiding judicial officer, or

(b) a formal judgment is entered in the records of the Court under rule 184.1 (whichever occurs first).

Prescribed forms—

Form 128 Record of Outcome – Judgment

Form 129 Judgment

(4) The Court may (without limitation) vary the terms of a judgment pronounced under subrule (1) before the judgment is perfected under subrule (3).

182.3—Pre-judgment interest

(1) The appropriate rate and period for the calculation of interest on pre-judgment monetary amounts is a matter for determination by the Court in each case.

(2) As a guide only, and subject to any contrary statute, the Court may calculate such interest—

(a) at the rate of 5 per cent per annum in respect of a period from the commencement date onwards or if the Court thinks fit any earlier period; or

(b) at another rate prescribed by the Chief Judicial Officer from time to time in respect of a period from not earlier than the first anniversary of the commencement date onwards.

(3) The Registrar must publish any prescription by the Chief Judicial Officer made under subrule (2)(b) on the CAA website.

Division 2—Particular provisions of judgments

182.4—Time to do an act

A judgment requiring a person to do an act may specify a time within which compliance is required and, if it does not do so, the Court may, on application by a party in whose favour the judgment was given, specify a time within which compliance is required.

182.5—Making an instrument

If a judgment requires the making of an instrument, it may include provisions about—

(a) preparation and delivery of a draft instrument;

(b) preparation and delivery of objections to the draft instrument;

(c) settling the draft instrument; or

(d) execution of the instrument (including execution by the Registrar on behalf of a party).

182.6—Account or inquiry

(1) If a judgment includes a provision that accounts be taken or an inquiry be conducted to determine relief to be granted, it may include provisions about—

(a) the appointment of a party, an independent expert or another person to prepare the account or conduct the inquiry;

(b) the nature and extent of the accounting or inquiry;

(c) how the accounting or inquiry is to be undertaken including in relation to evidence being taken from persons to be examined; or

(d) how the account or a report about the result of the inquiry is to be prepared.

(2) A judgment may include an order that, on the filing of an account under this rule, a party must pay to another party an amount certified by the person preparing the account as owing.

(3) The Court may monitor the progress of the account or inquiry and may—

(a) require the person undertaking it to appear before the Court to explain any delay; or

(b) make orders to enforce cooperation by a party in relation to it.

182.7—Appointment of receiver

(1) If a judgment includes a provision for the appointment of a receiver, it may include provisions—

(a) for giving security by the receiver for the proper conduct of the receivership;

(b) for remuneration of the receiver; or

(c) restraining a party from dealing with property the subject of the appointment or proposed appointment.

(2) A receiver appointed by the Court must—

(a) deal with property the subject of or received in the course of the receivership as directed by the Court; and

(b) produce accounts of the receivership when directed by the Court.

(3) If there are grounds to suspect that a receiver may have failed to carry out their duties as required by the Court, the Court may order the receiver to—

(a) provide a report to the Court explaining the position;

(b) appear before the Court to explain the position; or

(c) appear before the Court for examination.

(4) If the Court finds that a receiver is in default, the Court may—

(a) disallow the receiver's remuneration in whole or part;

(b) order the receiver to pay compensation for loss resulting from the default;

(c) order the receiver to pay interest on money that should have been paid under the terms of the receivership;

(d) make orders under subrule (6);

(e) order the receiver to pay costs; or

(f) make any other or further order as it thinks fit.

(5) The Court may make orders under subrule (6) if the Court finds that—

(a) a receiver has become mentally or physically incapable of carrying out their duties satisfactorily;

(b) a receiver has become bankrupt or applies to take the benefit of a law for the benefit of bankrupt or insolvent debtors;

(c) a receiver has been convicted of an offence; or

(d) there is other proper reason for removing a receiver from office.

(6) If the Court concludes under subrule (4) or (5) that a receiver should be removed from office, the Court may—

(a) revoke the appointment of the receiver;

(b) remove the receiver from office and appoint another receiver instead; or

(c) make any other or further order as it thinks fit.

(7) If the Court makes an order under subrule (6) or the receiver dies, the Court may make orders for handing over property in the control of the former receiver or their personal representative.

Division 3—Particular parties to judgments

182.8—Judgment against company

If a judgment against a company has not been obeyed, the Court may make orders against a director, officer or other person in a position of control or influence requiring them to take specified steps to secure the company's compliance with the judgment.

182.9—Persons under legal incapacity

Any money to which a person under a legal incapacity is entitled under a judgment must be dealt with in accordance with orders by the Court made from time to time.

182.10—Representative actions

A judgment given in a representative action under rule 24.2 or 24.4 must identify the persons represented in the proceeding.

Note—

Rule 24.9 also governs judgments in representative actions.

182.11—Ascertainment of class

(1) If it is necessary or desirable for the purpose of entering or implementing judgment, the Court may—

(a) order publication of an advertisement to ascertain members of a class;

(b) order an enquiry to ascertain members of a class;

(c) declare the identity of members of a class; or

(d) make such other or further order as it thinks fit.

(2) If some but not all persons entitled to share in the distribution of property have been identified and difficulty or delay is expected in identifying the others, the Court may authorise or require distribution to the persons identified without diminishing their shares to allow for costs yet to be incurred in identifying the others.

182.12—Administration of estate, trust or property transaction

(1) This rule applies to a judgment in a proceeding involving the administration of an estate or trust or a transaction or proposed transaction relating to property.

(2) A party may apply for an order that a person who was not a party when judgment was given be joined as a party and that the judgment extend to bind that person by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(3) Unless the Court otherwise orders, an application under this rule must be served personally on the person the subject of the application.

(4) On the hearing of the application, the Court may order that the person be joined as a party to the proceeding and that the judgment extend to bind that person.

Part 3—Judgment by Registrar

183.1—Entry of default judgment by Registrar

(1) If a party requests and is entitled to a monetary judgment in default of defence under Chapter 12 Part 2, the Registrar may enter a monetary judgment in default of defence in the prescribed form.

Prescribed form—

Form 130 Record of Monetary Judgment

(2) If a party requests and is entitled to a non-monetary judgment in default of defence under Chapter 12 Part 2, the Registrar may enter a judgment for relief to be assessed in default of defence in the prescribed form.

Prescribed form—

Form 131 Record of Judgment for Relief to be Assessed

(3) If a party requests and is entitled to a conditional judgment in default of defence under Chapter 12 Part 2, the Registrar may enter a conditional judgment in default of defence in the prescribed form.

Prescribed form—

Form 132 Record of Conditional Non-Monetary Judgment

(4) The Registrar may require a party requesting a default judgment to file a draft judgment in the prescribed form as an editable Word document.

Prescribed form—

Form 127 Draft Judgment

(5) A judgment under this rule is entered in the records of the Court when a filed document number is allocated to the record of judgment and the Court's seal is applied to it.

183.2—Entry of consent judgment by Registrar

(1) If a party requests and is entitled to consent judgment under rule 133.1, the Registrar may enter a judgment in the prescribed form.

Prescribed form—

Form 129 Judgment

(2) The Registrar may require a party requesting a consent judgment to file a draft judgment in the prescribed form as an editable Word document.

Prescribed form—

Form 127 Draft Judgment

(3) A judgment under this rule is entered in the records of the Court when it is signed by or on behalf of the Registrar and the Court's seal is applied to the document.

Part 4—Formal judgment

184.1—Entry of formal judgment

(1) A party to a judgment by the Court under rule 182.2 may file an application to the Registrar in accordance with rule 13.2(5) to enter formal judgment.

(2) Unless the Registrar otherwise directs, a request for formal judgment under subrule (1) must be accompanied by a draft judgment in the prescribed form as an editable Word document.

Prescribed form—

Form 127 Draft Judgment

(3) The Registrar may direct the parties to attend for settling of the formal judgment and, if a party so directed fails to attend, the Registrar may proceed in that party's absence.

(4) A formal judgment under this rule is entered in the records of the Court when it is signed by or on behalf of the Registrar and the Court's seal is applied to it.

184.2—Judgment requiring compliance with positive or negative requirements

A formal judgment requiring a person to do, or refrain from doing, an act must have endorsed on it a warning in the prescribed form of the possible consequences of failure to comply with it.

Prescribed form—

Form 129 Judgment

Part 5—Post-judgment interest

185.1—Post-judgment interest

(1) Subject to subrule (2), interest on a judgment accrues on and after the commencement date at the rate of 6 per cent per annum.

(2) The Chief Judicial Officer may from time to time prescribe another rate of interest in respect of a period from not earlier than the first anniversary of the commencement date onwards.

(3) The Registrar must publish all adjustments made under subrule (2) on the CAA website.

(4) A payment made by a judgment debtor must be credited first against the judgment debt as defined in rule 201.1 excluding interest and, after that has been discharged, to any sum that has accrued on account of interest.

Supreme Court

(5) Interest on a judgment accruing before the commencement date is governed by rule 217 of the *Supreme Court Civil Supplementary Rules 2014*.

District Court

(6) Interest on a judgment accruing before the commencement date is governed by rule 217 of the *District Court Civil Supplementary Rules 2014*.

Magistrates Court

(7) Interest on a judgment accruing before the commencement date is governed by rule 124 of the *Magistrates Court (Civil) Rules 2013*.

Part 6—Setting aside or varying judgment

186.1—Power to set aside or vary judgment

(1) The Court may at any time correct an error in a judgment.

(2) The Court may, if satisfied that the interests of justice so require—

(a) vary a judgment; or

(b) set aside a judgment and reopen a proceeding.

186.2—Power to add to judgment—Magistrates Court

(1) This rule applies to the following proceedings by way of claim when the applicant obtains default judgment under Chapter 12 Part 2, 5 or 6:

(a) a claim by a Council constituted under the *Local Government Act 1999* for an instalment of rates and, when applicable, fines or interest; and

(b) a claim by the Commissioner of State Taxation for State land tax and, when applicable, penalty tax or interest.

(2) In a proceeding to which this rule applies, an applicant who has obtained judgment for the amount to which it is entitled in respect of the claim may later apply, by filing an interlocutory application in accordance with rule 102.1, to amend the judgment to reflect further accrued liability of the same owner in respect of the same property.

(3) An interlocutory application under subrule (2) must be supported by an affidavit in accordance with rule 102.1(2) showing the calculation of the amount now claimed to be due in addition to the amount the subject of the original claim.

(4) The applicant must serve the interlocutory application and supporting affidavit on the respondent by original service.

(5) On the hearing of the interlocutory application, the Court may—

(a) if the respondent does not appear— enter default judgment under Chapter 12 Part 5;

(b) make orders for the application to proceed to trial; or

(c) make any other or further order as it thinks fit.

Part 7—Satisfaction of monetary judgment

187.1—Judgment debt paid in full

When it comes to the attention of the Registrar that a judgment debt as defined in rule 201.1 has been paid, the Registrar must, upon proof that it has been paid, record that the judgment has been paid in full.

Chapter 16—Costs

Note—

This Chapter addresses costs orders made in and costs rules applying to substantive proceedings (including appellate proceedings) in the Court. Chapter 20 Part 12 applies to originating applications to fix costs between a lawyer and client or arising under some other law. The Court has power under those rules to order that certain provisions of this Chapter apply to such proceedings.

Part 1—Introduction

191.1—Definitions

In this Chapter, unless the contrary intention appears—

claimant means a person to whom costs are payable either under a costs order that did not fix the amount of the costs or by operation of these Rules;

Fast Track costs scale means the applicable costs scale referred to in rule 192.4;

Higher Courts costs scale means the applicable costs scale referred to in rule 192.1;

indemnity basis means a basis on which costs are a complete indemnity against the costs incurred by the person entitled to payment of costs in the proceeding (or the relevant part of the proceeding), except to the extent that the costs are shown by the liable party to have been unreasonably incurred;

liable party means a person liable to pay costs to the claimant under a costs order that did not fix the amount of the costs or by operation of these Rules;

Magistrates Court costs scale means the applicable costs scale referred to in rule 192.2;

Minor Civil costs scale means the applicable costs scale referred to in rule 192.3;

solicitor/client basis means a basis on which costs are required to be shown by the person entitled to payment of costs to have been reasonably incurred in the proceeding (or the relevant part of the proceeding);

standard costs basis means a basis on which costs are required to be shown by the person entitled to payment of costs to have been reasonably incurred in the proceeding (or the relevant part of the proceeding) determined by reference to the relevant costs scale in force when the costs were incurred;

taxation means the process under Part 5 for the quantification of costs payable under a costs order that did not fix the amount of the costs in a proceeding or by operation of these Rules (and ***taxing*** has a corresponding meaning);

taxing officer means the officer responsible for taxing costs and—

(a) in the Supreme Court will usually be a Master or Judicial Registrar, but may be the Registrar exercising power of the Court conferred by rule 11.1 or a Judge;

(b) in the District Court will usually be a Master or Judicial Registrar, but may be the Registrar exercising power of the Court conferred by rule 11.2 or a Judge;

(c) in the Magistrates Court will usually be a Judicial Registrar, but may be the Registrar exercising power of the Court conferred by rule 11.3 or a Magistrate.

191.2—Record required to be kept and file produced

(1) A party to a proceeding must maintain an adequate record of the party's costs in respect of the proceeding.

(2) A record must enable the party to formulate a claim for costs in accordance with rule 195.2.

(3) A lawyer acting for a party must maintain an adequate record of the party's costs on the party's behalf and is not entitled to charge a fee for doing so.

(4) If the Court requires a lawyer's file and supporting documents in connection with a taxation, the lawyer must produce them to the Registry on request.

(5) A lawyer must be in a position to produce the lawyer's file and supporting documents to the taxing officer, if required, at a taxation hearing.

191.3—Consequences of non-compliance

If a party fails to maintain an adequate record of the party's costs as required by rule 191.2, the Court —

(a) may decline to award costs in favour of the party or reduce the costs awarded in favour of the party by such amount as it thinks fit; or

(b) may decline to tax costs ordered in favour of the party or reduce the costs taxed by such amount as it thinks fit.

Part 2—Costs scales

192.1—Higher Courts costs scale

(1) The Higher Courts costs scale in respect of work done from the commencement date is fixed by Schedule 6 Part 2.

(2) The Higher Courts costs scale in respect of work done before the commencement date is the scale fixed by rules 218 and 219 of the *Supreme Court Civil Supplementary Rules 2014* for the periods shown in those rules.

192.2—Magistrates Court costs scale

(1) The Magistrates Court costs scale in respect of work done from the commencement date is fixed by Schedule 6 Part 3.

(2) The Magistrates Court costs scale in respect of work done before the commencement date is the scale contained in Schedule 3 Cost Scale 1 or 3 (as applicable) of the *Magistrates Court (Civil) Rules 2013*.

192.3—Minor Civil costs scale

(1) The Minor Civil costs scale in respect of work done from the commencement date is fixed by Schedule 6 Part 4.

(2) The Minor Civil costs scale in respect of work done before the commencement date is the scale contained in Schedule 3 Cost Scale 2 of the *Magistrates Court (Civil) Rules 2013*.

192.4—Fast Track costs scale

(1) The Fast Track costs scale in respect of work done from the commencement date is fixed by Schedule 6 Part 5.

(2) The Fast Track costs scale in respect of work done before the commencement date is the scale contained in Schedule 1 Table 1 of the *Fast Track Rules 2014*.

192.5—Adjustments to costs scales

(1) The Chief Judicial Officer may make adjustments to a costs scale applying in a Court by reference to movements in the consumer price index or average weekly earnings.

(2) The Registrar must publish all cumulative adjustments made under subrule (1) on the CAA website.

Part 3—Scale of costs in proceeding

193.1—Scale of costs in a proceeding—Supreme Court and District Court

(1) Subject to the following subrules, costs between parties, whether ordered to be paid by the Court or payable by operation of these Rules, are to be determined on the standard costs basis and in accordance with the Higher Courts costs scale.

(2) However, if a proceeding is in the Fast Track List when costs between parties are awarded or become payable by operation of these Rules, unless the Court otherwise orders, costs are to be determined in accordance with the Fast Track costs scale.

(3) Subrule (1) is subject to the costs rules in Chapter 11 Part 2 Division 4.

(4) The Court may order that costs are payable on another scale, including the Magistrates Court costs scale, or another basis, including the indemnity basis or the solicitor/client basis.

193.2—Scale of costs in a proceeding—Magistrates Court

(1) Subject to the following subrules, costs between parties, whether ordered to be paid by the Court or payable by operation of these Rules, are to be determined on the standard costs basis and in accordance with the Magistrates Court costs scale.

(2) However, if a proceeding is in the Minor Civil Division when costs between parties are awarded or become payable by operation of these Rules, unless the Court otherwise orders, costs are to be determined in accordance with the Minor Civil costs scale.

(3) Subrule (1) is subject to the costs rules in Chapter 11 Part 2 Division 4.

(4) The Court may order that costs are payable on another scale, including the Higher Courts costs scale, or another basis, including the indemnity basis or the solicitor/client basis.

Part 4—Order for costs

194.1—Costs may be ordered at any stage

(1) The Court may make an order for costs in favour of a party or non-party and against a party or non-party at any stage of a proceeding up to and after the final determination of the proceeding.

(2) If the Court determines that it does not have jurisdiction to hear and determine the substantive proceeding, the Court may nevertheless order that a party pay costs in relation to the proceeding.

194.2—Costs budget may be ordered

(1) The Court may make an order fixing the costs, or the maximum costs, that may be recovered between parties in relation to a proceeding, or a stage of or step in a proceeding.

(2) Unless the Court otherwise orders, an order made under subrule (1) will not include any costs—

(a) payable under rule 69.5, rule 74.3, rule 154.5, rule 154.6, rule 154.11, rule 154.12, rule 154.13, rule 194.4(2) or rule 194.4(3); or

(b) ordered to be paid because of a party's failure to comply with these Rules or an order of the Court.

194.3—Costs orders

(1) The Court may order that costs be awarded—

(a) on the standard costs basis, solicitor/client basis, indemnity basis or another basis specified by the Court;

(b) in accordance with the Higher Courts costs scale, Magistrates Court costs scale, Minor Civil costs scale or Fast Track costs scale; or

(c) on a combination of different bases or scales for different components of costs.

(2) The Court may order that interest be payable on an award of costs in respect of a time before judgment is entered for the costs.

(3) The Court may order that costs (including any interest) be awarded on a lump sum or partial lump sum basis.

(4) The Court may order that costs awarded to a party be set-off against any liability of the party (including a liability for costs).

(5) The Court may refer any question about costs (including whether costs should be ordered, who should pay costs or the basis on which costs should be paid) for inquiry and report or determination by a taxing officer.

194.4—Presumptive costs rules

(1) Subject to an order of the Court to the contrary (which, to avoid doubt, may be made at any time in the course a proceeding), the following rules apply in any proceeding before the Court.

(2) The costs of an amendment are to be paid by the party making the amendment.

(3) The costs of an application to extend time fixed by or under these Rules are to be paid by the party making the application.

(4) The costs of a directions hearing are costs in the cause.

(5) Subject to subrules (2) and (3), the costs of an interlocutory application are costs in the cause.

(6) Costs that are reserved but not subsequently the subject of a specific order are costs in the cause.

(7) The quantum of costs ordered is to be taxed if not agreed.

(8) Costs ordered or to be paid under these Rules are not to be taxed and do not become payable until the final determination of a proceeding, including final costs orders being made.

Note—

See also rule 69.5, rule 74.3, rule 154.5, rule 154.6, rule 154.11, rule 154.12, rule 154.13, rule 194.4(2) and rule194.4(3), which create presumptive costs rules.

194.5—General costs principles

(1) Each of the following principles are subject to—

(a) the presumptive costs rules in rule 194.4 (to the extent that the Court does not otherwise order);

(b) other applicable rules;

(c) other applicable principles; and

(d) the overriding discretion of the Court as to costs.

(2) Costs follow the event.

(3) The costs of an application that, in the opinion of the Court, should have been made at an earlier stage of the proceedings are to be paid by the applicant.

(4) The costs of an adjournment of a hearing, directions hearing or trial arising from a party's default are to be paid by the party in default.

(5) The costs of proving a fact or document that a party unreasonably failed to admit are to be paid by that party.

(6) Costs incurred as a result of multiple parties with an identical or common interest being separately represented, or separately participating in the proceeding, are to be borne or paid by those parties if, in the opinion of the Court—

(a) the separate representation or participation was not necessary; or

(b) the separate representation or participation occurred to a greater extent than was necessary.

(7) Costs orders made by a transferor court in a proceeding transferred or removed into the Court will not be disturbed.

Supreme Court

(8) In a claim founded on a claim for defamation, costs of the claim are not payable to a successful applicant if the damages awarded are less than $50,000.

(9) In any other monetary claim, costs of the claim are not payable to a successful applicant if the amount awarded is less than $120,000.

District Court

(10) In a claim founded on a claim for defamation, costs of the claim are not payable to a successful applicant if the damages awarded are less than $25,000.

(11) In any other monetary claim, costs of the claim are not payable to a successful applicant if the amount awarded is less than $60,000.

Note—

See also rule 61.14 in relation to pre-action steps and rule 132.10 in relation to formal offers.

194.6—Discretionary factors

(1) In exercising its discretion as to costs, the Court may have regard to any factors it considers relevant.

(2) For example, the Court may have regard to the following factors—

(a) any misconduct or unreasonable conduct of a party in connection with a proceeding;

(b) any breach by a party of overriding obligations, these Rules or an order of the Court;

(c) any breach by a party of the pre-action obligations imposed by Chapter 7 Part 1;

(d) the making or not making of an offer by a party to resolve the proceeding;

(e) the non-acceptance by a party of an offer made by another party to resolve the proceeding;

(f) the value and importance of the relief sought or any relief obtained;

(g) any public interest in the subject matter of the proceeding or public benefit from the prosecution or defence of the proceeding; or

(h) whether costs awarded are to be met by a person or out of a fund.

Note—

See also rule 61.16 in relation to pre-action steps and rule 132.11 and rule 132.12 in relation to formal offers.

194.7—Indemnification against costs

If a person is or would otherwise be liable to pay costs to a second person and the first person is entitled to be indemnified by a third person in whole or in part against that liability, the Court may order that—

(a) the third person pay the costs of the first person to the extent of the indemnification; or

(b) the third person pay to the second person an amount to the extent of the indemnification.

194.8—Costs order against lawyer

(1) If a lawyer engages in relevant conduct in, or in connection with, a proceeding that causes a party (including the lawyer's client) to incur costs, the Court may order that—

(a) costs as between the lawyer and the lawyer's client be disallowed;

(b) the lawyer pay costs incurred by a party as a result of the relevant conduct; or

(c) the lawyer indemnify a party against a liability for costs incurred as a result of the relevant conduct.

(2) For the purposes of this rule, a lawyer engages in ***relevant conduct*** if the lawyer—

(a) breaches overarching obligations;

(b) fails to attend or be properly prepared for a hearing;

(c) fails to comply with these Rules or an order of the Court;

(d) is guilty of undue delay; or

(e) incurs costs unnecessarily, improperly or unreasonably.

Part 5—Taxation of costs

Division 1—Institution of taxation process

195.1—Pre-taxation steps

(1) Before initiating a taxation process under rule 195.2, a claimant must make a genuine offer to the liable party to resolve the amount of costs payable that would otherwise be the subject of the taxation process.

(2) A genuine offer must—

(a) be in writing;

(b) state the amounts claimed for costs divided into costs scale periods;

(c) state the amounts claimed for counsel fees;

(d) state the amounts claimed for external disbursements; and

(e) make an offer of a fixed sum for the total amount of the costs, which remains open for acceptance within 28 days.

(3) A recipient of an offer made under subrule (2) must respond within 28 days by—

(a) accepting the offer;

(b) making a counter offer of a fixed sum for the total amount of the costs; or

(c) offering to meet within 14 days to negotiate an amount for costs.

195.2—Initiation of taxation process

(1) A claimant may apply for the taxation of costs under a costs order or by operation of these Rules by filing and serving on the liable party a claim for costs in the prescribed form.

Prescribed form—

Form 136 Claim for Costs

(2) A claim for costs must—

(a) unless the Registrar permits the schedule to be in some other form, provide the costs schedule in Microsoft Word format; and

(b) attach copies of all invoices for counsel fees and external disbursements.

(3) A claimant must, if the claim proceeds to taxation—

(a) at the request of the liable party, produce for inspection any documents on which the claimant proposes to rely; and

(b) if ordered by the Court, identify any documents relevant to the claim that are not produced because of a claim of privilege which is not waived.

(4) A claimant or liable party may apply for an order relating to the taxation of costs, notwithstanding that a claim for costs has not been filed under subrule (1), by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

195.3—Response to claim for costs

(1) The liable party must, within 28 days after service of a claim for costs, file and serve a response to a claim for costs in the prescribed form, reproducing the schedule to the claim for costs and—

(a) completing the response liability column in the schedule for each item by either—

(i) admitting liability;

(ii) admitting liability to a specified extent; or

(iii) denying liability and succinctly identifying the reason for the denial; and

(b) completing the response quantum column in the schedule for each item (on the assumption that liability exists for the item, which may be denied) by either—

(i) admitting the quantum claimed; or

(ii) identifying what the liable party contends is the recoverable quantum and succinctly identifying the reason for the contention.

Prescribed form—

Form 137 Response to Claim for Costs

Note—

One manner to identify the reason for denying liability or differing on quantum is to create shorthand codes for different reasons (for example the liable party may elect to use "N" to mean the work was unnecessary).

(2) If the liable party in the response to the claim for costs does not respond to a particular item, the item is taken to be admitted in full.

(3) If the liable party fails to file and serve a response in accordance with subrule (1), the claimant may request the entry of a costs judgment for the total amount shown in the claim for costs by filing an application to the Registrar in accordance with rule 13.2(5) and an affidavit of proof of service in the prescribed form proving service of the claim for costs on the liable party.

Prescribed forms—

Form 42 Affidavit of Proof of Service

Form 43 Affidavit of Proof of Personal Service on an Individual by Sheriff's Officer

(4) The claimant may request entry of an interim costs judgment for the total amount admitted or taken to be admitted by the liable party in a response to a claim for costs by filing an application to the Registrar in accordance with rule 13.2(5).

(5) The Registrar may enter an administrative costs judgment for the appropriate amount upon the filing of a request by the claimant under subrule (3) or (4).

Prescribed form—

Form 130 Record of Monetary Judgment

195.4—Reference for taxation

(1) If a claim for costs is not resolved under rule 195.1 or rule 195.3, the claimant or liable party may refer the claim for taxation by filing and serving an application to the Registrar in accordance with rule 13.2(5).

(2) The Registrar will convene a hearing before a taxing officer and give notice of the hearing in the prescribed form.

Prescribed form—

Form 78E Notice of Hearing

(3) The parties involved in a disputed taxation must confer before the taxation hearing with a view to resolving, limiting or clarifying the items in dispute and report to the Court on the result at the commencement of the taxation.

Division 2—General provisions on taxation

195.5—General taxation principles

(1) If the same law firm represents multiple parties, unless special circumstances exist, costs will not be allowed separately for each party but will be allowed on the basis of the work necessary and reasonable for the representation of the parties collectively.

(2) The necessary and reasonable costs of procuring evidence reasonably required for presentation of a party's case will generally be allowed.

(3) Costs will not be allowed insofar as they result from over-caution, negligence or mistake.

(4) If proceedings are adjourned—

(a) as a result of the default of a party—the party should bear the costs; or

(b) as a result of the default of a lawyer—the lawyer should bear the costs.

195.6—Delay

If a claimant unduly delays bringing a claim for costs and the liable party suffers prejudice as a result, the Court may—

(a) not allow interest on the claim for costs (whether in whole or in part);

(b) disallow the claim for costs in whole or in part;

(c) assess compensation for the delay in favour of the liable party and reduce the costs awarded by that amount; or

(d) reduce the amount allowed to that to which the claimant would have been entitled if there had been no delay.

195.7—Counsel fees—Supreme Court and District Court

(1) The Chief Judicial Officer, on the recommendation of the Masters, may produce and amend from time to time an indicator to the exercise of the discretion in respect of counsel fees (a ***Counsel Fee Indicator***).

(2) A Counsel Fee Indicator is a guide only and does not fetter the exercise of the discretion of the Court in a particular case.

(3) The Registrar must publish the current version of any Counsel Fee Indicator on the CAA website.

Division 3—Taxation procedure

195.8—Powers

(1) A taxing officer has on and in respect of a taxation, the same powers as the Court in relation to a proceeding in the Court.

Example—

A taxing officer may order or take evidence (on affidavit or orally), require the production of documents, require the attendance of witnesses or make orders about the participation of persons interested in the taxation.

(2) A taxing officer, in undertaking a taxation, is not bound by the rules of evidence and may decide questions by estimation or by any other expedient means.

(3) Without affecting the generality of subrule (1), a taxing officer may—

(a) require a party to produce its record of costs and disbursements and any other material relevant to the taxation (subject to any claim for privilege);

(b) require a party to provide further details of any item the subject of a claim for costs;

(c) make interim orders;

(d) order repayment of any overpayment of costs; or

(e) make any orders that might be made on a directions hearing in a proceeding.

195.9—Hearings

(1) A taxing officer may use any one or more of the following methods to undertake a taxation—

(a) a lump sum assessment, or otherwise determination of the amount of costs to be awarded in a wholesale manner, rather than undertaking an item by item assessment;

(b) an item by item assessment;

(c) assessments in successive stages;

(d) separate assessments of different components of the costs claimed; or

(e) any other method.

(2) A taxing officer may—

(a) accept an undisputed item without inquiry;

(b) determine an issue in dispute;

(c) refer an issue in dispute to mediation or arbitration;

(d) refer an issue in dispute to an expert for inquiry and report;

(e) order that an item by item taxation be undertaken on a future occasion and that the parties take steps in preparation for the taxation; or

(f) make any other or further order the taxing officer thinks fit.

(3) If an order is made that an item by item taxation be undertaken on a future occasion, the claimant must file and serve an updated version of the response to claim for costs (filed by the liable party) in the prescribed form—

(a) substituting the heading "amount disallowed" for the heading "offer" in the relevant column of the schedule; and

(b) adding any additional columns or particulars ordered by the taxing officer.

Prescribed form—

Form 137 Response to Claim for Costs

195.10—Orders

(1) During or after a hearing conducted for the purposes of taxation, a taxing officer may make a provisional order—

(a) determining a specific issue in dispute;

(b) allowing or disallowing a specific item;

(c) fixing the amount of costs, or a specified component of costs, to which the claimant is entitled; or

(d) that interest be payable on an award of costs in respect of a period before judgment is entered for the costs.

(2) During or after a hearing conducted for the purposes of taxation, if the taxing officer is not a Registrar or Judicial Registrar, the taxing officer may make a non-provisional order—

(a) determining a specific issue in dispute;

(b) allowing or disallowing a specific item;

(c) fixing the amount of costs, or a specified component of costs, to which the claimant is entitled; or

(d) that interest be payable on an award of costs in respect of a period before judgment is entered for the costs.

195.11—Costs of taxation

(1) In this rule—

costs of taxation mean the costs of taking the steps under Divisions 1 and 3.

(2) Subject to subrule (3), the costs of taxation are costs in the cause of the claimant.

(3) The Court may make any order it thinks fit concerning the payment of costs of taxation, and in making such an order, may take the following matters into consideration—

(a) the overall result of the taxation process;

(b) a comparison between the result of the taxation and the parties' respective positions during the pre-taxation steps under rule 195.1;

(c) a comparison under rule 132.12 between the result of the taxation and any offer made by a party under rule 132.4 as applied by rule 132.12(1);

(d) the relative success or failure of the parties in relation to disputed items; or

(e) the relative number of items, and their respective quantum, in respect of which the amount claimed was disallowed.

195.12—Review of provisional order

(1) If the taxing officer makes a provisional order under rule 195.10(1), the claimant or liable party may within 14 days after the date of the order request a review of the provisional order by filing and serving an application to the Registrar in accordance with rule 13.2(5).

(2) If neither party requests a review within 14 days after the date of the order, it becomes a non-provisional order as if it had been made under rule 195.10(2).

(3) If either party requests a review within 14 days after the date of the order, the Registrar will convene a hearing and give notice of the hearing to the parties in the prescribed form, and the hearing will be conducted—

(a) if the order was made by a taxing officer other than a Registrar or Judicial Registrar— by the same taxing officer who made the order (however, it may be

before a different taxing officer if, for some reason, it is not possible or convenient for the same taxing officer to conduct the hearing); or

(b) if the order was made by a taxing officer who is a Registrar or Judicial Registrar—by a taxing officer other than a Registrar or Judicial Registrar.

Prescribed form—

Form 78E Notice of Hearing

(4) A taxing officer conducting a review under this rule will reconsider the provisional order the subject of the review and may exercise any of the powers identified in rule 195.8 and proceed in any manner identified in rule 195.9.

(5) A taxing officer conducting a review under this rule may confirm or vary the provisional order, which (as varied, when applicable) then becomes a non-provisional order as if it had been made under rule 195.10(2).

195.13—Entry of judgment

When an order is or becomes non-provisional under rule 195.10(2) or 195.12, it becomes a judgment of the Court.

Part 6—Right of appeal against judgment on taxation

196.1—Right of appeal

(1) Upon entry of judgment under rule 195.13 following completion of a taxation, the claimant or liable party may appeal against the judgment, or any interim judgment or order made in the course of the taxation, by filing a notice of appeal in accordance with rule 214.2 within 21 days after the relevant judgment or order.

(2) The claimant or liable party may only appeal against an interim judgment or order made in the course of the taxation before completion of the taxation with leave of the taxing officer.

Chapter 17—Enforcement

Part 1—General

Division 1—General

201.1—Definitions

In this Chapter, unless the contrary intention appears—

Enforcement Act means the *Enforcement of Judgments Act 1991*;

Fines Enforcement Act means the *Fines Enforcement and Debt Recovery Act 2017*;

judgment creditor means a person in whose favour a judgment is enforceable and includes a person to whom the benefit of a judgment has passed (by assignment or in any other way);

judgment debtor means a person against whom a judgment is enforceable;

judgment debt means the amount owing (including costs and post-judgment interest) under a monetary judgment and includes any recoverable costs of enforcing the judgment under the Enforcement Act or Fines Enforcement Act;

monetary judgment means—

(a) a judgment or order of the Court (including a judgment registered under Chapter 19 Part 15) to the extent that it is for the payment of a sum of money, whether or not it provides for any other form of relief; or

(b) a civil debt determination by the Chief Recovery Officer under the Fines Enforcement Act;

non-monetary judgment means a judgment to the extent that it is not a monetary judgment;

payment order—see rule 203.7;

sheriff means the sheriff within the meaning of the *Sheriff's Act 1978* and—

(a) where the context requires—includes deputy sheriffs and sheriff's officers within the meaning of section 6 of the *Sheriff's Act 1978*; and

(b) where the context requires—includes a person other than the sheriff who serves a summons or warrant under an order made under rule 206.1;

sheriff's fee means the fee payable to the sheriff for service of a document or execution of process prescribed for the purposes of the *Sheriff's Act 1978* or otherwise and any disbursements reasonably incurred by the sheriff in undertaking the service or execution.

201.2—Service of judgment

(1) A person who seeks to enforce a judgment must serve a copy of the judgment on the person against whom the judgment is enforceable—

(a) if an investigation summons is issued—at the time of or before service of the investigation summons;

(b) if a warrant of possession of land is sought under rule 204.2—at the time of or before service of the application for the warrant;

(c) if a warrant of sale or warrant of possession is issued and paragraph (b) does not apply—at the time of or before execution of the warrant;

(d) if a charging order, garnishee order or receivership order is sought—at the time of or before service of the application for the order;

(e) in any other case—before taking any step to enforce the judgment.

(2) Service of a judgment referred to in subrule (1) must be made—

(a) if the person against whom the judgment is sought to be enforced has an address for service in the proceeding—by service at the address for service or by personal service; or

(b) in any other case—by original service.

(3) An order against a person for contempt of a judgment or order by reason of non-compliance may only be made if the person allegedly in contempt was served by personal service with the relevant judgment or order before engaging in the conduct that constituted the alleged non-compliance.

201.3—Costs

The Court may, in the exercise of its discretion, make an order concerning the costs of steps governed by this Chapter.

201.4—Review of Registrar's decision

An application under section 18(2) of the Enforcement Act for review of a decision by the Registrar under rule 11.1(3)(c), rule 11.2(2)(b) or rule 11.3(2)(b) must be made by filing a notice of review in the prescribed form in accordance with rule 214.2 within—

(a) 21 days after the decision; or

(b) if the decision relates to the issue of a summons or warrant—21 days after the summons is served or warrant is executed.

Prescribed form—

Form 182 Notice of Review

Division 2—Issue and execution of enforcement process

201.5—Time of issue and execution

(1) Unless the Court otherwise orders, an enforcement process in respect of a judgment must not be issued more than 6 years after the date of the judgment.

(2) Unless the Court otherwise orders, an order for the issue of a warrant of apprehension lapses after 28 days unless the requesting party has filed an application to enforce a judgment in the prescribed form requesting the issue of a warrant and paid the prescribed issue fee.

Prescribed form—

Form 141 Application to Enforce Judgment

(3) Unless the Court otherwise orders, a warrant of possession of land must not be executed more than 6 months after—

(a) the date of the judgment for possession on which the warrant is based; or

(b) if the warrant was issued under rule 204.3— the date of the order made, or issue of the warrant by the Registrar without a court order, under rule 204.3.

(4) Unless the Court otherwise orders, any other warrant, except a warrant of commitment, must not be executed more than 12 months after the date of the issue of the warrant.

(5) An order otherwise by the Court under subrule (1), (2), (3) or (4) may be made at any time before the expiration of the time period referred to in the applicable subrule.

Division 3—Warrants, adjournments and remands

201.6—Warrants of apprehension

(1) If a person fails to appear within 15 minutes of the scheduled commencement of a hearing under this Chapter, and that hearing—

(a) occurs not less than 4 days after a summons requiring their attendance (and any other documents required to be served with the summons) was served by personal service on the person, and such service is proved by an affidavit of proof of service in the prescribed form or by oral evidence by the process server;

(b) is an adjourned hearing, the time for which was fixed in the person's presence at a previous hearing; or

(c) is an adjourned hearing and it is proved that the person was given not less than 4 days' notice of the adjourned hearing by telephone conversation, email service in accordance with rule 42.2 or post service in accordance with rule 42.3,

the Court may order the issue of a warrant of apprehension and, on filing of an application to enforce a judgment in the prescribed form requesting the issue of a warrant and payment of the prescribed fee (if applicable), the Registrar may issue a warrant of apprehension in the prescribed form.

Prescribed forms—

Form 141 Application to Enforce Judgment

Form 42 Affidavit of Proof of Service

Form 43 Affidavit of Proof of Personal Service on an Individual by Sheriff's Officer

Form 155 Warrant of Apprehension – Judgment Debtor

Form 154 Warrant of Apprehension

Form 158 Warrant of Apprehension – Fines Enforcement and Debt Recovery Act

(2) The Court may, if it thinks fit, abridge the period of 4 days referred to in subrule (1).

(3) A warrant of apprehension does not authorise apprehension outside normal court hours unless the Court is satisfied that there is no other reasonable means of ensuring the person's attendance at court.

(4) If a warrant of apprehension authorises apprehension outside normal court hours, it will be endorsed with an order that the person is to be held in police custody until the person can be brought before the Court.

(5) A person who is apprehended under a warrant of apprehension must be brought before the Court as soon as practicable.

201.7—Adjournment and remand

(1) The Court may adjourn a hearing from time to time.

(2) When a person is brought before the Court under a warrant of apprehension and the matter is to be adjourned, the Court may—

(a) remand the person in custody to the adjourned date provided that the adjourned date is not more than 7 days later;

(b) release the person on such conditions as the Court thinks fit to secure the person's attendance on the adjourned date (for example, surrender of a passport or lodging a monetary bond); or

(c) release the person on the person's undertaking to appear on the adjourned date.

(3) If the Court remands a person in custody under subrule (2)(a), the Court will issue a warrant of remand in the prescribed form.

Prescribed form—

Form 159 Warrant of Remand

Division 4—Rescission, variation, suspension or stay

201.8—Rescission, variation, suspension or stay of order, warrant or summons

(1) The Court may, if there is proper reason to do so, rescind, suspend, vary or stay a payment order, garnishee order, charging order or receivership order made, or a warrant or summons issued, under this Chapter.

(2) An application under subrule (1) may be made by a party to a proceeding, a person against whom an order is made or summons or warrant issued or a person who has an interest in the subject matter of the relevant order, summons or warrant by—

(a) filing an interlocutory application and supporting affidavit in accordance with rule 102.1; or

(b) an oral application during a hearing under or governed by this Part.

(3) An application filed under subrule (2)(a) must be served on all other relevant parties to the proceeding as soon as practicable and at least 7 days before the hearing date at their address for service or otherwise by original service.

(4) The Court may grant a stay subject to conditions, including conditions necessary or desirable to secure the attendance of the person applying for the stay at Court or compliance with any order.

(5) On the hearing of an application by a judgment debtor for a stay of a warrant, the Court may, if it thinks fit, conduct an investigation or examination hearing.

Note—

An application for a stay does not itself operate to stay the order or warrant sought to be stayed. Only an order of the Court can stay an order or warrant.

Part 2—Particular kinds of parties

202.1—Judgment against unincorporated association or partnership

(1) This rule applies to a judgment against an unincorporated association in the association's name or against a partnership in the partnership name.

(2) A judgment against an unincorporated association or a partnership may be enforced against the common property of the association or the property of the partnership in the same way as a judgment against a company.

(3) A monetary judgment against an unincorporated association or a partnership may be enforced against an individual member of the association or partner of the partnership but only with leave of the Court.

(4) A non-monetary judgment against an unincorporated association or a partnership may be enforced against an officer of the association or a partner of the partnership but only with leave of the Court.

(5) An application for leave under subrule (3) or (4) must be served by personal service on a person in respect of whom leave is sought.

Note—

Section 15 of the *Enforcement of Judgments Act 1991* provides that a monetary judgment against an unincorporated association may be enforced against the common property of the association or against the property of any person who is liable for the debts of the association and a monetary judgment against a partnership may be enforced against the partnership property or against the property of any person who is liable for the debts of the partnership.

202.2—Judgment against representative party

(1) A judgment against a representative party in a representative proceeding may only be enforced against a represented party with leave of the Court.

(2) An application for leave under subrule (1) must be served by personal service on a represented party in respect of whom leave is sought.

(3) In this rule, a reference to a "representative party", a "representative proceeding" or a "represented party" is a reference to those terms as defined in rule 24.1.

Part 3—Enforcement of monetary judgments

Division 1—General

203.1—Cross-judgments

If there are cross monetary judgments enforceable under the Enforcement Act between the same parties, only the balance of the amounts owing under the judgments (if any) is enforceable.

203.2—Limitation on enforcement processes

(1) Unless the Court otherwise orders, if a judgment debt against an individual is for $12,000 or less and the debt does not arise from the judgment debtor carrying on a business, no other enforcement process may be issued in respect of the judgement unless—

(a) a payment order has been made at an investigation hearing; or

(b) the judgment debtor failed to appear at the hearing of an investigation summons after having been duly served with the summons.

(2) Subrule (1) does not apply to an examination summons issued under section 61(7) of the Fines Enforcement Act.

Note—

Section 61(7) of the *Fines Enforcement and Debt Recovery Act 2017* provides that, if a debtor fails to comply with a determination that a debtor is to pay instalments towards the satisfaction of a debt under section 61(1), the Court may on application by the Chief Recovery Officer issue an examination summons.

(3) Unless the Court otherwise orders, no warrant of sale may be issued in respect of a judgment debt if the judgment debtor is subject to an extant payment order in respect of the judgment debt, unless—

(a) if the payment order was for payment of a lump sum under section 5(1)(a) of the Enforcement Act—the judgment debtor has failed to comply with the order; or

(b) if the payment order was for payment of instalments under section 5(1)(b) of the Enforcement Act—the judgment debtor is at least 2 instalments in arrears.

(4) Unless the Court otherwise orders, no warrant of sale of land may be issued against an individual in respect of a judgment debt of not more than $12,000 unless—

(a) a warrant of sale of goods has been executed leaving the whole or part of the judgment debt unpaid; or

(b) it is not possible to execute a warrant of sale of goods despite reasonable endeavours to do so.

203.3—Rules of evidence

The Court at a hearing of an investigation summons, examination summons or application for a payment order under this Part is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

Division 2—Investigation hearings

203.4—Issue of investigation summons

(1) An application for the issue of an investigation summons to a judgment debtor or witness under section 4(2) of the Enforcement Act must be made by filing an application to enforce a judgment in the prescribed form.

Prescribed form—

Form 141 Application to Enforce Judgment

(2) If an application complies with subrule (1), the Registrar may convene an investigation hearing before the Court and issue an investigation summons in the prescribed form requiring the judgment debtor or witness to attend for examination or to produce documents relevant to the investigation.

Prescribed forms—

Form 143 Investigation Summons

Form 144 Investigation Summons – Witness

(3) The investigation summons and a questionnaire in the prescribed form must be served by personal service on the judgment debtor or witness as soon as practicable.

Prescribed form—

Form 145 Questionnaire

Note—

Section 4(3) of the *Enforcement of Judgments Act 1991* requires the summons to be served personally.

Magistrates Court

(4) Unless the Court otherwise orders, the investigation summons must be returnable at the Court nearest to—

(a) the place of residence of a judgment debtor or witness who is an individual; or

(b) a registered or principal office of a judgment debtor which is not an individual.

203.5—Consent to order for payment

(1) After the issue of an investigation summons, a judgment debtor and judgment creditor may consent to an order for payment under section 5(1) of the Enforcement Act by executing a consent order for payment in the prescribed form.

Prescribed form—

Form 142 Consent Order for Payment

(2) Upon the filing of a duly executed consent to payment, the Court may make an order in chambers in the terms of the consent.

203.6—Completion of questionnaire

(1) Unless the parties have executed a consent order for payment under rule 203.5, a judgment debtor must complete Parts A and B of the questionnaire and bring the completed form to the investigation hearing.

(2) A judgment debtor may, but is not required to, swear or affirm the affidavit following Part B of the questionnaire before attending the investigation hearing.

(3) If the judgment debtor does not swear or affirm an affidavit in accordance with subrule (2), the judgment debtor must swear or affirm at the investigation hearing that the information recorded in the questionnaire is true.

203.7—Investigation hearing

(1) Unless the Court otherwise orders, a hearing under this Division is to be heard in chambers in the presence of the parties.

(2) If a judgment debtor or witness appears at an investigation hearing, the person must give evidence on oath or affirmation relevant to the judgment debtor's means of satisfying the monetary judgment.

(3) The Court may, at an investigation hearing, on application by the judgment creditor and subject to compliance with section 5(2) and (3) of the Enforcement Act, make a payment order under section 5(1) of the Enforcement Act in the prescribed form (a ***payment order***).

Prescribed form—

Form 81 Record of Outcome – Order or Form 82 Order

(4) The Court may, at an investigation hearing, on application by a judgment creditor and after giving to the judgment debtor an opportunity to be heard—

(a) make a garnishee order, charging order or receivership order;

(b) issue a warrant of sale; or

(c) make an order for or to assist enforcement of the judgment with the consent of the judgment creditor and judgment debtor.

Division 3—Examination hearings

203.8—Issue of examination summons

(1) An application for the issue of an examination summons to a judgment debtor must be made—

(a) when the application is under section 5(5) of the Enforcement Act—by filing an application to enforce a judgment in the prescribed form; or

(b) when the application is under section 61(7) of the Fines Enforcement Act—by filing an Originating Application, which need not be supported by an affidavit, in accordance with rule 82.1 in the prescribed form.

Prescribed forms—

Form 141 Application to Enforce Judgment

Form 2D Originating Application – Examination Summons Fines Enforcement and Debt Recovery Act

(2) The judgment creditor is not required to serve an application under subrule (1) on the judgment debtor.

(3) If an application complies with subrule (1), the Registrar may convene an examination hearing before the Court and issue an examination summons in the prescribed form requiring the judgment debtor to attend for examination.

Prescribed forms—

Form 146 Examination Summons

Form 147 Examination Summons - Fines Enforcement and Debt Recovery Act

(4) The examination summons must be served by personal service on the judgment debtor as soon as practicable.

Notes—

Section 5(5) of the *Enforcement of Judgments Act 1991* requires an examination summons issued under that subsection to be served personally.

Section 61(7) of the *Fines Enforcement and Debt Recovery Act 2017* requires an examination summons issued under that subsection to be served personally.

Magistrates Court

(5) Unless the Court otherwise orders, the examination summons must be returnable at the Court nearest to—

(a) the place of residence of a judgment debtor who is an individual; or

(b) a registered office or principal office of a judgment debtor who is not an individual.

203.9—Examination hearing

(1) Unless the Court otherwise orders, a hearing under this Division is to be heard in chambers in the presence of the parties.

(2) If a judgment debtor appears at an examination hearing, the person must give evidence on oath or affirmation relevant to whether they, without proper excuse, failed to comply with a payment order.

(3) The Court may—

(a) on an application under the Enforcement Act—if satisfied of the matters in section 5(7) of that Act, order the issue of a warrant of commitment under that section in the prescribed form;

Prescribed form—

Form 160 Warrant of Commitment – Non-Compliance with Order for Payment

(b) on an application under the Fines Enforcement Act—if satisfied of the matters in section 61(9) of that Act, order the issue of a warrant of commitment under that section in the prescribed form.

Prescribed form—

Form 161 Warrant of Commitment – Fines Enforcement and Debt Recovery Act

(4) The Court may, at an examination hearing, on application by the judgment creditor and after giving to the judgment debtor an opportunity to be heard—

(a) make a garnishee order, charging order or receivership order;

(b) issue a warrant of sale; or

(c) make an order for or to assist enforcement of the judgment with the consent of the judgment creditor and judgment debtor.

(5) If a judgment debtor remedies the default that led to an order for the issue of a warrant of commitment—

(a) if a warrant has not yet been issued—the judgment creditor must not request the issue of the warrant and the Registrar must not issue the warrant; or

(b) if a warrant has been issued—the Registrar must cancel the warrant.

Division 4—Warrant of sale

203.10—Application

(1) An application for a warrant of sale under section 7(1) of the Enforcement Act must be made by filing an application to enforce a judgment in the prescribed form.

Prescribed form—

Form 141 Application to Enforce Judgment

Note—

Section 7(2) of the *Enforcement of Judgments Act 1991* provides that the seizure and sale of personal property that could not be taken in bankruptcy proceedings against the judgment debtor cannot be authorised.

(2) If a warrant for the sale of land is sought, the person seeking the warrant must file a copy of the certificate of title in relation to the land sought to be sold under the warrant.

(3) If an application complies with subrule (1), the Registrar may issue a warrant of sale in the prescribed form.

Prescribed form—

Form 163 Warrant of Sale

Note—

Section 7(5)(b) of the *Enforcement of Judgments Act 1991* provides that, subject to any contrary direction by the court, if there is a reasonable possibility of satisfying the judgment debt out of personal property, the sheriff should sell personal property before proceeding to sell real property.

Division 5—Garnishee orders

203.11—Application and hearing without notice

(1) An application for a garnishee order under section 6(1) of the Enforcement Act must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 accompanied by a draft order in the prescribed form.

Prescribed form—

Form 148 Interim Garnishee Order

Note—

Section 60(1) of the *Social Security (Administration) Act 1999* (Cth) provides that, subject to other provisions of that Act, a social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

(2) The supporting affidavit must—

(a) identify the money of, or owing or accruing to, the judgment debtor in the control of or by the proposed garnishee sought to be attached;

(b) if the money comprises salary or wages—identify whether the judgment debtor has consented to the making of the order and, if so, exhibit a consent in writing signed by the judgment debtor before an authorised witness; and

(c) state whether the judgment creditor seeks an order nisi under section 6(3) of the Enforcement Act and, if so, identify the grounds on which it is sought without notice.

(3) If the judgment creditor seeks an order nisi, the Court may, if satisfied that it is appropriate to do so, make a garnishee order nisi under section 6(3) of the Enforcement Act in the prescribed form in chambers and fix a date for hearing to give the judgment debtor and garnishee an opportunity to be heard.

Prescribed form—

Form 148 Interim Garnishee Order

(4) If a garnishee order nisi—

(a) is made—the interlocutory application, supporting affidavit and garnishee order nisi; or

(b) is not sought or not made—the interlocutory application, supporting affidavit and draft order,

must be served on the judgment debtor and garnishee at that person's address for service or otherwise by original service as soon as practicable.

203.12—Hearing

(1) If a judgment debtor or garnishee appears at a hearing, they will be given an opportunity to give evidence or make representations.

(2) If a judgment debtor or garnishee fails to appear within 15 minutes of the scheduled commencement of the hearing and the conditions in rule 201.6(1) are satisfied, the Court may proceed in the absence of the judgment debtor or garnishee as the case may be.

(3) If consent by the judgment debtor in respect of the attachment of salary or wages is required, it must be given—

(a) in court orally by the judgment debtor or by a lawyer on their behalf; or

(b) in writing signed by the judgment debtor before an authorised witness.

(4) The Court may at the hearing, subject to compliance with section 6(2) of the Enforcement Act if applicable—

(a) make a garnishee order under section 6(1) of the Enforcement Act in the prescribed form; or

(b) make an order confirming, varying or revoking a garnishee order nisi under section 6(3)(d) of the Enforcement Act in the prescribed form.

Prescribed forms—

Form 149 Final Garnishee Order

Form 81 Record of Outcome – Order or Form 82 Order

(5) If an order is made under subrule (4) (a ***garnishee order***) in the absence of the judgment debtor or garnishee, the garnishee order must be served on the judgment debtor and garnishee at that person's address for service or otherwise by personal service.

203.13—Personal liability of garnishee

(1) A judgment creditor may apply for judgment against a garnishee on the ground that the garnishee failed to comply with a garnishee order and became personally liable for payment of the amount subject to attachment under section 6(6) of the Enforcement Act by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) An application for judgment against a garnishee must be served on the garnishee at that person's address for service or otherwise by personal service as soon as practicable.

Division 6—Charging orders

203.14—Application

(1) An application for a charging order under section 8(1) of the Enforcement Act must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 accompanied by a draft order in the prescribed form.

Prescribed form—

Form 150 Charging Order

(2) The supporting affidavit must—

(a) identify the property sought to be charged;

(b) prove the judgment debtor's ownership of the property;

(c) identify whether any other person has a proprietary interest in the property;

(d) if the property is an interest in land—exhibit a copy of the certificate of title;

(e) identify whether registration of the charge is sought and, if so, the type of registration; and

(f) identify whether sale of the property is sought and, if so, how it is proposed that the property be sold and the proceeds of sale be applied.

(3) The application, draft order and supporting affidavit must be served on the judgment debtor at that person's address for service or otherwise by personal service as soon as practicable.

203.15—Hearing

(1) If a judgment debtor appears at the hearing, they will be given an opportunity to give evidence or make representations.

(2) If a judgment debtor fails to appear within 15 minutes of the scheduled commencement of the hearing and the conditions in rule 201.6(1) are satisfied, the Court may proceed in the absence of the judgment debtor.

(3) If a person has or may have an interest in the property sought to be charged, the Court may order that that person be joined as an interested party to the proceeding or that notice be given to the person.

(4) The Court may, at the hearing, if satisfied that it is appropriate to do so, make a charging order in the prescribed form.

Prescribed form—

Form 150 Charging Order

(5) If a charging order is made in the absence of the judgment debtor, the order must be served on the judgment debtor at that person's address for service or otherwise by personal service as soon as practicable.

Division 7—Appointment of receiver

203.16—Application

(1) An application for appointment of a receiver under section 9(1) of the Enforcement Act must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 accompanied by a draft order in the prescribed form.

Prescribed form—

Form 79 Draft Order

(2) An application for appointment of a receiver under section 66(1) of the Fines Enforcement Act must be instituted by filing an Originating Application in accordance with rule 82.1 in the prescribed form supported by an affidavit in accordance with rule 82.1(2) and accompanied by a draft order in the prescribed form.

Prescribed forms—

Form 2E Originating Application – Appointment of Receiver Under Fines Enforcement and Debt Recovery Act

Form 79 Draft Order

(3) The supporting affidavit must—

(a) identify the property sought to be the subject of the receivership;

(b) identify the grounds of the application; and

(c) identify the proposed remuneration of the receiver.

(4) The application, draft order and supporting affidavit must be served on the judgment debtor at that person's address for service or otherwise by personal service as soon as practicable.

203.17—Hearing

(1) If a judgment debtor appears at the hearing, they will be given an opportunity to give evidence or make representations.

(2) If a judgment debtor fails to appear within 15 minutes of the scheduled commencement of the hearing and the conditions in rule 201.6(1) are satisfied, the Court may proceed in the absence of the judgment debtor.

(3) The Court may, at the hearing, if satisfied that it is appropriate to do so, make an order under section 9(1) of the Enforcement Act or section 66(1) of the Fines Enforcement Act in the prescribed form (a ***receivership order***).

Prescribed form—

Form 82 Record of Outcome - Order

(4) If a receivership order is made in the absence of the judgment debtor or receiver, the order must be served on the judgment debtor and receiver at that person's address for service or otherwise by personal service as soon as practicable.

Division 8—Absconding debtors

203.18—Application

(1) An application for a summons or warrant of apprehension for a person to appear or be brought before the Court for examination under section 14(1) of the Enforcement Act must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 accompanied by a draft order in the prescribed form.

Prescribed form—

Form 79 Draft Order

(2) The supporting affidavit must identify the grounds for believing that—

(a) the person is about to leave the State; and

(b) the person's absence from the State would seriously prejudice the applicant's prospects of enforcing a judgment that has been, or may be, given in the applicant's favour.

(3) If an application complies with subrules (1) and (2), the Registrar may issue—

(a) a summons in the prescribed form for the person to appear before the Court for examination; or

(b) a warrant of apprehension in the prescribed form for the person to be apprehended and brought before the Court for examination.

Prescribed forms—

Form 151 Summons to Judgment Debtor

Form 152 Summons to Potential Judgment Debtor

Form 155 Warrant of Apprehension – Judgment Debtor

Form 154 Warrant of Apprehension

(4) If a summons is issued, the summons together with the application, draft order and supporting affidavit must be served on the person named in the summons at that person's address for service or otherwise by personal service as soon as practicable.

(5) If a warrant is issued, the application, draft order and supporting affidavit must be served on the person named in the warrant at the same time as the warrant is executed.

203.19—Hearing

(1) If a person the subject of a summons appears at a hearing or is brought before the Court under a warrant, they will be given an opportunity to give evidence or make representations.

(2) If a person the subject of a summons fails to appear within 15 minutes of the scheduled commencement of the hearing and the conditions in rule 201.6(1) are satisfied, the Court may issue a warrant of apprehension under rule 201.6(1).

(3) The Court may, at the hearing, if satisfied that it is appropriate to do so, make an order requiring a person to give security for the satisfaction of any judgment that has been

or may be given in the applicant's favour under section 14(2) of the Enforcement Act in the prescribed form.

Prescribed form—

Form 82 Record of Outcome - Order

Part 4—Enforcement of non-monetary judgments (except contempt)

Division 1—Warrant of possession of personal property

204.1—Application and issue of warrant—personal property

(1) An application by a person in whose favour a judgment for recovery or delivery up of possession of personal property has been given for a warrant of possession under section 11(1) of the Enforcement Act must be made by filing an application to enforce a judgment in the prescribed form.

Prescribed form—

Form 141 Application to Enforce Judgment

(2) If an application complies with subrule (1), the Registrar may issue a warrant of possession in the prescribed form.

Prescribed form—

Form 169 Warrant of Possession of Personal Property

Division 2—Warrant of possession of land

204.2—Application and issue of warrant—land

(1) An application by a person in whose favour a judgment for recovery or delivery up of possession of land has been given for a warrant of possession under section 11(1) of the Enforcement Act must be made by filing an application to enforce a judgment in the prescribed form.

Prescribed form—

Form 141 Application to Enforce Judgment

(2) The person seeking the warrant must attach to, or file at the same time as, the application a copy of the certificate of title in relation to the land sought to be the subject of the warrant.

(3) If an application complies with subrules (1) and (2) and is made within 6 months after the judgment for possession on which the application is based, the Registrar may issue a warrant of possession in the prescribed form.

Prescribed form—

Form 168 Warrant of Possession of Land

204.3—Application for warrant of possession of land after 6 months

(1) This rule applies if an application for a warrant of possession is made—

(a) more than 6 months after the judgment for possession on which the application is based; or

(b) after a previous warrant of possession has lapsed.

(2) Upon applying for issue of a warrant, the applicant must file a notice of application for a warrant of possession in the prescribed form and serve it on—

(a) the respondent; and

(b) the occupier (if any) of the land the subject of the judgment for possession.

Prescribed form—

Form 166 Notice of Application – Warrant of Possession

(3) A notice under subrule (2) must be served at the person's address for service or otherwise by personal service.

(4) The Registrar may, on request by a person referred to in subrule (3), join the person as an interested party without an order being made by the Court.

(5) A respondent, or occupier who has been joined as an interested party in accordance with subrule (4), who wishes to oppose the issue of a warrant of possession under this rule must, within 10 days after service of the notice, file and serve on the applicant—

(a) a notice of objection to issue of a warrant of possession in the prescribed form; and

(b) a supporting affidavit in accordance with rule 31.7 deposing to facts by reason of which a warrant should not be issued.

Prescribed form—

Form 167 Notice of Objection to Issue of Warrant of Possession

(6) If—

(a) service of the notice of application in accordance with subrules (2) and (3) on the respondent and on any occupier is proved by an affidavit of proof of service in the prescribed form; and

(b) no notice of objection is filed in accordance with subrule (5),

the Registrar may issue a warrant of possession in the prescribed form.

Prescribed forms—

Form 42 Affidavit of Proof of Service

Form 43 Affidavit of Proof of Personal Service on an Individual by Sheriff's Officer

Form 168 Warrant of Possession of Land

(7) If a notice of objection is filed in accordance with subrule (5), the Registrar must convene a hearing before the Court to determine whether a warrant of possession should be issued and give notice of the hearing to the applicant, respondent and any occupier identified in the notice of application or notice of objection.

Prescribed form—

Form 78E Notice of Hearing

(8) At the hearing, the Court—

(a) will consider whether, having regard to the circumstances that have occurred or become known since the making of the order for possession or issue of the previous warrant (whichever is later), there is good reason not to issue a warrant; and

(b) if satisfied that no such good reason exists, may order the issue of a warrant of possession.

(9) If the Court orders the issue of a warrant of possession, the Registrar will issue a warrant of possession in the prescribed form.

Prescribed form—

Form 168 Warrant of Possession of Land

Division 3—Execution of instruments

204.4—Application

(1) An application by a party for an order under section 13(1) of the Enforcement Act that another party execute or endorse a document or that an officer of the Court be authorised to do so on the party's behalf must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 accompanied by a draft order in the prescribed form.

Prescribed form—

Form 79 Draft Order

(2) The supporting affidavit must identify—

(a) the document necessary to give effect to the judgment; and

(b) the request made of the party to execute the document and the party's response or other ground on which the order is sought.

(3) The application, draft order and supporting affidavit must be served on the party against whom the order is sought at that party's address for service or otherwise by original service as soon as practicable.

204.5—Hearing

(1) If a party against whom an order under this Division is sought appears at the hearing, they will be given an opportunity to give evidence or make representations.

(2) If a party against whom an order is sought fails to appear within 15 minutes of the scheduled commencement of the hearing and the conditions in rule 201.6(1) are satisfied, the Court may proceed in the absence of the party.

(3) The Court may, at the hearing, if satisfied that it is appropriate to do so, make an order in the prescribed form—

(a) that the party execute or endorse the document; or

(b) authorising an officer of the Court to execute or endorse the document on behalf of the party under section 13(1) of the Enforcement Act.

Prescribed form—

Form 81 Record of Outcome – Order or Form 82 Order

(4) If an order requiring a party to execute or endorse a document is made in the absence of the party, the order must be served on that party at that party's address for service or otherwise by personal service as soon as practicable.

Part 5—Contempt

Division 1—Introduction

205.1—Definitions

In this Part, unless the contrary intention appears—

accused means the person charged with contempt of Court;

prosecutor means the person prosecuting the charge of contempt of Court and, when applicable, denotes the Registrar.

205.2—Application of Part

This Part applies to all proceedings for contempt, whether brought under the Act, the Enforcement Act, another statute or the inherent or implied jurisdiction of the Court.

Division 2—Court initiated proceeding

205.3—Initiation

(1) If contempt is committed in the face of the Court and it is necessary to deal urgently with it, the Court may direct the Registrar to formulate a charge of contempt and in the meantime—

(a) order that the accused be taken into custody; or

(b) order the issue of a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court to be dealt with on the charge.

Prescribed form—

Form 156 Warrant of Apprehension – Contempt or Breach of Condition

(2) In any other case, the Court may direct the Registrar to formulate a charge of contempt.

205.4—Formulation of charge

(1) If the Court makes an order under rule 205.3(1) or a direction under rule 205.3(2), the Registrar must as soon as practicable formulate a charge containing reasonable details of the alleged contempt and—

(a) if the contempt was allegedly committed in or in respect of a proceeding—file an interlocutory application in accordance with rule 102.1 charging the accused with contempt; or

(b) in any other case—file an Originating Application in accordance with rule 82.1 charging the accused with contempt.

(2) Upon an application being filed under subrule (1), the Court may order the issue of—

(a) a summons in the prescribed form requiring the accused to attend before the Court to answer the charge; or

(b) a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court to be dealt with on the charge.

Prescribed forms—

Form 153 Summons for Contempt or Breach of Condition

Form 156 Warrant of Apprehension – Contempt or Breach of Condition

Division 3—Party initiated proceeding

205.5—Application by party

(1) If a party claims that another party, a witness or another person has committed contempt of Court in relation to a proceeding, the party may apply by filing an interlocutory application in accordance with rule 102.1 for the accused to be charged

with contempt and supporting affidavit containing reasonable details of the alleged contempt.

(2) If the Court is satisfied that there are reasonable grounds to suspect that the accused committed the alleged contempt, the Court may—

(a) require the Registrar; or

(b) permit the party who filed the interlocutory application,

to formulate a charge containing reasonable details of the alleged contempt and file an interlocutory application in accordance with rule 102.1 charging the accused with contempt.

(3) If the Court makes an order under subrule (2)(a), the Court may order that the party who filed the interlocutory application must indemnify the Registrar in respect of costs incurred, or ordered to be paid, by the Registrar in prosecuting the contempt charge.

(4) Upon an interlocutory application charging the accused with contempt being filed, the Court may order the issue of—

(a) a summons in the prescribed form requiring the accused to attend before the Court to answer the charge; or

(b) a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court to be dealt with on the charge.

Prescribed forms—

Form 153 Summons for Contempt or Breach of Condition

Form 156 Warrant of Apprehension – Contempt or Breach of Condition

Division 4—Hearing and determination of charge

205.6—Prosecution by Registrar

If the prosecution of the contempt charge is undertaken by the Registrar, the Registrar may retain a law firm to act, or counsel to appear, for the Registrar.

205.7—Hearing and determination

(1) If the accused admits the charge, the Court may act on the admission.

(2) If the accused does not admit the charge, at the hearing of the charge of contempt—

(a) evidence may be adduced by the prosecutor or the accused (in addition to oral testimony and the tender of documents) in the form of an affidavit, provided that the other party has an opportunity to cross-examine the deponent;

(b) the Court may, on its own initiative, adduce evidence;

(c) if the Court calls a witness to give evidence—the prosecutor and the accused may cross-examine the witness; and

(d) after hearing submissions by the parties, the Court will determine whether the charge has been proved beyond reasonable doubt.

(3) If the Court finds the accused guilty, or the accused admits guilt of the contempt, the Court will hear submissions concerning penalty.

(4) The Court may exercise, with respect to the charge, any power that it has with respect to a charge of an offence and, with respect to the accused, any power it has in relation to a person charged with an offence.

205.8—Penalty

(1) This rule applies when the accused admits guilt or the Court finds the accused guilty of contempt.

(2) The Court may punish contempt by a fine or, if the accused is an individual, by imprisonment.

(3) If the Court imposes imprisonment, the Court will issue a warrant of commitment in the prescribed form.

Prescribed form—

Form 162 Warrant of Commitment – Contempt

(4) If the Court imposes a fine, the Court may—

(a) fix the time for payment of the fine; or

(b) if the accused is an individual—fix a term of imprisonment in default of payment of the fine.

(5) The Court may—

(a) if the accused provides an undertaking to the Court to observe conditions determined by the Court and to appear for the determination of penalty upon a breach of those conditions—release the accused without imposing penalty; or

(b) if the accused provides an undertaking to the Court to observe conditions determined by the Court—suspend the carrying into effect of a penalty for contempt.

205.9—Subsequent proceedings

(1) If the Court makes an order under rule 205.8(5) and it subsequently appears that the accused may have breached a condition of the undertaking, the Court may order the issue of—

(a) a summons in the prescribed form requiring the accused to attend before the Court; or

(b) a warrant of apprehension in the prescribed form to have the accused apprehended and brought before the Court.

Prescribed forms—

Form 153 Summons for Contempt or Breach of Condition

Form 156 Warrant of Apprehension – Contempt or Breach of Condition

(2) If the Court finds that the accused breached a condition of an undertaking entered into under rule 205.8(5)(a), the Court may—

(a) impose a penalty on the accused for the contempt; or

(b) make any other or further order as it thinks fit.

(3) If the Court finds that the accused breached a condition of an undertaking entered into under rule 205.8(5)(b), the Court may—

(a) cancel the suspension of the penalty and order that the penalty be carried into effect; or

(b) make any other or further order as it thinks fit.

(4) The Court may, at any stage, cancel or reduce a penalty imposed for contempt.

Part 6—Service and execution of process

Division 1—General

206.1—Service and execution of summonses and warrants

(1) Unless the Court otherwise orders, service of a summons and execution of a warrant under this Chapter must be undertaken by the sheriff.

(2) An application for leave to serve a summons otherwise than by the sheriff or under section 7 of the *Sheriff's Act 1978* to appoint another person to execute a warrant must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(3) An interlocutory application and supporting affidavit under subrule (2)—

(a) need not be served on any other party to the proceeding; and

(b) must be served on the sheriff as soon as practicable.

206.2—Suspension of execution

The sheriff may only suspend execution of a process on—

(a) an order of the Court; or

(b) a written direction from the party who requested the execution that has not been subject of a written withdrawal.

206.3—Attempted service/execution report

If the sheriff is unable to effect service of a summons, application or other document, or execute a warrant, the sheriff must file and provide to the party who requested service or execution an attempted service report in the prescribed form.

Prescribed form—

Form 44 Attempted Service Report

Form 45 Attempted Service Report by Sheriff's Officer

206.4—Sheriff's fee

(1) Subject to subrule (2)—

(a) a judgment creditor who requests service of a document or execution of a warrant; and

(b) a law firm acting for a judgment creditor who requests service of a document or execution of a warrant,

are jointly and severally liable to pay the sheriff's fee for undertaking the service or execution.

(2) The sheriff is entitled to deduct the sheriff's fee out of money received by the sheriff by virtue of service of a summons or execution of a warrant.

(3) If there is a dispute between the sheriff and a person liable to pay or bear a sheriff's fee about the amount of the fee, the sheriff or any party may apply to the Court for an order determining the dispute by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(4) If a law firm liable to pay a sheriff's fee under subrule (1)(b) fails to pay it within 7 days after receipt of a written demand, the sheriff may apply to the Court for an order

for enforcement of the fee by filing and serving on the law firm an interlocutory application and supporting affidavit in accordance with rule 102.1.

(5) The sheriff may, with the consent of the Attorney-General, commit the conduct of an application under subrule (3) or (4) to the Crown Solicitor.

206.5—Application for orders

The sheriff or any party to a proceeding may apply to the Court to determine a dispute or for orders in relation to service or execution by the sheriff by filing and serving an interlocutory application and supporting affidavit in accordance with rule 102.1.

206.6—Sheriff liable as if in contempt

If the sheriff does not properly serve a document or execute a warrant under this Chapter, the sheriff is liable to punishment as if in contempt of the Court.

Division 2—Execution of warrant of sale

206.7—Sale of property

(1) Subject to subrule (2), only the interest of the judgment debtor may be the subject of a warrant of sale.

(2) The sheriff may sell the combined interest of the judgment debtor and a third person provided that the sheriff, judgment creditor, judgment debtor and third person have first agreed in writing as to the proportion in which the proceeds of sale will be divided between the sheriff (on behalf of the judgment creditor, judgment debtor and the sheriff) and the third person.

(3) The sheriff must sell property in a manner, at a time, at a place and in lots that is, in the opinion of the sheriff, most advantageous.

(4) Unless the Court otherwise orders, a sale is to be for cash on delivery or transfer of the property the subject of the sale.

(5) Before property is sold under a warrant, the sheriff must serve notice of the intended sale on the judgment debtor at the judgment debtor's address for service or otherwise by original service or by express post to the judgment debtor's last known address, unless the property is perishable and it is not practicable to do so.

(6) Before property is sold under a warrant—

(a) if the property is perishable—the sheriff must undertake reasonable advertising of the intended sale;

(b) in any other case, the sheriff must advertise the sale—

(i) by advertisement in a newspaper circulating generally throughout the State;

(ii) if the property is land—by an advertisement published in the Gazette; and

(iii) by such other means as the sheriff considers desirable in the circumstances.

(7) If property is sold through an auctioneer or agent, the gross proceeds of sale must, if the sheriff so requires, be given to the sheriff who will then pay to the auctioneer or agent the proper charges and expenses.

206.8—Adverse claims

(1) A person who claims to have—

(a) an unregistered interest in property which is to be sold under a warrant of sale; or

(b) an interest in money received by the sheriff by virtue of a warrant,

may file and serve on the sheriff written notice of the claim in the prescribed form.

Prescribed forms—

Form 164 Notice of Claim to Property Subject to Execution

Form 165 Notice of Claim to Money Subject to Execution

(2) The Registrar may join a person referred to in subrule (1) as an interested party without an order being made by the Court.

(3) Upon receiving a written notice under subrule (1), the sheriff must serve a copy of the notice on the judgment creditor and the judgment debtor at their address for service or otherwise by original service as soon as practicable.

(4) If the judgment creditor or judgment debtor disputes the claim, they must, within 7 days after service of the notice, file an interlocutory application in accordance with rule 102.1, which need not be supported by an affidavit, seeking an order that the sheriff not recognise the claim.

(5) An application under subrule (4) must be served on the sheriff, the person making the claim and the judgment debtor or judgment creditor as applicable at their address for service or otherwise by original service as soon as practicable.

(6) If the sheriff is not served with an application under subrule (4), the sheriff is entitled to act on the basis that the claim is not disputed.

(7) If the sheriff is served with an application under subrule (4), the sheriff must not take further steps under the warrant except in accordance with an order of the Court.

Note—

See section 16 of the *Enforcement of Judgments Act 1991*.

206.9—Payment out by sheriff

(1) Subject to the *Bankruptcy Act 1966* (Cth) and rule 206.8, when the sheriff receives money by virtue of a warrant, after making all lawful deductions (including any payment to a person having a prior interest in property sold, payment made in satisfaction of an adverse claim and the sheriff's fee)—

(a) the sheriff must pay to the judgment creditor the balance of the judgment debt owing by the judgment debtor, including post-judgment interest accruing to the date of payment plus any additional costs reasonably incurred by the judgment creditor in enforcing the judgment that are not included in the judgment debt; and

(b) if any moneys remain—the sheriff must pay the balance to the judgment debtor against whom the warrant was executed.

(2) If there is a dispute about money to be paid out by the sheriff, the sheriff may apply to the Court under rule 206.5 or pay the monies into Court to abide the Court's order.

Part 7—Payment of court fees

207.1—Due date for payment

When a fee is payable to the Court under these Rules, or any statute or notice, subject to any applicable statute, the Registrar may determine the date on which payment is due.

207.2—Summary recovery

(1) The Registrar may report to the Court a default by a party or lawyer in payment of a fee when due.

(2) The Court will list the matter for hearing and the Registrar must give notice of the hearing in the prescribed form to the party or lawyer in question.

Prescribed form—

Form 78E Notice of Hearing

(3) The Registrar may, with the agreement of the Crown Solicitor, commit to the Crown Solicitor the conduct of the proceeding by the Registrar.

(4) The Court may, if satisfied that the fee is owing by the party or lawyer in question, make such order as it thinks fit to enforce payment, including (without limitation)—

(a) an order granting judgment in favour of the Courts Administration Authority against the party or lawyer in question; or

(b) an order as to costs.

Chapter 18—Appellate jurisdiction

Part 1—General

211.1—Definitions

In this Chapter, unless the contrary intention appears—

appeal means an appeal against a judgment, order or decision of a court or tribunal in a proceeding and, unless the context indicates otherwise, includes—

(a) a review;

(b) a cross appeal (or cross review);

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

(d) an application for an extension of time to appeal or review (or cross appeal or cross review);

appellant means—

(a) in an appeal—the person appealing against or seeking review in the nature of an appeal against a judgment, order or decision and, unless the context indicates otherwise, includes that person in the capacity of a respondent to a cross appeal; or

(b) in a case stated—the person who files the notice of case stated or otherwise has the carriage of the case stated;

appellate document means—

(a) a notice of appeal or review;

(b) an application for leave to appeal;

(c) a notice of cross appeal or cross review;

(d) a notice of alternative contention; or

(e) a notice of case stated;

appellate proceeding means—

(a) an appeal (including a review, cross appeal or cross review); or

(b) a case stated;

case stated means a case stated or question reserved for the consideration of the Full Court;

cross appeal means a cross appeal referred to in rule 214.4 and, unless the context indicates otherwise, includes a cross review referred to in rule 214.4;

filing page means a front sheet to a document to be filed which shows the court, jurisdiction, list (if applicable), case number, parties, name of the document to be filed and details of the law firm representing the party filing the document, or if self-represented, the party;

interested party in an appellate proceeding means a party (whenever joined)—

(a) who was an interested party in the proceeding at first instance unless the party has no interest in the appellate proceeding; or

(b) against whom no relief is sought in and whose interest is not directly and adversely affected by the appellate proceeding but who should be given the opportunity to be heard in relation to the proceeding or who must be joined to be bound by the result;

listed hearing date means the earlier of the listed hearing date referred to in rule 217.3(1) and any varied hearing date referred to in rule 217.3(3);

preparation commencement date in respect of an appellate proceeding to be determined by the Full Court means—

(a) if leave to appeal is required—the date when leave to appeal is granted or referred for hearing at the same time as the appeal; or

(b) in any other case—the date of institution of the appellate proceeding;

respondent to an appellate proceeding means a party (whenever joined)—

(a) who was an applicant or respondent in the proceeding at first instance, unless the party has no interest in the appellate proceeding; or

(b) against whom orders are sought in, or whose interest may be directly and adversely affected by, the orders sought in the appellate proceeding;

review means a proceeding in which a party to the proceeding seeks review in the nature of an appeal against a judgment, order or decision of a Court or tribunal.

211.2—Service of documents

Unless the Court otherwise orders, any document that is to be served on a person in an appellate proceeding must be served—

(a) if the person has an address for service in the appellate proceeding—by service at that address for service;

(b) if the person has an address for service in the underlying proceeding but not in the appellate proceeding—by service at that address for service; or

(c) in any other case—by original service.

211.3—Interlocutory applications, hearings and orders

(1) Chapter 9, with any necessary changes, applies to an appellate proceeding in the same manner as it applies to an originating application.

(2) Chapter 10 Part 1, Part 2 Division 5, Part 4 and Part 8, with any necessary changes, apply to an appellate proceeding in the same manner as they apply to an action.

211.4—Resolution and early finalisation

(1) Chapter 11 Part 1, with any necessary changes, applies to an appellate proceeding in the same manner as it applies to an action.

(2) Chapter 12 Parts 5 and 6, with any necessary changes, apply to an appellate proceeding in the same manner as they apply to an originating application.

211.5—Judgment, costs and enforcement

(1) Chapter 15, except Part 3, with any necessary changes, applies to an appellate proceeding in the same manner as it applies to an action.

(2) Chapter 16, except Part 6, with any necessary changes, applies to an appellate proceeding in the same manner as it applies to an action.

(3) Chapter 17, with any necessary changes, applies to an appellate proceeding in the same manner as it applies to an action.

Part 2—Jurisdiction

Division 1—Supreme Court

212.1—Jurisdiction of Master

Unless a Judge or Master otherwise orders, the jurisdiction of the Supreme Court to hear and determine a review of a decision of a Registrar of the Supreme Court under rule 195.12(3), rule 201.4 or rule 262.3 is to be exercised by a Master.

212.2—Jurisdiction of single Judge

(1) Subject to subrule (2), rule 212.1 and rule 212.3, the appellate jurisdiction of the Supreme Court is to be exercised by a single Judge if—

(a) the appellate proceeding is an appeal against an interlocutory decision (order or judgment), or a judgment or order (final or interlocutory) under Chapter 19 Part 3, 5, 11, 12, 13, 15, 16 or 17 by a Master or Judicial Registrar of the Court;

(b) the appellate proceeding is an appeal against a decision of the South Australian Civil and Administrative Tribunal constituted otherwise than by a Presidential Member;

(c) the appellate proceeding is an appeal against an interlocutory decision of the Legal Practitioners Disciplinary Tribunal;

(d) the appellate proceeding is an appeal against a decision of the Board of Examiners under rule 258.2(4) or section 17A(6) of the Legal Practitioners Act;

(e) the appellate proceeding is an appeal against or review of a decision of the Law Society under section 46, 52A or 63(4) of the Legal Practitioners Act or Chapter 20 Part 7, 8, 9 or 10 of these Rules;

(f) a statute so requires;

(g) a statute so provides in the absence of rules or an order otherwise providing and no such provision is made;

(h) any applicable statute and these Rules are silent on the forum to hear the appellate proceeding;

(i) a Judge so orders; or

(j) the Full Court remits the appeal to a single Judge for hearing and determination.

Notes—

Section 43(2)(b) of the *District Court Act 1991* provides that an appeal against an interlocutory judgment given by a District Court Judge lies to a single Judge of the Supreme Court.

Section 11A(a) of the *Dust Diseases Act 2005* provides that an appeal against an interlocutory order made by the South Australian Employment Tribunal lies to a single Judge of the Supreme Court.

Section 30(1) of the *Environment, Resources and Development Court Act 1993* provides that an appeal against an interlocutory order by the Environment Resources and Development Court or against a decision or order made by a commissioner, master, registrar or magistrate of that Court lies to a single Judge of the Supreme Court.

Section 22(2) of the *Youth Court Act 1993* provides that an appeal against an interlocutory order by the Youth Court or against a final judgment by a magistrate of that Court lies to a single Judge of the Supreme Court.

Section 40 of the *Magistrates Court Act 1991* provides that an appeal against a judgment by the Magistrates Court, except in respect of a minor civil action, lies to a single Judge of the Supreme Court.

Section 71(1)(b) of the *South Australian Civil and Administrative Tribunal Act 2013* provides that, unless the rules of court otherwise provide, an appeal against a decision of the Tribunal, unless comprised of or including a presidential member, lies to a single Judge of the Supreme Court.

Section 86(1) of the *Legal Practitioners Act 1981* provides that a right of appeal to the Supreme Court lies against a decision of the Tribunal made in the exercise or purported exercise of powers or functions under this Act.

(2) Subject to a statute conferring jurisdiction on a single Judge in absolute terms, a Judge may order that the appellate jurisdiction of the Supreme Court that would otherwise be exercised by a single Judge be exercised by the Full Court.

212.3—Jurisdiction of Full Court

(1) Subject to subrule (2), the appellate jurisdiction of the Supreme Court is to be exercised by the Full Court if—

(a) the appellate proceeding is an appeal against—

(i) a final decision (judgment or order) by a Master or Judicial Registrar of the Court, except a judgment or order under Chapter 19 Part 3, 5, 11, 12, 13, 15, 16 or 17;

(ii) a decision of the South Australian Civil and Administrative Tribunal constituted by or including a Presidential Member; or

(iii) a final decision of the Legal Practitioners Disciplinary Tribunal;

(b) the appellate proceeding is a case stated;

(c) a statute so requires;

(d) a statute so provides in the absence of rules or an order otherwise providing and no such provision is made;

(e) the appellate proceeding arises from a final judgment of a court or tribunal constituted of a judicial officer who has the status of a Judge; or

(f) a Judge so orders.

Notes—

Section 43(2)(c) of the *District Court Act 1991* provides that an appeal against a final judgment given by a District Court Judge lies to the Full Court.

Section 11A(b) of the *Dust Diseases Act 2005* provides that an appeal against a decision, other than an interlocutory order, made by the South Australian Employment Tribunal lies to the Full Court.

Section 68 of *South Australian Employment Tribunal Act 2014* provides that an appeal against a decision of the Full Bench of the South Australian Employment Tribunal or Employment Court lies to the Full Court.

Section 30(1) of the *Environment, Resources and Development Court Act 1993* provides that an appeal against a final judgment by a Judge of that Court lies to the Full Court.

Section 22(2) of the *Youth Court Act 1993* provides that an appeal against a final judgment by a Judge of that Court lies to the Full Court.

Section 71(1)(a) of the *South Australian Civil and Administrative Tribunal Act 2013* provides that, unless the rules of court otherwise provide, an appeal against a decision of the Tribunal comprised of or including a presidential member lies to the Full Court.

Section 86(1) of the *Legal Practitioners Act 1981* provides that an appeal to the Supreme Court lies against a decision of the Tribunal made in the exercise or purported exercise of powers or functions under that Act.

(2) Subject to a statute conferring jurisdiction on the Full Court in absolute terms, a Judge may order that the appellate jurisdiction of the Supreme Court that would otherwise be exercised by the Full Court is to be exercised by a single Judge.

212.4—Constitution of Full Court

Subject to rule 212.5, when the jurisdiction to hear and determine an appellate proceeding is vested in or to be exercised by the Full Court, the Full Court—

(a) will ordinarily be comprised of 3 Judges;

(b) may, if the Chief Justice so determines, be comprised of 5 Judges; or

(c) may, if a statute permits, and if the Chief Justice so determines, be comprised of 2 Judges.

212.5—Interlocutory and ancillary orders in Full Court matter

(1) Subject to any statute to the contrary and subrule (3), when the jurisdiction to hear and determine an appellate proceeding is vested in, or to be exercised by, the Full Court, a single Judge may make interlocutory orders and other orders ancillary to the hearing and determination of the appellate proceeding.

(2) For example, a Judge may make orders relating to—

(a) the filing, service or amendment of an appellate document;

(b) striking out an appellate document;

(c) security for costs;

(d) evidence that is or may be adduced on the appellate proceeding;

(e) the grant or referral to the Full Court of leave to appeal;

(f) the grant or referral to the Full Court of an extension of time to appeal; or

(g) the hearing by the Full Court of the appellate proceeding or any issue related to it (including leave to appeal, or an extension of time to appeal or to seek leave to appeal).

(3) A Judge may not refuse leave to appeal or an extension of time to appeal.

(4) This rule does not derogate from the power of the Full Court constituted under rule 212.4 to make interlocutory orders and other orders ancillary to the hearing and determination of the appellate proceeding.

Division 2—District Court

212.6—Jurisdiction of Master

Unless a Judge or Master otherwise orders, the jurisdiction of the District Court to hear and determine a review of a decision of a Registrar of the District Court under rule 195.12(3) or rule 201.4 is to be exercised by a Master.

212.7—Jurisdiction of single Judge

Subject to any statute to the contrary and to rule 212.6, the jurisdiction of the District Court to hear and determine an appeal is to be exercised by a Judge.

Notes—

Section 43(2) of the *District Court Act 1991* provides that an appeal against a judgment given by a District Court master or a judicial registrar lies to a Judge of that court.

Section 38(6) of the *Magistrates Court Act 1991* provides that a right of review in respect of a judgment by the Magistrates Court in a minor civil action lies to a Judge of the District Court.

Section 32 of the *Police Complaints and Discipline Act 2016* provides that an appeal lies against a decision of the Police Disciplinary Tribunal to the District Court.

Division 3—Magistrates Court

212.8—Jurisdiction of Magistrate

Unless the Court otherwise orders, the jurisdiction of the Magistrates Court to hear and determine a review of a decision of a Registrar of the Magistrates Court under rule 195.12(3) or 201.4 is to be exercised by a Magistrate.

Part 3—Leave to appeal—Supreme Court

Division 1—General

213.1—When required

(1) Subject to any statute to the contrary, leave to appeal is required—

(a) against an interlocutory decision (order or judgment), or any judgment or order (final or interlocutory) under Chapter 19 Part 3, 5, 11, 12, 13, 15, 16 or 17 by a judicial officer of the Magistrates, Youth, District or Supreme Court;

(b) against a judgment on appeal;

(c) against an order or judgment that relates to costs; or

(d) if a statute so requires.

(2) If leave to appeal is granted, but it later becomes evident that it ought not to have been granted, the Court may revoke the grant of leave.

Notes—

Section 43(3) of the *District Court Act 1991* provides that an appeal lies as of right, or by permission, according to the rules of the appellate court but, in the case of an appeal against a final judgment of the Court in its Administrative and Disciplinary Division, permission is required to appeal on a question of fact.

Section 30(2) of the *Environment, Resources and Development Court Act 1993* provides that an appeal lies as of right on a question of law and with permission on a question of fact (but this principle may be displaced or modified by the provisions of the relevant Act under which the jurisdiction is conferred).

Section 22(1) of the *Youth Court Act 1993* provides that a party to a proceeding in the Court may, in accordance with the rules of the appellate court, appeal against any judgment given in the proceeding.

Section 40(1) of the *Magistrates Court Act 1991* provides that a party to a civil action (except a minor civil action) may, in accordance with the rules of the Supreme Court, appeal against any judgment given in the action.

Section 71(2) of the *South Australian Civil and Administrative Tribunal Act 2013* provides that an appeal under section 71 is only by leave of the Supreme Court (but this principle may be displaced or modified by the provisions of a relevant Act).

Section 68(2) of *South Australian Employment Tribunal Act 2014* provides that an appeal cannot be commenced under section 68 except with the permission of a Judge of the Supreme Court.

Division 2—Seeking Leave

213.2—Notice of appeal seeking leave to appeal

(1) Subject to rule 213.3, when leave to appeal is required, the appeal must be instituted in the ordinary way in accordance with rule 214.2 and the notice of appeal must seek the necessary leave.

(2) If a notice of appeal seeking leave to appeal is filed under this Part—

(a) the institution of the appeal is conditional on leave to appeal being granted; and

(b) if leave to appeal is refused, the appeal lapses.

213.3—Leave sought from Master or Judge at first instance

(1) An application for leave to appeal against an order or judgment of a Master or Judge of the Supreme Court may be made in the first instance to that Master or Judge by oral application either—

(a) if the order is made in court or in chambers in the presence of the parties—when the order is made; or

(b) in any other case—at the next hearing of the proceeding.

(2) If leave to appeal is—

(a) refused—the party may institute an appeal by filing a notice of appeal in accordance with rule 214.2, seeking leave to appeal and setting out the grounds on which leave should be granted; or

(b) granted—the party may institute an appeal by filing a notice of appeal in accordance with rule 214.2.

(3) To avoid doubt, a party may elect not to seek leave to appeal under this rule and instead proceed directly under rule 214.2 and seek leave from the appellate court.

Division 3—Determination of question of leave

213.4—Appeal to single Judge

(1) A Judge may order that the question of leave to appeal be heard before the hearing of the appeal.

(2) Unless an order is made under subrule (1), the application for leave to appeal and the appeal will be heard at the same time.

213.5—Determination by Full Court of leave to appeal to Full Court

(1) This rule applies when the question of leave to appeal to the Full Court is to be determined by the Full Court.

(2) A party who seeks leave to appeal from the Full Court must, within 14 days of the filing of the notice of appeal—

(a) file written submissions in the prescribed form identifying why the grounds of appeal are reasonably arguable and why leave to appeal should be granted;

Prescribed form—

Form 190 Written Submissions

(b) attach to the written submissions—

(i) a copy of the judgment or order the subject of the appeal; and

(ii) a copy of the reasons for judgment given in respect of that judgment or order; and

(c) file 3 physical copies of an application book containing the notice of appeal, written submissions and attachments.

(3) Unless the Court otherwise orders, the party is not to file an affidavit or any other evidence on the application for leave to appeal.

(4) A party who files written submissions under subrule (2) must serve the written submissions and attachments on each other party to the appeal as soon as practicable.

(5) Unless the Court otherwise orders, the other parties are not to file any evidence or submissions on the application for leave to appeal.

(6) The Court may obtain or refer to the file for the proceeding in the court or tribunal at first instance.

(7) The Court will ordinarily determine the application for leave to appeal without hearing further from the parties and will not make an order as to costs of the application for leave to appeal.

(8) The Court may—

(a) order that the application for leave to appeal be listed for separate hearing and determination;

(b) order that the application for leave to appeal be heard at the same time as the appeal;

(c) invite a party to produce specific documents or make submissions on a specific matter; or

(d) make any other or further order.

213.6—Determination by single Judge of leave to appeal to Full Court

(1) This rule applies if the question of leave to appeal to the Full Court is to be determined by a single Judge.

Note—

Section 68(2) of *South Australian Employment Tribunal Act 2014* provides that an appeal cannot be commenced under section 68 except with the permission of a Judge of the Supreme Court.

(2) A party who seeks leave from a single Judge to appeal to the Full Court must, within 14 days of the filing of the notice of appeal—

(a) file written submissions in the prescribed form identifying why the grounds of appeal are reasonably arguable and why leave to appeal should be granted;

Prescribed form—

Form 190 Written Submissions

(b) attach to the written submissions—

(i) a copy of the judgment or order the subject of the appeal; and

(ii) a copy of the reasons for judgment given in respect of that judgment or order.

(3) A party who files written submissions under subrule (2) must serve the written submissions and attachments on each other party to the appeal as soon as practicable.

(4) Unless the Court otherwise orders, the other parties are not to file any evidence or submissions on the application for leave to appeal.

(5) The Court may obtain or refer to the file for the proceeding in the court or tribunal at first instance.

(6) The Court will ordinarily determine the application for leave to appeal without hearing further from the parties and will not make an order as to costs of the application for leave to appeal.

(8) The Court may—

(a) order that the application for leave to appeal be listed for separate hearing and determination;

(b) invite a party to produce specific documents or make submissions on a specific matter; or

(c) make any other or further order.

Part 4—Institution of appellate proceeding

Division 1—Time to appeal or seek review

214.1—Time to appeal or review

(1) Subject to any statute or rule to the contrary, an appeal must be instituted within 21 days after the date of the judgment or order the subject of the appeal.

(2) If leave to appeal is sought under rule 213.3, an appeal must be instituted within the later of—

(a) 21 days after the making of the judgment, order or decision subject of the appeal; or

(b) 7 days after the grant or refusal of leave (as the case may be).

(3) If an extension of time to appeal is required, the appeal must be instituted in the ordinary way in accordance with rule 214.2 and the notice of appeal must seek the necessary extension of time.

(4) The Court may order that the question of an extension of time to appeal be heard before the hearing of the appeal.

(5) Unless an order is made under subrule (4), the application for an extension of time to appeal and the appeal will be heard at the same time.

Division 2—Appeals and reviews

214.2—Institution of appeal

(1) An appeal must be instituted by filing a notice of appeal or notice of review in the prescribed form setting out (in accordance with the prescribed form)—

(a) the forum of the appellate Court;

(b) the statutory provision under which the appeal is brought;

(c) details of the judgment or order the subject of the appeal;

(d) the grounds of appeal;

(e) the orders sought on appeal;

(f) if leave to appeal is sought—the grounds on which it is sought; and

(g) if an extension of time is sought—the grounds on which it is sought.

Prescribed forms—

Form 181 Notice of Appeal

Form 181S Appeal Grounds

Form 182 Notice of Review

Form 182S Review Grounds

Form 183 Appeal or Review Grounds – Standalone

Filing instructions—

If a Notice of Appeal is filed physically at Registry, a Form 181 with a Form 181S is to be used.

If a Notice of Appeal is filed using the Electronic System, a Form 181S is to be uploaded.

If a Notice of Review is filed physically at Registry, a Form 182 with a form 182S is to be used.

If a Notice of Review is filed using the Electronic System, a Form 182S is to be uploaded.

If a revised Appeal Grounds or Review Grounds is filed, a Form 183 is to be used.

Prescribed forms—

Form 182A Notice of Review – Minor Civil Action

Form 182B Notice of Review – Marriage Consent

Form 182S Review Grounds

Filing instructions—

If a Notice of Review of a minor civil action is filed (whether physically at Registry or using the Electronic System), a Form 182A with a form 182S is to be used.

If a Notice of Review of a marriage consent is filed (whether physically at Registry or using the Electronic System), a Form 182B with a form 182S is to be used.

(2) The appellant must join as a respondent or interested party in the appellate proceeding—

(a) any party to the first instance proceeding unless that party has no interest in the appeal; and

(b) any other person falling within paragraph (b) of the definitions of respondent or interested party in rule 211.1.

(3) The Court may order the addition or removal of a person as a party to an appellate proceeding; however a person cannot be added as an appellant without the person's consent.

(4) The appellant must serve the notice of appeal or review, together with a multilingual notice in the prescribed form, on each other party to the appellate proceeding as soon as practicable.

Prescribed form—

Form 33 Multilingual Notice – Notice of Appeal or Review

(5) Unless the Court otherwise orders, an appellant may not rely on grounds that are not stated in the notice of appeal or review.

(6) If the appeal is against a judgment or order of another court or tribunal, the appellant must serve a copy of the notice of appeal or review on the Registrar or other proper officer of that court or tribunal as soon as practicable.

214.3—Documents and information from court of first instance

(1) The Registrar may, and when directed by the Court must, request the court or tribunal of first instance to transmit to the Court by physical or electronic means (as specified) documents relevant to the appeal.

(2) Unless the Registrar otherwise specifies, documents relevant to the appeal the subject of a request comprise—

(a) all documents lodged with the court or tribunal;

(b) any transcript of evidence or hearing;

(c) any other evidentiary material; and

(d) the judgment, order or decision subject of the appeal and any reasons given for it.

(3) The Registrar or proper officer of the court or tribunal must comply with the request as soon as practicable.

214.4—Institution of cross appeal

(1) Another party to the appellate proceeding may institute an appeal against the same judgment or order by filing a notice of cross appeal or notice of cross review in the prescribed form within 14 days after service of the notice of appeal or notice of review on that party.

Prescribed forms—

Form 184 Notice of Cross Appeal

Form 184S Cross Appeal Grounds

Form 185 Notice of Cross Review

Form 185S Cross Review Grounds

Form 186 Cross Appeal or Review Grounds – Standalone

Filing instructions—

If a Notice of Cross Appeal is filed physically at Registry, a Form 184 with a Form 184S is to be used.

If a Notice of Cross Appeal is filed using the Electronic System, a Form 184S is to be uploaded.

If a Notice of Cross Review is filed physically at Registry, a Form 185 with a Form 185S is to be used.

If a Notice of Cross Review is filed using the Electronic System, a Form 185S is to be uploaded.

If a revised Cross Appeal Grounds or Review Grounds is filed, a Form 186 is to be used.

(2) Subrules (2) to (6) of rule 214.2 apply, with any necessary changes, in respect of a cross appeal.

(3) If leave to appeal is required, the appellant on the cross appeal must—

(a) file with the notice of cross appeal an interlocutory application in accordance with rule 102.1, which need not be supported by an affidavit, seeking orders as to the manner in which the question of leave will be determined; and

(b) serve the interlocutory application with the notice of cross appeal on each other party to the appeal as soon as practicable.

(4) On the hearing of the interlocutory application, the Court may make such orders as it thinks fit for the hearing and determination of the application for leave to appeal.

(5) For example, the Court may order—

(a) that leave to cross appeal be determined at the same time as the question of leave to appeal;

(b) that leave to cross appeal abide the outcome of the question of leave to appeal; or

(c) that leave to cross appeal be heard at the same time as the cross appeal.

214.5—Notice of alternative contention

(1) If another party to the appellate proceeding wishes to contend that a decision subject to appeal or cross appeal should be upheld for reasons other than those given by the court or tribunal, that party must file a notice of alternative contention in the prescribed form setting out the grounds on which the party asserts that the decision should be upheld within 14 days after service of the notice of appeal or notice of review, or notice of cross appeal or notice of cross review, on that party.

Prescribed form—

Form 187 Notice of Alternative Contention

(2) Subrules (4) and (5) of rule 214.2 apply, with any necessary changes, in respect of a notice of alternative contention.

Division 3—Case stated—Supreme Court

214.6—Case stated by court or tribunal

(1) A court (including a Judge or Master of the Supreme Court) or tribunal which reserves a question of law for the consideration of the Full Court must—

(a) prepare a document containing a statement of the background and relevant facts on the basis of which the question of law is to be determined and a statement of the question to be determined;

(b) designate a party to the proceeding who is to be regarded as the appellant on the case stated before the Full Court and have the carriage of it; and

(c) designate who are to be the other parties to the appellate proceeding.

(2) If the case is stated by another court or tribunal, the Court may request that court or tribunal to forward to the Registrar the whole or part of the file for the proceeding including any transcript of hearings and evidence in the custody of that court or tribunal.

214.7—Institution of case stated

(1) The party designated as the appellant under rule 214.6 must file in the Court a notice of case stated in the prescribed form.

Prescribed form—

Form 188 Notice of Case Stated

(2) Subrules (3) and (4) of rule 214.2 apply, with any necessary changes, in respect of a case stated.

Part 5—Interlocutory steps

215.1—Interlocutory orders

(1) The Court may, at a directions hearing or in chambers, make orders on its own initiative or on the application of any person in relation to an appellate proceeding.

(2) For example, the Court may make orders—

(a) concerning the constitution of the appellate proceeding;

(b) concerning notice of the appellate proceeding being given to a person;

(c) concerning the preservation of the subject matter of the appellate proceeding;

(d) for the identification of issues in the appellate proceeding;

(e) for a report to be prepared by the judicial officer who made the judgment or order the subject of the appellate proceeding concerning any matter relevant to the appellate proceeding;

(f) fixing or modifying the time for parties to take steps in the appellate proceeding;

(g) modifying or enforcing compliance with these Rules;

(h) that the parties participate in an alternative dispute resolution process under Chapter 11 Part 1;

(i) relating to evidence sought to be adduced at the hearing of the appellate proceeding;

(j) for the conduct of and preparation for hearing of the appellate proceeding;

(k) under rule 215.2, rule 215.3 or rule 215.4; or

(l) concerning costs.

(3) Chapter 9 applies, with any necessary changes, to an appellate proceeding.

215.2—Amendment of appellate document

(1) A party may, without leave of the Court, amend an appellate document (except to introduce an additional party to an appellate proceeding) at any time up to the date on which the Court lists the appellate proceeding for hearing.

(2) If a party makes an amendment under this rule, another party may apply for an order disallowing the amendment, in whole or part, on the ground that, if leave had been sought to make the amendment, it would have been refused.

(3) A party may amend an appellate document (including to introduce an additional party into an appellate proceeding)—

(a) with the written consent of each other party to the appellate proceeding (including, if applicable, an additional party sought to be introduced into an appellate proceeding); or

(b) with leave of the Court.

(4) Rule 33.2 applies, with any necessary changes, to amendment of an appellate document.

215.3—Security for costs

(1) The Court may order that the appellant on an appeal provide security for costs.

(2) Subrules (2) to (6) of rule 115.1 apply, with any necessary changes, to an application for security for costs.

215.4—Stay of execution

(1) The Court may, if there is proper reason to do so, stay execution of a judgment or proceeding pending the hearing and determination of an appellate proceeding or application for leave to appeal on such terms as it thinks fit.

(2) An application for a stay must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 deposing to the grounds on which the stay is sought.

(3) An application for a stay must be served on each other party to the appellate proceeding as soon as practicable.

Note—

An application for a stay does not itself operate to stay the judgment or proceeding. Only an order of the Court can stay a judgment or proceeding.

215.5—Early finalisation

Chapter 12 applies, with any necessary changes, to an appeal.

Part 6—Reviews of Registrars' decisions

216.1—Application of Part

This Part applies to a review of a decision of a Registrar under rule 195.12(3), rule 201.4 or rule 262.3.

216.2—Listing and hearing

(1) Subject to rule 212.8 and subrule (3), the review will be listed for hearing before—

(a) a Magistrate in the Magistrates Court;

(b) a Master in the District Court; or

(c) a Master in the Supreme Court.

(2) Subject to subrule (3), the Registrar will give notice of the hearing in the prescribed form to the relevant party or parties.

Prescribed form—

Form 78E Notice of Hearing

(3) A review may be determined without a hearing if the reviewing judicial officer thinks fit.

Part 7—Appeal or review to Judge—Supreme Court and District Court

Division 1—Introduction

217.1—Application of Part

(1) This Part applies to appeals and reviews to be heard by a Judge.

Supreme Court

(2) If a single Judge of the Supreme Court refers an appeal to the Full Court, it is governed instead by Part 8.

Division 2—Transcript

217.2—Transcript

(1) This rule applies to appeals where a transcript of evidence was not produced for the proceeding in the court of first instance.

(2) The appellant must file and serve with the notice of appeal a document identifying whether the appellant requests that a transcript of the evidence of any witness be produced and if so identifying what passages of evidence are requested to be produced.

(3) Each other party to the appeal must, within 7 days after service of the appeal notice on the party, file and serve a document identifying whether they request that a transcript of the evidence of any witness be produced and if so identifying what passages of evidence are requested to be produced.

(4) Unless a Judge otherwise orders, the Court will request the court of first instance to produce transcript in accordance with any request made under subrules (2) and (3).

Division 3—Listing for hearing

217.3—Listing for hearing

(1) An appeal will be listed for hearing before a Judge on a fixed date in a given month.

(2) The Court will give notice of the listed hearing date in the prescribed form to the parties.

Prescribed form—

Form 78E Notice of Hearing

(3) If a party seeks a change from the listed hearing date, the party must, within 7 days of being notified of the hearing date, contact the Judge's chambers and make a request with details of alternative hearing dates.

Division 4—Appeal book

217.4—Filing and service of appeal book

(1) The appellant must prepare an appeal book in accordance with rule 217.5.

(2) The appellant must file a physical copy of the appeal book 7 days before the listed hearing date.

217.5—Content of appeal book

(1) An appeal book must contain—

(a) the current versions of the originating process and pleadings in the case of a claim, or principal affidavits in the case of an originating application;

(b) the judgment or order the subject of the appeal;

(c) reasons for judgment given in respect of that judgment or order;

(d) any order giving leave to appeal or extending time to appeal; and

(e) the notice of appeal or notice of review, any notice of cross appeal or notice of cross review and any notice of alternative contention.

(2) An appeal book must contain a filing page, be paginated and contain a table of contents at the front.

Division 5—Written submissions, chronologies and lists of authorities

217.6—Filing and service

(1) Each party who intends to make submissions on the appeal must prepare written submissions in accordance with rule 217.7 and a list of authorities in accordance with rule 217.8 and may prepare a chronology.

(2) Unless the Court otherwise orders, the appellant must file and serve on each other party to the appellate proceeding written submissions, a list of authorities and any chronology not less than 7 days before the listed hearing date.

(3) Unless the Court otherwise orders, each other party must file and serve on each other party to the appellate proceeding written submissions, a list of authorities and any chronology not less than 3 days before the listed hearing date.

(4) The appellant may file and serve on each other party to the appellate proceeding written submissions in reply not less than 1 day before the listed hearing date.

217.7—Written submissions

(1) Written submissions must be in the prescribed form and must show the anticipated hearing date and name of the judicial officer listed to hear the matter (if known).

Prescribed form—

Form 190 Written Submissions

(2) Written submissions must—

(a) in respect of each ground of appeal or issue—set out succinctly each proposition advanced by the party together with supporting references to the reasons for judgment, evidence, legislation or authorities;

(b) to the extent that a party challenges a factual finding—identify the finding that was or was not made, why it is erroneous, the finding that should have been made and the evidence relied on in support of the challenge;

(c) to the extent that a party challenges a statement of law—identify the statement of law, why it is erroneous, the correct statement of law and any authorities relied on in support of the challenge;

(d) to the extent that a party challenges the reasoning of the judicial officer at first instance—identify the reasoning, why it is erroneous and the correct reasoning.

(3) Written submissions must provide citations to cases in the manner required by rule 217.8 for a list of authorities.

(4) Written submissions should not, other than in exceptional circumstances, set out passages from the reasons for judgment, evidence, legislation or authorities but should merely identify them.

(5) Written submissions must not, without the leave of the Registrar or the Court, exceed 20 pages for submissions in chief, or 10 pages for submissions in reply, and must comply with the Registrar's prescribed format requirements.

(6) The Registrar may, on application by a party in accordance with rule 13.2(5), vary the page limit for written submissions.

217.8—Lists of authorities

(1) A list of authorities must be divided into 2 parts, being authorities expected to be read and authorities not expected to be read.

(2) A list of authorities must show the anticipated hearing date and name of the judicial officer listed to hear the matter (if known).

(3) A citation to a case must—

(a) if the case is reported in an authorised series of reports—include a citation to the highest ranking available series of reports in which the case is published;

(b) if the case is reported in a published (but not authorised) series of reports—include a citation to an available series of reports in which the case is published; and

(c) if the case postdates 1997 and is published online on Austlii or its equivalent elsewhere—include a medium neutral citation to the case.

Division 6—Hearing and determination of appeals

217.9—Application of Division

This Division does not apply to the hearing and determination of a minor civil review.

217.10—Hearing

(1) Subject to any statute to the contrary—

(a) an appeal or review is to be by way of rehearing;

(b) the Court may draw inferences from evidence adduced in the proceeding at first instance; and

(c) the Court may hear further evidence in its discretion.

(2) The Court may, if it considers that it is in the interests of justice to do so, determine an appeal on the merits notwithstanding a failure of a party to raise or state properly a ground of appeal or alternative contention in the notice of appeal, notice of review or a notice of alternative contention.

217.11—Determination of appeal or review

(1) Subject to any statute to the contrary, the Court may—

(a) set aside or amend the judgment or order the subject of the appeal;

(b) substitute the Court's own judgment or order;

(c) remit the matter for rehearing or reconsideration;

(d) dismiss the appeal;

(e) make orders for the costs of the appeal or costs at first instance; or

(f) make such other or further order for the disposition of the appeal as it thinks fit.

(2) When the Court determines an appellate proceeding from another court or tribunal (including refusing leave to appeal), the Registrar must—

(a) give to the Registrar or proper officer of the court or tribunal written notice of the Court's decision together with any written reasons given by the Court; and

(b) return any documents or materials transmitted to the Court by the Registrar or proper officer of the court or tribunal (other than documents and materials forwarded in electronic form) for the purpose of the appellant proceeding.

Division 7—Hearing and determination of minor civil reviews—District Court

217.12—Hearing and determination

The hearing and determination of a minor civil review is governed by section 38(7) of the *Magistrates Court Act 1991*.

Part 8—Appeals or cases stated to Full Court of Supreme Court

Division 1—Introduction

218.1—Application of Part

This Part applies to appeals and cases stated to be heard by the Full Court.

218.2—Variation of times

The Registrar, on an application to Registrar filed by a party in accordance with rule 13.3(5), or the Court, on an interlocutory application filed by a party in accordance with rule 102.1, may vary a time limit prescribed in Divisions 2 to 5 of this Part.

Division 2—Core appeal book

218.3—Filing and service of core appeal book

(1) The appellant must prepare a core appeal book in accordance with rule 218.4.

(2) The appellant must file 3 physical copies of the core appeal book 28 days after the preparation commencement date.

(3) The appellant must serve a copy of the core appeal book on each other party to the appellate proceeding as soon as practicable.

218.4—Content of core appeal book

(1) A core appeal book for an appeal must contain the following items in the following order—

(a) the current versions of the originating process and pleadings in the case of a claim or principal affidavits in the case of an originating application;

(b) if the appeal relates to an order made on an interlocutory application—a copy of the interlocutory application;

(c) if the order the subject of the appeal or case stated was itself made on appeal—

(i) the judgment or order the subject of the original appeal; and

(ii) the reasons for judgment in respect of that judgment or order;

(d) the judgment or order the subject of the appeal;

(e) the reasons for judgment in respect of that judgment or order;

(f) any order giving leave to appeal or extending time to appeal;

(g) the notice of appeal;

(h) any notice of cross appeal or notice of contention;

(i) a list of exhibits admitted into evidence, showing for each exhibit the exhibit number, a description of the exhibit and the page and line of the transcript at which it was admitted;

(j) a list of documents marked for identification, the tender of which was rejected, showing the MFI number, a description of the document and the page and line of the transcript at which its tender was rejected;

(k) a list of witnesses showing for each witness the transcript page numbers for examination in chief, cross-examination and re-examination; and

(l) a certificate signed by the responsible solicitor for the appellant, or if unrepresented, the appellant, certifying that the appeal book is accurate, complete and complies with this rule.

(2) A core appeal book for a case stated must contain the following items in the following order—

(a) the current versions of the originating process and pleadings in the case of a claim or principal affidavits in the case of an originating application;

(b) any relevant judgment or order;

(c) any relevant reasons in respect of that judgment or order;

(d) the case stated; and

(e) a certificate signed by the responsible solicitor for the appellant, or if unrepresented, the appellant, certifying that the appeal book is accurate, complete and complies with this rule.

(3) A core appeal book must contain a filing page, be paginated and contain a table of contents at the front.

Division 3—Written submissions, authorities and exhibit appeal book

218.5—Filing and service

(1) Each party who intends to make submissions on the appeal or case stated must prepare written submissions in accordance with rule 218.6, a chronology in accordance with rule 218.7 and list of authorities in accordance with rule 218.8.

(2) The appellant must, within 28 days after the preparation commencement date—

(a) file and serve on each other party written submissions and a list of authorities; and

(b) serve on each other party a draft chronology.

(3) Each other party must, within 14 days after receipt of the documents referred to in subrule (2)—

(a) file and serve on each other party written submissions and a list of authorities; and

(b) serve on each other party a revised draft chronology.

(4) The appellant must, within 14 days after receipt of the documents referred to in subrule (3), file and serve on each other party—

(a) any written submissions in reply;

(b) any revised list of authorities; and

(c) a final (if so advised further revised) version of the chronology.

218.6—Written submissions

(1) Written submissions must be in the prescribed form and must show the anticipated hearing date and names of the judicial officers listed to hear the matter (if known).

Prescribed form—

Form 190 Written Submissions

(2) Written submissions must—

(a) in respect of each ground of appeal or issue—set out succinctly each proposition advanced by the party together with supporting references to the reasons for judgment, evidence, legislation or authorities;

(b) to the extent that a party challenges a factual finding—identify the finding that was or was not made, why it is erroneous, the finding that should have been made and the evidence relied on in support of the challenge;

(c) to the extent that a party challenges a statement of law—identify the statement of law, why it is erroneous, the correct statement of law and any authorities relied on in support of the challenge;

(d) to the extent that a party challenges the reasoning of the judicial officer at first instance—identify the reasoning, why it is erroneous and the correct reasoning; and

(e) list any other exhibits on which the party relies on in addition to those referred to in the body of the submissions.

(3) Written submissions must provide citations to cases in the manner required by rule 218.8 for a list of authorities

(4) Written submissions should not, other than in exceptional circumstances, set out passages from the reasons for judgment, evidence, legislation or authorities but should merely identify them.

(5) Written submissions must not, without the leave of the Registrar or the Court, exceed 20 pages for submissions in chief, or 10 pages for submissions in reply and must comply with the Registrar's format requirements.

(6) The Registrar may, on application filed by a party in accordance with rule 13.2(5), vary the page limit for written submissions.

218.7—Chronologies

(1) Chronologies must contain columns for the date and event, and one or more columns for exhibit, transcript and reasons for judgment references.

(2) Chronologies must be prepared by the parties cooperatively by exchanging successive drafts containing modifications by the parties to the previous draft.

(3) A party may file its own version of the chronology if the party cannot agree on the final version prepared by the appellant under rule 218.5(4) but it must only differ to the extent that the party cannot agree with that version and must highlight the differences.

218.8—Lists of authorities

(1) A list of authorities must be divided into 2 parts, being authorities expected to be read and authorities not expected to be read.

(2) A list of authorities must show the anticipated hearing date and name of the judicial officers listed to hear the matter (if known).

(3) A citation to a case must—

(a) if the case is reported in an authorised series of reports—include a citation to the highest ranking available series of reports in which the case is published;

(b) if the case is reported in a published (but not authorised) series of reports—include a citation to an available series of reports in which the case is published; and

(c) if the case postdates 1997 and is published online on Austlii or its equivalent elsewhere—include a medium neutral citation to the case.

218.9—Exhibit appeal book

(1) The appellant, except on a case stated, must prepare an exhibit appeal book containing only those exhibits that are referred to or said to be relied on in the written submissions of the parties.

(2) An exhibit appeal book must contain—

(a) the exhibits referred to in subrule (1) in exhibit number order;

(b) a filing page, page numbers and a table of contents at the front; and

(c) subject to subrule (4), a certificate signed by the responsible solicitor for each party to the appellate proceeding, or if a party is unrepresented, that party, certifying that the appeal book is accurate, complete and complies with this rule.

(3) The appellant must file 3 physical copies of the exhibit appeal book 7 days after the last of the written submissions are filed or due (whichever is earlier).

(4) If the appellant, acting diligently and reasonably, cannot obtain the signature of another party on the certificate referred to in subrule (2)(c) by the due date for filing under subrule (3), the appellant must include a certificate by the appellant and any other party willing to sign it and seek directions from the Registrar concerning any unresolved issue about signing the certificate.

(5) The appellant must serve a copy of the exhibit appeal book on each other party to the appellate proceeding as soon as practicable in electronic or physical form.

218.10—Updating written submissions and chronologies

Each party must, within 7 days of the exhibit appeal book being filed, file and serve on each other party to the appellant proceeding a revised version of that party's written submissions and any chronology including appeal book references in respect of any exhibits.

Division 4—Information sheet

218.11—Information sheet

(1) The appellant must serve on each other party a draft information sheet in the prescribed form at the same time as serving the written submissions referred to in rule 218.5(2).

Prescribed form—

Form 189 Information Sheet - Setting Down Appeal or Case Stated for Hearing

(2) The parties to an appellate proceeding must cooperate to complete an information sheet.

(3) The appellant must file and serve on each other party a completed information sheet by the time for filing written submissions in reply referred to in rule 218.5(4).

Division 5—Listing for hearing

218.12—Listing for hearing

(1) The Court may treat the appellate proceeding as being ready to be listed for hearing on the earlier of—

(a) 56 days after the preparation commencement date (subject to any variation of times under rule 218.2); or

(b) 7 days after the due date for filing by the appellant of written submissions in reply.

(2) If all written submissions or a completed information sheet will not have been filed by the date referred to in subrule (1) as a result of default by a party in compliance with these Rules, that party must before that date file an affidavit in accordance with rule 31.7 seeking an extension of time and explaining the default.

(3) The Court may, after the date referred to in subrule (1), list the appellate proceeding for hearing even if not all written submissions or the completed information sheet have been filed.

Division 6—Default

218.13—Default by appellant

(1) If the appellant fails to—

(a) file and serve the core appeal book, written submissions, a list of authorities or the exhibit appeal book by their due dates;

(b) serve a draft chronology or draft information sheet by the due date; or

(c) file and serve a final chronology or final information sheet by the due date,

another party may apply to the Court for appropriate orders.

(2) On an application under subrule (1), the Court may—

(a) order that another party have the carriage of the appellate proceeding and make orders for the filing or service of the requisite documents;

(b) order that the appellate proceeding be treated as discontinued;

(c) make an order as to costs; or

(d) make such other or further order as it thinks fit.

(3) If the appellant has not filed the core appeal book, exhibit appeal book, written submissions, a list of authorities, chronology and an information sheet 3 months after the preparation commencement date, the appellate proceeding is taken to have been discontinued and lapses.

218.14—Default by respondent

(1) If a respondent fails to—

(a) file and serve written submissions or a list of authorities by their due dates; or

(b) respond to or cooperate in the preparation of a draft chronology or draft information sheet,

the appellant may apply to the Court for appropriate orders.

(2) On an application under subrule (1), the Court may—

(a) order that the respondent be precluded from making submissions at the hearing of the appellate proceeding;

(b) make an order as to costs; or

(c) make such other or further order as it thinks fit.

218.15—Reinstatement of discontinued appellate proceeding

(1) The appellant may apply to reinstate an appellate proceeding that has been treated as discontinued under rule 218.13 by filing an interlocutory application and supporting affidavit in accordance with rule 102.1—

(a) stating the grounds on which the application is made;

(b) explaining why the appellant allowed the appellate proceeding to be treated as discontinued; and

(c) establishing that there is an arguable basis for the appellate proceeding.

(2) The application and supporting affidavit must be served on each other party to the appellate proceeding that was dismissed or taken to be discontinued under rule 218.13.

(3) The Court may, for special reasons, reinstate an appellate proceeding that has been treated as discontinued under rule 218.13.

Note—

In general the Court would need to be satisfied that the appellant has a reasonable explanation for having allowed the appellate proceeding to be discontinued, that there is an arguable basis for the appellate proceeding and that reinstatement will not cause undue prejudice to a respondent.

Division 7—Hearing and determination of appellate proceedings

218.16—Skeleton of oral argument

(1) A party may, and if the Court orders must, lodge with the Court a skeleton outline of the propositions that the party intends to advance in oral argument.

(2) A skeleton outline must—

(a) be filed or given to the Court no later than the commencement of the hearing;

(b) be given to each other party at the same time as it is given to the Court;

(c) be no longer than 3 pages;

(d) state propositions sequentially in the order to be addressed in oral argument; and

(e) cross refer to the party's written submissions.

218.17—Hearing of appeal

(1) Subject to any statute to the contrary—

(a) an appeal is to be by way of rehearing;

(b) the Court may draw inferences from evidence adduced in the proceeding; and

(c) the Court may hear further evidence in its discretion.

(2) The Court may, if it considers it to be in the interests of justice, determine an appeal on the merits notwithstanding a failure of a party to raise or state properly a ground of appeal or alternative contention in the notice of appeal or a notice of alternative contention.

218.18—Determination of appeal

(1) Subject to any statute to the contrary, the Court may—

(a) set aside or amend a judgment or order the subject of the appeal;

(b) substitute the Court's own judgment or order;

(c) remit the matter for rehearing or reconsideration;

(d) dismiss the appeal;

(e) make orders for the costs of the appeal or costs at first instance; or

(f) make such other or further order for the disposition of the appeal as it thinks fit.

(2) When the Court determines an appellate proceeding from another court or tribunal (including refusing leave to appeal), the Registrar must—

(a) give to the Registrar or proper officer of the court or tribunal written notice of the Court's decision together with any written reasons given by the Court; and

(b) return any documents or materials transmitted to the Court by the Registrar or proper officer of the court or tribunal (other than documents and materials forwarded in electronic form) for the purpose of the appellant proceeding.

Chapter 19—Specific kinds of proceedings

Part 1—Introduction

231.1—Introduction

(1) This Chapter contains rules relating to specific kinds of proceedings in the nature of claims or originating applications.

(2) Except to the extent that a rule in this Chapter excludes, modifies or is inconsistent with the other provisions of these Rules, the other provisions of these Rules applicable to a claim or originating application (as the case may be) apply to a proceeding the subject of this Chapter.

(3) If a rule in this Chapter requires an action to be instituted by filing a Claim in accordance with rule 63.1, unless the rule otherwise provides, the prescribed form is Form 1 Claim.

Prescribed form—

Form 1 Claim

(4) If a rule in this Chapter requires an action to be instituted by filing an Originating Application in accordance with rule 82.1, unless the rule otherwise provides, the prescribed form is Form 2 Originating Application.

Prescribed form—

Form 2 Originating Application

Part 2—Administration proceedings in equitable jurisdiction—Supreme Court and District Court

Note—

The Supreme Court and District Court each have equitable jurisdiction that encompasses ordering the execution of a trust or administration of a deceased estate under the direction of the Court, which is governed by the rules in this Part. However, only the Supreme Court has jurisdiction conferred by the *Administration and Probate Act 1919* in respect of deceased estates and the *Trustee Act 1936* in respect of trusts. Those matters are addressed in Chapter 20 Parts 4 and 19 of these Rules or in the *Probate Rules 2015*.

232.1—Application for general administration

(1) An action in the equitable jurisdiction of the Court for the administration of a deceased estate or the execution of a trust under the direction of the Court must be instituted by filing an Originating Application in the prescribed form and supporting affidavit in accordance with rule 82.1.

Prescribed form—

Form 7 Originating application Ex Parte

(2) The supporting affidavit must identify the persons who have an interest in the execution or administration for the purpose of the Court determining who should be joined as a respondent or interested party.

(3) At the first hearing, the Court will determine who should be joined as a respondent or interested party in the proceeding.

232.2—Application for determination of a question

(1) A person who is eligible to apply to the Court for the execution of a trust or the administration of a deceased estate under rule 232.1 may instead apply for the determination of any question or for any relief which could be determined or granted in an application under rule 232.1.

(2) Without limiting subrule (1), an action may be brought for—

(a) the determination of any question that could be determined in an application under rule 232.1, including (without limitation) any question—

(i) arising in the administration of an estate or in the execution of a trust;

(ii) as to the composition of a 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 approving any sale, purchase, compromise or other transaction by an executor, administrator or trustee; or

(d) an order directing any act to be done in the administration of an estate or in the execution of a trust that the Court could order to be done if the estate or trust were being administered or executed under the direction of the Court.

(3) An action under subrule (1) must be instituted by filing an Originating Application in the prescribed form and supporting affidavit in accordance with rule 82.1.

Prescribed form—

Form 7 Originating application Ex Parte

(4) The supporting affidavit must identify the persons who have an interest in the administration for the purpose of the Court determining who should be joined as a respondent or interested party.

(5) At the first hearing, the Court will determine who should be joined as a respondent or interested party in the action.

Supreme Court

(6) If advice or direction under section 69 of the *Administration and Probate Act 1919* or section 91 of the *Trustee Act 1936* is to be sought by the applicant in addition to an action under this rule, the applicant may include a request for advice or direction in the action brought under this rule.

Note—

An application for advice or direction under those statutory provisions is otherwise to be made under the *Probate Rules 2015*.

Part 3—Arbitration-related proceedings

233.1—Arbitration-related proceeding rules

The rules in Schedule 5 apply to proceedings under the *International Arbitration Act 1974* (Cth) and the *Commercial Arbitration Act 2011*.

Part 4—Building contract progress claim

234.1—Institution of proceeding

An action to recover an amount in respect of a progress claim under section 15 or 16 of the *Building and Construction Industry Security of Payment Act 2009* must be instituted by filing a Claim and statement of claim in accordance with rule 63.1.

Part 5—Caveat proceedings—Supreme Court and District Court

235.1—Institution of proceeding

(1) Subject to subrule (2), an application under section 191 of the *Real Property Act 1886* for the removal of a caveat, an extension of time for removal of a caveat, compensation for lodging or failing to withdraw a caveat or leave to lodge a further caveat must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) If there is already a proceeding in existence between the parties—

(a) under subrule (1) in respect of the caveat; or

(b) for substantive relief in respect of the claimed proprietary interest the subject of the caveat,

the applicant or another party to the proceeding may apply for an order under subrule (1) by filing, in the existing proceeding, an interlocutory application and supporting affidavit in accordance with rule 102.1.

Part 6—Confiscation proceedings

Notes—

This Part deals with applications under the *Criminal Assets Confiscation Act 2005*, *Serious and Organised Crime (Unexplained Wealth) Act 2009* and *Proceeds of Crime Act 2002* (Cth). It also deals with applications under the *Mutual Assistance in Criminal Matters Act 1987* (Cth) insofar as it provides for an application to be made as if it were under the *Proceeds of Crime Act 2002* (Cth).

Part 15 Division 4 deals with the registration of foreign forfeiture orders, foreign pecuniary penalty orders and foreign restraining orders.

Division 1—Introduction

236.1—Definitions

(1) In this Part, unless the contrary intention appears—

Commonwealth Act means the *Proceeds of Crime Act 2002* (Cth);

confiscation freezing order means a freezing order under section 17 of the State Act or section 15B of the Commonwealth Act;

confiscation legislation means the State Act or the Commonwealth Act;

forfeiture confirmation order means a forfeiture confirmation order under section 67 of the State Act or section 84 or 110 of the Commonwealth Act;

forfeiture order means a forfeiture order under section 47 of the State Act or section 47, 48 or 49 of the Commonwealth Act;

forfeiture-related order means an order or declaration under section 48, 53, 55, 56, 58 to 59B, 61, 76, 76AA, 78 or 79 of the State Act or section 55, 57, 58, 73, 77, 93, 94, 94A, 102 or 103 of the Commonwealth Act;

monetary order means a literary proceeds order under section 111 of the State Act or section 152 of the Commonwealth Act or a pecuniary penalty order under section 95 of the State Act or section 116 of the Commonwealth Act;

monetary-related order means an order under section 109, 115 120, 123 or 129 of the State Act or section 119, 133, 141, 149, 156, 161, 168, 176, 282 or 283 of the Commonwealth Act;

monitoring order means a monitoring order under section 165 of the State Act or section 219 of the Commonwealth Act (including a monitoring order applied for under section 34Y of the Mutual Assistance Act);

Mutual Assistance Act means the *Mutual Assistance in Criminal Matters Act 1987* (Cth);

prescribed authority means—

(a) in respect of a proceeding under the State Act—the South Australian Director of Public Prosecutions; or

(b) in respect of a proceeding under the Commonwealth Act—the Commonwealth Director of Public Prosecutions or the Commissioner of the Australian Federal Police;

production order means a production order under section 150 of the State Act or section 202 of the Commonwealth Act (including a production order applied for under section 34P of the Mutual Assistance Act);

restraining order means—

(a) in Divisions 2, 3, 4, 5 and 6—a restraining order under section 24 of the State Act or section 17, 18, 19, 20 or 20A of the Commonwealth Act (including any restraining order applied for under section 34K of the Mutual Assistance Act); or

(b) in Division 7—a restraining order under section 20 of the State Unexplained Wealth Act;

restraining-related order means an order under section 27, 28, 34, 35, 36, 38, 39, 40, 43, 44 or 187 of the State Act, or an order under or section 24, 24A, 28A, 29, 29A, 38, 39, 39B, 42, 44, 261 or 280 of the Commonwealth Act or an order under section 34L of the Mutual Assistance Act;

State Act means the *Criminal Assets Confiscation Act 2005*;

State Unexplained Wealth Act means the *Serious and Organised Crime (Unexplained Wealth) Act 2009;*

statutory forfeiture means the forfeiture of property by force of the confiscation legislation without the need for any order for forfeiture by the Court (see sections 56A and 74 of the State Act and section 92 of the Commonwealth Act);

statutory forfeiture declaration means a declaration by the Court under section 56B or 77 of the State Act or section 95 of the Commonwealth Act;

transaction set aside order means an order setting aside a disposition or dealing with property under section 32 of the State Act or section 36 of the Commonwealth Act;

unexplained wealth order means an unexplained wealth order under section 9 of the State Unexplained Wealth Act or section 179E of the Commonwealth Act;

unexplained wealth-related order means an order under section 20 or 25(1) of the State Unexplained Wealth Act or section 179C, 179EB, 179F, 179K, 179L, 179S, 282A or 283 of the Commonwealth Act.

(2) In this Part, unless the contrary intention appears, a term defined in the State Act or Commonwealth Act that is not defined in subrule (1) has the same meaning as in those Acts.

Division 2—General

236.2—Originating application and supporting affidavit

(1) An action under this Part must be instituted by filing an Originating Application, or amended Originating Application under rule 236.4, and supporting affidavit in accordance with rule 82.1.

(2) If a party relies on a conviction or order quashing a conviction, the party must exhibit a certificate of record in the criminal or appellate proceeding proving the conviction or quashing.

236.3—Joinder

(1) A party who institutes an action under this Part may seek orders under more than one rule in this Part (in aggregate or in the alternative) against the same respondent.

(2) Two or more applicants may institute an action under this Part if one of the conditions in rule 21.3 is satisfied.

(3) An action may be brought under this Part against 2 or more respondents if—

(a) the applicant seeks the same orders against them jointly or severally;

(b) the orders sought relate to the same subject matter (offence or property) or arise out of the same transaction or event or series of transactions or events;

(c) the same question of law or fact will arise in determining the application against each respondent; or

(d) the Court gives leave or so orders.

(4) The Court may, on its own initiative or on application by a person, join or disjoin a person as a respondent or interested party to an action under this Part.

236.4—Amendment

(1) Subject to subrule (2), if a party has instituted an action seeking orders under a rule in this Part, that party may, without leave of the Court, amend the Originating Application to join an additional or alternative application for orders under another rule in this Part and, for that purpose, join an additional respondent or interested party, provided that the additional application—

(a) relates to, or is dependent on, the existing application or an order made on the existing application; or

(b) relates to the same subject matter (offence or property) as the existing application.

(2) If a party makes an amendment under this rule, another party may apply for an order disallowing the amendment in whole or in part on the ground that, if leave had been sought to make the amendment, it would have been refused (and the onus will be on the party seeking disallowance of the amendment to persuade the Court that it should be disallowed).

(3) A party who makes an amendment under this rule must serve the amended Originating Application documents on each other party in accordance with rule 236.5.

236.5—Service

(1) Service of a document required to be served by the prescribed authority under this Part may be effected—

(a) if the person to be served has an address for service in the proceeding—by service at the address for service or if applicable under paragraph (c) or (d);

(b) if the person to be served does not have an address for service in the proceeding—by original service or if applicable under paragraph (c) or (d);

(c) if the document is to be served under the State Act—by service in accordance with section 216 of the State Act or regulation 16 of the *Criminal Assets Confiscation Regulations 2006* to the extent that they apply to the document; or

(d) if the document is to be served under the Commonwealth Act—by service in accordance with section 28A of the *Acts Interpretations Act 1901* (Cth).

(2) Service of a document required to be served on the prescribed authority under this Part may be effected—

(a) if the prescribed authority has an address for service in the proceeding—by service at the address for service;

(b) if the prescribed authority does not have an address for service in the proceeding—by original service or by leaving the document at the office of the prescribed authority with a person who is apparently an adult and employed by or an officer of the prescribed authority or by email service to an email address (if any) maintained by the prescribed authority for the purpose of service of documents in proceedings under the confiscation legislation; or

(c) if the document is to be served under the Commonwealth Act—by service in accordance with section 28A of the *Acts Interpretations Act 1901* (Cth).

(3) If the Court makes an order referred to in rule 236.9, the applicant must serve the order on each other party to the action as soon as practicable.

(4) If the Court makes a restraining order, unless the Court otherwise orders, the applicant must serve the order on each other party to the action as soon as practicable.

Note—

Section 29(3)(b) of the *Criminal Assets Confiscation Act 2005* and section 33(3)(b) of the *Proceeds of Crime Act 2002* (Cth) empower the Court to order that the prescribed authority delay giving such notice for a specified period if the Court considers it appropriate in order to protect the integrity of any investigation or prosecution.

236.6—Response and opposing affidavit

Unless the Court otherwise orders, a respondent or interested party—

(a) who wishes to adduce evidence or make submissions in relation to the orders sought on an Originating Application or amended Originating Application must file a response in accordance with rule 83.1; and

(b) who wishes to adduce evidence in relation to the orders sought on an Originating Application or amended Originating Application must file an affidavit in response in accordance with rule 83.2.

236.7—Interlocutory applications and affidavits

(1) An application—

(a) for a restraining-related order (if not made at a hearing at which a restraining order is considered or made);

(b) a forfeiture-related order (if not made at a hearing at which a forfeiture order is considered or made);

(c) a monetary-related order (if not made at a hearing at which a monetary order is considered or made);

(d) an unexplained wealth-related order (if not made at a hearing at which an unexplained wealth order is considered or made);

(e) to revoke, confirm, vary or exclude property from or otherwise relating to an order made under this Part; or

(f) otherwise made under the State Act, State Unexplained Wealth Act or Commonwealth Act,

in or in connection with an existing proceeding must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 in that proceeding.

(2) Another party who wishes to adduce evidence in relation to the orders sought in an interlocutory application must file an affidavit in response in accordance with rule 83.2.

236.8—Consent orders

If a party seeks an order by consent under section 219 of the State Act or section 316 of the Commonwealth Act, that party must comply with rule 133.1.

236.9—Nature of orders under this Part

For the purposes of these Rules, the following orders are treated as final judgments—

(a) a transaction set aside order made under rule 236.13;

(b) a forfeiture order, statutory forfeiture declaration or forfeiture confirmation order made under rule 236.16 or rule 236.18;

(c) a monetary order made under rule 236.19.

Division 3—Restraining orders

236.10—Application

(1) An application for a restraining order must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) The supporting affidavit must identify—

(a) the person convicted of or charged with or suspected on reasonable grounds of having committed or proposed to be charged with the serious offence (***the suspect***) (if known);

(b) the identity of the owner (if known) of the specified property if it is alleged that property of another person (***the owner***) is—

(i) subject to the effective control of the suspect; or

(ii) proceeds or an instrument of the offence;

(c) any other person reasonably believed to have an interest in the specified property (***additional person***);

(d) what notice (if any) is proposed to be given to persons other than parties to the proceeding (whether by publication or otherwise); and

(e) if the applicant seeks a restraining order without notice—the grounds on which an order is sought without notice.

(3) The applicant—

(a) must join the suspect or owner (if applicable and known) as a respondent; and

(b) may join an additional person as an interested party.

(4) Subject to subrule (5), the applicant must serve—

(a) the originating application and supporting affidavit on the respondent as soon as practicable; and

(b) the originating application together with notice that the supporting affidavit may be requested on any interested party or additional person as soon as practicable.

(5) If the applicant seeks a restraining order without notice, the applicant need not serve the documents until the Court has heard and determined the application or the Court otherwise orders.

236.11—Hearing and determination

(1) A person who claims an interest in the specified property who is not already a party to the action may apply, by filing an interlocutory application and supporting affidavit in accordance with rule 102.1, to be joined as an interested party or respondent.

(2) An application under subrule (1) must be made as soon as practicable after a person receives notice of the application.

(3) If a person referred to in subrule (1) wishes to adduce evidence or make submissions at a hearing of the application for a restraining order, the supporting affidavit must address the matters in answer to the application required to be addressed in a response in accordance with rule 83.1 and a responding affidavit in accordance with rule 83.2.

236.12—Notice of cessation of restraining order

(1) Subject to subrule (2), if a restraining order ceases to be in force, or ceases to be in force in respect of certain property covered by the order, by operation of section 46 of the State Act or section 45 or 45A of the Commonwealth Act, the applicant must within 14 days of the cessation file a notice identifying the existence and date of the cessation.

(2) Subrule (1) does not apply when the cessation is the result of an order made by the Court that made the restraining order.

(3) The applicant must serve the notice of cessation on each party with an address for service as soon as practicable.

Division 4—Transaction set aside orders

236.13—Application for set aside order

(1) An application for a transaction set aside order must be instituted by either—

(a) filing an amended version of the Originating Application in the action in which the restraining order was made, joining as an additional party any person required under this rule to be joined who is not already a party; or

(b) filing an Originating Application in accordance with rule 82.1 in a new action.

(2) The application must be supported by an affidavit in accordance with rule 82.1(2).

(3) The applicant must join the parties to the disposition or dealing as respondents.

Division 5—Forfeiture orders and declarations

236.14—Application for forfeiture order

(1) An application for a forfeiture order must be instituted by either—

(a) if there is an existing action in which a restraining order was made in relation to the property the subject of the proposed forfeiture application—filing an amended version of the Originating Application in that action, joining as an additional party any person required under this rule to be joined who is not already a party; or

(b) filing an Originating Application in accordance with rule 82.1 in a new action.

(2) The application must be supported by an affidavit in accordance with rule 82.1(2) identifying—

(a) if made on a ground that a person has been convicted of a serious offence within the meaning of the State Act or an indictable offence within the meaning of the Commonwealth Act—that person (***the suspect***);

(b) if made on a ground that a restraining order has been in force for at least 6 months—the person whose conduct or suspected conduct formed the basis of the restraining order (***the suspect***) (if known);

(c) the owner of the specified property (***the owner***) (if known);

(d) any other person reasonably believed to have an interest in the specified property or to whom hardship may reasonably be expected to be caused by operation of the order (***additional person***); and

(e) what notice (if any) is proposed to be given to persons other than parties to the proceeding (whether by publication or otherwise).

(3) The applicant—

(a) must join the owner or the suspect (if applicable and known) as a respondent; and

(b) may join an additional person as an interested party.

236.15—Application for statutory forfeiture declaration

(1) An application for a statutory forfeiture declaration must be instituted by either—

(a) if there is an existing action in which a restraining order was made in relation to the property the subject of the statutory forfeiture—filing an amended version of the Originating Application in that action, joining as an additional party any person required under this rule to be joined who is not already a party; or

(b) filing an Originating Application in accordance with rule 82.1 in a new action.

(2) The application must be supported by an affidavit in accordance with rule 82.1(2) identifying—

(a) if made in reliance on the person being a serious drug offender—that person (***the suspect***); or

(b) in any other case—the person convicted of a serious offence (***the suspect***) and the matters referred to in rule 236.14(2)(b) to (e).

(3) The applicant—

(a) must join the suspect as a respondent; and

(b) may join an additional person as an interested party.

236.16—Hearing and determination

(1) A person who claims an interest in the specified property who is not already a party to the action may apply by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 to be joined as an interested party or respondent.

(2) An application under subrule (1) must be made as soon as practicable after a person receives notice of the application.

(3) If a person referred to in subrule (1) wishes to adduce evidence or make submissions at a hearing of the application for or in relation to a forfeiture order or statutory forfeiture declaration, the supporting affidavit must address the matters in answer to the application required to be addressed in a response in accordance with rule 83.1 and a responding affidavit in accordance with rule 83.2.

236.17—Notice of discharge of forfeiture order

(1) If a forfeiture order is discharged by operation of section 64 or under section 70 or 83 of the State Act or by operation of section 81 or under section 87 or 113 of the Commonwealth Act, the applicant must within 14 days file a notice identifying the existence and date of the discharge.

(2) The applicant must serve the notice of discharge on each party with an address for service as soon as practicable.

236.18—Application for forfeiture confirmation order

(1) An application for a forfeiture confirmation order must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) The applicant must serve the interlocutory application and supporting affidavit on—

(a) each other party; and

(b) any other person as required by section 65(1) of the State Act or section 82(1) or 108(1) of the Commonwealth Act.

(3) A person who claims an interest in the specified property who is not already a party to the action may apply by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 to be joined as an interested party or respondent.

(4) An application under subrule (3) must be made as soon as practicable after a person receives notice of the application.

(5) If a person referred to in subrule (3) wishes to adduce evidence or make submissions at a hearing of the application for a forfeiture confirmation order, the supporting affidavit must address the matters in answer to the application required to be addressed in a response in accordance with rule 83.1 and a responding affidavit in accordance with rule 83.2.

Division 6—Monetary orders

236.19—Application for monetary order

(1) An application for a monetary order must be instituted by either—

(a) if there is an existing action in relation to the offence the subject of the proposed application—filing an amended version of the Originating Application in that action, joining as an additional party any person required under this rule to be joined who is not already a party; or

(b) filing an Originating Application in accordance with rule 82.1 in a new action.

(2) The application must be supported by an affidavit in accordance with rule 82.1(2).

(3) The applicant must serve the application and supporting affidavit on the respondent against whom the order is sought as soon as practicable.

236.20—Notice of discharge of order

(1) If a monetary order is discharged by operation of section 125 of the State Act or section 146 or 173 of the Commonwealth Act, the applicant must within 14 days file a notice identifying the existence and date of the discharge.

(2) The applicant must serve a notice of discharge on the respondent as soon as practicable.

Division 7—Unexplained wealth orders

236.21—Application for unexplained wealth order

(1) An application for an unexplained wealth order must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) If the application is made under the Commonwealth Act—

(a) the applicant may, but is not required to, serve the originating application and supporting affidavit on the respondent before the Court determines whether to make a preliminary unexplained wealth order under section 179B of the Commonwealth Act; and

(b) if the Court makes a preliminary unexplained wealth order, the applicant must serve the order on the respondent as soon as practicable and, if the restraining order application and supporting affidavit have not already been served on the respondent, serve them on the respondent at the same time.

236.22—Application for evidence or documents

(1) An application by the Commissioner of Police under section 15(1) of the State Unexplained Wealth Act for an order that a person give evidence or produce documents or materials must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

Note—

Section 15(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the affidavit to specify how the evidence, documents or materials to which the application relates are relevant to identifying, tracing, locating or valuing a person's wealth.

(2) The Court may, if it thinks fit, make an order on the application without notice.

(3) If the Court makes an order without notice—

(a) the applicant must serve the order, together with the Originating Application and supporting affidavit, on the respondent as soon as practicable; and

(b) the respondent may, within 7 days of service of the order or such other period as the Court may fix, apply to the Court, by filing an interlocutory application and supporting affidavit in accordance with rule 102.1, to set aside or vary the order.

236.23—Order for evidence or documents

(1) The Court may order that the respondent—

(a) give oral or affidavit evidence to the Court on questions; or

(b) produce before the Court materials,

relevant to identifying, tracing, locating or valuing a person's wealth.

(2) The Court may order that evidence be given or materials be produced before a judicial officer or the Registrar.

(3) If the Court makes an order under this rule, the applicant must serve the order on the respondent as soon as practicable.

Note—

Section 15(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Commissioner of Police to ensure that a copy of the order is served on the respondent, in accordance with any directions of the Court, and that the respondent is advised that the order was made under section 15 of that Act.

(4) The Court may make such orders as to costs as it thinks fit.

Note—

Section 15(5) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* empowers the Court to make an order that the Crown pay the respondent's legal costs in connection with complying with the order (which may be costs as between solicitor and client) or such part of those costs as determined by the Court.

236.24—Application for restraining order

(1) An application by the Commissioner of Police under section 20(1) of the State Unexplained Wealth Act for a restraining order must be instituted by either—

(a) filing an interlocutory application and supporting affidavit in accordance with rule 102.1 in the action in which the unexplained wealth order is being sought or was made; or

(b) filing an Originating Application and supporting affidavit in accordance with rule 82.1 in a new action.

(2) The supporting affidavit must—

(a) depose to facts or exhibit documents by reason of which the order sought is reasonably necessary to ensure payment of an amount that is, or may become, payable under an unexplained wealth order;

(b) if an order is sought to restrain the disposal of specified property, identify—

(i) the owner of the property;

(ii) any other person who has or is believed to have an interest in the property; and

(iii) any person who has custody of the property;

(c) if an order is sought to restrain specified kinds of transactions involving safe custody facilities, identify—

(i) the relevant deposit holder; and

(ii) any person who would have a legal entitlement to enter into the transaction if it were not restrained; and

(d) identify any other person to whom notice of the application should be given.

Note—

Section 20(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Court to be satisfied that the order is reasonably necessary to ensure payment of an amount that is, or may become, payable under an unexplained wealth order and that the application for the order be accompanied by an affidavit setting out matters that would justify such a finding.

(3) The Court may order the joinder of any additional party to the proceeding or that notice of the application be given to any person.

(4) The Court may, if it thinks fit, make a restraining order without notice.

(5) If the Court makes a restraining order, the applicant must serve the order, and if made without notice also the application and supporting affidavit, on each other party to the proceeding and any other person to whom notice of the application is required to be given as soon as practicable.

Note—

Section 23 of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* provides that, if a court makes a restraining order, the Commissioner of Police should give written notice of the order (including a copy of the order) to any persons that should, in the opinion of the court, be given notice of the order.

236.25—Objection when restraining order made without notice

(1) A notice of objection under section 24 of the State Unexplained Wealth Act to a restraining order made without notice must be made by a notice of objection in the prescribed form.

Prescribed form—

Form 58 Notice of Objection

Note—

Section 24(1) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires a notice of objection to be lodged within 14 calendar days of the objector becoming aware of the restraining order or such longer period as the Court may allow.

(2) The notice of objection must be supported by an affidavit in accordance with rule 31.7 deposing to facts or exhibiting documents relied on.

(3) The objector must serve the notice of objection and supporting affidavit on the applicant as soon as reasonably practicable.

Note—

Section 24(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires that the Commissioner of Police be served by registered post at least 7 calendar days before the day appointed for hearing the notice.

236.26—Application to declare property ownership

(1) An application by the Commissioner of Police under section 19(2) of the State Unexplained Wealth Act to declare property to be property of a person for the purpose of the *Enforcement of Judgments Act 1991* must be instituted by either—

(a) filing an interlocutory application and supporting affidavit in accordance with rule 102.1 in the action in which the unexplained wealth order was made; or

(b) filing an Originating Application and supporting affidavit in accordance with rule 82.1 in a new action.

(2) The supporting affidavit must—

(a) depose to facts or exhibit documents that evidence that particular property is subject to the effective control of the person the subject of the relevant unexplained wealth order; and

(b) identify each person whom the Commissioner of Police has reason to believe may have an interest in the property and any other person who should be given notice of the application.

Note—

Section 19(2) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Court to be satisfied that particular property is subject to the effective control of the person the subject of the relevant unexplained wealth order.

(3) The Court may order the joinder of any additional party to the action or that notice of the application be given to any person.

Note—

Section 19(3) of the *Serious and Organised Crime (Unexplained Wealth) Act 2009* requires the Commissioner of Police, on applying for an order, to give written notice of the application to the person who is subject to the unexplained wealth order, any person whom the Commissioner of Police has reason to believe may have an interest in the property and any other persons who should, in the opinion of the Court, be given notice of the application.

(4) The applicant must serve the application and supporting affidavit on each other party as soon as practicable.

Division 8—Production, examination, monitoring, freezing orders

236.27—Filing or delivery of application

(1) An applicant who wishes to make an originating application under this Division may either—

(a) file the Originating Application and supporting documents; or

(b) request that the Originating Application and supporting documents be delivered without being filed.

(2) If an applicant seeks to proceed under subrule (1)(b)—

(a) the applicant must notify the Registrar orally that an application is sought to be made without filing the documents and of the general nature of the application;

(b) the Registrar will appoint a time for hearing of the application by a judicial officer empowered to hear the application;

(c) the Registrar will determine whether some or all of the documents to be produced are to be filed or merely delivered to the judicial officer who is to hear the application;

(d) if the Registrar determines that documents are to be delivered to the judicial officer who is to hear the application—

(i) the Registrar will make arrangements with the applicant for delivery to the Registrar in advance of the hearing of those documents in an envelope marked "Strictly Confidential. Documents relating to application under [Act and section]. Not to be opened other than by or at the direction of [name of judicial officer]"; and

(ii) the Registrar will deliver the sealed envelope personally to the judicial officer without its contents being filed.

236.28—Production or confiscation freezing order—Magistrates Court

(1) An application for a production order or a confiscation freezing order must be instituted by filing or delivering an Originating Application in accordance with rule 82.1 in the prescribed form supported by an affidavit in accordance with rule 82.1(2).

Prescribed form—

Form 7 Originating application Ex Parte

(2) The application must be accompanied by a draft order in the prescribed form.

Prescribed form

Form 79 Draft Order

Note

Jurisdiction is conferred by the legislation on a magistrate (rather than upon the Magistrates Court) to make a production order or a confiscation freezing order.

236.29—Monitoring order—Supreme Court and District Court

(1) An application for a monitoring order must be instituted by filing or delivering an Originating Application in accordance with rule 82.1 in the prescribed form supported by an affidavit in accordance with rule 82.1(2).

Prescribed form—

Form 7 Originating application Ex Parte

(2) The application must be accompanied by a draft order in the prescribed form.

Prescribed form—

Form 79 Draft Order

Note

Jurisdiction is conferred by the legislation on a judge of a court of a State that has jurisdiction to deal with criminal matters on indictment (rather than upon the Court itself) to make a monitoring order.

236.30—Examination order—Supreme Court, District Court and Magistrates Court

(1) An application under section 131 of the State Act or section 180 of the Commonwealth Act for an examination order must be made by either—

(a) filing an interlocutory application and supporting affidavit in accordance with rule 102.1 in the action in which the restraining order was made; or

(b) filing an Originating Application and supporting affidavit in accordance with rule 82.1 in a new proceeding.

(2) An application under section 132 of the State Act or section 180A, 180B, 180C, 180D, 180E or 181 of the Commonwealth Act for an examination order must be made by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 in the action in which the relevant order or application was made.

Part 7—Corporations, consumer and competition legislation proceedings

Division 1—Introduction

237.1—Definitions

In this Part, unless the contrary intention appears—

ASIC Act means the *Australian Securities and Investment Commission Act 2001* (Cth);

Corporations Act means the *Corporations Act 2001* (Cth);

Competition Act means the *Competition and Consumer Act 2010* (Cth) except insofar as it addresses matters under the Australian Consumer Law;

Consumer Law means the Australian Consumer Law which is Schedule 2 to the *Consumer and Competition Act 2010* (Cth) together with those provisions of the *Consumer and Competition Act 2010* (Cth) that address matters under the Australian Consumer Law;

Fair Trading Act means the *Fair Trading Act 1987*;

Specified Superior Court means one or more of the Federal Court of Australia, the Family Court of Australia, a Supreme Court of a State or a court to which section 41 of the *Family Law Act 1975* (Cth) applies because of a Proclamation made under section 41(2).

Division 2—Actions by claim

237.2—Corporations Act actions by claim

(1) An action arising under the Corporations Act in respect of which jurisdiction is not confined by the Corporations Act to a Specified Superior Court must be instituted by filing a Claim and statement of claim in accordance with rule 63.1.

Note—

Actions governed by this rule include—

(a) a claim for remedies for a contravention of a provision of the *Corporations Act 2001* (Cth) except under Part 7.12 or Part 9.5 (for example sections 283F, 601MA, 601XAA, 670B, 670E, 671C, 672F, 729, 953B and 953B, 961M and 961N, 1020AL, 1022B and 1022C, 1023Q and 1023R);

(b) a recovery action under Part 5.6 Division 7 or Part 5.7B of the *Corporations Act 2001* (Cth) (for example sections 567, 588FF, 588FH, 588M, 588R, 588T, 588W, 588Z, 588ZA, 596ACA and 596AF);

(c) a civil penalty proceeding under Part 9.4B of the *Corporations Act 2001* (Cth);

(d) a claim for remedies under Part 9.4AAA of the *Corporations Act 2001* (Cth);

(e) a claim to recover monies or enforce rights or duties arising by reason of a provision of the *Corporations Act 2001* (Cth) when the *Corporations Act 2001* (Cth) does not explicitly create a right of action or does not vest jurisdiction in a court (for example sections 565, 588FGAA and 925H); or

(f) any other action in respect of which jurisdiction is conferred by section 1337E of the *Corporations Act 2001* (Cth) on courts of a State.

Supreme Court

(2) An action arising under the Corporations Act in respect of which jurisdiction is confined by the Corporations Act to a Specified Superior Court must be instituted by filing a Claim and statement of claim in accordance with rule 63.1 if it is or includes—

(a) a claim for remedies for a contravention of a provision of Part 7.12 or Part 9.5 of the Corporations Act (including, without limitation, sections 1101B, 1323, 1324, 1324B, 1325, 1325B, 1325C and 1325E);

(b) a claim for relief from liability in respect of a contravention of the Corporations Act, a procedural irregularity or a breach of duty (including, without limitation, sections 1318(2), 1322(4) and 1325D);

(c) a claim for or in respect of oppressive conduct (including, without limitation, sections 232 to 234); or

(d) a claim for remedies under Part 5.9 Division 2 of the Corporations Act (including, without limitation, section 598).

237.3—Competition Act actions by claim

An action arising under the Competition Act must be instituted by filing a Claim and statement of claim in accordance with rule 63.1 if it is or includes—

(a) a claim for remedies (including a pecuniary penalty) under Part VI of the Competition Act (including, without limitation, sections 76, 77, 80, 80A, 80AC, 81, 81A, 82, 86C, 86D, 86E, 87, 87B and 87C);

(b) a claim to recover monies or enforce rights or duties arising by reason of a provision of the Competition Act when the Competition Act does not explicitly create a right of action or does not vest jurisdiction in a court; or

(c) any other action in respect of which jurisdiction is conferred by section 86 of the Competition Act on courts of a State.

237.4—Consumer actions by claim

(1) An action arising under the Consumer Law must be instituted by filing a Claim and statement of claim in accordance with rule 63.1 if it is or includes—

(a) a claim for remedies (including a pecuniary penalty) for a contravention of a provision of the Consumer Law (including, without limitation, sections 224, 228, 232, 236, 237, 238, 239, 243, 246, 247 and 248);

(b) a claim for remedies under a provision of the Consumer Law (including, without limitation, sections 250, 259, 265, 267, 269, 271, 274 and 279);

(c) a claim to recover monies or enforce rights or duties arising by reason of a provision of the Consumer Law when the Consumer Law does not explicitly create a right of action or does not vest jurisdiction in a court; or

(d) any other action in respect of which jurisdiction is conferred by section 138B of the Consumer Law on courts of a State.

(2) An action arising under the ASIC Act must be instituted by a filing a Claim and statement of claim in accordance with rule 63.1 if it is or includes—

(a) a claim for remedies (including a pecuniary penalty) for a contravention of a provision of Part 2 Division 2 Subdivision C, D or E of the ASIC Act (including, without limitation, sections 12GBA, 12GBB, 12GBCC, 12GD, 12GF, 12GLA or 12GLB);

(b) a claim to recover monies or enforce rights or duties arising by reason of a provision of the ASIC Act when the ASIC Act does not explicitly create a right of action or does not vest jurisdiction in a court; or

(c) any other action in respect of which jurisdiction is conferred by section 12GJ of the ASIC Act on courts of a State.

(3) An action arising under the Fair Trading Act must be instituted by filing a Claim and statement of claim in accordance with rule 63.1 if it is or includes—

Supreme Court or District Court

(a) a claim for remedies for a contravention of a provision of the Fair Trading Act (section 85);

Supreme Court

(b) a claim for an injunction in respect of a contravention of a provision of the Fair Trading Act (section 83);

Magistrates Court

(c) a claim for a pecuniary penalty (section 86B); or

Supreme Court, District Court and Magistrates Court

(d) an action to recover monies or enforce rights or duties arising by reason of a provision of the Fair Trading Act when the Fair Trading Act does not explicitly create a right of action or does not vest jurisdiction in a court (except an application under section 8A of that Act, which is to be instituted by originating application).

237.5—Joinder of causes of action

A cause of action governed by this Division may be joined with another cause of action governed by this Division or arising at law, in equity or under a different statute if both causes of action vest in the applicant against the respondent.

Division 3—Proceedings by originating application

237.6—Corporations and ASIC Act proceedings under Corporations Rules—Supreme Court

An action under the Corporations Act or ASIC Act not governed by rule 237.2 or 237.4(2) is governed by the *Corporations Rules 2003*.

237.7—Competition Act proceedings by originating application

An action under the Competition Act not governed by rule 237.3 must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

237.8—Consumer legislation proceedings by originating application

An action under the Consumer Law or Fair Trading Act not governed by rule 237.4 must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

Part 8—Family Relationship Declarations

238.1—Definitions

In this Part, unless the contrary intention appears—

relationship declaration means a declaration or order under section 9 or 11B of the *Family Relationships Act 1975*.

238.2—Institution

(1) Subject to subrule (3), an application for a relationship declaration must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) The supporting affidavit must—

(a) identify the use that the applicant intends to make of the declaration;

(b) identify to the extent possible all persons whose interests would or may be affected by the declaration by their full names and addresses and, in the case of children, their ages; and

(c) if the application is made under section 9 of the *Family Relationships Act 1975*—exhibit a copy of the birth certificate for the child.

(3) If a relationship declaration is sought as part of or in the course of a substantive action under section 14 of the *Family Relationships Act 1975*, the action must be instituted in the manner appropriate to the substantive action, and if the substantive action is instituted by a Claim and statement of claim in accordance with rule 63.1, the applicant must also file an affidavit addressing the matters required to be addressed by subrule (2).

238.3—Domestic partner declaration

An applicant seeking a domestic partner declaration under section 11B of the *Family Relationships Act 1975*—

(a) if the applicant is, or claims to be, a domestic partner—must join the other putative domestic partner (if alive) or the personal representative of the estate of such a person (if there is one), as a respondent;

(b) if the applicant is not a party to the putative domestic partner relationship—must join the putative domestic partners (if alive) or the personal representative of the estate of such a person (if there is one) as respondents; and

(c) in any case—must join any other person whose interests would, or may, be affected by the declaration as an interested party.

238.4—Parentage declaration

An applicant seeking a parentage declaration under section 9 of the *Family Relationships Act 1975*—

(a) if the applicant is, or claims to be, the mother of the child—must join the putative father or co-parent (if alive) or the personal representative of the estate of such a person (if there is one) as a respondent;

(b) if the applicant is, or claims to be, the father or co-parent of the child—must join the mother of the child (if alive) or the personal representative of the estate of the mother (if there is one) as a respondent;

(c) if the applicant is, or claims to be, a person whose interests, rights or obligations are affected—must join the mother and father or co-parent of the child (if alive) or the personal representative of the estate of such a person (if there is one) as a respondent;

(d) in any case—must join the child as a respondent if the child is over 18; and

(e) in any case—must join any other person whose interests would or may be affected by the declaration as an interested party.

Part 9—Housing improvement tenancy disputes

239.1—Institution

(1) An application under section 35(3) of the *Housing Improvement Act 2016* must be instituted by filing a Claim and statement of claim in accordance with rule 63.1.

(2) The applicant—

(a) if a tenant—must join the landlord as a respondent and any tenant who is not an applicant as an interested party;

(b) if a landlord—must join the tenant as a respondent and any landlord who is not an applicant as an interested party; and

(c) in any case—must join as an interested party the Minister responsible for the administration of the *Housing Improvement Act 2016*.

Part 10—Interpleader

240.1—Institution

(1) A person who has possession, custody or control of money or other property—

(a) in which the person claims no personal interest; and

(b) the beneficial entitlement to which is subject to uncertainty or conflict; or

(c) who is required by statute to pay money into court,

may institute an action under this rule to determine the entitlement to the property and, if the property is money, may pay the money into court.

(2) A person who is required by statute to lodge a document may institute an action under this rule and lodge the document with the Court.

(3) An action under this rule must be instituted by filing an Originating Application in accordance with rule 82.1 in the prescribed form.

Prescribed forms—

Form 6 Originating Application – Interpleader

Form 6A Originating Application – Interpleader – Referral by Small Business Commissioner MC

(4) Unless instituted by the Small Business Commissioner under section 20(6) of the *Retail and Commercial Leases Act 1995*, the application must be supported by an affidavit in accordance with rule 82.1(2).

(5) The applicant must join as an interested party—

(a) if the action is instituted under subrule (1)—any person who the applicant knows has or claims an interest in the property; or

(b) if the action is instituted under subrule (2)—any person who is a party to the document.

(6) An interested party may file a notice of acting but, unless the Court otherwise orders, is not required to file a response.

240.2—Directions

(1) An applicant who files an application under rule 240.1(1) must file an interlocutory application in accordance with rule 102.1, which need not be supported by an affidavit, seeking orders for the conduct of the action.

(2) After the filing of the application, the Registrar will convene a directions hearing and give notice in the prescribed form to all parties.

Prescribed form—

Form 78A Notice of Directions Hearing

(3) At a directions hearing, the Court may make such orders as it thinks fit for the determination of the action.

(4) For example, the Court may order—

(a) the addition or substitution of a party;

(b) service on a person;

(c) that a party have carriage of the action; or

(d) the trial of the action or an issue in the action.

Part 11—Possession of land

241.1—Institution

(1) A person who claims an entitlement to, and seeks an order for possession of, land may institute an action under this rule for an order for possession either—

(a) against a named person; or

(b) against anyone in possession of or physically present on the land.

(2) An action under this Part must be instituted by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(3) If the action is brought—

(a) under subrule (1)(a)—the applicant must join the person against whom the order is sought as a respondent;

(b) under subrule (1)(b)—the applicant must join any person who the applicant knows claims possession of or is in occupation of the whole or part of the land as a respondent or interested party.

(4) The supporting affidavit must—

(a) depose to or exhibit—

(i) if the applicant is the registered proprietor—proof that the applicant is the registered proprietor of a freehold estate in possession within the meaning of section 192(a) of the *Real Property Act 1886*;

(ii) if the applicant is a registered mortgagee or encumbrancee—proof that the person in possession is a mortgagor or encumbrancer in default, or a

person claiming under such mortgagor or encumbrancer, within the meaning of section 192(b) of the *Real Property Act 1886*;

(iii) if applicant is a lessor—proof that—

(A) the applicant has power to re-enter and the rent is in arrears for at least 3 months within the meaning of section 192(c) of the *Real Property Act 1886*; or

(B) a legal notice to quit has been given, the lease has become forfeited or the term of the lease has expired;

(b) exhibit the documents from which the applicant derives title and upon which the applicant bases the entitlement to possession;

(c) identify who to the knowledge of the applicant claims possession, or is in occupation, of the land;

(d) state whether the National Credit Code applies; and

(e) state whether any person has possession of the land as a tenant under, or is a former tenant holding over after termination of, a residential tenancy agreement.

(5) The application must contain a proper description of the land and the application or affidavit must include a reference to the certificate of title and any other basic document of title (such as a registered mortgage or registered lease).

(6) Unless the Court otherwise orders, the applicant must serve the Originating Application documents on each other party by personal service as soon as practicable.

Notes—

Section 193 of the *Real Property Act 1886* requires that an originating process seeking an order to give up possession under section 192 be served at least 16 days before the hearing.

The Court may order substituted service under rule 42.7.

241.2—Notice to occupier and response

(1) Subject to subrule (2), if the application is made under rule 241.1(1)(a), the applicant must serve notice of the proceeding by personal service on any person who the applicant knows is in occupation of the land as soon as practicable.

(2) The applicant need not serve notice of the proceeding on an occupier if the Court is satisfied that the occupier is a trespasser who entered the land without any actual or apparent right to do so and an order for possession should be made as a matter of urgency.

(3) A respondent or interested party who wishes to oppose the application must file a response in accordance with rule 83.1 and, if the party wishes to adduce evidence in relation to the application, an affidavit in response in accordance with rule 83.2.

(4) An occupier of the land who is not a party may apply to be joined as a respondent or interested party by filing an interlocutory application and supporting affidavit in accordance with rule 102.1 addressing the matters that would be addressed in a response and responding affidavit under rule 83.1 and 83.2.

241.3—Incidental application

(1) A party to an action under this Part may make an application under section 55A of the *Law of Property Act 1936* or under the *National Credit Code* (except under sections 76 to 79 or 124) by filing an interlocutory application and supporting affidavit in accordance with rule 102.1.

(2) The Court may determine an application under this rule summarily and is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

241.4—Hearing and determination of application for possession

(1) At the hearing of the application for possession, the Court may hear the application, give directions for the hearing of the application or make such other or further order as it thinks fit.

(2) The Court will not give judgment for possession of land in an application under this Part unless satisfied that appropriate notice of the action has been given to any person presently in occupation of the land.

Part 12—Pre-action discovery—Supreme Court and District Court

242.1—Institution

(1) A person who seeks disclosure or production of evidentiary material or information to decide whether to bring or to formulate a claim may institute an action under this rule by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) The supporting affidavit must identify—

(a) the person against whom the applicant is contemplating bringing a claim and the cause of action contemplated;

(b) the evidentiary material or information sought; and

(c) why the applicant requires the evidentiary material or information to determine whether a cause of action exists or against whom the claim lies or to formulate the claim properly.

242.2—Order

(1) The Court may make an order under subrule (2) if satisfied that—

(a) the applicant may have a good cause of action against another person;

(b) the person against whom the order is sought may be in possession of evidentiary material or information relevant to the possible cause of action; and

(c) the applicant requires disclosure or production of relevant evidentiary material or information to—

(i) decide whether a cause of action exists;

(ii) decide against whom the claim lies; or

(iii) formulate the claim properly.

(2) If the Court is satisfied under subrule (1), the Court may—

(a) order that the respondent file and serve on the applicant a document disclosing whether the respondent is, or has been, in possession of evidentiary material relevant to the possible cause of action and, if so, providing full particulars of such evidentiary material;

(b) order that the respondent produce any evidentiary material relevant to the possible cause of action to the Court or for inspection or copying by the applicant;

(c) order that the respondent make discovery as if the respondent were a party to a substantive action for the possible cause of action and for that purpose specify any matters or make any order that could be specified or made in respect of a party under Chapter 7 Part 13;

(d) order that the respondent verify disclosure or production by affidavit;

(e) order that the respondent provide specified information to the Court;

(f) order that the respondent attend before the Court for examination; or

(g) make any other or further order as it thinks fit, including as to costs.

(3) If the Court makes an order under subrule (2), the Court may subsequently make a further order under subrule (2).

Example—

If the Court orders that the respondent make discovery, after the respondent has done so the Court may order that the respondent attend before the Court for examination.

242.3—Compensation

(1) Unless the Court otherwise orders, the respondent is entitled to payment by the applicant of reasonable compensation for the time and expense involved in complying with an order made under rule 242.2.

(2) The compensation is to be fixed by agreement or in default of agreement by the Court.

Part 13—Pre-action search or freezing orders—Supreme Court and District Court

243.1—Institution

(1) A person who seeks a search order under rule 112.2 or freezing order under rule 112.14 in anticipation of instituting a substantive action may institute an action under this rule by filing an Originating Application and supporting affidavit in accordance with rule 82.1.

(2) The supporting affidavit must depose to the matters referred to in rule 112.3, 112.14, 112.15 or 112.17 as the case may be.

(3) The applicant must join the person against whom the order is sought as a respondent but need not serve the Originating Application documents on the person before the application is heard by the Court.

(4) Chapter 10 Part 2 Division 1 and Schedule 2 otherwise apply to an application for a search order.

(5) Chapter 10 Part 2 Division 5 and Schedule 3 otherwise apply to an application for a freezing order.

Note—

It is preferable that the substantive action first be instituted and a freezing order or search order be sought by interlocutory application under Chapter 10 Part 2 Division 1 or 5 respectively. An action should only be brought under this rule if urgency prevents proceeding under Chapter 10 Part 2.

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